

## Right to Know Advisory Committee

### Selected state statutes limiting release of e-mail addresses

Prepared July 8, 2010

State	Provision
Idaho	No agency may distribute or sell for use as a mailing list or a telephone number list any list of persons without first securing the permission of those on the list. §9-348(1)(a) No list of persons prepared by the agency may be used as a mailing list or a telephone number list except by the agency or another agency without first securing the permission of those on the list. §9-438(1)(b)
Virginia	The following records are not public records but may be disclosed by in the discretion of the custodian (except where such disclosure is prohibited by law): 10. Personal information, as defined in §2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record. §2.2-3705.1.10
Pennsylvania	Exemptions The following personal information: (A) A record containing all or part of a person's Social Security number; driver's license number; personal financial information; home, cellular or personal telephone numbers; personal e-mail addresses; employee number or other confidential personal identification number. . . . §708(a)(6)(i)(A)
New York	An Agency may deny access to records or portions thereof that, if disclosed, would constitute an unwarranted invasion of personal privacy. An unwarranted invasion of personal privacy includes, but is not limited to: . . . iii. Sale or release of lists of names or addresses if such lists would be used for commercial or fund-raising purposes. NY Pub.Off.Law §87(2)(b)(iii)
Indiana	State agencies by administrative rule and

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State	Provision
	<p>other governmental units by ordinance may restrict the commercial use of information obtained through disk or tape of electronically-stored information. §5-14-3-3(e)</p> <p>A public agency is not required to create or provide copies of lists of names and addresses (including electronic mail account addresses) unless the public agency is required to publish such lists and disseminate them to the public under a statute. However, if a public agency has created a list of names and addresses (excluding electronic mail account addresses) it must permit a person to inspect and make memoranda abstracts from the list unless access to the list is prohibited by law. §5-14-3-3(f)</p>
Kansas	<p>The agency may require a person requesting the records or information therein to provide written certification that: . . .(2) the requester does not intend to, and will not:</p> <p>(A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or (B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed.</p>
Texas	<p>An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter. Tx Govt Code §552.137</p> <p>Exceptions, including disclosure if the member of the public affirmatively consents to its release.</p>

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## Maine Statutes: using technology for public meetings

### TITLE 10 COMMERCE AND TRADE

#### CHAPTER 110 FINANCE AUTHORITY OF MAINE

##### §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 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.

### TITLE 21-A ELECTIONS

#### CHAPTER 13 CAMPAIGN REPORTS AND FINANCES

##### §1002. Meetings of commission

**1. Meeting schedule.** The commission<sup>1</sup> 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

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<sup>1</sup> 21-A MRSA §1001, sub-§1: "Commission" means the Commission on Governmental Ethics and Election Practices established under Title 1, section 1002.

## Maine Statutes: using technology for public meetings

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.

### TITLE 32 PROFESSIONS AND OCCUPATIONS

#### CHAPTER 2-B MAINE EMERGENCY MEDICAL SERVICES ACT OF 1982

##### §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



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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 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.

**2. Functions.** The board shall perform the following functions.

A. The board shall direct the operations of the emergency medical services program.

B. With the advice of the commissioner, the board shall adopt rules in accordance with the Maine Administrative Procedure Act to carry out this chapter. In order to encourage participation at rule-making hearings by emergency medical services volunteers, the board shall hold hearings in each region as determined necessary. Each hearing must be held in the evening or at times convenient to the public and may use available technology. At least 2 members of the board shall attend each hearing.

C. The board shall grant licenses pursuant to this chapter.

D. The board shall specify in rules the criteria that must be met as a precondition to offering an emergency medical services course, refresher course or continuing education

## Maine Statutes: using technology for public meetings

course. The board shall work toward developing consistent educational programming in terms of course content, course requirements and quality of instruction. The board shall adopt rules, which are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A, regarding the requirements for certification, recertification and decertification of persons engaged in emergency medical services education and training.

E. The board shall keep records and minutes of its activities and meetings. These records and minutes must be made easily accessible to the public and be provided expeditiously upon request. The board shall distribute to all licensed emergency medical services persons a publication listing training opportunities, meeting schedules of the board, proposed rule changes and other information judged by the board to have merit in improving emergency medical patient care in the State. The board shall create, print and distribute this publication in the most cost-efficient manner possible. Any paid advertising utilized to accomplish this purpose may not be solicited by board members or staff and must be included in such a way that endorsement of a product or service by the board can not reasonably be inferred. The board may prepare, publish and disseminate educational and other materials to improve emergency medical patient care.

F.

F-1. The director must be qualified by training or by experience and is appointed by the board with approval of the commissioner. The director serves for an indefinite term, subject to removal for cause.

G. The board shall submit to the commissioner its budgetary requirements in the same manner as is provided in Title 5, section 1665. The department shall serve as the fiscal agent for Maine Emergency Medical Services.

H. With the approval of the commissioner, the board may enter into contracts, subject to provisions of state law, and delegate this authority to the director. The board may also delegate, through rules, to staff, any provision necessary to carry out this chapter, including the process of hearings. Funds appropriated or allocated to the board to be contracted with the regional councils may be disbursed on a sole-source contract basis, according to guidelines established by the board. Funds must be expended in accordance with standard state contract or grant procedures and guidelines where appropriate.

I. The board may establish and collect licensure fees, application fees, examination fees, course and conference fees, tuition and other charges as determined necessary by the board for the efficient administration of this chapter. All funds received pursuant to this paragraph must be deposited into a nonlapsing fund established for the purpose. Maine Emergency Medical Services shall administer the fund with the advice and consent of the commissioner. Funds must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest on these investments must be credited to the fund.

J. The board shall establish and maintain a statewide quality assurance and improvement committee and shall adopt rules, which are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A, regarding the requirements and authority of the statewide quality assurance and improvement committee.

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**3. Authority.** In addition to authority otherwise conferred, the board or, as delegated, its subcommittee or staff may, for each violation of applicable laws, rules or conditions of licensure or registration, in accordance with the procedures established in section 90-A and any rules adopted by the board, take one or more of the following actions:

A. Issue warnings, censures or reprimands to a licensee. Each warning, censure or reprimand issued must be based upon violations of different applicable laws, rules or conditions of licensure or must be based upon separate instances of actionable conduct or activity;

B. Suspend a license or registration for up to 90 days for each violation of applicable laws, rules and conditions of licensure or registration or for each instance of actionable conduct or activity. Suspensions may be set to run concurrently or consecutively and may not exceed one year in total. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation, although the suspension remains part of the licensee's record;

C. Impose civil penalties of up to \$1,500 for each violation of applicable laws, rules and conditions of licensure or for each instance of actionable conduct or activity;

D. Impose conditions of probation upon an applicant or licensee. Probation may run for that time period as the board, its subcommittee or staff determines appropriate. Probation may include conditions such as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional or occupational supervision of the applicant or licensee; and other conditions as the board, its subcommittee or staff determines appropriate. Costs incurred in the performance of terms of probation are borne by the applicant or licensee. Failure to comply with the conditions of probation is a ground for disciplinary action against a licensee; or

E. Execute a consent agreement that resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of the applicant or licensee, the board, its subcommittee or staff and the Department of the Attorney General. Any remedy, penalty or fine that is otherwise available by law, even if only in the jurisdiction of the District Court, may be achieved by consent agreement, including long-term suspension and permanent revocation of a professional license. A consent agreement is not subject to review or appeal and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court.

**4. Authority to issue letters of guidance.** In addition to authority otherwise conferred, the board or, as delegated, its subcommittee or staff may issue a letter of guidance or concern to an applicant or licensee.

A. Letter of guidance or concern may be used to educate, reinforce knowledge regarding legal or professional obligations and express concern over action or inaction by the licensee or applicant that does not rise to the level of misconduct sufficient to merit disciplinary action. The issuance of a letter of guidance or concern is not a formal proceeding and does not constitute an adverse disciplinary action of any form. Notwithstanding any other provision of law, a letter of guidance or concern is not confidential. The board or, as delegated, its subcommittee or staff may place a letter of

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guidance or concern, together with any underlying complaint, report and investigation materials, in a licensee's or applicant's file for a specified amount of time, not to exceed 10 years. Any letters, complaints and materials placed on file may be accessed and considered by the board, its subcommittee or staff in any subsequent action commenced against the applicant or licensee within the specified time frame.

<p style="text-align:center"><b>TITLE 39-A</b> <b>WORKERS' COMPENSATION</b></p>
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**CHAPTER 3**  
**WORKERS' COMPENSATION BOARD**

### §151. Workers' Compensation Board

**1. Board established.** Pursuant to Title 5, section 12004-G, subsection 35, the Workers' Compensation Board is established as an independent board composed of 7 members. The members of the board, including the executive director, must be appointed by the Governor within 30 days after a new board member is authorized or a vacancy occurs, subject to review by the joint standing committee of the Legislature having jurisdiction over labor matters and confirmation by the Legislature. Notwithstanding the provisions of Title 3, section 157, the designated committee shall complete its review of the appointments of the Governor within 15 days of the Governor's written notice of appointment and the vote of the Legislature must be taken no later than 7 days after the vote of the designated committee.

The board consists of 3 representatives of management, 3 representatives of labor and the executive director appointed pursuant to subsection 1-A. All management representatives must be appointed from a list provided by the Maine Chamber of Commerce and Industry or other bona fide organization or association of employers. All labor representatives must be from a list provided by the Executive Board of the Maine AFL-CIO or other bona fide labor organization or association of employees representing at least 10% of the Maine work force. Any list submitted to the Governor must have at least 4 times the number of names as there are vacancies for the group represented by the vacancies.

A member of the board is not liable in a civil action for any act performed in good faith in the execution of duties as a board member.

A member of the board may not be a lobbyist required to be registered with the Commission on Governmental Ethics and Election Practices, a service provider to the workers' compensation system or a representative of a service provider to the workers' compensation system.

Members of the board representing management and labor hold office for staggered terms of 4 years, commencing and expiring on February 1st, except for initial appointees and members appointed to fill unexpired terms. A member representing management or labor may not serve for more than 2 full terms.

**1-A. Executive director.** The Governor shall appoint an executive director, who is the chair and chief executive officer of the board. The executive director serves at the pleasure of the

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Governor. Except as otherwise provided, the executive director shall, at the direction of the board, hire personnel as necessary to administer this Act, subject to the Civil Service Law.

**2. Removal.** Board members representing management and labor hold office for the terms provided, unless removed, and until their successors are appointed and qualified. They must be sworn and may be removed by the Governor for inefficiency, willful neglect of duty or malfeasance in office, but only with the review and concurrence of the joint standing committee of the Legislature having jurisdiction over labor matters upon hearing in executive session or by impeachment. Before removing a board member, the Governor shall notify the President of the Senate and the Speaker of the House of Representatives of the removal and the reasons for the removal.

**3. Vacancies.** If a vacancy occurs during a term of a management or labor member, the Governor shall appoint a replacement to fill the unexpired part of the term. The replacement must be from the group represented by the member being replaced.

### **4. Chair.**

**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. 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.

**6. Salary; expenses.** A board member is entitled to a per diem of \$100 per day. Members of the board receive their actual, necessary, cash expenses while on official business of the board.

**7. Leave of absence.** An employer may not terminate the employment of an employee who is appointed as a member of the board because of the exercise by the employee of duties required as a board member. The member is entitled to a leave of absence from employment for the period of time required to perform the duties of a board member. During the leave of absence, the member may not be subjected to loss of time, vacation time, or benefits of employment, excluding salary.

**8. Headquarters; regional offices.** The board must have its central office in the Augusta area and such district offices as it may choose to establish. The board may hold sessions at any place within the State.

**9. Seal.** The board must have a seal bearing the words "Workers' Compensation Board of Maine."

## **Maine Statutes: using technology for public meetings**

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

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

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

This section governs public proceedings 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 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.

**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 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.

**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.

**5. Application.** Nothing in this section may be construed to:

A. Require a body to conduct a public proceeding in which public or governmental business is discussed or transacted through telephonic, video, electronic or other means of communication, whether or not the members are physically assembled in one location; or

B. Prohibit the use of interactive audio or video means to expand public participation.

*Questions:*

- *Public hearings?*
- *Application to bodies already authorized by statute to meet through electronic means?*



Right to Know Advisory Committee  
Legislative Subcommittee  
Revised DRAFT: Meetings in public

Based on proposal prepared by Attorney Sigmund Schutz in 2009.

**Sec. 1. 1 MRSA §401** is amended to read:

**§401. Declaration of public policy; rules of construction**

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

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

Nothing in this subchapter prohibits communications of any kind between the members of a public body unless the communications are intended to defeat the purposes of this subchapter.\*

*\*Not included in Mr. Schutz's proposed language.*

**Sec. 2. 1 MRSA §402, sub-§2** is amended to read:

**2. Public proceedings.** The term "public proceedings" as used in this subchapter means ~~the a meeting to transactions of transact~~ any functions affecting any or all citizens of the State by any of the following:

- A. The Legislature of Maine and its committees and subcommittees;
- B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Community College System and any of its committees and subcommittees;

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees;

F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and

G. The committee meetings, subcommittee meetings and full membership meetings of any association that:

(1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and

(2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.

This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach.

*Mr. Schutz's Note: The term meeting is added to the definition of public proceedings.*

## OPTION 1

**Sec. 3. 1 MRSA §402, sub-§4** is enacted to read:

**4. Meeting.** “Meeting” means the convening of a quorum of the membership of any public body listed in subsection 2, or the majority of the members of such public body if the rules of that body define “quorum” as more than a majority of its members, whether in person, by means of telephone or electronic communication or in any manner such that all participating members are able to communicate with each other contemporaneously or by the use of serialized telephone or electronic communications.

OPTION 2 (Suggested in concept by Sig Schutz):

**Sec. 3. 1 MRSA §402, sub-§4** is enacted to read:

**4. Meeting.** “Meeting” means:

A. The convening of a quorum of the membership of any public body listed in subsection 2, or the majority of the members of such public body if the rules of that body define “quorum” as more than a majority of its members, whether in person, by means of telephone or electronic communication or in any manner such that all participating members are able to communicate with each other contemporaneously or by the use of serialized telephone or electronic communications; or

B. The assembly of 3 or members of any public body listed in subsection 2.

*Mr. Schutz’s Note: This is a new definition for the term “meeting.” The aim is to prevent the use of e-mail, instant messaging, electronic bulletin boards, telephone calls, virtual internet meetings, or electronic or telephonic meetings of any kind to circumvent the requirements that the public be given notice of and an opportunity to attend all public proceedings. On 7/8/10 Mr. Schutz asked that the definition be clarified to provide that an assembly of 3 members would constitute a meeting, which ¶B now provides.*

**Sec. 4. 1 MRSA §406** is amended to read:

#### **§406. Public notice**

Public notice shall be given for all public proceedings as defined in section 402, ~~if these proceedings are a meeting of a body or agency consisting of 3 or more persons.~~ This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.

*Mr. Schutz's Note: The current text of Section 406 refers to a "meeting" of a body or agency consisting of 3 or more persons. The term "meeting" is not defined in current law. In place of the "3 or more persons" test, the proposed definition of meeting substitutes a "quorum of the membership of any public body listed in subsection 2, or the majority of the members of such public body if the rules of that body define 'quorum' as more than a majority of its members."*

*Staff Note - a different interpretation of some of the language Mr. Schutz's draft deletes is that some of the deleted words actually describe the body or agency that is subject to the notice requirement, not the attendance at the meeting: the body or agency must consist of 3 or more persons; i.e., §406 does not apply to a two-person board (if such a board exists). This interpretation does not require the OPTION definition of meeting above.*

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Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Confidential communications

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

R. Information in a communication between a constituent and an elected official if the information is not a public record under this subsection or if the information is a personal and private matter, including medical information, financial information, or the loss of housing or employment information. Personal and private matters do not include requests for elected officials to take public actions or votes.

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Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Penalties

**Issues/recommendations discussed**

- Holding individuals responsible for violations (not just entities)
- Increase fine amounts
- Is fine (civil penalty) sufficient or is criminal penalty appropriate? Or both?
- Give statute “teeth” – more penalty options?
- Is enforcement the/an issue? Education, outreach ideas? ? – need some message that is not necessarily statutory?

**Current law**

**§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 denial 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.

**2. Actions.** If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.

**3. Proceedings not exclusive.** The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.

**4. Attorney's fees.** In an appeal under subsection 1 or 2, the court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.

#### **§410. Violations**

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

#### **Proposals**

#### **§410. Violations**

**1. Violation.** A state government agency, a local government entity or an officer or employee of a state government agency or local government entity who *intentionally or knowingly* violates this subchapter or a rule adopted pursuant to this subchapter is subject to the following penalties.

**2. Penalty.** The following penalties apply to violations of this section.

#### **Options**

➡ A. A person who (*include culpable mental state -- intentionally or knowingly? Willfully? Do we use this regularly now in civil violations? We don't use willful in the criminal context.*) violates subsection 1 commits a civil violation for which a fine of not more than \$? may be adjudged.

➡ B. A person who intentionally or knowingly violates subsection 1 is guilty of a Class E crime, except the sentencing alternative may include only the penalties provided in Title 17-A, section 1301. (fines – for a Class E, it is a fine of no more than \$1,000) (*okay to structure it like this for a crime?*)

➡ **Another option that can be drafted is to set out a penalty for a 1st offense, then increase the penalty for a second or subsequent offense. (including going from a civil violation to a crime) – this is possible for individuals as well as government agencies or entities**

➡ C. A state government agency or local government entity who (*include culpable mental state -- intentionally or knowingly? Willfully? Do we use this regularly now in civil violations? We don't use willful in the criminal context.*)

See Q in ¶A) violates subsection 1 commits a civil violation for which a fine of not more than \$? may be adjudged.

➡ D. A state government agency or local government entity who intentionally or knowingly violates subsection 1 is guilty of a Class E crime, except the sentencing alternative may include only the penalties provided in Title 17-A, section 1301. (fines – for a Class E, it is a fine of no more than \$1,000) (okay to structure it like this for a crime? see Q. in ¶B)

➡ **Another option that can be drafted is to compound penalties by imposing fine for each day of violation (i.e., \$25/day) – proof problems?...**

### Other additional sanctions

#### In current law:

- ➡ See **attorney's fees** in §409, sub-§4
- ➡ See **court invalidation of act** in violation of FOA laws in §409, sub-§2

#### Could add:

**#. Enjoin.** In addition to any other relief awarded pursuant to this subchapter, the court may issue an order to enjoin future violations of this subchapter. (subsequent violation = violation of court order, which is subject to enforcement and possible contempt)



sometimes are in tension with open government are in many cases substan-  
tial.

As an initial matter, it must be remembered that open meeting statutes  
infringe upon public officials' freedoms of speech and association.<sup>206</sup> Even  
where such restrictions are justified, the fact remains that an open meeting  
statute limits a public official's right to interact with other public officials,  
imposing restrictions that are not applicable to the ordinary citizen. There-  
fore, while the benefits of open government certainly justify some en-  
croachment on the freedoms of association and speech for those who elect  
to enter public life, a rational open meeting statute should endeavor to  
avoid *unduly* restricting such rights. For example, some states have deter-  
mined that elected members of political parties have an interest in caucus-  
ing together as a party that outweighs the public's interest in observing all  
of the interactions of a quorum or majority of a public body.<sup>207</sup> Such an  
exemption represents an effort to balance the public's right of access with  
the rights of elected officials to associate together to plan strategy in fur-  
therance of their political agendas.<sup>208</sup>

open and the need for members of governing bodies to obtain information and communicate in order to  
function effectively"; Bowen, *supra* note 21, at 134 ("Successful open meeting legislation involves  
the reconciliation of serious value conflicts").

<sup>206</sup> See Little & Tompkins, *supra* note 198, at 452 ("If public officials are prohibited from com-  
municating with each other outside of public meetings, public officials would be set apart from other  
citizens as mere dummies with rights of free speech and free association suspended during their terms  
in office").

<sup>207</sup> See, e.g., N.Y. PUBLIC OFFICERS LAW § 108 (McKinney 2001) ("Nothing contained in this  
article shall be construed as extending the provisions hereof to . . . deliberations of political commit-  
tees, conferences and caucuses"). See generally Timothy P. Whelan, *New York's Open Meetings Law:  
Revision of the Political Caucus Exemption and its Implications for Local Government*, 60 BROOK. L.  
REV. 1483 (1995) (discussing the development of the political caucus exemption to New York's open  
meeting statute). One danger of a political caucus exemption is that such an exception can very easily  
swallow the rule. Consider the case of a seven member city council with five Republicans and two  
Democrats. An overly broad political caucus exemption, or an overly expansive judicial construction of  
such an exemption, could allow the five-member Republican majority to conduct all of its debates and  
policy discussions in a political caucus, and then convene meetings merely to announce their decisions.  
Joseph Stuzar, *New York Abandons a Commitment to Open Meetings*, 50 ALB. L. REV. 613, 624-25  
(1986) (arguing that amendments to New York's political caucus exemption to make clear that political  
caucuses were free to discuss potential legislative actions in a closed caucus session "vitalize the pub-  
lic's right to open government").

<sup>208</sup> See, e.g., ARIZ. REV. STAT. ANN. § 38-431.08 (West 2001) ("This article does not apply to . . .  
[any] judicial proceeding of any court or any political caucus of the legislature."); 65 PA. CONS. STAT.  
ANN. § 712 (West 2000) ("Not included in the intent of this chapter are caucuses or meetings of any  
ethics committee created pursuant to the Rules of the Senate or the House of Representatives."); W.  
VA. CODE ANN. § 6-9A-2(4) (Michie 2003) ("The term meeting does not include . . . [any] political  
party caucus.");

## Legislative Party Caucuses

Party caucuses are the principal partisan vehicles in most state legislatures; in fact, 84 chambers indicated that they have active political caucuses. The Nebraska Legislature is a nonpartisan body and, therefore, has no political party organization. The following 12 chambers have political party caucuses, but they do not play an active role.

Alabama Senate	Mississippi Senate and House
Arkansas Senate and House	South Carolina Senate
Colorado House	Texas Senate and House
Louisiana Senate and House	District of Columbia Council

**Role of party caucuses.** The role and power of political party caucuses vary from state to state and even from chamber to chamber. Generally, they operate in three primary areas—legislative organization, information gathering and dissemination and policy formulation. In 44 states, American Samoa and Puerto Rico, party caucuses play a major role in legislative organization by nominating or electing key leaders. In 74 chambers, members receive briefings on major policy issues during caucus meetings. Caucus meetings also are used to establish policy; this is true in over four-fifths of the legislatures. Tables 99-2.9 and 99-2.10 indicate the major functions of legislative party caucuses.

**Caucus rules.** Most legislative party caucuses have not developed formal rules for their proceedings. More often, caucus business is governed by informal rules loosely based on senate or house parliamentary procedure, by unwritten caucus traditions or simply by the style of the caucus leader who presides over the meeting. In 19 legislative bodies, however, one or both caucuses have written rules, and they are:

Arizona Senate (majority)	Oregon House (majority)
Florida Senate (majority) and House	Pennsylvania House (minority)
Georgia Senate and House	Rhode Island Senate
Kansas House	Tennessee Senate
Massachusetts House	Virginia Senate and House
Michigan House	Washington Senate
Missouri House	West Virginia Senate
Oklahoma House	American Samoa Senate (majority)

**Open and closed caucus meetings.** The question of whether caucus meetings should be open to the public and press or restricted only to members has resulted in some controversy around the country.

Legislators may prefer to keep all party discussions and "haggling" private. Closed meetings offer legislative caucuses the ability to plan coherent strategy, allow brainstorming among veteran and freshman legislators, and provide caucus members a time when they can give candid, personal opinions "without others in the room." According to some, it is the only time that party members can freely vent and share ideas. Caucuses also may choose to close their meetings when discussing sensitive matters, such as personnel issues.

However, there are other viewpoints. Some feel that open caucuses are in the best interest of the public. Legislators gather at caucuses to discuss the public's business. The public has a right to observe these discussions and to be informed about what happens at such meetings. Open legislative caucuses are another way to encourage open government; they allow some much-needed sunshine into an area of public policymaking that should not be kept dark.

Tables 99-2.11 and 99-2.12 show the extent to which majority and minority caucus meetings are open or closed.

**Table 99-2.9 Main Functions of the Majority Caucus**

State (1)	To nominate chamber officer candidates	To elect caucus leaders	To review the daily calendar	To get briefings on major issues	To get direction or feedback from members	To form caucus policy	To develop party positions	To plan floor strategy	To recruit candidates
Alabama									
Alaska	B	B	B	B	B	B	B	B	
Arizona	B	B	S	B	B	B	B	B	
Arkansas									
California	H	B		H	B	B	B	B	B
Colorado	B	B		S	S				
Connecticut	B	B	B	B	B	B	B	B	H
Delaware	H	H	H	H	H	H	H	H	H
Florida	B	B	B	B	B	B	B	B	B
Georgia	B	B	H	B	S	B	B	B	S
Hawaii		H		H	H	H	H	H	
Idaho	S	S		B	B	S	S	B	
Illinois	S			B	B	B	B	B	
Indiana	S	B		B	B	H	H	H	
Iowa	H	B	B	B	S	B	B	B	B
Kansas	B	B	B	B	B	B	B	B	B
Kentucky	H	B	B	S	B	B	B	B	H
Louisiana									
Maine	B	B	B	B	B	B	B	B	H
Maryland	S	S		S	S	S	S	S	
Massachusetts	B	B	S	B	B	B	B	B	
Michigan	S	B	B	B	S	B	B	B	S
Minnesota	B	B	H	B	B	B	B	B	B
Mississippi									
Missouri	B	B	H	B	H	H	B	B	H
Montana	B	B		B	B	B	B		

**Table 99-2.9 Main Functions of the Majority Caucus, cont'd.**

State (1)	To nominate chamber officer candidates	To elect caucus leaders	To review the daily calendar	To get briefings on major issues	To get direction or feedback from members	To form caucus policy	To develop party positions	To plan floor strategy	To recruit candidates
Nebraska									
Nevada	S	B	S	B	B	B	B	B	S
New Hampshire	H		H	H	H	H		H	H
New Jersey	S	B	B	B	B	B	B	B	
New Mexico	B	B		S	B	B	B	B	H
New York	H	H	H	H	H	H	H	H	H
North Carolina	B	B		B	B	B	B	B	H
North Dakota	B	B			B	B	B		
Ohio		B	H	B	B	B	B	B	B
Oklahoma	B	B		B	B	B	B	B	H
Oregon	B	B	S	B	B	B	B	B	S
Pennsylvania	B	B	B	B	B	B	B	B	S
Rhode Island	S	S		B	B	S			
South Carolina		H	H	H	H	H	H	H	H
South Dakota	B	B	B	B	B	B	B	B	B
Tennessee		B		B	S	B	B	H	
Texas									
Utah	B	B	B	B	B	B	B	B	B
Vermont	B	B	H	H	H	H	B	B	
Virginia	B	B	H	B	B	B	B	B	B
Washington	B	B	S	B	B	B	B	B	
West Virginia	B			B	B	B	B	S	
Wisconsin	B	B	S	B	S	B	B	B	B
Wyoming	S	B		S	S	B	S	H	
American Samoa		S			S	S	S	S	S
District of Columbia									
Puerto Rico	S	S				S	S	S	

**Table 99-2.9 Main Functions of the Majority Caucus, cont'd.**

## Key:

S=Senate

H=House or Assembly

B=Both chambers

## Note:

1. The following chambers did not return a survey: Delaware Senate, Hawaii Senate, Maryland House, New Hampshire Senate, New York Senate, American Samoa House, Guam Senate, Northern Mariana Islands Senate and House, Puerto Rico House and Virgin Islands Senate.

**Table 99-2.10 Main Functions of the Minority Caucus**

State (1)	To nominate chamber officer candidates	To elect caucus leaders	To review the daily calendar	To get briefings on major issues	To get direction or feedback from members	To form caucus policy	To develop party positions	To plan floor strategy	To recruit candidates
Alabama									
Alaska	B	B	B	B	B	B	B	B	
Arizona	H	B		B	B	B	B	B	
Arkansas									
California		B		H	B	B	B	B	B
Colorado	S	B		S	S				
Connecticut	B	B	B	B	B	B	B	B	H
Delaware		H		H	H	H	H		
Florida	B	B	B	B	B	B	B	B	B
Georgia	B	B	H	B	S	B	B	B	S
Hawaii		H		H	H	H	H	H	H
Idaho		S		B	B	S	S	B	
Illinois	S			B	B	B	B	B	
Indiana	S	B		B	B	H	H	H	
Iowa	H	B		B	S	B	B		B
Kansas	S	B	B	B	B	B	B	B	B
Kentucky		B	S	S	S	S	S	S	H
Louisiana						H		H	
Maine	B	B	B	B	B	B	B	B	H
Maryland		S		S	S	S	S	S	
Massachusetts	B	B	S	B	B	B	B	B	
Michigan	S	B	S	B	S	B	B	B	S
Minnesota	H	B	H	B	B	B	B	B	B
Mississippi									
Missouri	H	B		B	H	H	B	B	H
Montana	B	B		B	B	B	B		

**Table 99-2.10 Main Functions of the Minority Caucus, cont'd.**

State (1)	To nominate chamber officer candidates	To elect caucus leaders	To review the daily calendar	To get briefings on major issues	To get direction or feedback from members	To form caucus policy	To develop party positions	To plan floor strategy	To recruit candidates
Nebraska									
Nevada	S	B		B	B	B	B	B	S
New Hampshire	H		H	H	H	H		H	H
New Jersey	S	B	B	B	B	B	B	B	
New Mexico	B	B		S	B	B	B	B	H
New York	H	H	H	H	H	H	H	H	H
North Carolina	H	B		B	B	B	B	B	H
North Dakota		B			B	B	B		
Ohio		B	H	B	B	B	B	B	B
Oklahoma	B	B		B	B	B	B	B	H
Oregon	B	B	S	B	B	B	B	B	S
Pennsylvania	S	B	B	B	B	B	B	B	S
Rhode Island	S	S		S	S	S			
South Carolina		H	H	H	H	H	H	H	H
South Dakota		B	B	B	B	B	B	B	B
Tennessee		B		B	S	B	B	H	
Texas									
Utah	B	B	S	B	B	B	B	B	B
Vermont	B	B	H	H	H	H	B	B	
Virginia	H	B	H	B	B	B	B	B	B
Washington		B	S	B	B	B	B	S	
West Virginia	B			B	B	B	B	S	
Wisconsin	B	B	S	B	S	B	B	B	B
Wyoming	S	B		S	S	B	S	H	
American Samoa									
District of Columbia									
Puerto Rico									



**Table 99-2.10 Main Functions of the Minority Caucus, cont'd.**

## Key:

S=Senate

H=House or Assembly

B=Both chambers

## Note:

1. The following chambers did not return a survey: Delaware Senate, Hawaii Senate, Maryland House, New Hampshire Senate, New York Senate, American Samoa House, Guam Senate, Northern Mariana Islands Senate and House, Puerto Rico House and Virgin Islands Senate.

Table 99-2.11 Openness of the Majority Caucus Meetings

State (1)	Always open to caucus staff	Always open to the public	Always open to the press	Usually open to caucus staff	Usually open to the public	Usually open to the press	Usually closed to caucus staff	Usually closed to the public	Usually closed to the press	Always closed to caucus staff	Always closed to the public	Always closed to the press
Alabama												
Alaska							B	B	B			
Arizona	B	B	B									
Arkansas								S	S			
California							B				B	B
Colorado	B	B	B									
Connecticut				S		S	H				H	H
Delaware				H				H				H
Florida	B	S	S		H	H						
Georgia	S				S	S						
Hawaii	H										H	H
Idaho										B	B	B
Illinois				H			S				B	B
Indiana							S			H	B	B
Iowa	B							H			S	B
Kansas	B	H	H		S	S						
Kentucky	B	B	B									
Louisiana												
Maine	B				B	B						
Maryland												
Massachusetts								H	H			
Michigan				B	S	S		H	H			
Minnesota	H	H	H	S					S		S	
Mississippi												
Missouri							S				B	B
Montana	B	B	B									

Table 99-2.11 Openness of the Majority Caucus Meetings, cont'd.

State (1)	Always open to caucus staff	Always open to the public	Always open to the press	Usually open to caucus staff	Usually open to the public	Usually open to the press	Usually closed to caucus staff	Usually closed to the public	Usually closed to the press	Always closed to caucus staff	Always closed to the public	Always closed to the press
Nebraska												
Nevada	B							H	H		S	S
New Hampshire	H										H	H
New Jersey				B				S	S		H	H
New Mexico				B							B	B
New York				H								
North Carolina				B				H	H			S
North Dakota	B	B	B									
Ohio				S			H				B	B
Oklahoma				B				H	H		S	S
Oregon				B							B	B
Pennsylvania				H			S				B	B
Rhode Island	S	S	S	H	H	H						
South Carolina	H	H	H									
South Dakota	B										B	B
Tennessee	S	S	S	H	H	H						
Texas				H							H	H
Utah				S	B	B						
Vermont	S	S	S		H	H						
Virginia	H			S				H	H			
Washington				B				B	S			
West Virginia							S	S	S		H	H
Wisconsin				B	B	B						
Wyoming								S	S		H	
American Samoa	S	S	S									
District of Columbia												
Puerto Rico										S	S	S

**Table 99-2.11 Openness of the Majority Caucus Meetings, cont'd.****Key:**

S=Senate

H=House or Assembly

B=Both chambers

**Note:**

1. The following chambers did not return a survey: Delaware Senate, Hawaii Senate, Maryland House, New Hampshire Senate, New York Senate, American Samoa House, Guam Senate, Northern Mariana Islands Senate and House, Puerto Rico House and Virgin Islands Senate.

Table 99-2.12 Openness of the Minority Caucus Meetings

State (1)	Always open to caucus staff	Always open to the public	Always open to the press	Usually open to caucus staff	Usually open to the public	Usually open to the press	Usually closed to caucus staff	Usually closed to the public	Usually closed to the press	Always closed to caucus staff	Always closed to the public	Always closed to the press
Alabama												
Alaska				B	B	B						
Arizona	B	B	B									
Arkansas								S	S			
California							B				B	B
Colorado	B	B	B									
Connecticut	S						H				H	H
Delaware							H	H				H
Florida	B	S	S		H	H						
Georgia	S				S	S						
Hawaii	H										H	H
Idaho							S	S	S	H	H	H
Illinois				H			S				B	B
Indiana							S			H	B	B
Iowa	B							H			S	B
Kansas	B	H	H		S	S						
Kentucky	B	B	B									
Louisiana	H										H	H
Maine	H			S	H	H		S	S			
Maryland												
Massachusetts								H	H			
Michigan				B				B	B			
Minnesota				B				H	H			
Mississippi												
Missouri							S				B	B
Montana	B	B	B									

Table 99-2.12 Openness of the Minority Caucus Meetings, cont'd.

State (1)	Always open to caucus staff	Always open to the public	Always open to the press	Usually open to caucus staff	Usually open to the public	Usually open to the press	Usually closed to caucus staff	Usually closed to the public	Usually closed to the press	Always closed to caucus staff	Always closed to the public	Always closed to the press
Nebraska												
Nevada	B										B	B
New Hampshire	H							H	H			
New Jersey				B				S	S		H	H
New Mexico				B							B	B
New York				H								
North Carolina				B				H	H			S
North Dakota	B	B	B									
Ohio				S			H				B	B
Oklahoma				B				H	H		S	S
Oregon	S			H		S					H	H
Pennsylvania				H			S				B	B
Rhode Island	S	S	S									
South Carolina												
South Dakota	B	B	B									
Tennessee	S	S	S	H								
Texas				H							H	H
Utah	S	B	B									
Vermont	S	S	S		H	H						
Virginia	H			S				H	H			
Washington				B				B	S			
West Virginia							S	S	S		H	H
Wisconsin				B	B	B						
Wyoming		H	H	S	S							
American Samoa												
District of Columbia												
Puerto Rico										S	S	S

**Table 99-2.12 Openness of the Minority Caucus Meetings, cont'd.**

## Key:

S=Senate

H=House or Assembly

B=Both chambers

## Note:

1. The following chambers did not return a survey: Delaware Senate, Hawaii Senate, Maryland House, New Hampshire Senate, New York Senate, American Samoa House, Guam Senate, Northern Mariana Islands Senate and House, Puerto Rico House and Virgin Islands Senate.



### Openness of Legislative Caucus Meetings

In February 2009, a request for information about the openness of legislative caucuses meetings was sent to selected majority and minority leadership staff in each legislative chamber (or in some instances, other legislative staff). The specific questions were:

- 1) Do legislative party caucuses play an active role in your legislative chamber?
  - a) yes
  - b) no
  
- 2) Are the meetings of your legislative party caucus:
  - a) always open
  - b) usually open
  - c) usually closed
  - d) always closed
  
- 3) How is this determined:
  - a) Required by constitution
  - b) Established by statute
  - c) Established by Senate or House rule
  - d) Set by legislative caucus rule or policy
  - e) Determined for each individual caucus meeting on a case-by-case basis

Shown below is a summary of the responses.

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#### **Alabama**

*House Democratic Caucus* (Majority). The party caucuses have an active role in House and Senate activities in Alabama. All the caucuses address the issue of open meetings in different ways (most on a case-by-case basis). Realistically, most of the meetings are usually closed simply because no one other than members shows up.

#### **Alaska**

*Senate*. (per Senate President's Office; chamber is tied) 1) Yes, party caucuses do play an active role in our legislative chamber. 2) The Senate caucuses are usually closed. 3) This is set by the legislative caucus rules and policies.

*House Majority Caucus* (coalition). 1) Yes. 2) Usually closed. 3) B and E. We do have statutes that provide guidelines for open meetings as it pertains to caucus. However, for purposes of strategy or personalities, caucuses can be closed. This has been a rule for many years.

#### **Arizona**

*Senate Republican Caucus* (Majority). 1) Yes. 2) Usually open. 3) Established by Senate or House rule.

*Senate Democratic Caucus* (Minority). 1) Yes. 2) Usually open. 3) Established by Senate or House rule.



**Arkansas**

*Senate and House Republican Caucuses (Minority)*. 1) Yes. 2) Usually closed, but if a caucus meeting is held at the capitol, it is always open to the public. 3) Determined for each individual caucus meeting on a case-by-case basis.

*House* (per House Coordinator of Legislative Services). 1) No. 2) House Democratic Caucus (majority)-usually open; House Republican Caucus (minority)-usually closed. 3) House Democratic Caucus-set by legislative caucus rule or policy; House Republican Caucus-determined for each individual caucus meeting on a case-by-case basis

**California**

*Senate Republican Caucus (Minority)*. 1) Yes. 2) Always closed. 3) Set by legislative caucus rule or policy.

*Assembly Democratic Caucus (Majority)*. 1) Yes. 2) Always closed. 3) Determined for each individual caucus meeting on a case-by-case basis.

*Assembly Republican Caucus (Minority)*. 1) Yes. 2) Always closed, except for special guests or presentations. 3) Determined for each individual caucus meeting on a case-by-case basis.

**Colorado**

*Senate Democratic Caucus (Majority)*. 1) Yes. 2) Always open. 3) Established by statute.

*Senate Republican Caucus (Minority)*. 1) Yes. 2) Always open. 3) Required by constitution.

*House Republican Caucus (Minority)*. Our Republican caucus does not play an active role in floor proceedings. All of our caucus meetings are open to the media. If it is caucus meeting called during the session and held in one of the Capitol committee rooms, it is broadcast over the internet. Media access is required by statute when two or more legislators gather.

**Connecticut**

*Senate Republican Caucus (Minority)*. Senate Republican Caucuses are always closed. For us, I would say it plays an active role in information sharing amongst the members and in setting strategy

**Delaware**

*Senate Democrat Caucus (Majority)*. 1) Yes, caucuses play an active role in the Delaware State Senate. 2) Caucuses are always closed (though on occasion a staff person or outside individual(s) may be asked to attend for specific purposes). 3) Set by legislative caucus rule or policy.

**Florida**

*Senate Democratic Caucus (Minority)*. 1) Yes. 2) Always open. 3) Established by Senate or House Rule.

*House Democratic Caucus (Minority)*. The Democratic Caucus often meets informally or in pre-session briefings. Our meetings are almost always open. The Constitution requires that certain meetings be open, but in very limited circumstances. Our practice is to open them to a much greater extent.

**Georgia**

*House Republican Caucus (Majority)*. 1) Yes. 2) Usually open. 3) Determined for each individual caucus meeting on a case-by-case basis.

**Hawaii**

*Senate Democratic Caucus* (Majority). 1) Yes. 2) Always closed (non-member participants, such as staff or issue experts, can be invited). 3) Established by Senate or House rule.

*Senate Republican Caucus* (Minority). 1) Yes. 2) Always open. 3) Determined for each individual caucus meeting on a case-by-case basis.

*House Democratic Caucus* (Majority). 1) Yes. 2) Always closed, although possibly may be open to the public. (In the last three years, however, no House majority caucus has been opened to the public.) 3) Set by legislative caucus policy.

**Idaho**

*House Republican Caucus* (Majority). 1) Yes. 2) Always closed. 3) Set by legislative caucus rule or policy.

*House Democratic Caucus* (Minority). 1) Yes. 2) Usually open. 3) Set by legislative caucus rule or policy.

**Illinois**

*Senate Democratic Caucus* (Majority). 1) Yes, frequently. 2) Always closed (unless high-ranking staff are invited in to assist on a specific topic or appropriation inquiry). 3) The best choice is "d" - it has been a long-standing custom to grant a request to caucus at any time during session, except during the debate of a bill (unless the sponsor agrees to take it out of the record so that the caucus can be held - which I might add, is very unlikely as the subject matter is most likely quite contentious and partisan).

*House Democratic Caucus* (Majority). 1) Yes. 2) Always closed. 3) B, sort of. Our Open meetings act doesn't apply to the Illinois General Assembly. The constitution only requires open meetings for sessions of the House and Senate, joint committees and legislative commissions.

**Indiana**

*Senate Republican Caucus* (Majority). The Senate Republican Caucus does not allow any media/citizens into the caucus. In fact, only a couple of staff people may go if invited for informational purposes.

*Senate Democratic Caucus* (Minority). 1) Yes. 2) Usually closed to members and key staff. On rare occasions, we'll have invited guests, i.e., the governor. 3) Determined for each individual caucus meeting on a case-by-case basis by the caucus chair.

*House Democratic Caucus* (Majority). 1) Yes. 2) Usually closed. 3) Determined for each individual caucus meeting on a case-by-case basis.

**Iowa**

*Senate Democratic Caucus* (Majority). 1) Yes. 2) Always closed. 3) Set by legislative caucus rule or policy. More accurately, our caucuses are closed by Senate tradition. I am not aware of any written rule or policy. (For the record, we have opened up our caucuses when the presidential candidates have visited our caucus.)

**Kansas**

*House Democratic Caucus* (Minority). 1) play an active role in our chamber. 2) are always open. 3) is open by determination of the caucus members

**Kentucky**

*House Democratic Caucus* (Majority). 1) Yes. 2) Usually open. 3) Determined for each individual caucus meeting on a case-by-case basis.

*House Republican Caucus* (Minority). 1) Yes. 2) Usually open. 3) Determined for each individual caucus meeting on a case-by-case basis.

**Louisiana**

*Senate* (per the Senate Chief of Staff). 1) Yes, but in a different way that most other states. 2) Usually closed--rarely opened to others. 3) Determined for each individual caucus meeting on a case-by-case basis.

**Maine**

*House Democratic Caucus* (Majority). The House Democratic Caucus meetings are critical to the policymaking process here in Maine. Our meetings are always open -- as I understand, this is defined in statute.

*House Republican Caucus* (Minority). 1) Yes. 2) Always open. In the past 10 years, I would say that we have closed our caucus fewer than 5 or 6 times. The House minority meets as a caucus before every House session and other times as needed. Our meetings are almost always in the State House and are open to members of the public, guests, the press and lobbyists. 3) I believe statute governs and does require most meetings with legislators to be open, with some exceptions—personnel matters, etc. There isn't anything that refers specifically to caucuses but any type of meeting with an official group of legislators is covered.

**Maryland**

*House Democratic Caucus* (Majority). 1) Yes. 2) Always closed. 3) Set by caucus policy. Under the Maryland Open Meetings Act, a legislative party caucus is not considered a "public body" and is not required to allow access by non-caucus members.

**Massachusetts**

*Senate Republican Caucus* (Minority). 1) Yes. 2) The Senate Republican caucus meeting is always closed to the public. Sometimes the Senate Minority Leader will invite a guest, speaker or staff to join them. 3) Determined for each individual caucus on a case-by-case basis.

*House Democratic Caucus* (Majority). 1) Yes. 2) The Democratic Party Caucus rules state that all caucuses are open unless there is a vote to close them. 3) Caucus rules.

**Michigan**

*Senate Democratic Caucus* (Minority). The only meetings that we can have that are closed to the public are caucus meetings held in our caucus room. This is governed by Michigan's Open Meetings Act. We do them weekly and they are closed to the public.

**Minnesota**

*House Republican Caucus* (Minority) Meetings of the House Republican Caucus are open to the public unless closed by the Leader or a vote of the caucus. This is determined by caucus rules.

**Missouri**

*House Democratic Caucus* (Minority). 1) Yes. 2) Always closed. 3) Court case allows caucuses to be closed. We have an informal policy that closes caucus.

**Montana**

*Both chambers* (Per the Legislative Services Division ) Legislative party caucuses play a role; however, it seems to be diminishing for the reason that a court decision in 1995 ruled that our caucuses must be open to the public. (It was only a district court opinion and that part of the ruling was never appealed to our Supreme Court. It was based on a constitutional provision, however, our legal counsel believes that the transcripts from the 1972 constitutional convention would not have supported the decision had it been appealed.)

**Nevada**

*Senate* (per the Secretary of the Senate). 1) Yes. 2) Always closed or upon invitation of the caucus. 3) The caucus will determine whether a meeting would ever be open. There are no established rules or policies.

*Assembly* (per the Chief Clerk of the Assembly) 1) Both party caucuses meet regularly. 2) The caucus meetings are never open to the public, but sometimes an individual is invited to present information. 3) Set by legislative caucus rule or policy.

**New Hampshire**

*House Democratic Caucus (Majority).* 1) Yes. 2) Always closed. 3) Set by caucus.

*House Republican Caucus (Minority).* 1) Yes. 2) Always closed. 3) Set by legislative caucus rule or policy.

**New Jersey**

*Senate Republican Caucus (Minority).* 1) Yes. 2) Usually closed. (Exceptions are made when guests are invited to speak to the caucus. Otherwise, only legislators and staff are included in legislative caucus meetings.) 3) Set by legislative caucus rule or policy (unwritten policy)

*Assembly Republican Caucus (Minority).* 1) Yes. 2) Always closed. 3) Set by legislative caucus rule or policy.

**New Mexico**

*House Republican Caucus (Minority).* 1) Yes. 2) Usually closed. 3) Determined for each individual caucus meeting on a case-by-case basis.

**North Carolina**

*House Democratic Caucus (Majority).* 1) Yes. 2) Always closed. 3) Set by legislative caucus rule or policy

*House Republican Caucus (Minority).* 1) Yes. 2) Always closed. 3) Set by legislative caucus rule or policy.

**North Dakota**

*Both chambers (per Legislative Council).* 1) Yes. 2) Usually open. N.D.C.C. Section 44-04-19.3 states "Open meetings exemption - Legislative caucuses. A caucus of members of either house of the legislative assembly may meet in an executive session that is not subject to section 44-04-19.2 if the meeting is not held on public property." 3) Established by statute (see #2 ).

**Ohio**

*Senate Republican Caucus (Majority).* 1) Yes. 2) Always closed. Occasionally, the President may invite someone to make a presentation. 3) Established by statute. It is an exception to the Open Meetings Law.

*Senate Democratic Caucus (Minority).* 1) Yes. 2) Always closed, unless invited. 3) Established by statute.

**Oklahoma**

*Senate Republican Caucus (Majority).* 1) Yes. 2) Always closed. 3) Set by legislative caucus rule or policy.

*House Republican Caucus (Majority).* 1) Yes. 2) Always closed. 3) Set by legislative caucus rule or policy.

**Oregon**

*Senate Democratic Caucus (Majority).* 1) Yes. 2) Usually closed. Guests by invitation only. 3) Set by general caucus policy.

*House Republican Caucus (Minority).* 1) Yes. 2) Always closed. 3) Set by legislative caucus rule or policy. It is not a hard and fast rule or policy, but it's standard procedure unless an exception is made for a specific reason.

**Pennsylvania**

*House Democratic Caucus (Majority).* 1) Yes. 2) Always closed. 3) Set by legislative caucus policy – (exceptions made however for example on invited quests by leadership).

**Rhode Island**

*Senate Republican Caucus (Minority).* 1) Yes. 2) Usually closed. 3) Determined for each individual caucus meeting on a case-by-case basis.

*House Republican Caucus (Minority).* 1) Yes. 2) Usually closed. 3) Determined for each individual caucus meeting on a case-by-case basis.

### **South Carolina**

*Senate* (per the Clerk of the Senate). 1) Yes. 2) Usually closed. 3) D & E. We do have a rule that allows caucus meetings to be closed except when they take any official action (which they never do) or for election of caucus leaders.

*House* (per the Clerk of the House). In the South Carolina House, the legislative caucuses are very active. The meetings are usually open to the public; however, House Rule allows the House legislative caucuses to close the meetings whenever they deem it appropriate. On average, more than half of the meetings are open to the public.

### **South Dakota**

*Both chambers* (per Legislative Research Council) 1) Yes. 2) Democratic Caucuses-usually open; Republican Caucuses-always closed. 3) Determined for each individual caucus meeting on a case-by-case basis.

### **Tennessee**

*Senate Republican Caucus* (Majority). 1) No. 2) Always open 3) Determined for each individual caucus meeting on a case-by-case basis.

*\*House Republican Caucus.* 1) Yes. 2) Usually open. 3) Determined for each individual caucus meeting on a case-by-case basis.

*\*House Democratic Caucus .* 1) Yes. 2) Usually open. 3) Determined for each individual caucus meeting on a case-by-case basis.

*\*The House was organized by a coalition.*

### **Texas**

*Senate* (per the Secretary of the Senate). The party caucus participation has increased; however, the caucuses are not funded with state money and are not official participants in the legislative process. We do not even announce meetings of the caucuses. The caucuses can reserve rooms just as any outside entity can, restricted only by availability. Senators' staff do not participate in the caucuses because that would be considered political activity, which is forbidden of state employees on state time. The caucuses are not open to the public.

*House* (per the Chief Clerk of the House). 1) No. 2) Usually open. 3) Set by legislative caucus rule or policy.

### **Utah**

*House Republican Caucus* (Majority). 1) Yes. 2) Always open during session. During the interim, always open unless we are discussing elections/campaigns. 3. Set by legislative caucus rule or policy.

### **Vermont**

*House* (per the Clerk of the House). 1) Yes. 2) Usually open. 3) On occasion in the past a party caucus has been closed to the public. Usually that meeting is held outside the statehouse. This decision has been on a case by case basis.

### **Virginia**

*Senate* (per the Secretary of the Senate). 1) Yes, in the Senate. 2) Depends on the caucus - I think most are closed. 3) Set by party caucus.

*House* (per the Clerk of the House). 1) Yes. 2) Usually closed. 3) Established by statute.

### **Washington**

*Senate Democratic Caucus* (Majority). 1) Yes. 2) Usually closed. 3) Set by legislative caucus rule or policy.

*Senate Republican Caucus* (Minority). 1) Yes. 2) Usually open to members and their guests (never the public at large), sometimes closed to all but members. 3) Senate and Caucus Rules.

**West Virginia**

*Senate Democratic Caucus* (Majority). 1) Yes. 2) Always closed. 3) C or D because they sound like the same thing.

*House Republican Caucus* (Minority). 1) Yes. 2) Usually closed. 3) Established by statute §6-9A-2. Political party caucuses are exempt from the open governmental proceedings laws. Party leaders determine if the caucus is to be open or closed.

**Wyoming**

*Both chambers* (per the Legislative Service Office). 1) No. Wyoming does not have caucus staff; and although the House Republicans and Democrats do have a weekly lunch caucus meeting, impromptu caucus meetings in the House and Senate are rare. 2) The caucuses for the House and Senate Democrats [minority in both] are open. The caucuses for the House and Senate Republicans [majority in both] are closed. 3) The decision is made by caucus policy.

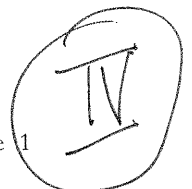
## TITLE 1

CHAPTER 13  
PUBLIC RECORDS AND PROCEEDINGSSUBCHAPTER 1-A  
EXCEPTIONS TO PUBLIC RECORDS**§432. Exceptions to public records; review**

**1. Recommendations.** During the second regular session of each Legislature, the review committee may report out legislation containing its recommendations concerning the repeal, modification and continuation of public records exceptions and any recommendations concerning the exception review process. 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.

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

- A. Whether a record protected by the exception still needs to be collected and maintained;
- B. The value to the agency or official or to the public in maintaining a record protected by the exception;
- C. Whether federal law requires a record to be confidential;
- D. Whether the exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
- E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
- F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;



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

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

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

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

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

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

#### **§434. Review of proposed exceptions to public records**

**1. Procedures before legislative committees.** Whenever a legislative measure containing a new public records exception is proposed, 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 may not be enacted into law unless review and evaluation pursuant to subsection 2 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.

**3. Report.** The review committee shall report its findings and recommendations on whether the proposed exception should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.





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## RCW 42.56.140

### Public records exemptions accountability committee.

(1)(a) The public records exemptions accountability committee is created to review exemptions from public disclosure, with thirteen members as provided in this subsection.

(i) The governor shall appoint two members, one of whom represents the governor and one of whom represents local government.

(ii) The attorney general shall appoint two members, one of whom represents the attorney general and one of whom represents a statewide media association.

(iii) The state auditor shall appoint one member.

(iv) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(v) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(vi) The governor shall appoint four members of the public, with consideration given to diversity of viewpoint and geography.

(b) The governor shall select the chair of the committee from among its membership.

(c) Terms of the members shall be four years and shall be staggered, beginning August 1, 2007.

(2) The purpose of the public records exemptions accountability committee is to review public disclosure exemptions and provide recommendations pursuant to subsection (7)(d) of this section. The committee shall develop and publish criteria for review of public exemptions.

(3) All meetings of the committee shall be open to the public.

(4) The committee must consider input from interested parties.

(5) The office of the attorney general and the office of financial management shall provide staff support to the committee.

(6) Legislative members of the committee shall be reimbursed for travel expenses in accordance with RCW [44.04.120](#). Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW [43.03.050](#) and [43.03.060](#).

(7)(a) Beginning August 1, 2007, the code reviser shall provide the committee by August 1st of each year with a list of all public disclosure exemptions in the Revised Code of Washington.

(b) The committee shall develop a schedule to accomplish a review of each public disclosure exemption. The committee shall publish the schedule and publish any revisions made to the schedule.

(c) The chair shall convene an initial meeting of the committee by September 1, 2007.

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The committee shall meet at least once a quarter and may hold additional meetings at the call of the chair or by a majority vote of the members of the committee.

(d) For each public disclosure exemption, the committee shall provide a recommendation as to whether the exemption should be continued without modification, modified, scheduled for sunset review at a future date, or terminated. By November 15th of each year, the committee shall transmit its recommendations to the governor, the attorney general, and the appropriate committees of the house of representatives and the senate.

[2007 c 198 § 2.]

**Notes:**

**Finding -- 2007 c 198:** "The legislature recognizes that public disclosure exemptions are enacted to meet objectives that are determined to be in the public interest. Given the changing nature of information technology and management, recordkeeping, and the increasing number of public disclosure exemptions, the legislature finds that periodic reviews of public disclosure exemptions are needed to determine if each exemption serves the public interest." [2007 c 198 § 1.]

### Exemptions Are Narrow

" This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. "

RCW 42.56.030

"... the exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. "

RCW 42.56.210

### Top Ten Public Interest Exemptions

**#1**

**Law Enforcement** RCW 42.56.420, .240

- Terrorism-prevention records, assessments, plans, RCW 42.56.420
- Law-enforcement intelligence & investigations, RCW 42.56.240(1)
- Identities of crime victims and witnesses, RCW 42.56.240(2) & (5)

**Public Interest Reason**

- Public safety
- Effective law enforcement
- Personal privacy

### Top Ten Public Interest Exemptions

**#2**

**Personal Financial Information** RCW 42.56.230

- Credit card and financial account numbers
- Tax records
- PUD Billing/usage NOT exempt – *except from police*

**Public Interest Reason – Privacy**

- Risk of grave harm to individuals
- No legitimate public interest in these details

### Top Ten Public Interest Exemptions

**#3**

**Employee privacy**

- Information in personnel files, if information would violate the right to privacy, RCW 42.56.230(2)
  - "Highly offensive" & no "legitimate concern" to public, RCW 42.56.050
- Addresses, phone numbers, personal email address, RCW 42.56.250(3)
- Healthcare records Federal law (ADA)
- No exemption just because NOT related to conduct of government

**Public Interest Reason**

- Risk of grave harm to individuals
- Low employee morale harms public
- No legitimate public concern in these details

### Top Ten Public Interest Exemptions

**#4**

**Employment and Licensing**

- Public employment applications RCW 42.56.250(2)
- Test questions RCW 42.56.250(1)

**Public Interest Reason**

- Encourage qualified applicants
- Maintain integrity of hiring and licensing process
- Applicant's privacy

### Top Ten Public Interest Exemptions

**#5**

**Public Employment Discrimination**

- Identity of agency employee seeking "informal" advice, RCW 42.56.250(4)
- Employing agency's investigative records, RCW 42.56.250(5)

**Public Interest Reason**

- Reduce taxpayer expenses
  - Encourages informal process
  - Allows investigation without interference

**Top Ten Public Interest Exemptions**

**#6**

**Real Estate Appraisal, RCW 42.56.260**

- Appraisal for agency sale or purchase of realty
- Only during sale, not more than three years

**Public Interest Reason**

- Fair bargaining with taxpayer dollars

**Top Ten Public Interest Exemptions**

**#7**

**Legal advice**

- Attorney-client communications, RCW 5.60.060(2)
- Work product, RCW 42.56.290
- Mediation records, RCW 42.56.600

**Public Interest Reasons**

- Before dispute: guide actions & avoid disputes
- During dispute: equal footing with adversary
- During mediation: encourage settlement

**Top Ten Public Interest Exemptions**

**#6**

**Deliberative process RCW 42.56.280**

- Drafts, recommendations, memos
- Opinions and policy positions – *NOT the raw data*
- NOT exempt after final decision

**Public Interest Reasons**

- Fosters decision making process
- Secures negotiation strategy

**Top Ten Public Interest Exemptions**

**#9**

**Agency "Trade Secrets" RCW 42.56.270**

- Valuable formulae, designs, source code, data
- If disclosure would produce "private gain and public loss"
- Five year window

**Public Interest Reason**

- Protects public investment
- Allows agencies to fairly compete

**Top Ten Public Interest Exemptions**

**#10**

**Private Commercial Information RCW 42.56.270**

- Economic development loan applications
- Trade secrets
  - if private gain and public loss
  - or if Trade Secret Act applies

**Public Interest Reason**

- Encourage State industry
- Encourage contractor/vendor applicants

**No liability if your release in good faith!**

- RCW 42.56.060 "No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of this chapter."

### Show Your Work!

- Combat public cynicism by showing public **benefits**
- Add **benefit explanation** to exemption log
- Most exemptions are discretionary – **weigh public interests**
- Don't assert an exemption if there is **no public benefit**





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**45-229****Chapter 45.--PUBLIC RECORDS, DOCUMENTS AND INFORMATION****Article 2.--RECORDS OPEN TO PUBLIC**

**45-229. Legislative review of exceptions to disclosure; continuation of sections listed.** (a) It is the intent of the legislature that exceptions to disclosure under the open records act shall be created or maintained only if:

- (1) The public record is of a sensitive or personal nature concerning individuals;
- (2) the public record is necessary for the effective and efficient administration of a governmental program; or
- (3) the public record affects confidential information.

The maintenance or creation of an exception to disclosure must be compelled as measured by these criteria. Further, the legislature finds that the public has a right to have access to public records unless the criteria in this section for restricting such access to a public record are met and the criteria are considered during legislative review in connection with the particular exception to disclosure to be significant enough to override the strong public policy of open government. To strengthen the policy of open government, the legislature shall consider the criteria in this section before enacting an exception to disclosure.

(b) Subject to the provisions of subsection (h), all exceptions to disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and any new exception to disclosure or substantial amendment of an existing exception shall expire on July 1 of the fifth year after enactment of the new exception or substantial amendment, unless the legislature acts to continue the exception. A law that enacts a new exception or substantially amends an existing exception shall state that the exception expires at the end of five years and that the exception shall be reviewed by the legislature before the scheduled date.

(c) For purposes of this section, an exception is substantially amended if the amendment expands the scope of the exception to include more records or information. An exception is not substantially amended if the amendment narrows the scope of the exception.

(d) This section is not intended to repeal an exception that has been amended following legislative review before the scheduled repeal of the exception if the exception is not substantially amended as a result of the review.

(e) In the year before the expiration of an exception, the revisor of statutes shall certify to the president of the senate and the speaker of the house of representatives, by July 15, the language and statutory citation of each exception which will expire in the following year which meets the criteria of an exception as defined in this section. Any exception that is not identified and certified to the president of the senate and the speaker of the house of representatives is not subject to legislative review and shall not expire. If the revisor of statutes fails to certify an exception that the revisor subsequently determines should have been certified, the revisor shall include the exception in the following year's certification after that determination.

(f) "Exception" means any provision of law which creates an exception to disclosure or limits disclosure under the open records act pursuant to K.S.A. 45-221, and amendments thereto, or pursuant to any other provision of law.

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(g) A provision of law which creates or amends an exception to disclosure under the open records law shall not be subject to review and expiration under this act if such provision:

- (1) Is required by federal law;
- (2) applies solely to the legislature or to the state court system.

(h) (1) The legislature shall review the exception before its scheduled expiration and consider as part of the review process the following:

- (A) What specific records are affected by the exception;
- (B) whom does the exception uniquely affect, as opposed to the general public;
- (C) what is the identifiable public purpose or goal of the exception;
- (D) whether the information contained in the records may be obtained readily by alternative means and how it may be obtained;

(2) An exception may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exception and if the exception:

(A) Allows the effective and efficient administration of a governmental program, which administration would be significantly impaired without the exception;

(B) protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. Only information that would identify the individuals may be excepted under this paragraph; or

(C) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(3) Records made before the date of the expiration of an exception shall be subject to disclosure as otherwise provided by law. In deciding whether the records shall be made public, the legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exception of the type specified in paragraph (2)(B) or (2)(C) of this subsection (h) would occur if the records were made public.

(i) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) of this section on June 1, 2004, are hereby continued in existence until July 1, 2010, at which time such exceptions shall expire: 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 11-306, 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-304, 17-1312e, 17-2227, 17-5832, 17-7503, 17-7505, 17-7511, 17-7514, 17-76,139, 19-4321, 21-2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312, 25-4161, 25-4165, 31-405, 34-251, 38-1508, 38-1520, 38-1565, 38-1609, 38-1610, 38-1618, 38-1664, 39-709b, 39-719e, 39-934, 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21, 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b, 40-3421, 40-3613, 40-3805, 40-4205, 44-510j, 44-550b, 44-594, 44-635, 44-714, 44-817, 44-1005, 44-1019, subsections (a)(1) through (43) of 45-221, 46-256, 46-259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406, 49-427, 55-1,102, 56-1a606, 56-1a607, 56a-1201, 56a-1202, 58-4114, 59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-3336, 65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-1135, 65-1467, 65-1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a, 65-2898a, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4608, 65-4922, 65-4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-67a05, 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203, 66-1220a, 66-2010, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-50,131, 74-5515, 74-7308, 74-

7338, 74-7405a, 74-8104, 74-8307, 74-8705, 74-8804, 74-9805, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362, 75-5133, 75-5266, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493, 76-12b11, 76-3305, 79-1119, 79-1437f, 79-15,118, 79-3234, 79-3395, 79-3420, 79-3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

(j) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) of this section on June 1, 2005, are hereby continued in existence until July 1, 2011, at which time such exceptions shall expire: 1-501, 9-1303, 12-4516a, 38-1692, 39-970, 40-4913, 65-525, 65-5117, 65-6016, 65-6017 and 74-7508.

(k) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) during 2006, 2007 and 2008 are hereby continued in existence until July 1, 2014, at which time such exceptions shall expire: 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-17,150, 12-2001, 12-5332, 17-12a607, 38-1008, 38-2209, 40-5006, 40-5108, 41-2905, 41-2906, 44-706, 44-1518, subsections (a)(44), (45), (46) and (47) of 45-221, 56-1a610, 56a-1204, 65-1,243, 65-3239, 66-1233, 74-50,184, 74-8134, 74-99b06 and 82a-2210.

**History:** L. 2000, ch. 156, § 8; L. 2005, ch. 126, § 2; L. 2006, ch. 87, § 1; L. 2007, ch. 195, § 28; L. 2009, ch. 45, § 2; July 1.



Select Year: 2008

## The 2008 Florida Statutes

[Title XIX](#)

[Chapter 286](#)

[View Entire Chapter](#)

PUBLIC BUSINESS PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

**286.0111 Legislative review of certain exemptions from requirements for public meetings and recordkeeping by governmental entities.**--The provisions of s. [119.15](#), the Open Government Sunset Review Act, apply to the provisions of law which provide exemptions to s. [286.011](#), as provided in s. [119.15](#).

**History.**--s. 9, ch. 84-298; s. 2, ch. 85-301; s. 3, ch. 95-217; s. 53, ch. 2008-4.

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IV-4

Select Year: 2008 

## The 2008 Florida Statutes

[Title X](#)[Chapter 119](#)[View Entire Chapter](#)

PUBLIC OFFICERS, EMPLOYEES, AND RECORDS PUBLIC RECORDS

### 119.15 Legislative review of exemptions from public meeting and public records requirements.--

(1) This section may be cited as the "Open Government Sunset Review Act."

(2) This section provides for the review and repeal or reenactment of an exemption from s. 24, Art. I of the State Constitution and s. [119.07\(1\)](#) or s. [286.011](#). This act does not apply to an exemption that:

- (a) Is required by federal law; or
- (b) Applies solely to the Legislature or the State Court System.

(3) In the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption shall be repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

(4)(a) A law that enacts a new exemption or substantially amends an existing exemption must state that the record or meeting is:

1. Exempt from s. 24, Art. I of the State Constitution;
2. Exempt from s. [119.07\(1\)](#) or s. [286.011](#); and
3. Repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

(b) For purposes of this section, an exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

(c) This section is not intended to repeal an exemption that has been amended following legislative review before the scheduled repeal of the exemption if the exemption is not substantially amended as a result of the review.

(5)(a) By June 1 in the year before the repeal of an exemption under this section, the Division of Statutory Revision of the Office of Legislative Services shall certify to the President of the Senate and



public unless otherwise provided by law. In deciding whether the records shall be made public, the Legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exemption of the type specified in subparagraph (6)(b)2. or subparagraph (6)(b)3. would occur if the records were made public.

(8) Notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

**History.**--s. 2, ch. 95-217; s. 25, ch. 98-136; s. 37, ch. 2005-251; s. 15, ch. 2006-1.

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Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Confidential communications

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

R. Information in a communication between a constituent and an elected official if the information:

(1) Would be confidential if it were in the possession of any other public agency or official; or

(2) Is the constituent's personal medical information, the constituent's personal financial information or personal information about the constituent's loss of housing or employment.

This paragraph does not include requests for elected officials to take public actions or votes.

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Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Review Criteria

**CHAPTER 13  
PUBLIC RECORDS AND PROCEEDINGS**

**SUBCHAPTER 1-A  
~~EXCEPTIONS TO PUBLIC RECORDS~~ EXCEPTIONS AND ACCESSIBILITY**

**§431. Definitions**

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

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

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

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

**§432. Exceptions to public records; accessibility; review**

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

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

section 433. The following criteria apply in determining whether each exception scheduled for review should be repealed, modified or remain unchanged:

- A. Whether a record protected by the exception still needs to be collected and maintained;
- B. The value to the agency or official or to the public in maintaining a record protected by the exception;
- C. Whether federal law requires a record to be confidential;
- D. Whether the exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
- E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
- F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;
- G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;
- H. Whether the exception is as narrowly tailored as possible; and
- I. Any other criteria that assist the review committee in determining the value of the exception as compared to the public's interest in the record protected by the exception.

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

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

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

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

### **§433. Schedule for review of exceptions to public records**

#### **1. Scheduling guidelines.**

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

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

- (1) Title 1;
- (2) Title 2;
- (3) Title 3;
- (4) Title 4;
- (5) Title 5;
- (6) Title 6;
- (7) Title 7;
- (8) Title 8;
- (9) Title 9-A; and
- (10) Title 9-B.

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

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

- (15) Title 20-A; and
- (16) Title 21-A.

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

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

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

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

**3. Scheduling changes.** The advisory committee may make adjustments to the scheduling guidelines provided in subsection 2 as it determines appropriate and shall notify the review committee of such adjustments.

**§434. Review of proposed exceptions to public records; 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 accessibility of a public record may not be

enacted into law unless review and evaluation pursuant to ~~subsection~~ subsections 2 and 2-C 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-C. 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.

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Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: distribution lists

- **OPTION 1**

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

R. Unless otherwise provided by law, a record consisting of names, telephone numbers, mailing addresses, electronic mail addresses or other contact information of members of the public that the agency or public official maintains as a distribution list or that the agency or public official can create or provide from data in the possession of the agency.

- **OPTION 2**

**Sec. 1. 1 MRSA §402-B** is enacted to read:

**§402-B. Contact information**

**1. Limited provision of list.** An agency or official may create or provide copies of lists of names, telephone numbers, mailing addresses, electronic mail addresses or other contact information of members of the public only if:

A. A statute requires the agency or public official to publish and release the lists;  
or

B. Each member of the public whose information is included in the list affirmatively consents to the release of that person's information.



- **OPTION 3**

**Sec. 1. 1 MRSA §402-B** is enacted to read:

**§402-B. Lists of contact information**

**1. Not a public record.** A list of contact information contained in or derived from records in the possession of the agency is confidential and may not be released except as provided in this section. “Contact information” means names, telephone numbers, mailing addresses and electronic mail addresses provided by members of the public for the purposes of communicating electronically with the agency, including engaging in electronic transactions with the agency.

**2. Application.** This section does not prohibit the release of:

A. Lists consisting of contact information of members of the public who have affirmatively consented to the release of their information;

B. Lists held by credentialing boards and commissions consisting of professional contact information of those licensed under Title 32;

C. Information provided to an agency by a person who has a contractual relationship with the agency or by the contractor’s agent;

D. Information provided to an agency by a vendor who seeks to contract with agency or by the vendor’s agent;

E. Information contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract;

F. Information provided to an agency on a letterhead, coversheet, printed document or other document made available to the public; or

G. Information provided to a governmental body for the purpose of providing public comment on or receiving notices relating to an application for a license or permit, or receiving orders or decisions from an agency.

**3. To another agency.** This section does not prevent an agency from disclosing contact information for any reason to another agency or to a federal 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 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.

**5. Executive sessions.** This section applies to executive sessions.

## 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.

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Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Meetings in public

**Sec. 1. 1 MRSA §401** is amended to read:

**§401. Declaration of public policy; rules of construction**

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

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

Nothing in this subchapter prohibits communications of any kind between the members of a public body unless the communications are **used** to defeat the purposes of this subchapter.

**SUMMARY**

This bill further defines the intent of the Legislature by specifying that nothing in Title 1, chapter 13, subchapter 1, the freedom of access laws, prohibits communications of any kind between the members of a public body unless the communications are **used** to defeat the purposes of the freedom of access laws.



**State Fines, Penalties and Attorneys' Fees  
For Open Records Violations**  
Updated Jul 9, 2010

State	Entity	Standard	Civil or criminal	Fines/penalties/Attorneys fees( \$)
ALABAMA				No provision for fines for wrongful failure to disclose <b>\$</b> <i>Public Records Law does not reference sanctions for noncompliance, but attorneys' fees have been awarded (2001 case)</i>
ALASKA				No sanctions for noncompliance <b>\$</b> <i>Full attorneys' fees have traditionally been available to the prevailing plaintiff in a public interest suit</i>
ARIZONA	Officer or the public body			If wrongfully denied access to public records, has a cause of action for damages <b>\$</b> <i>If custodian acted in bad faith or in an arbitrary and capricious manner, superior court may award to petitioner legal costs, including reasonable attorneys' fees</i>
ARKANSAS	A person	Negligent violation	Misdemeanor <hr/> Civil	Fine of up to \$200, imprisonment for up to 30 days or both; alternatively, the defendant may be sentenced to "appropriate public service, education or both" FOIA permits civil suits to enforce <b>\$</b> <i>Attorneys' fees maybe awarded to a substantially prevailing plaintiff unless the court finds the position of the defendant was substantially justified or that other circumstances make award unjust</i>
CALIFORNIA	Public agency			<b>\$</b> <i>Court will award costs and reasonable attorneys' fees to prevailing plaintiff</i> <b>\$</b> <i>Agency can recover attorneys' fees if agency prevails and court finds lawsuit was clearly frivolous</i>

**State Fines, Penalties and Attorneys' Fees  
For Open Records Violations**  
Updated Jul 9, 2010

State	Entity	Standard	Civil or criminal	Fines/penalties/Attorneys fees( \$)
COLORADO	<hr/> Custodian	Willful and knowing violation <hr/> Arbitrary or capricious	Criminal	Fine of up to \$100, imprisonment of up 90 days, or both  <hr/> If criminal justice agency arbitrarily or capriciously withheld a criminal justice record, court may impose a penalty of up to \$25 per day <b>\$ Unless denial was proper, court shall order court costs and reasonable attorneys' fees to prevailing applicant</b> <b>\$ If denial was proper, court will award court costs and reasonable attorneys' fees to the custodian if the action was frivolous, vexatious or groundless</b>
CONNECTICUT				<b>\$ Court costs and attorneys' fees of not more than \$1,000 may be awarded to the prevailing party if the court finds that an appeal of a Freedom of Information Commission decision is frivolous or filed solely for the purpose of delay; court may issue injunction against future actions</b>
DELAWARE				<b>\$ Court may award attorneys' fees and costs to a successful defendant if the action was frivolous or was brought solely for the purpose of harassment</b>
DISTRICT OF COLUMBIA	Any person	Arbitrary and capricious violation	Misdemeanor	Fine of up to \$100
FLORIDA	Public officer <hr/> Agency ( <b>\$</b> )	Willing and knowing violation	First degree Misdemeanor	Fine of up to \$1,000, imprisonment of up to one year or both <b>\$ If court finds agency unlawfully refused. Court will assess and award against the agency responsible the reasonable costs of enforcement including reasonable attorneys' fees</b>
GEORGIA	Any person	Knowingly and willfully	Misdemeanor	Fine of up to \$100 <b>\$ Court may award prevailing party reasonable attorneys' fees where it determines that either party acted without substantial justification either in complying with the chapter or in instituting the litigation</b>

**State Fines, Penalties and Attorneys' Fees  
For Open Records Violations**  
Updated Jul 9, 2010

State	Entity	Standard	Civil or criminal	Fines/penalties/Attorneys fees( \$)
IDAHO	Public official	Deliberately and in bad faith	Civil penalty	Up to \$1,000 <b>\$</b> Court shall award reasonable costs and attorneys' fees to the prevailing party or parties if it finds that the request or refusal to provide records was frivolously pursued
ILLINOIS		Lacked any rational basis for withholding		<b>\$</b> If a person seeking the right to inspect or receive a copy of a public record "substantially prevails", the court may award the person reasonable attorneys' fees only if the court finds that the record or records in question were of "clearly significant interest to the general public and that the public body lacked any rational basis in law for withholding the record."
INDIANA				<b>\$</b> The court will award attorneys' fees, court costs and other reasonable expenses of litigation to the prevailing plaintiff <b>\$</b> An award of attorneys' fees to a prevailing defendant is discretionary if the court finds the action was frivolous or vexatious.
IOWA			Civil	Court may assess the persons who participated in violation damages of not more than \$500 nor less than \$100 <b>\$</b> The court will order the payment of all costs and reasonable attorneys fees, including appellate attorneys' fees, to any plaintiff successfully establishing a violation of the Open Records Act.
KANSAS	Agency	Knowingly		Fine up to \$500 for each violation <b>\$</b> Attorneys' fees are allowable to either party, if the denial or the request was not in good faith and without reasonable basis in fact or law.
KENTUCKY	Official of a public agency	Willful violation	Civil	An amount not to exceed \$25 for each day that the person was denied the right to inspect or copy the public record <b>\$</b> A court may award costs and attorneys' fees to the requestor if it finds the agency willfully violated the Open Records Act

**State Fines, Penalties and Attorneys' Fees  
For Open Records Violations**  
Updated Jul 9, 2010

State	Entity	Standard	Civil or criminal	Fines/penalties/Attorneys fees( \$)
LOUISIANA	A person	Violation	Criminal	<ul style="list-style-type: none"> <li>• 1st offense: fine of not less than \$100 and not more than \$1,000, imprisonment for not less than one month and not more than six months or both</li> <li>• Subsequent offense: fine of not less than \$250 and not more than \$2,000, imprisonment for not less than two months and not more than six months or both</li> </ul> <p><b>\$</b> <i>If a person seeking the right to inspect or to receive a copy of a public record prevails in such a suit, the person will be awarded reasonable attorneys' fees and other costs of litigation. If such person prevails in part, the court may award that person reasonable attorneys' fees or an appropriate portion.</i></p>
MAINE	State government agency or local government entity	Willful	Civil violation	<p>Forfeiture of up to \$500</p> <p><b>\$</b> <i>The court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.</i></p>
MARYLAND	Governmental unit	Willful and knowing	Misdemeanor	<p>Fine of up to \$1,000, damages</p> <hr/> <p><b>\$</b> <i>Court may award actual damages and attorneys' fees to complainant if court finds by clear and convincing evidence that the complainant substantially prevailed</i></p>
MICHIGAN				<p><b>\$</b> <i>Reasonable attorneys' fees, costs, and disbursements will be awarded to any person who prevails in an action to compel disclosure. If the complainant prevails in part, the court may use its discretion to award reasonable fees, costs, and disbursements, or an appropriate portion.</i></p>
MISSOURI	Body or member of a public governmental body	Purposeful violation	Civil	<p>Fine of not more that \$5,000 (up to \$1,000 if not purposeful)</p> <p><b>\$</b> <i>Court may order a public governmental body or its members to pay all costs and reasonable attorneys' fees to any party successfully establishing a purposeful violation</i></p>

**State Fines, Penalties and Attorneys' Fees  
For Open Records Violations**  
Updated Jul 9, 2010

<b>State</b>	<b>Entity</b>	<b>Standard</b>	<b>Civil or criminal</b>	<b>Fines/penalties/Attorneys fees( \$)</b>
MONTANA				<b>\$</b> <i>A plaintiff, who prevails in an action brought in district court to enforce their rights under the Open Records Act, may be awarded costs and reasonable attorneys' fees.</i>
NEBRASKA	Any official	Violation	Class III misdemeanor	<p>Fine of up to \$500, imprisonment of up to three months or both</p> <hr/> <p>Any official who violates the provisions of the public records statutes is subject to removal or impeachment and, in addition, is deemed guilty of a Class III misdemeanor</p> <p><b>\$</b> <i>In any case in which the complainant seeking access has substantially prevailed, the court may assess against the public body that had denied access to their records, reasonable attorneys' fees and other litigation costs reasonably incurred by the complainant.</i></p>
NEVADA	Public officer or employee	Acts in good faith		<p>Immune</p> <hr/> <p><b>\$</b> <i>If the requester prevails, the requestor is entitled to recover costs and reasonable attorney's fees in the proceeding from the agency whose officer has custody of the book or record.</i></p>
NEW HAMPSHIRE	Public body  Public official or employee of public body	Knew or should have known in violation  Bad faith		<p><b>\$</b> <i>Reasonable attorneys' fees if the court finds that a public body knew or should have known that the conduct engaged in was in violation of the statute</i></p> <p><b>\$</b> <i>Fees may be awarded personally against a public official or employee of a public body who acted in bad faith</i></p> <p><b>\$</b> <i>Court may award attorneys' fees in favor of public body if the lawsuit was in bad faith, frivolous, unjust, vexatious, wanton or oppressive</i></p>
NEW MEXICO				<b>\$</b> <i>The court shall order damages, costs and reasonable attorneys' fees to any person whose written request has been denied and is successful in a court action.</i>

**State Fines, Penalties and Attorneys' Fees  
For Open Records Violations**  
Updated Jul 9, 2010

State	Entity	Standard	Civil or criminal	Fines/penalties/Attorneys fees( \$)
NEW YORK				<b>\$</b> Court may award reasonable attorneys' fees and other litigation costs reasonably incurred in any case in which the requestor has substantially prevailed, provided, however, that the court finds that: (1) the record involved was, in fact, of clearly significant interest to the general public; and (2) the agency lacked a reasonable basis in law for withholding the record.
NORTH CAROLINA				<b>\$</b> Requester who prevails may seek attorneys' fees, which is discretionary with the judge
NORTH DAKOTA	Public entity		Intentional or knowing	Court may award costs, disbursements Court may award damages of \$1,000 or actual damages, whichever is greater **Non compliance with an attorney general's opinion can result in personal liability for the person or persons responsible for the noncompliance <b>\$</b> Court may award attorneys' fees
OHIO				<b>\$</b> Court has discretion to award attorneys' fees when the person bringing suit obtains a writ of mandamus
OKLAHOMA	A public official	Willful violation	Criminal	Fine of up to \$500, imprisonment of up to one year
OREGON				<b>\$</b> If requestor prevails entirely and obtains disclosure, the requestor is entitled to reasonable attorneys' fees and litigation costs and disbursements at trial. If the requestor prevails in part, the court may award reasonable attorneys' fees or a portion thereof. If the requestor does not prevail in the litigation, the requestor is not liable for the governmental agency's attorneys' fees. <b>\$</b> If a state agency does not comply with an Attorney General's order requiring disclosure and fails to provide notice or institute proceedings within seven days after the order, the requestor is entitled to attorneys' fees irrespective of the outcome of subsequent litigation.
PENNSYLVANIA				<b>\$</b> If the court finds that the requestor or the agency has acted in bad faith in pursuing an appeal or refusing access to records, it can award reasonable attorneys' fees to the prevailing party

**State Fines, Penalties and Attorneys' Fees  
For Open Records Violations**  
Updated Jul 9, 2010

State	Entity	Standard	Civil or criminal	Fines/penalties/Attorneys fees( \$)
RHODE ISLAND	Public body or official	Knowing and willful	Civil	Fine of not more than \$1,000 <b>\$</b> <i>The court will award reasonable attorneys' fees and costs to the prevailing plaintiff. If the court finds in favor of the defendant and also finds that the plaintiff's case lacked a grounding in fact or in existing law or in good faith argument for the extension, modification, or reversal of existing law, the court may award attorneys' fees and costs to the prevailing defendant.</i>
SOUTH CAROLINA	Any person or group of persons who violate law	Willfully	Misdemeanor	Fine of not more than \$100 or imprisoned for not more than 30 days for the first offense, fine of not more than \$200 or imprisoned for not more than 60 days for the 2nd offense, fine of \$300 or imprisoned for not more than 90 days for the 3rd or subsequent offense <b>\$</b> <i>A court may award a successful plaintiff reasonable attorneys' fees and other costs of litigation. If the plaintiff prevails in part, the court may award attorneys' fees or an appropriate portion of the fees</i>
TENNESSEE				<b>\$</b> <i>Attorneys' fees may be awarded if the refusal to disclose was willful</i>
TEXAS	An officer for public information	With criminal negligence	Misdemeanor	Fine of up to \$1,000, imprisonment of up to six months or both <b>\$</b> <i>The court shall assess costs of litigation and reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevails. When determining whether or not to award attorneys' fees, the court considers whether the conduct of the officer for public information of the governmental body had a reasonable basis in law and whether the litigation was brought in good faith.</i>
UTAH	Public employee	Intentionally	Class B misdemeanor	Fine of not more than \$1,000, imprisonment of up to six months or both <b>\$</b> <i>Court may assess against governmental entity reasonable attorneys' fees and other litigation costs reasonably incurred if requestor substantially prevails - but subject to Governmental Immunity Act</i>

**State Fines, Penalties and Attorneys' Fees  
For Open Records Violations**  
Updated Jul 9, 2010

State	Entity	Standard	Civil or criminal	Fines/penalties/Attorneys fees( \$)
VERMONT				<i>\$ Court may award reasonable attorneys' fees and litigation costs to a substantially prevailing complainant</i>
VIRGINIA	Individual member of public body	Willfully and knowingly	Civil penalty	<ul style="list-style-type: none"> <li>• First offense: fine of not less than \$100 and not more than \$1,000</li> <li>• Subsequent offense: fine of not less than \$500 and not more than \$2,500</li> </ul> <i>\$ Costs and attorneys' fees will be awarded where the petitioner substantially prevails and where there are no special circumstances making the award unjust</i>
WASHINGTON			Civil	Statutory penalties of not less than \$5 and not more than \$100 per day for each day requestor was denied <i>\$ A requesting party who prevails against the agency is entitled to its costs and attorneys' fees</i>
WEST VIRGINIA	Custodian	Willful	Misdemeanor	Fine of up to \$100 and not more than \$500, imprisonment for not more than 10 days or both <i>\$ Any person who is denied access to public records requested and who successfully brings a suit filed pursuant to the FOIA is entitled to recover his or her attorneys' fees and court costs from the public body that denied him or her access to the records</i>
WISCONSIN	An authority or legal custodian	Arbitrarily and capriciously	Civil	Forfeiture of up to \$1,000 <i>\$ If the requester prevails in whole or in substantial part, the court will award reasonable attorneys' fees</i>
WYOMING		Violation	Misdemeanor	Fine of up to \$750

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Voter provides the following information when registering to vote:

<b>21-A §152. Registration and enrollment procedure</b>	<b>21-A §154. Registration and enrollment for citizens outside the United States</b>
A. First name, middle name or initial and last name, first name or initial, middle name and last name or first name and last name;	A. First name, middle name or initial and last name, first name or initial, middle name and last name or first name and last name;
B. Residence address, including street, street number, apartment number, town and zip code;	B. Last residence address immediately before departing from the United States, including street, street number, apartment number, town and zip code;
C. Mailing address;	C. Mailing address;
D. Date of birth;	D. Date of birth;
E. (repealed)	
	E. (repealed)
	F. (repealed)
F. Most recent prior residence where registered to vote, including the name under which registered, if changed, legal address and mailing address;	
G. (repealed)	G. (repealed)
H. Notification that failure to complete the entire application may prevent registration;	H. Notification that failure to complete the entire application may prevent registration;
I. (repealed)	

	I. (repealed)
	J. (repealed)
J. Date of application;	L. Date of application;
K. Signature of applicant;	J. Signature of applicant;
L. Choice of political party if the applicant desires to enroll in a political party or an indication that the applicant chose not to enroll in a party;	N. Choice of political party if the registrant wishes to enroll in a political party or an indication that the applicant chose not to enroll in a party;
M. A place for the person's current, valid Maine driver's license number, if applicable; or, if the applicant has no driver's license number, the last 4 digits of the person's social security number, if applicable; or, if the applicant has neither number, a place to put "none" or "not applicable"; and	O. A place for the person's current, valid Maine driver's license number, if applicable; or, if the applicant has no driver's license number, the last 4 digits of the person's social security number, if applicable; or, if the applicant has neither number, a place to put "none" or "not applicable"; and
N. A place for the applicant to respond to the questions concerning the voter's qualifications as required by the federal Help America Vote Act of 2002, Public Law 107-252. <ul style="list-style-type: none"> <li>• Are you a citizen of the United States of America?</li> <li>• Will you be 18 years of age on or before Election Day?</li> </ul>	P. A place for the applicant to respond to the questions concerning the voter's qualifications as required by the federal Help America Vote Act of 2002, Public Law 107-252. <ul style="list-style-type: none"> <li>• Are you a citizen of the United States of America?</li> <li>• Will you be 18 years of age on or before Election Day?</li> </ul>

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**PL 2009, c. 564 (LD 1627) – Access to Data in the Central Voter Registration System**

Updated 7-14-10

Type of Request	Available Format	Records Available	Restrictions	Fees
<b>Individual voter</b>	Not specified	Any information contained in that voter's record	None	None
<b>Any person</b>	Printed (municipal absentee voter list only) or electronic	<ol style="list-style-type: none"> <li>1. List of absentee voters (municipal or statewide): <ul style="list-style-type: none"> <li>• Voter record number</li> <li>• Electoral districts</li> <li>• Enrollment status</li> <li>• Date and manner by which ballot was requested, issued and received</li> <li>• Notation of whether application and ballot were accepted or rejected</li> <li>• Voter status</li> <li>• Special designations – uniformed service, overseas or township voter</li> </ul> </li>   <li>2. Certain voter information: <ul style="list-style-type: none"> <li>• First or last name</li> <li>• Year of birth</li> <li>• Enrollment status</li> <li>• Electoral districts (congressional and county only)</li> <li>• Voter status</li> <li>• Date of registration or date of voter record change (if applicable)</li> <li>• Date of last statewide election in which voter voted</li> <li>• Special designations – uniformed service, overseas or township voter</li> </ul> </li>   <li>3. Any report or statistical information that does not contain the names, dates of birth, voter record numbers or addresses of individual voters</li> </ol>	None	<p><u>Printed</u> – \$1 for the first page and 25¢ per page for each additional page; 75¢ for each additional page of mailing labels</p> <p><u>Electronic</u> – None</p>

Type of Request	Available Format	Records Available	Restrictions	Fees
<b>Political party, individual or organization engaged in “get out the vote” activities or campaign activities</b>	Printed or electronic	List or report of certain voter information: <ul style="list-style-type: none"> <li>• Name</li> <li>• Residence address</li> <li>• Mailing address</li> <li>• Year of birth</li> <li>• Enrollment status</li> <li>• Electoral districts</li> <li>• Voter status</li> <li>• Date of registration</li> <li>• Date of change of voter record (if applicable)</li> <li>• Voter participation history</li> <li>• Voter record number</li> <li>• Special designations – uniformed service, overseas or township voter</li> </ul>	May not sell, distribute or use the data for any purpose that is not directly related to political party, “get out the vote” or campaign activities	<u>Printed</u> – \$1 for the first page and 25¢ per page for each additional page; 75¢ for each additional page of mailing labels  <u>Electronic</u> – Based on number of records requested: <ul style="list-style-type: none"> <li>• 900,001 or more: \$2,200</li> <li>• 600,001-900,000: \$1,650</li> <li>• 400,001-600,000: \$1,100</li> <li>• 250,001-400,000: \$820</li> <li>• 150,001-250,000: \$550</li> <li>• 100,001-150,000: \$275</li> <li>• 75,001-100,000: \$220</li> <li>• 50,001-75,000: \$182</li> <li>• 35,001-50,000: \$138</li> <li>• 25,001-35,000: \$83</li> <li>• 15,001-25,000: \$55</li> <li>• 7,501-15,000: \$33</li> <li>• 1,001-7,500: \$22; or</li> <li>• 1 to 1,000: \$11</li> </ul>
<b>State political party committee</b>	Electronic	Statewide caucus list	None	None
<b>Municipal committee/ municipal caucus</b>	Electronic	Municipal caucus list of registered voters: <ul style="list-style-type: none"> <li>• Name</li> <li>• Residence address</li> <li>• Mailing address</li> <li>• Enrollment status</li> <li>• Electoral districts</li> <li>• Voter status</li> <li>• Voter record number</li> <li>• Special designations – uniformed service, overseas or township voter</li> </ul>	For use by municipal committee once each biennial election cycle beginning January 1 <sup>st</sup> in an election year	None

Type of Request	Available Format	Records Available	Restrictions	Fees
<b>Other governmental or quasi-governmental entity</b>	Electronic	Certain voter information: <ul style="list-style-type: none"> <li>• Name</li> <li>• Residence address</li> <li>• Mailing address</li> <li>• Electoral districts</li> <li>• Voter status</li> <li>• Date of registration or date of change of the voter record (if applicable)</li> <li>• Voter record number</li> <li>• Special designations – uniformed service, overseas or township voter</li> </ul>	For entity’s authorized use only  May not be used for solicitation or redistributed	None
<b>Law enforcement officer/agency or court order</b>	Electronic	<ul style="list-style-type: none"> <li>• Any information pertaining to individual voters, except for Address Confidentiality Program participants</li> </ul>	May not be used for purposes other than a bona fide law enforcement purpose or as directed in the court order  Address Confidentiality Program participant information may be made available for inspection to an authorized law enforcement agency, pursuant to 5 MRSA §90-B	None
<b>Request for a specific voter registered in a specific municipality</b>	Not specified	Voter information: <ul style="list-style-type: none"> <li>• Registration status</li> <li>• Enrollment status</li> <li>• Electoral districts</li> </ul>	None	Not specified

## Responses of State FOA Contacts to Social Security Number Information Request

Updated May 17, 2010

Agency	Context of collection	Treatment, release, protection, etc.
Maine Criminal Justice Academy, DPS	collects SSNs in a "notice of employment/termination" form that it uses.	Generally speaking, as a matter of policy, law, or both, the department would not intentionally disseminate SSNs it collects, to the general public.
Maine Emergency Medical Services, DPS	collects SSNs in certain license application forms that are used by that office.	Generally speaking, as a matter of policy, law, or both, the department would not intentionally disseminate SSNs it collects, to the general public.
Maine State Police, DPS	may collect SSNs in its incident investigation reports.	Generally speaking, as a matter of policy, law, or both, the department would not intentionally disseminate SSNs it collects, to the general public.
Maine State Police Traffic Division, DPS	SSNs in its inspection technician applicant form.	Generally speaking, as a matter of policy, law, or both, the department would not intentionally disseminate SSNs it collects, to the general public.
Maine State Police, State Bureau of Identification, DPS	collects SSNs that are submitted to that bureau on, e.g., fingerprint cards and court documents; the bureau maintains the SSNs as "unique identifier" information.	Generally speaking, as a matter of policy, law, or both, the department would not intentionally disseminate SSNs it collects, to the general public.
Bureau of Capitol Police, DPS	2 may collect SSNs as a principal identifier "in the Master Names Files of the IMC Records Management Software," as well as in bureau incident investigation reports.	Generally speaking, as a matter of policy, law, or both, the department would not intentionally disseminate SSNs it collects, to the general public.
The Gambling Control Board, DPS	collects SSNs in the license application form used by the board.	Generally speaking, as a matter of policy, law, or both, the department would not intentionally disseminate SSNs it collects, to the general public.

Agency	Context of collection	Treatment, release, protection, etc.
The State Fire Marshal's Office, DPS	may collect SSNs in its incident investigation reports.	Generally speaking, as a matter of policy, law, or both, the department would not intentionally disseminate SSNs it collects, to the general public.
Department of Marine Resources	obtains SSNs as part of its marine resources licensing system. It is a line item on virtually all applications.	Along with all other data, it is then entered into our licensing database: MRLEN. We do not have a written policy regarding the release of SSNs. Although by unwritten policy we do not release SSNs when licensing info requests are made. However anyone with access to MRLEN has access to these numbers
State Treasurer, as Unclaimed Property Administrator	<ul style="list-style-type: none"> <li>• Collects and maintains records that may contain SSN pursuant to 33 MRSA §1958, sub-§2, (b)</li> <li>• Collects SSNs from claimants, not only for verification but also in the event an Internal Revenue Service for 1099 must be issued</li> <li>•</li> </ul>	Maintain in paper reports and on a data based and is used to verify claimant ownership to specific property
Treasurer	Old accounting system included payee's SSN when Treasurer collected vendor codes for stop payments and reissues of state-issued checks. Since accounting system has been updated, SSNs are not part of the vendor code and are no longer collected or stored	
Department of Inland Fisheries and Wildlife	Collects SSNs from license applicants although required only from commercial licenses Also assign a MOSES ID number they can use in place of SSN	Any SSNs collected are exempt from FOA as provided in 1 MRSA §402, sub-§3, ¶N
Department of Inland Fisheries and Wildlife, Warden Service	Common practice to record SSN in a law enforcement investigation and record it in our LE records management system	This is protected privacy act information and would be redacted electronically from any records prior to release (if not covered by one of exceptions in CHRIA)

Agency	Context of collection	Treatment, release, protection, etc.
State Planning Office	Don't deal with information that contains SSN - any information requested that would deal with employee information is referred to the Bureau of Human Resources	
Ethics Commission	Uses a customized version of the State's vendor form and EFT form which must be completed by publicly funded legislative and gubernatorial candidates - both require either SSN or EIN	Work closely with DPFS in DAFS to set up candidates in State's AdvantageME system as vendors to receive funds under the Maine Clean Election Act. Copy at DPFS and at Ethics Commission Practice is to redact SSNs or bank account numbers from copies of forms in response to other requests
Department of Conservation: Administration	<ul style="list-style-type: none"> <li>• The number is on every job application and becomes, with the addition of two suffix zeroes the employee's identification number</li> <li>• Now have separate vendor number that gets used for expense account vouchers Human Resources collects SSNs for all employees</li> <li>• SSNs appear on all job applications, and the application of the ultimate hire goes on file</li> <li>• Worker's comp forms</li> <li>• Travel reimbursement vouchers</li> </ul>	Employee identification number shows up on every payroll distribution printout
Department of Conservation: Forest Policy and Management	SSN or TIN required for all reimbursements to state "vendors", which includes recipients of cost share funds for Forest Stewardship Plans. Used to create a vendor code	<ul style="list-style-type: none"> <li>• Vendor code used on all subsequent documents whenever reimbursements are needed</li> <li>• SSNs and TINs that are collected for cost share payments are protected as confidential by statute (12 MRSA §8005, sub-§§1 and 2)</li> <li>• SSNs and TINs we collect reside in a database that is not viewable by the outside world; only a small number of employees can access the database</li> </ul>



Agency	Context of collection	Treatment, release, protection, etc.
Department of Conservation: Forest Protection	<p>When the Forest Protection Division applies for reimbursement from other jurisdictions for sending fire crews out of state, it submits SSN of each ranger on the crew</p> <p>Collect SSNs of civilian fire crews who supplement staff on deployments</p>	
Public Utilities Commission	Does not collect SSNs	
Maine Health Data Organization	<ul style="list-style-type: none"> <li>• Collect SSNs of patients as part of the data submissions of the hospitals (90-590 CMR Chapter 241).</li> <li>• Encrypted SSNs are also submitted by health insurers and TPA's as part of the MHDO's claims database.</li> </ul>	<ul style="list-style-type: none"> <li>• The SSNs are used internally and not for public distribution. In fact, 22 MRSA Section 8707 (1) expressly prohibits the MHDO from releasing any direct identifiers (which are defined under 90-590 CMR Chapter 125) to the public.</li> <li>• The only exception to this is the release of direct identifiers (which can include SSNs) to the ME CDC for use in an investigation or research project of substantial public health importance.</li> <li>• The SSNs stay encrypted and are encrypted again before release to the public.</li> </ul>

Agency	Context of collection	Treatment, release, protection, etc.
Public Advocate	<p>The only time that I can recall that a form other than a state agency form or state retirement form has received someone's social security number is when an individual was financing or refinancing a mortgage and the bank sends along their already completed bank form for you, the employer to review to approve and say that their job is in good standing and yes that do make what they are claiming.</p> <p>What follows is a list of where social security numbers are used within the Public Advocate Office:</p> <ul style="list-style-type: none"> <li>• Retirement papers - forms</li> <li>• Life insurance/beneficiaries – forms</li> <li>• Direct hire applications – forms</li> <li>• Position detail reports</li> <li>• Human resource profile</li> <li>• Dental forms</li> <li>• Health Insurance forms</li> <li>• Payroll reports</li> <li>• Voluntary Cost Savings applications/forms</li> </ul>	<ul style="list-style-type: none"> <li>• The Public Advocate Office does not make it a practice to provide anyone outside of this office with anyone's social security number.</li> </ul>

Agency	Context of collection	Treatment, release, protection, etc.
Finance Authority of Maine	<p>Following categories of records in which SSNs are collected pursuant to FAME’s mission, business and education finance, as well as employee-related purposes:</p> <ul style="list-style-type: none"> <li>• Credit reports</li> <li>• Account, loan and grant applications and servicing forms</li> <li>• Tax returns</li> <li>• Financial statements</li> <li>• Loan and grant records</li> <li>• Accounts payable documentation</li> <li>• Employment, including employee benefit and payroll records</li> </ul>	<p>Policies and procedures to ensure that SSNs are not inappropriately released:</p> <ul style="list-style-type: none"> <li>• Avoidance of unnecessary collection of such personal information</li> <li>• Secure e-mail and electronic transmission capabilities</li> <li>• Confidentiality and privacy policies, including review of all permitted information planned to be sent out prior to release</li> <li>• Locked file-rooms and office cabinets</li> <li>• Screening of agents and vendors an related contract provisions requiring continued confidential treatment and security of such information</li> <li>• Safe destruction practices</li> <li>• Limited employee access to such data</li> <li>• Employee training</li> <li>• Statutory provisions generally prohibiting release of confidential information</li> </ul>
Office of Information Technology	<p>Not “collected” by OIT, but OIT administers information systems  SSNs exist within 112 databases or tables today in ten different departments</p> <ul style="list-style-type: none"> <li>• 82 instances = DHHS, DAFS and MDOL</li> <li>• Federal regulation and transactions related to payments, expenditures and taxes are basic reasons</li> <li>• SSN is a unique identifier, a reporting key field along with name for tax and client services, and is used as a “de-duplicator” (a mechanism to match similar names to a single person) to assure accurate processing and to thwart fraud</li> </ul>	<ul style="list-style-type: none"> <li>• 32 systems have external access by non-state users (most often the person who is assigned the SSN) - all but two within DHHS, DAFS and MDOL <ul style="list-style-type: none"> <li>• Allows a citizen to authenticate himself or herself as they do business with or report activity</li> <li>• Heavily protected and extra care taken to assure compliance with Federal and State law</li> </ul> </li> </ul> <p>(More detail withheld to avoid disclosing the individual IT applications, potentially making them more susceptible to attempts to penetrate security)</p>

Agency	Context of collection	Treatment, release, protection, etc.
DAFS, Bureau of General Services	Central Fleet and Central Services <ul style="list-style-type: none"> <li>• Employees who must be tested for Class II license provide SSN on the form</li> </ul>	
	Leased space - <ul style="list-style-type: none"> <li>• A few older leases have the SSN identified in the lease as the Vendor Information Number - number used in remitting payment to the landlord</li> <li>• No longer keeps SSNs or VINs on file - all new leases use Vender Ids</li> </ul>	<ul style="list-style-type: none"> <li>• Leases available for inspection by the public, but prior to the visit a copy of the document is reviewed and SSNs redacted</li> </ul>
	Planning, Design and Construction <ul style="list-style-type: none"> <li>• Do not collect SSN for own processes</li> <li>• Must collect payroll information to satisfy Title 26, §1311 (wage and benefit record of contractor) and contracting agency (BGS or others) receives records that initially have such personal information</li> </ul>	<ul style="list-style-type: none"> <li>• BGS Rule Chapter 150 outlines the process by which SSNs are prohibited from being transferred to the State agency</li> </ul>
	Purchases <ul style="list-style-type: none"> <li>• SSNs and/or federal Employer Identification Numbers (EIN) are collected for purposes of confirming vendor's identities when they register in the State Controller's AdvantageME/Vendor Self Service financial accounting and procurement system. SSN collected only vendors who are independent contractors within an EIN, which is a small percentage</li> <li>• Procurement cards formerly required full SSN, but now use only last four digits</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• Once a vendor's identity has been confirmed, the system assigns a separate vendor-specific Vendor/Customer Number (VCN) that is not based on SSN or EIN. VCN used on contract documents and purchase orders</li> <li>• SSN used on contracts when no EIN prior to 7/1/07 - those documents scanned into FORTIS document management system, which is available to state agencies who have Purchases' permission to access. When public requests copies of contracts, we provide copies without redacting SSN</li> </ul>

Agency	Context of collection	Treatment, release, protection, etc.
	Risk Management <ul style="list-style-type: none"> <li>Does not collect SSN except as required for federal income tax reporting purposes</li> </ul>	<ul style="list-style-type: none"> <li>When collected, SSNs kept in claim files that are not accessible to anyone other than staff of Risk Management, the State's Archivist and Attorney General; also kept in database accessible by only Risk Management staff</li> </ul>
DAFS, Division of Financial and Personnel Services - Service Centers	<ul style="list-style-type: none"> <li>Personnel and payroll records and reports - all expenditures relating to payroll payments require a SSN for identification purposes</li> </ul>	<ul style="list-style-type: none"> <li>SSN are blackened and permanently covered on any documents required to be scanned</li> </ul>
	<ul style="list-style-type: none"> <li>Eye examination and reimbursement form - require SSN for identification and payment</li> </ul>	<ul style="list-style-type: none"> <li>Used for internal purposes only</li> </ul>
	<ul style="list-style-type: none"> <li>Travel expense vouchers - recent change in procedure has eliminated need for SSNs on travel expense reimbursement forms - employees TAMS ID number is now used as the unique identifier for payment purposes</li> </ul>	
	<ul style="list-style-type: none"> <li>Inmate records - used by the Service Center are for internal purposes only</li> </ul>	
DAFS, Bureau of Human Resources	Recruitment records <ul style="list-style-type: none"> <li>Employment Applications - for internal use only</li> <li>Certificate of Eligibles (certifications)</li> </ul>	<ul style="list-style-type: none"> <li>Applications               <ul style="list-style-type: none"> <li>Hard copy maintained within the BHR for three years and then destroyed</li> <li>On-line applications maintained in a secure database</li> </ul> </li> <li>Maintained within BHR for three years then destroyed</li> </ul>

Agency	Context of collection	Treatment, release, protection, etc.
<p>Right to Know Advisory Committee draft</p>	<p>Personnel records</p> <ul style="list-style-type: none"> <li>• All State of Maine employees issued an employee number at the time of hire = SSN plus two trailing numbers</li>   <li>• Following forms have a space for SSN or Employee Number <ul style="list-style-type: none"> <li>• Employment eligibility verification form</li> <li>• Personnel file authorization form</li> <li>• Office notice of layoff</li> <li>• Request for placement on the reemployment register</li> <li>• New hire</li> <li>• General employee information</li> <li>• Termination form</li> <li>• Retroactive personnel record adjustment worksheet</li> <li>• Continuation of benefits coverage</li> <li>• Voluntary employee incentive program worksheet</li> <li>• Repayment of shutdown days</li> <li>• Voluntary employee incentive program application</li> <li>• Five percent salary option form</li> <li>• Retirement plan &amp; benefits options form</li> <li>• Register update form</li> <li>• Performance management form</li> <li>• Record of employee discipline</li> <li>• Request for placement on the transfer/demotion register</li> <li>• 3 month promotion report</li> </ul> </li> <li>• Verification certification</li> <li>• Statement concerning your employment in a job not covered by Social Security</li> </ul>	<ul style="list-style-type: none"> <li>• BHR maintains a secure database of current and former employees' records and also fiche copies of older records</li> <li>• Employee records released to the Maine Public Employees Retirement System (MePERS) in the form of paper copy, fiche or emailed images</li> <li>• All personnel forms are for internal use only - if a document is requested for legal matters, the SSN is redacted by the AG's Office or the Office of Employee Relations</li> </ul>

Agency	Context of collection	Treatment, release, protection, etc.
	<p>Other records</p> <ul style="list-style-type: none"> <li>The four collective bargaining agreements with MSEA and the Maine State Law Enforcement Association require the State to transmit “employee data” including SSN, to the unions on a quarterly basis</li> </ul>	

Agency	Context of collection	Treatment, release, protection, etc.
	<p>Employee Health &amp; Benefits</p> <ul style="list-style-type: none"> <li>• All applications require SSN in order to access the employee record in payroll and make changes to benefit plan deductions; SSN is the only consistent identifier throughout all programs</li> <li>• Health, dental and vision plans use an ID number, but not SSN</li> <li>• Centers for Medicare and Medicaid Services require periodic reporting of employment status as well as health plan coverage type - their forms use SSN</li> </ul>	<ul style="list-style-type: none"> <li>• Enrollment/change applications are maintained in office of Employee Health &amp; Benefits <ul style="list-style-type: none"> <li>• Maintained until employee terminates service or is deceased, and then maintained for two years, moved to Records Center for five years, then destroyed</li> <li>• Retiree health insurance applications are maintained in the office until death. At time of death, maintained for one year, moved to Records Center for 20 years, then destroyed</li> </ul> </li> <li>• Monthly premium reports for health, dental and vision are maintained in the office <ul style="list-style-type: none"> <li>• Health and vision premium reports are kept for three years then destroyed</li> <li>• Dental is kept for two years, moved to Records Center for five years, then destroyed</li> </ul> </li> <li>• COBRA election forms - maintained in the office for one year, moved to the Records Center for two years, then destroyed</li> <li>• Deferred Compensation 457 Plan - maintained in the office and not destroyed</li> <li>• Billing Systems - databases, including SSNs, on server with the Office of Information Technology. Files can be transmitted from carriers to OIT and downloaded in the office</li> </ul>



Agency	Context of collection	Treatment, release, protection, etc.
	<p>Federal Drug Testing Custody and Control forms are used and maintained in the office; SSN are required for identification. Results of the tests also provide SSN as the means of identification</p>	<p>Federal Drug Testing Custody and Control forms</p> <ul style="list-style-type: none"> <li>• A third party issues numbers for the random tests and has no access to the SSNs of State employees in the pool</li> <li>• Results are matched with the custody and control forms - the database is maintained and secured in the office on BHR file server with OIT; related forms and results are filed in locked cabinets</li> </ul>

Agency	Context of collection	Treatment, release, protection, etc.
	<p>Workers' Compensation Division</p> <ul style="list-style-type: none"> <li>• SSN used as a means of identifying clients</li> <li>• Also use other identifiers such as Employee Number from Human Resources (SSN + 2 digits)</li> <li>• TAMS number (employee number assigned by employer)</li> <li>• WC Division claim number</li> <li>• WC Board claim number</li> <li>• HICN number</li> </ul>	<ul style="list-style-type: none"> <li>• Forms and letters shared as necessary with the employee, employee's employer, attorneys, Workers' Comp Board and other state agencies as needed (such as AG, MDOL, Retirement, State Controller, medical providers, the employee's union) - usually sent through the mail or e-mail</li> <li>• A number of contractual agencies/ vendors that receive SSN <ul style="list-style-type: none"> <li>• Medical case management agencies</li> <li>• Surveillance companies</li> <li>• Medical bill auditors</li> <li>• Law firms (ours and claimants')</li> <li>• 10-day medical provider network</li> </ul> </li> <li>• Claims management program is on a secure server and is accessed by "departmental designees" in all departments of State government</li> <li>• Electronically submit data using FTP and sending from and to secure websites <ul style="list-style-type: none"> <li>• Matrix Rx</li> <li>• MSIGA (Maine State Guarantee Authority)</li> <li>• Workers' Comp Board</li> <li>• Eastside Wellness sites</li> <li>• MePERS</li> <li>• ISO Claim Search</li> <li>• OSHA</li> <li>• Advantage (State's accounting database)</li> <li>• CMS Section 111 (Federal Mandate by Centers for Medicare)</li> </ul> </li> </ul>

Agency	Context of collection	Treatment, release, protection, etc.
	<p>Forms that contain SSN</p> <ul style="list-style-type: none"> <li>• Employment Status Report</li> <li>• Employee's Return To Work Report</li> <li>• Request for Expedited Proceeding</li> <li>• Limited Certificate Authorizing Written</li> <li>• Certificate Authorizing Release</li> <li>• Lump Sum Settlement</li> <li>• Statement of Compensation Paid</li> <li>• Employer's Supplemental Report</li> <li>• Wage Statement</li> <li>• Schedule Of Dependent(s) and Filing</li> <li>• Memorandum of Payment</li> <li>• Discontinuance or Modification of Comp</li> <li>• Consent Between Employer and Employee</li> <li>• Certificate Authorizing Release of Benefits</li> <li>• Certificate of Discontinuance or Reduction</li> <li>• Notice of Controversy</li> <li>• Request for Independent Med Exam</li> <li>• Employer's First Report of Occ. Injury</li> <li>• Restoration of Sick or Vacation Time</li> <li>• State of Maine New Vendor/Vendor Up</li> <li>• Worker's Compensation Reimbursement</li> <li>• WC - Lost Time Tracking</li> <li>• Transitional Duty Plan Form</li> <li>• Return to Work Referral Form</li> <li>• ER or EE Petition Package</li> <li>• Affidavit Regarding Lump Sum Settlement</li> <li>• Employee's First Report of Injury</li> <li>• Designee's Supplemental Report</li> <li>• Request For Medical Case Management</li> <li>• Request For Surveillance</li> <li>• Memo To Transfer Med Records</li> <li>• Widow(Er) Update</li> </ul>	

Agency	Context of collection	Treatment, release, protection, etc.
<p>DAFS, Maine Revenue Services</p>	<p>MRS processes tax returns and other tax related documents year round; SSN is used as the unique identifier for individuals and some businesses; uniform identifier that is also used by other states, the IRS and other state agencies within Maine State Government</p> <ul style="list-style-type: none"> <li>• SSN required when tax forms are filed and, in some cases, when corresponding with MRSA regarding a specific amount</li> <li>• When corresponding with the taxpayer, MRS generally asks for identifying information other than the SSN, such as notice numbers or electronic confirmation numbers, so as to minimize the use of SSN whenever possible</li> </ul>	<ul style="list-style-type: none"> <li>• Federal and state law require strict confidentiality of taxpayer information, including SSNs</li> <li>• Except for purposes of tax processing and administration or when dealing with the taxpayer or the taxpayer's authorized representative, and except as otherwise authorized by Title 36, section 191, subsection 2, taxpayer information may not be divulged, discussed or otherwise released</li> <li>• Generally, SSNs not printed on tax forms, assessments, refund checks or tax correspondence issued by the bureau <ul style="list-style-type: none"> <li>• Exception: certain compliance-related assessments that legally require the taxpayer's identification number and for certain sales tax and withholding income tax forms when a sole proprietor uses their SSN as the business identification number (MRS discourages this practice)</li> </ul> </li> <li>• All tax information is kept at secure facilities</li> <li>• All paper tax returns are scanned and stored electronically and the originals are shredded on site</li> <li>• Taxpayers that file electronically do so over a secure internet connection; that information is also stored electronically</li> <li>• The IRS periodically reviews MRS policy and procedure to ensure compliance with the safeguard requirements for confidential federal taxpayer information received from the IRS.</li> <li>• New employee and periodic confidentiality training is required for all MRS employees and contractors.</li> <li>• Security envelopes are used for MRS correspondence, including return envelopes.</li> <li>• Browsing of taxpayer records either paper or electronic system is prohibited, subject to dismissal and monetary penalties.</li> <li>• Other agencies with whom MRS corresponds for tax administration purposes, including the IRS, other Maine agencies and other states, must also abide by the strict confidentiality requirements.</li> </ul>

Agency	Context of collection	Treatment, release, protection, etc.
DAFS, Bureau of Lottery and Alcoholic Beverages	<p>Lottery Ticket claims</p> <ul style="list-style-type: none"> <li>If someone claims a winning ticket of \$600 and over, the Bureau requires the claimant to provide their SSN on the claim form; Bureau issues a W2G tax form and files with the IRS</li> <li>Use SSN at time of claim to determine if an offset for nonpayment of taxes and/or child support or overpayment for unemployment benefits must be made against the claimant</li> </ul> <p>Lottery agent licensing</p> <ul style="list-style-type: none"> <li>Application form asks for owner's SSN so Bureau can run a credit check</li> </ul>	<ul style="list-style-type: none"> <li>SSN are not released to the public for any reason and the forms are filed in a secure location. If any of the forms are no longer needed, they are shredded</li> </ul>
DAFS, Office of the State Controller	<p>Maintains SSNs in both the accounting division for the payments to vendors and the payroll division for payments to employees. SSN is required to be maintained within systems for tax reporting to the IRS</p>	
	<p>Accounting System Usage</p> <ul style="list-style-type: none"> <li>SSN stored in the accounting system on the vendor record</li> <li>SSN field on vendor form</li> <li>New vendors often established through their business activities with other department; new vendor form mailed to OSC for verification</li> </ul>	<ul style="list-style-type: none"> <li>Although the vendor record is available to many users of the system, the SSN is masked (cannot be seen or accessed) to any users except employees of OSC</li> <li>Only time the accounting system extracts SSN is when processing the 1099/W-2 forms that are mailed to vendors</li> </ul> <p>Prior to July 1/2007 and the new accounting system, the SSN was part of the vendor identification number and was a required element on all invoices submitted for payment. Those invoices have been scanned and stored within a FORTIS database as required documentation for audit. Documents are available to authorized uses within the OSC and other agencies.</p>

Agency	Context of collection	Treatment, release, protection, etc.
	<p>Payroll Usage SSN is a significant data element with the HR/Payroll system</p> <ul style="list-style-type: none"> <li>• Used as the employee number in addition to all tax-related reporting</li> <li>• The employee number (in the case of Human Resource System - SSN + 2 digits) is necessary to complete various payroll notifications, transfers and transactions <ul style="list-style-type: none"> <li>• Some requested by employee (direct deposit)</li> <li>• Required by law (wage garnishment or tax levies)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Within HR/Payroll, all employees authorized to work on payroll or personnel transactions have access to the system</li> <li>• All employees of OSC and employees within the Bureau of the Budget and Bureau of Human Resources have access</li> <li>• Entities receiving payroll information that includes SSN: <ul style="list-style-type: none"> <li>• Federal government <ul style="list-style-type: none"> <li>• IRS reporting of wages</li> <li>• US Savings Bond purchases</li> <li>• Student loan garnishments</li> </ul> </li> <li>• State agencies <ul style="list-style-type: none"> <li>• MDOL , Employment Security for employment data</li> <li>• Maine Revenue Services for wage reporting and state tax levies</li> <li>• DHHS for child support assignments</li> <li>• Employee Health and Benefits for health and dental data</li> </ul> </li> </ul> </li> <li>• External vendors (such as Anthem, Delta Dental, Unions per contract, Deferred Compensation per employee request)</li> </ul>

Agency	Context of collection	Treatment, release, protection, etc.
<p>Department of Professional and Financial Regulation</p>	<p>Occupational and professional licenses</p> <ul style="list-style-type: none"> <li>• Title 10, §8003, sub-§4-A: An individual who applies for a license shall provide that individual's SSN on the application, which must be recorded</li> <li>• Title 36, §175, sub-§1: every department, board, commission, division, authority, district or other agency of the State issuing or renewing a license or other certificate of authority to conduct a profession, trade or business shall annually, on or before April 1st, provide to the State Tax Assessor a list of all licenses or certificates or authority issued or renewed; information to include SSN or federal identification number of licensees</li> </ul>	<ul style="list-style-type: none"> <li>• Written advice from four Assistant Attorneys General and a consent decree in the U.S. District Court for the District of Maine have all taken the position that SSN collected by PFR pursuant to 36 §175, sub-§1 are confidential tax records that fall within the prohibition against non-disclosure contained in 36 §191, sub-§1</li> </ul>
	<p>The Office of Licensing and Registration has authority under state law to collect SSNs from licensure applicants and applicants for license renewal. SSNs of applicants are entered into the Agency Licensure Management System, the central licensing data base. If the agency ceased collecting SSNs, there would be no equally reliable way to identify licensees for licensing purposes. Cost of removing SSNs would be prohibitive.</p>	<p>Taking steps now to enhance the security of the licensing database (ALMS) by adding features to mask SSNs to eliminate the potential for inadvertent release of the confidential information</p>

Agency	Context of collection	Treatment, release, protection, etc.
<p>Right to Know Advisory Committee draft</p>		<p>Internal policy: Treatment of Social Security Numbers and other Personal Information by Agencies within the Department.</p> <ol style="list-style-type: none"> <li>1. PFR employees should not disclose or release SSNs contained in agency files. PFR employees receive frequent requests for copies of license applications and lists of licensees. Employees should redact any SSNs before sending out documents responsive to these requests.</li> <li>2. Each agency should designate an attorney or manager responsible for processing and responding to requests for personal information, including FOA requests. If a PFR employee receives a request from the public to review or copy documents containing personal information, the employee shall ask that the request be in writing. In addition, all responses to such requests shall be reviewed by the designated attorney or manager.</li> <li>3. In processing a public or FOA request, each agency should redact information protected by statute. In addition, the agency should determine whether the request can be responded to without supplying other personal information. Each agency may have specific information which is protected by law or regulation.</li> <li>4. When posting information on PFR's website, agencies should <i>not</i> post personal information, such as <b>home addresses</b> and <b>telephone numbers</b>. An exception to this rule would be in cases in which such information is directly applicable to a licensee's business, such as when a home address is also a business address or a home telephone number is also a business telephone number. Under no circumstances should SSNs be posted.</li> <li>5. Each agency should use its best efforts when collecting information to provide notice regarding whether the information will be treated as public or confidential information.</li> </ol>



Agency	Context of collection	Treatment, release, protection, etc.
DPFR, Office of Securities	Collects SSNs of individuals applying for licenses as agents or investment advisor representatives; also collects SSNs for those seeking license as broker-dealer or investment advisor if individual does not have Central Registration Depository number (CRD) is national database used by all 50 states and federal government to license or register agents and investment advisor representatives	<p>32 MRSA § 16607, sub-§ 2, ¶ E specifically designates SSNs in possession of Office of Securities as nonpublic and not subject to disclosure; as a result:</p> <ul style="list-style-type: none"> <li>• SSNs redacted in hard copy; reports printed from CRD database exclude SSNs</li> <li>• SSNs collected as part of investigations and examinations would be redacted if records are disclosed pursuant to court order</li> </ul>
DPFR, Bureau of Financial Institutions	The Bureau obtains SSNs in a variety of ways.	<ul style="list-style-type: none"> <li>• As with other sensitive financial information, once an SSN is provided to the Bureau, it is a confidential record under 9-B M.R.S.A. 226 (the personal identifying information of consumers and governing body organizers of financial institutions is confidential).</li> </ul>
	<p>1) Applications. The Bureau collects SSNs in its Financial and Biographical reports submitted as part of two Bureau applications/filings:</p> <p>(A) Application to establish a new financial institution and</p> <p>(B) Notice of Change in Control of a financial institution.</p> <p>Both of these applications/filings are federal interagency (i.e., FDIC, FRB, OCC) filings. The SSNs are used to obtain background checks on potential principal owners, organizers, directors and executive officers of new and/or existing state-chartered financial institutions.</p>	<ul style="list-style-type: none"> <li>• The SSNs are accorded confidential treatment (by both the Bureau and the federal agencies) and are separated from public documents.</li> <li>• The protection- Confidential status under Title 9-B; Locked file room after business hours.</li> </ul>

Agency	Context of collection	Treatment, release, protection, etc.
	<p>2) Records of financial institution examinations.</p> <p>In the process of examining Banks and credit unions, examiners obtain loan and deposit trial balances, usually in electronic form, that often contain sensitive information about customers, including SSN's. Examination work product (known as Workpapers and usually in paper form), and Suspicious Activity Reports made by financial institutions, may also contain this sensitive information.</p>	<ul style="list-style-type: none"> <li>The protection: Confidential Status under Title 9-B; Electronic encryption; Locked file room after business hours.</li> </ul>
	<p>3) Consumer complaints.</p> <p>Though not requested by the Bureau, a consumer occasionally sends along documents related to a consumer complaint or inquiry that contain an SSN.</p>	<ul style="list-style-type: none"> <li>The protection: Confidential status under Title 9-B; The Bureau has begun redacting the SSNs and currently locks the complaint storage cabinet.</li> </ul>
	<p>4) Personnel records.</p> <p>The Human Resources Service Center B instructs us to retain employment applications for 2 years in a locked file cabinet. These applications as well as existing employee files contain SSNs.</p>	<ul style="list-style-type: none"> <li>The protection: As per instructions of Human Resources, files are kept in a locked cabinet.</li> </ul>

Agency	Context of collection	Treatment, release, protection, etc.
DPFR, Bureau of Insurance	<p>The Bureau of Insurance uses social security numbers (SSNs) in several ways:</p> <ul style="list-style-type: none"> <li>• <b>Applications.</b> There are existing uniform licensing applications/forms developed by the National Association of Insurance Commissioners (NAIC) that allow a person to submit one uniform, electronic application to each state where the person wants to do business. Such applications use SSNs. Maine law requires applicants for insurance producer or business entity licenses to use NAIC applications.</li> </ul>	
	<ul style="list-style-type: none"> <li>• <b>Identity verification.</b> Maine law also requires insurance companies to submit a uniform license application. Both the insurance company license application and the forms filed in connection with changes of ownership include biographical forms for the principal owners and managers. The biographical form uses the SSN to ensure that a proper background check is conducted. Because insurance products pay in the future, it is critical to protect the insurance consumers from fly-by-night and other unscrupulous operators. The SSN is used to help verify the identity of an individual and to conduct a thorough background check. This helps to ensure that insurance companies are operated by people without a history of civil/criminal violations.</li> </ul>	
	<ul style="list-style-type: none"> <li>• <b>Investigation.</b> SSNs are used in the Bureau’s individual investigations and in multi-state investigation/enforcement actions.</li> </ul>	

Agency	Context of collection	Treatment, release, protection, etc.
		<ul style="list-style-type: none"> <li>Recognizing the importance to protect SSN information, the Bureau has confidentiality agreements with other states and the NAIC. Furthermore, national databases in which SSNs are housed are searchable by SSN, but the SSN is not disclosed in the search results. SSNs are redacted prior to the release of information publicly.</li> <li>SSNs are not available on the "find a licensee" function on our website</li> </ul>
DPFR, Consumer Credit Protection		<ul style="list-style-type: none"> <li>We carefully review and manually delete all such numbers before any required release (such as in response to a FOIA request).</li> </ul>
<ul style="list-style-type: none"> <li>Consumer Complaint Resolution</li> </ul>	<p>On complaint forms, especially for credit reporting complaint  Necessary to resolve many types of complaints especially credit reporting agency complaints  Critical  9-A MRSA §6-106 and 10 MRSA §1328(1)(A)</p>	
<ul style="list-style-type: none"> <li>Registration of Loan Originators/Officers</li> </ul>	<p>Application for Registration/Licensing  State and federal SAFE Acts; 9-A MRSA 6-105-A  To create unique identities for computer system (tracking in licensing system)  Necessary</p>	
<ul style="list-style-type: none"> <li>Licensing of Collection Agencies</li> </ul>	<p>On license applications for sole proprietors and partnerships  Background Checks  Necessary  32 MRSA 11031(3)(A) (together with fingerprint cards)</p>	

Agency	Context of collection	Treatment, release, protection, etc.
<ul style="list-style-type: none"> <li>Compliance examinations (audits)</li> </ul>	<p>Staff reviews consumer loan documents as part of compliance exam process            To conduct exams (audits) to check for compliance with Maine laws. Incidental to reviewing confidential consumer documents during examinations (unavoidable).            Necessary            9-A MRS, Section 6-106,</p>	
<ul style="list-style-type: none"> <li>Registration of Consumer Reporting Agencies</li> </ul>	<p>1) At time of application for registration            2) Examination (audit)            Investigations if necessary            Facilitates investigations            10 MRSA §1328(1)(G)</p>	
<ul style="list-style-type: none"> <li>Debt Mgmt Service Provider</li> </ul>	<p>1) At time of application for registration            2) Examination (audit)            Background check for sole proprietors/partners            Necessary            32 MRSA §6173(2)</p>	
<ul style="list-style-type: none"> <li>Foreclosure Purchasers</li> </ul>	<p>1) Application            2) Examination (audit)            Identification/Background checks            Necessary            32 MRSA §§6191-6200</p>	
<ul style="list-style-type: none"> <li>Exchange Facilitators</li> </ul>	<p>At time of application for license            Identification/Background checks            Moderate            10 MRSA §1395 <i>et seq.</i></p>	

Agency	Context of collection	Treatment, release, protection, etc.
<ul style="list-style-type: none"> <li>New Filers (MCCC1) - Sales Finance, General Creditors, Car Dealers, Mobile Home Dealers, Rent-to-Own, Pawn Brokers and Loan Servicers</li> </ul>	Application/Notification requests FEIN (company) or SS # (proprietor or partner) Identification Moderate 9-A MRS, §6-202	
<ul style="list-style-type: none"> <li>Insurance Premium Finance Companies</li> </ul>	Application/Notification Requests Identification Moderate 9-A MRS §2-302	
<ul style="list-style-type: none"> <li>Litigation Funding Providers</li> </ul>	Sole proprietor, partnerships, corporate officer, LLP, shareholder or LLP partners Identification/Examination/Investigation Necessary	
<ul style="list-style-type: none"> <li>Loan Brokers</li> </ul>	1) At time of application for license; 2) During compliance exams/investigations Background checks/ Compliance exams Necessary 9-A MRS §10-201	
<ul style="list-style-type: none"> <li>Payday Lender</li> </ul>	Sole proprietor, partnerships, corporate officer, LLP, shareholder or LLP partners Sole proprietor, partnerships, corporate officer, LLP, shareholder or LLP partners Background checks/Compliance exams Necessary 9-A MRS §1-201; 2-302 9-A MRS §1-201; 2-302	

Agency	Context of collection	Treatment, release, protection, etc.
<ul style="list-style-type: none"> <li>Supervised Lender</li> </ul>	Sole proprietor, partnerships, corporate officer, LLP, shareholder or LLP partners Identification/Examination/Investigation Necessary 9-A MRS §2-302	
<ul style="list-style-type: none"> <li>Payroll Processor</li> </ul>	At time of application for Sole proprietor, partnerships. Identification/Examination/Investigation Necessary 10 MRS, §1495 <i>et seq.</i>	
<ul style="list-style-type: none"> <li>Repossession Company</li> </ul>	At time of licensing and during exam (audit) (together with fingerprints) Identification/Examination/Investigation Necessary 32 MRS, §11001 <i>et seq.</i>	

Agency	Context of collection	Treatment, release, protection, etc.
Department of Audit	<p>Collects SSNs in certain audits to identify specific individuals who are part of sample and population being tested; information used to link and track data through different electronic information systems</p> <p>Examples include audits of state payroll and pension information, tax revenues, vocational rehabilitation and Medicaid</p>	<ul style="list-style-type: none"> <li>• Small electronic files containing SSNs asked to be provided with password protection; larger files transmitted by compact disc</li> <li>• Precautions taken to keep sensitive information confidential within secure building outside of State House complex, including workpapers with SSNs or other sensitive information kept in locked briefcases; spreadsheets containing SSNs encouraged to be viewed on computer and not printed out in written form; and SSNs never shared in written findings</li> <li>• After audits are completed, SSNs are redacted from electronic files and blacked out in written records to preserve confidentiality in those audit records required to be retained for certain period</li> <li>• Once retention period is over, electronic and paper audit files are permanently deleted or shredded; compact discs are destroyed by breaking them</li> </ul>



Agency	Context of collection	Treatment, release, protection, etc.
Department of Education	<p>SSNs collected as part of following computer systems:</p> <ul style="list-style-type: none"> <li>• Infinite Campus State Edition Student Information</li> <li>• Infinite Campus State Edition Staff Information</li> <li>• Maine Education Data Management System (MEDMS)</li> <li>• Maine Adult Education Management Information System</li> <li>• General Education Development (GED) System (Legacy)</li> <li>• Child Development Services (Case-E)</li> <li>• Licensing and Certification</li> </ul> <p>SSNs are also in possession of DOE as part of information submitted by individuals:</p> <ul style="list-style-type: none"> <li>• Job applications and related forms</li> <li>• Private school approval applications and annual reports include staff names and SSNs</li> <li>• Home school parents required to submit name and SSN of certified teachers working with them</li> <li>• Certificates of employment of school superintendents</li> <li>• State Board of Education members vendor forms</li> <li>• Teacher certification applications and renewal applications include name and SSN</li> </ul>	Security for SSNs collected by DOE provided by OIT in accordance with Computer Matching and Privacy Protection Act Agreement between Social Security Administration and State –data is confidential, but may be shared with authorized agencies; is not disclosed to public as part of FOA requests
Maine State Housing Authority		

Agency	Context of collection	Treatment, release, protection, etc.
<ul style="list-style-type: none"> <li>Homeownership</li> </ul>	Participating lenders load info into lender online. Info feeds to Emphasys' Applied Oriented Database (AOD).	Information stored: <ul style="list-style-type: none"> <li>Lender Online - Encrypted software.</li> <li>Paper files - Files locked. Staff locks confidential info work in progress in bins in locked room over night.</li> <li>AOD Database - Password Protected (AOD Database)</li> <li>Fortis</li> </ul> Share info with servicers – SSN not included. Sent thru secure email server.
<ul style="list-style-type: none"> <li>Development</li> </ul>	Electronic copies of closing docs. AOD Database	Information stored: <ul style="list-style-type: none"> <li>Fortis</li> <li>AOD Database - AOD is password protected. Limited access in department</li> </ul>
<ul style="list-style-type: none"> <li>Homeless               <ul style="list-style-type: none"> <li>Rental Assistance Coupon Plus (RAC+) Program</li> </ul> </li> </ul>	Applications for program	Information stored: <ul style="list-style-type: none"> <li>File cabinets - Locked cabinets</li> <li>Emphasys' Elite Database - Password protected database</li> <li>Housing counselor work stations - Locked stations/offices</li> </ul>
<ul style="list-style-type: none"> <li>Shelters</li> </ul>	Homeless Prevention and Rapid Re-Housing Program (HPRP) initiatives	HUD requests info be stored in the Homeless Management Information System (HMIS)
<ul style="list-style-type: none"> <li>Homeless Management Information System (HMIS)</li> </ul>	Thru RAC+, Continuum of Care, Grant processes and input by partner agencies	HMIS Database Users have individual passwords – track usage. Vendor contracts – required to safeguard under the Health Insurance Portability and Accountability Act. Training required before getting password. Info available for viewing only by user who entered it. Contracts govern interagency info. System maintained by company that maintains 90% of HMIS systems in the nation. Internal info does not contain SSNs. Kinney manages process to remove SSNs. Limited access.
<ul style="list-style-type: none"> <li>Asset Management</li> </ul>	Potential access to SSNs thru HUD's Housing and Development Software (HDS) System or copies from management review. Signature Cards.	HDS System - Scanned to Fortis and paper copy shredded Paper - Signature card info in locked cabinet.

Agency	Context of collection	Treatment, release, protection, etc.
	Section 8 Applications  Owner (landlord) information	Emphasys' Elite software: In computer – accessed by internal users and section 8 agents. Approx 25 people access by security (password protected) and sign rules of behavior form. Paper Files: Paper includes copies of SS cards - locked in cabinet in secure area  Anything printed with any identifying information is shredded. Anything sent electronically is encrypted and utilizes a secured file transfer system which is password protected. Info also obtained from HUD site – HUD blocks out all but last 4 digits of SSN and date of birth. W-9s for owners kept secured in Finance
<ul style="list-style-type: none"> <li>Energy and Housing Services (EHS)</li> </ul>		
<ul style="list-style-type: none"> <li>Low Income Housing and Energy Assistance Program (LIHEAP)</li> </ul>	<ul style="list-style-type: none"> <li>LIHEAP Applications – SSNs are required for all family members to avoid duplication of benefits</li> </ul>	Maine Energy Assistance and Conservation (MERAC) Database: Individual access limited to what the individual entered in the system  MaineHousing monitors for compliance (client info locked up and not easily accessible to other parties)  Data is de-identified for programming purposes to eliminate connection to live data
<ul style="list-style-type: none"> <li>Weatherization</li> </ul>	LIHEAP Application determines eligibility of persons receiving weatherization.  Noted on form that collects energy use of household during billing phase.	Paper – filed; Cabinet in room that is locked nightly.
<ul style="list-style-type: none"> <li>Housing Services (Home repair, elderly, etc)</li> </ul>	Application for services	Electronic - Limited access (to EHS personnel)  Paper – file cabinet - Cabinet in room that is locked nightly. Limited access (to EHS personnel); Cabinet in room that is locked nightly.

Agency	Context of collection	Treatment, release, protection, etc.
<ul style="list-style-type: none"> <li>Finance</li> </ul>	<p>Vendors: Accounts Payable, Tenant Based rent, section 8, LIHEAP,HPRP</p> <p>Employee SSN</p>	<ul style="list-style-type: none"> <li>Emphasys' Elite Database -</li> <li>Quickbooks</li> <li>Emphasys' AOD Accounts Payable (A/P) System</li> <li>Emphasys/Elite Database,Quickbooks,AOD, A/P System – password protected, limited access</li> <li>Paper files: Paper files locked in cabinets in locked room with limited access</li> <li>Current payroll system is online: Payroll system is secure offsite. Does not allow SSNs to be shown</li> <li>Required by IRS to bulk send 1099 info electronically: FISC report received with name and SSN. Will not change. Finance blocks identifying info and shreds original report.</li> <li>Excel Files from other departments: Excel files are uploaded to IRS site which is password</li> </ul>
<ul style="list-style-type: none"> <li>Loan Servicing</li> </ul>	<p>Access to info pre-loaded by Lenders/Servicers</p>	<ul style="list-style-type: none"> <li>Servicers load SSN in Systems: Servicers obligated and required to keep info secure and comply with State and Fed Regulations. MaineHousing annually performs quality control review to verify safe harbor.</li> <li>Loans loaded into Lender Online. Loads to AOD Database. Purchase detail loaded into AOD Database. AOD Database is password protected.</li> <li>Staff locks work stations and keeps files in locked cabinets.</li> <li>Access limited to default unit. No info to outside partners unless specifically requested by legal to do so and personally identifiable info is blanked out.</li> <li>Info sent electronically is encrypted.</li> </ul>



Agency	Context of collection	Treatment, release, protection, etc.
<ul style="list-style-type: none"> <li>Information Services (IS)</li> </ul>	(don't receive info directly)	<p>Establishes security features for electronic records and educates staff</p> <p>Encryption. Secure sites. Encrypt back up tapes that leave the site</p> <p>Contracted with external security firm to advise on good/better/best practices (evolving)</p>
<ul style="list-style-type: none"> <li>Communications and Planning Unit (CPU)</li> </ul>	<p>SSN of staff for Integrated Disbursement and Information System (IDIS) Access</p> <p>Access to databases (AOD, RAC+, EHS)</p>	<p>Sent to HUD. Do not retain copies.</p> <p>SSNs redacted on any info retracted</p> <p>Password protected</p> <p>Limited access</p> <p>Mutual agreement not to include SSNs when sharing data</p>
Workers' Compensation Board	To ensure filings are accurately tracked, SSN of injured employees required on all forms	<p>Access to WCB records concerning individual employees is strictly limited by both statute (39-A MRS §152, sub-§2) and rule (90-351 COMAR Ch. 16)</p> <p>Board releases records only to those persons meeting these standards</p> <p>Single employee assigned overall responsibility for processing requests for records</p> <p>Questions referred to Board's General Counsel</p>

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## Social Security Numbers in Maine Statutes

July 14, 2010

Citation	Binder page	Section headnote	Description	Treatment
1 §402, sub-§3, ¶N	1/3	(Freedom of Access laws) Definitions - exceptions to “public records”	SSN in possession of DIFW not a public record	Not public - public entity
5 §17059, sub-§4, ¶A	21/21	(State Retirement System) Qualified domestic relations orders	QDRO must contain SSN of member or retiree and each alternate payee	Collect - public entity
5 §3360-M, sub-§3	14/14	(Victims’ Compensation Fund) Payment for forensic examinations for alleged victims of gross sexual assault	Tracking number of forensic exam cannot be victim’s SSN	Do not collect - restriction on public entity
5 §7070, sub-§2, ¶D-1	16/17	(State Civil Service System) Personnel records	Records containing the listed information are confidential, including SSN	Confidential - in possession of public entity
8 §1006, sub-§1, ¶H	32/33	(Gambling Control Board) Confidentiality of records and information	SSN of any individuals	Confidential - in possession of public entity
8 §231, sub-§6, ¶A	25/25	Fireworks technician license qualifications	Application must include SSN	Collect - public entity
8 §416-A, sub-§3, ¶C, sub-¶(3)	27/27	(Tri-State Lotto) Payment of prize to another person	SSN of assignor and SSN of assignee Sub-§9 designates financial, tax and personal records as confidential	Collect - public entity Confidential
10 §1272, 1st ¶	35/35	(Protection of SSN) Prohibition	Business may not display SSN on a credit card, customer service card or debit card	Do not display - restriction on private entity
10 §1272, 2nd ¶	35/35	(Protection of SSN) Prohibition	SSN may be used as identification for medical insurance, health insurance, dental insurance, prescription drug coverage - but must use different number as request of an individual	May use - private/public entity

## Social Security Numbers in Maine Statutes

July 14, 2010

Citation	Binder page	Section headnote	Description	Treatment
10 §1272-B	36/36	(Protection of SSN) Refusal to provide social security number	<p>Person, corporation or other entity may not deny goods or services because individual refuses to provide SSN. Exceptions (sub-§2)</p> <ul style="list-style-type: none"> <li>• Requesting disclosure of SSN to obtain consumer report as permitted under Fair Credit Reporting Act</li> <li>• If SSN used in conjunction with provision of and billing for health care or pharmaceutical services</li> <li>• If SSN used in conjunction with a background check conducted by a landlord, lessor, employer or volunteer service organization</li> <li>• If SSN necessary to verify the identify of the individual to effect, administer or enforce a specific transaction requested or authorized by the individual or to prevent fraud</li> </ul>	Cannot require disclosure by individual, exceptions
10 §1313-C, sub-§3	38/38	(Fair Credit Reporting Act) Security freeze by consumer reporting agency; time in effect	Consumer reporting agency must provide consumer with a personal identification number or password, other than the SSN, to be used by consumer when providing authorization for the release of the consumer report	Do not use - restriction on private entity
10 §1313-D	42/42	(Fair Credit Reporting Act) Duties of consumer reporting agency if security freeze is in place	Consumer reporting agency cannot change any official information, including SSN, without sending written confirmation of the change to the consumer	Do not change - restriction on private entity
10 §1347, sub-§6, ¶A	43/44	(Notice of Risk to Personal Data) Definitions - definition of “personal information”	<p>Personal information means an individual’s first name, or first initial, and last name in combination with any one or more of the following data elements, including SSN</p> <p>Requirements for notice of data breach - §1348</p> <p>Penalties - §1349</p>	Part of data breach - applies to private and public entities



## Social Security Numbers in Maine Statutes

July 14, 2010

Citation	Binder page	Section headnote	Description	Treatment
10 §8003, sub-§4-A	46/48	(Department of Professional and Financial Regulation) Departmental organization; duties	An individual who applies for a license shall provide SSN on the application, which must be recorded	Collect - public entity
12 §8005, sub-§1	64/64	(Bureau of Forestry) Certain information confidential	SSN collected by bureau for purposes of contacting forest landowners under §8611, in notifications under §8883-B or in reports under 36 MRSA §581-G are confidential	Collect - public entity Confidential
12 §8005, sub-§2	64/64	(Bureau of Forestry) Certain information confidential	SSN collected by bureau as part of forest management plan and held to administer landowner assistance programs are confidential	Collect - public entity Confidential
16 §53-B, sub-§1, ¶A-1	66/66	Privileged communications to victim advocate; family violence; definition of “confidential communications”	“confidential communications” includes SSN and other information that personally identifies victim	Confidential - in possession of private/public entity
17-A §905-A, sub-§4	68/68	Crime of Misuse of Identification	Definition of “legal identification” includes SSN - misuse of identification to obtain SSN	Protected - private/public entity
19-A §1509, sub-§1	74/74	(Child support information) Locator information; presumption concerning notice	Parties to paternity action or proceeding involving child support must provide SSN	Collect - public entity
19-A §1565, sub-§4	75/75	(Uniform Act on Paternity) Judgment	Individual who is party to a paternity action must disclose SSN; SSN must be included in record SSN is confidential and is not open to the public Court shall disclose SSN to DHHS for child support enforcement purposes	Collect - public entity Confidential Limited disclosure
19-A §2006, sub-§10	77/81	(Child Support) Support guidelines	Person who is party to an action to establish or modify a support order must disclose SSN; SSN must be included in record SSN is confidential and is not open to the public Court shall disclose SSN to DHHS for child support enforcement purposes	Collect - public entity Confidential Limited disclosure

## Social Security Numbers in Maine Statutes

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Citation	Binder page	Section headnote	Description	Treatment
19-A §2104, sub-§1	85/85	(Support enforcement) State registry of support orders	DHHS must maintain record of each support order established or modified in this State; must include SSN Use data for matching	Maintain - by public entity
19-A §2152, sub-§2, ¶A	86/86	(Support enforcement) Disclosure of information in medical support recoupment and child support cases	DHHS may request of any person information needed to establish, modify or enforce a support order, including SSN Sub-§11: info confidential	Collect - public entity (Confidential)
19-A §2152, sub-§5, ¶D	86/86	(Support enforcement) Disclosure of information in medical support recoupment and child support cases	DHHS may request information of putative father if paternity not established, including SSN Sub-§11: info confidential	Collect - public entity (Confidential)
19-A §2154, sub-§4	90/90	(Support enforcement) Employment information	Employer new hire reporting, including employee's SSN Data match	Collect - private/public, report to public entity
19-A §2154, sub-§4-A	90/91	(Support enforcement) Employment information	Employer new hire reporting, including independent contractor's SSN Data match	Collect - private/public, report to public entity
19-A §2158, sub-§1, ¶B	93/93	(Support enforcement) Access to wireless service provider's records of individuals who owe child support	Definition of data match to include SSN Sub-§6: list of obligors is confidential	Use of SSN - release to private entity
19-A §2158, sub-§3, ¶c	93/93	(Support enforcement) Access to wireless service provider's records of individuals who owe child support	Compilation of matched list, including SSN Sub-§6: list of obligors is confidential	Use of SSN - release to private entity
19-A §2201, sub-§13	95/99	(Support enforcement) Notice to licensing boards and obligor; judicial review	Notice by DHHS to licensing entity of delinquent child support obligor, includes SSN	Use of SSN - release by public to public

## Social Security Numbers in Maine Statutes

July 14, 2010

Citation	Binder page	Section headnote	Description	Treatment
19-A §2306, sub-§6, ¶A	101/103	(Support enforcement) Immediate withholding of earnings	Payor must notify DHHS when payor-payee relationship terminates, including SSN	Collect-private/public, report to public entity
19-A §2360-A	105/105	(Support enforcement) Lump-sum settlement; workers' compensation claims	DHHS notify Workers' Compensation Board of names and SSN of all persons who owe DHHS child support debts - compare for lump-sum settlements	Use SSN - release by public to public
19-A §2366	106/106	(Support enforcement) Employer or holder responsibility and liability	Order to withhold and deliver issued by DHHS to employer or holder - must include obligor's SSN	Use SSN - release by public to private entity
19-A §2661, sub-§1	108/108	(Support enforcement) Notice of termination	When payor of income unable to continue to withhold because relationship between payor and obligor ends, payor send DHHS notice of termination, including SSN	Use SSN - release by private to public
19-A §3011, sub-§1	109/109	(Uniform Interstate Family Support Act) Pleadings and accompanying documents	Petitioner must include SSN of obligor and obligee and SSN of each child	Collect - public entity
19-A §3151, sub-§1, ¶D	111/111	(Uniform Interstate Family Support Act) Procedure to register order for enforcement	DHHS may register a support order or income withholding order by forwarding to the appropriate court, records and information, including SSN of obligor	Use SSN - release by public to public
19-A §651, sub-§2	71/71	(Marriage) Recording of intentions	Application for recording notice of intention to marry must include SSN of the parties The record of the SSN is confidential and not open for public inspection	Collect -public entity Confidential
19-A §908	73/73	(Divorce) Disclosure and recording of social security numbers	Individual who is party to a divorce must disclose SSN; SSN must be included in record SSN is confidential and is not open to the public Court shall disclose SSN to DHHS for child support enforcement purposes	Collect - public entity Confidential Limited disclosure

## Social Security Numbers in Maine Statutes

July 14, 2010

Citation	Binder page	Section headnote	Description	Treatment
20-A §6001, sub-§2	113/113	(School records, Student records) Dissemination of information	A public school may not publish on the Internet or provide for publication on the Internet any personal information without written permission of parent of student; “personal information” includes SSN	Do not release without permission - public entity
20-A §6101, sub-§2, ¶B, sub-¶(7)	116/117	(School records, Employee and applicant records) Record of directory information	Information in any form relating to an employee or applicant or to employee’s immediate family must be kept confidential if relates to SSN	Confidential - in possession of public entity
20-A §15689-B, sub-§7		Authorization and schedules of payment of state subsidy; appeals	Commissioner may require school administrative units to collect and report individual student SSNs (for purposes of ME Statewide Longitudinal Data System) and may withhold monthly subsidy payments failure to comply	Collect - public entity report to public entity
21-A §112-A, sub-§§2 & 4		Proof of identity for voting purposes	Last 4 digits of SSN or signed social security card are 2 forms of documentation that may be offered by an applicant and considered by a registrar in verifying voter identity	Collect - public entity
21-A §152, sub-§1, ¶M	121/121	(Voter registration) Registration and enrollment procedure	Voter application - include driver’s license number or last four digits of SSN	Collect - public entity
21-A §154, sub-§1, ¶O	125/126	(Voter registration) Registration and enrollment for citizens outside the United States	Voter application for person residing outside the US - include driver’s license number or last four digits of SSN	Collect - public entity
22 §16, sub-§1, ¶B	128/128	(DHHS) Access to financial records of deposit accounts of recipients of public assistance	Compilation of matched list, including SSN Sub-§2: DHHS ensure privacy protected to maximum extent possible	Use SSN - release to private entity
22 §17	130/130	(DHHS) Access to financial records of deposit accounts of individuals who owe overdue child support	Compilation of matched list, including SSN Sub-§7: list of obligors and SSN is confidential	Use SSN - release to private entity
22 §2761, sub-§6	133/134	(DHHS: birth records) Registration of live births	Parents must provide SSN; not recorded on birth certificate; DHHS may not use SSN for any purposes other than IV-D	Collect - public entity Limited disclosure

## Social Security Numbers in Maine Statutes

July 14, 2010

Citation	Binder page	Section headnote	Description	Treatment
22 §3763, sub-§5	137/138	(DHHS: TANF) Program requirements	DHHS home visit program may verify SSN of participants	Collect? - public entity
24 §2986, sub-§2	141/141	(Maine Health Security Act, billing for health care) Performing forensic examinations for alleged victims of gross sexual assault	Tracking number of forensic exam cannot be victim's SSN	Do not collect - restriction on private/public entity
26 §1232, sub-§1	(142B)	(Unemployment Compensation, Employer's contributions and coverage) Licenses	State entity that issues licenses must provide list of licenses or certificates of authority issued in last year, including SSN	Report SSN - by public entity
26 §1311	143/143	(Labor: preference to Maine workers and contractors) Wage and benefit record of contractor	Public authority letting a contract will adopt rules to protect privacy of personal information filed in records with the public authority, such as SSN	Protect SSN - private/public entity
26 §871, sub-§2, ¶B	(142A)	(Employment practices: Aliens) Illegal employment of aliens	SSN card not evidence of US authorization for an alien to accept employment in the US	Use of SSN?
28-A §2519, sub-§7	145/147	(Liquor Liability Act) Approval of alcohol server education courses	Instructor of alcohol server education class must provide liquor enforcement with state ID card or SSN of student who complete the course	Collect - private entity, report to public entity
29-A §1301, sub-§6	153	(Driver's license) Application	SSN must be recorded on application; use number to establish a permanent license number or nondriver ID card	Collect - public entity
29-A §2458, sub-§2, ¶P	157/158	(Major motor vehicle offenses) Suspension or revocation of license, title, registration or fuel use decal	SOS may suspend or revoke certificate of title, certificate of registration, license, fuel use decal or operating authority of person if person failed to provide valid SSN pursuant to §1301	Penalty for no SSN - public entity
29-A §956, sub-§5	151/152	(Motor vehicle dealers, licensing of dealers) Record of transactions	Dealer must maintain record of all sales representatives and full-time employees, including SSN, available for inspection by AG and law enforcement officers	Collect - private entity, report to public

## Social Security Numbers in Maine Statutes

July 14, 2010

Citation	Binder page	Section headnote	Description	Treatment
32 §1094-B, sub-§1	164/164	(Dentists) Removable dental prostheses; owner identification	Dentist must mark removable dental prosthesis with owners name and SSN	Mark SSN - "disclosure" by private entity
32 §14507, sub-§1	170/170	(Door-to-door home repair transient sellers) Application	Application for license - include SSN of home repair seller	Collect - public entity
32 §14507, sub-§2	170/170	(Door-to-door home repair transient sellers) Application	Application for license - include SSN of home repair seller's employees	Collect - public entity
32 §16607, sub-§2, ¶E	172/172	(Maine Uniform Securities Act) Public records; confidentiality	Nonpublic records: any SSN	Protect - public entity
32 §2103, sub-§4, ¶E	166/166	(Nurses and nursing) Exceptions	Authorization of practice by nurse licensed in another jurisdiction pending receipt of US SSN	SSN requirement - public entity
32 §2103, sub-§7	166/167	(Nurses and nursing) Exceptions	Authorization of practice by nurse who has passed National Council of State Boards of Nursing examination, pending receipt of US SSN	SSN requirement - public entity
33 §1958, sub-§2, ¶B	176/176	(Uniform Unclaimed Property Act) Report of property presumed abandoned	Property holder must report SSN of owner, if known	Report SSN - by private entity
33 §651-B, sub-§1, ¶A, sub-¶(1)	175/175	(Register of Deeds) Privacy protection	Definition of "personal information" means individual's first name or first initial and last name in combination with any one or more of listed data elements, including SSN Sub-§2: individual may ask that personal information be redacted	Protect - public entity
34-A §1216, sub-§1	179/180	(Corrections) Confidentiality of information	DOC may release SSN of juveniles to DHHS for sole purpose of determining eligibility and billing for services; DHHS must treat as confidential	Limited release by public entity
36 §175, sub-§1	(181A)	(Taxation) Applicants for license or renewal of license	State entity that issues licenses must provide list of licenses or certificates of authority issued in last year, including SSN	Use of SSN - release by public to public

## Social Security Numbers in Maine Statutes

July 14, 2010

Citation	Binder page	Section headnote	Description	Treatment
36, §176-B, sub-§1, 2, 3, 7,		Access to financial records of individuals who owe Maine taxes	Tax assessor may ask financial institutions to perform match using SSNs or tax IDs provided by bureau and compile list for bureau of customers whose #s match; list of customers compiled with SSNs or tax IDs and amount of tax debt provided by the bureau to the financial institution is confidential	Use of SSN – release by public to private
36 §191, sub-§2, ¶O	182/184	Confidentiality of tax records	Exception for disclosure of SSN to DHHS when payor’s SSN provided by DHHS	Use of SSN - release by public to public
36 §191, sub-§2, ¶S	182/184	Confidentiality of tax records	Exception for disclosure of SSN to DHHS of applicants for Maine Residents Property Tax Relief Program; no further disclosure	Use of SSN - release by public to public
36 §191, sub-§2, ¶T	182/184	Confidentiality of tax records	Exception for disclosure of SSN to DHHS of delinquent payor of child support	Use of SSN - release by public to public
36 §4713	(194A)	(Mahogany quahog tax) Dealer application for mahogany quahog certificate	Dealer must file application with State Tax Assessor that includes SSN or tax ID	Collect - public entity
36 §5276-A, sub-§1	195/195	(Income taxes) Setoff of debts against refunds	The assessor shall provide any agency of the State authorized to collect a liquidated debt the SSN of each debtor whose refund is subject to setoff	Use of SSN - release by public to public
36 §5276-A, sub-§8	195/196	(Income taxes) Setoff of debts against refunds	Party shall provide SSN in any civil or criminal action in which a fine, forfeiture, order to pay or money judgment is entered in favor of the State or any agency of department, or in which counsel is appointed for an indigent party	Collect - public entity
38 §490-Z, sub-§14, ¶L	199/207	Performance standards for quarries, blasting	Record of name, signature and SSN of blaster	Collect - public entity
39-A §105-A		(Workers’ Compensation) Construction contractors	“Construction subcontractor” ( a person who performs construction work on a site for a hiring agent) must possess or apply for a federal ID # or a SSN	Use of SSN?

**Social Security Numbers in Maine Statutes**  
**July 14, 2010**

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Right to Know Advisory Committee  
 REVISED PROPOSED DRAFT  
 Protection of Social Security Numbers

Original draft	Comments
<p><b>Sec. 1. 1 MRSA §402, sub-§3,</b>                      ¶N is amended to read:</p> <p style="padding-left: 40px;">N. Social security numbers in the possession of <del>the Department of Inland Fisheries and Wildlife</del> <u>an agency or official</u>. <u>Subchapter 2-A applies to the protection of Social Security numbers in the possession of an agency or official</u>; and</p>	
<p><b>Sec. 2. 1 MRSA §410</b> is amended to read:</p> <p><b>§410. Violations</b></p> <p>For every willful violation of this subchapter <u>or subchapter 2-A</u>, the state government agency or local government entity whose officer or employee committed the violation <del>shall be</del> <u>is</u> liable for a civil violation for which a forfeiture of not more than \$500 may be adjudged.</p>	
<p><b>Sec. 3. 1 MRSA c. 13, sub-c. 2-A</b> is enacted to read:</p> <p style="text-align: center;"><b><u>SUBCHAPTER 2-A</u></b>  <b><u>PROTECTION OF SOCIAL SECURITY NUMBERS</u></b></p> <p><b><u>§461. Collection and disclosure of Social Security numbers</u></b></p>	

Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Protection of Social Security Numbers

**1. Collection of Social Security number; prohibition; collection practice.** An agency or official of this State or any of its political subdivisions may not collect an individual's Social Security number unless specifically required by state or federal law or court order. When an agency or official is required to collect an individual's Social Security number, the agency or official shall collect and maintain the Social Security number in manner that facilitates preserving the confidentiality of the Social Security number when it is contained in or associated with an otherwise public record.

- What does “collect” mean?
  - Collect document, and it contains SSN
- Collection of SSN “specifically required” is too narrow
- Phrasing the statute in the negative requires amending other statutes to enable existing government operations to continue. Simpler to declare that all government agencies are authorized to collect in order to positively ID or locate information or to contact a person; the prohibit unauthorized release
- The legislation should allow SSNs to be collected for workers’ compensation case tracking purposes and the like, but make it clear that disclosure of SSNs is strictly prohibited.
- Need lead-time
- Many times SSNs are collected because required by a federal agency, but not all of it is in law; federal regulations require the collection, and some collection is required by the federal agency on its own authority
- Cover independent authorities, too?
- Dept. of Audit’s work cuts across all State agencies and State and Federal programs; would need court orders or change in statute
- Limit collection to federal or state law or rule or court order, or for criminal justice purposes
- Registries of Deeds are required to file documents that may or may not have SSNs - conflicts with statute that says

<p>Right to Know Advisory Committee REVISED PROPOSED DRAFT Protection of Social Security Numbers</p>
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	<p>cannot redact unless specifically requested?</p> <ul style="list-style-type: none"><li>• Change to “authorized” to collect rather than “required” to collect</li><li>• Allow collection “for the purpose of carrying out the agency’s or official’s licensing, examination or investigative responsibilities</li><li>• Include: unless the SSN is required in connection with an application for or administration of a loan or other financial assistance through the agency or official, or is an application to open or the administration of an account under T. 20, c. 417-E</li></ul>
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**2. Nondisclosure of Social Security number.** Except as provided in subsection 3, an agency or official:

<p><u>A. May not disclose an individual’s Social Security number if that Social Security number was collected on or after January 1, 2011; and</u></p>	<ul style="list-style-type: none"><li>• In conflict with Registries of Deeds statute that does not allow altering a document?</li><li>• Is this giving the agency the option?</li></ul>
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<p><u>B. May redact or otherwise refuse to disclose an individual’s Social Security number that was collected prior to January 1, 2011.</u></p>	<ul style="list-style-type: none"><li>• In conflict with Registries of Deeds statute that does not allow altering a document?</li><li>• Is the expectation that agencies go back into files and redact SSNs?</li></ul>
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**3. Permitted disclosure of Social Security numbers.** An agency or official may disclose the Social Security number of an individual only in the following

Right to Know Advisory Committee  
 REVISED PROPOSED DRAFT  
 Protection of Social Security Numbers

<p><u>circumstances.</u></p>	
<p><u>A. An agency or official may disclose the Social Security number of an individual when the disclosure is expressly required by state or federal law or a court order.</u></p>	<ul style="list-style-type: none"> <li>• In conflict with Registries of Deeds statute that does not allow altering a document?</li> </ul>
<p><u>B. A state or local law enforcement agency may, for purposes of furthering an investigation, disclose the Social Security number of an individual to any individual, state, local or federal agency or other legal entity.</u></p>	<ul style="list-style-type: none"> <li>• Too narrow - many agencies need information, validation, conduct investigations that are not law enforcement agencies (change to “regulatory agency?”)</li> <li>• Allows disclosure to anyone?</li> <li>• Any way to make this a pilot project to see if it works?</li> <li>• Dept. of Audit must disclose fraud to federal authorities (USGAO standards)</li> <li>• Change “law enforcement agency” to “criminal justice agency”</li> </ul>
<p><u>C. An agency or official may disclose the Social Security number of an individual when the individual expressly consents in writing to the disclosure.</u></p>	<ul style="list-style-type: none"> <li>• Delete “expressly”</li> <li>• Expand to consent to disclosure of non-public personal information</li> <li>• Add new ¶: D. A criminal justice agency may disseminate the SSN of an individual to another criminal justice agency for criminal justice purposes</li> <li>• Add new ¶: D. An agency or official may disclose the SSN of an individual</li> </ul>

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REVISED PROPOSED DRAFT  
Protection of Social Security Numbers

for purposes of carrying out the agency's or official's licensing, examination or investigative responsibilities

- Add new ¶: D. An agency or official may disclose the SSN of an individual to a credit reporting agency when permitted to obtain a credit report from, or to report or receive other information to or from a credit reporting agency under the Fair Credit Reporting Act or other applicable law
- Add a new ¶: E. An agency or official may disclose the SSN of an individual in connection with the agency's or officials activities related to the application, processing, servicing, reporting or collecting of a loan under the Federal Family Education Loan Program
- Add a new ¶: F. An agency or official may disclose the SSN of an individual to the Maine Bureau of Revenue Services in connection with collecting an obligation to such agency, and entitle to have obligation offset from any tax refund
- Add a new ¶: G. An agency or official may disclose the SSN of an individual to the Maine Bureau of Revenue Services in connection with administration of certain benefits under T. 20-A, c. 417-E to verify eligibility
- Add a new ¶: H. An agency or official may disclose the SSN of an individual collected in connection with the opening or administration of an account under T. 20-A, c. 417-E

<p>Right to Know Advisory Committee REVISED PROPOSED DRAFT Protection of Social Security Numbers</p>
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	<ul style="list-style-type: none"><li>• Add a new ¶: I. An agency or official may disclose the SSN of an individual in connection with any audits or other procedures conducted for the agency related to the agency’s financial statements or records of any programs administered by the agency or any benefits awarded by the agency</li></ul>
<p><b><u>4. Compliance.</u></b> <u>An agency or official complies with this section if the agency or official either removes or completely and permanently obscures a Social Security number on a public record before disclosing the public record.</u></p>	<ul style="list-style-type: none"><li>• Applies only after 1/1/11?</li></ul>
<p><b><u>5. Notice.</u></b> <u>If an agency or official discloses a Social Security number in violation of this section, the agency or official shall provide notice to the person whose Social Security number was disclosed as in Title 10, chapter 210-B.</u></p>	<ul style="list-style-type: none"><li>• Applies only after 1/1/11?</li><li>• Do the penalties of Title 10, c. 210-B apply, as well?</li></ul>
	<p>Note:</p> <ul style="list-style-type: none"><li>• Federal criminal justice agencies routinely provide SSNs to the State Bureau of Identification when providing criminal history record information regarding individual</li><li>• It is standard practice for the Maine Secretary of State’s Office, Bureau of Motor Vehicles to provide SSNs to law enforcement agencies when such agencies request a driving history</li></ul>

Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Protection of Social Security Numbers

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record report regarding any given  
individual

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# 124th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2010

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Legislative Document

No. 1791

H.P. 1279

House of Representatives, February 23, 2010

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

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Reported by Representative PRIEST of Brunswick for the Joint Standing Committee on  
Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G.  
Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint  
Rule 218.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk





STATE OF MAINE

APPROVED

CHAPTER

MAR 31 '10

186

BY GOVERNOR

RESOLVES

IN THE YEAR OF OUR LORD

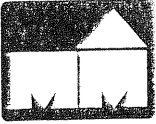
TWO THOUSAND AND TEN

H.P. 1279 - L.D. 1791

**Resolve, Directing the Right To Know Advisory Committee To Further  
Examine Requirements That Public Bodies Keep Records of Public  
Proceedings**

**Sec. 1. Records of public proceedings. Resolved:** That the Right To Know Advisory Committee, established under the Maine Revised Statutes, Title 1, section 411, shall further examine issues related to requiring public bodies to keep records of public proceedings. The issues to be examined must include the form and maintenance of the records to be kept, including how soon the records must be available and how long the records must be retained, the appropriate contents of the records, whether failure to comply with records requirements results in the invalidation of action taken by the public body and other related issues. The advisory committee shall submit a report containing its findings and recommendations to the joint standing committee of the Legislature having jurisdiction over judiciary matters no later than February 15, 2011.





# Maine Municipal Association

60 COMMUNITY DRIVE  
AUGUSTA, MAINE 04330-9486  
(207) 623-8428  
www.memun.org

To: Members of the Judiciary Committee

From: Jeffrey Austin, MMA

Date: March 9, 2010

Re: Response to Question concerning LD 1791, *An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Records of Public Proceedings*

Here is supplemental information related to LD 1791:

**1. What are the record retention obligations for meeting minutes?**

The record retention schedule is Chapter 10 of the Rules of the Secretary of State (implementing 5 MRSA §95-B). Appendix A is specifically directed at local governments (although other appendices do impact municipal government as well). There are over 70 different documents for which a distinct record retention obligation exists.

With respect to LD 1791 and "meeting minutes", categories A.45, A.46, A.47 and A.56.a appear to me to be the relevant ones for your consideration. Basically, the official meeting minutes of a public body are permanent records and may not be destroyed.

Here are the entries from Appendix A of Chapter 10 of the Rules of the S.O.S.:

<b>A.45. Minutes of Meetings, Notes (Handwritten or Stenographic)</b>	Until transcribed
(See also Item 51.) Notes taken during official meetings held by local government agency, for the purpose of producing minutes.	Not Confidential
<b>A.46. Minutes of Meetings</b>	<b>Permanent</b>
All official meetings held or conducted by local government officials, where official minutes are kept.	Not Confidential
<b>A.47. Minutes of Meetings, Transitory</b>	2 years
Routine staff meetings, NOT the official proceeding of a board or committee.	Not Confidential
<b>A.56.a Recordings of Meetings Without Verbatim Transcript</b>	5 years
All official meetings held or conducted by local government officials. If both an audio and a video recording are made at the direction of the local government agency, only one or the other needs to be retained for 5 years.	Not Confidential

2. **What record keeping obligations for municipal government exist today?**
1. The approval, approval with conditions, or denial of any application for any permit, certificate or license required by the municipality must be recorded in writing with the reasons for the decision and the findings of fact which support the reasons;
  2. Any decision made by the municipality to dismiss a public official, employee or appointee, or any refusal to renew the contract of such an individual, with the reasons for the decision and the findings of fact which support the reason;
  3. **General Assistance fair hearings** (appeals) must be taped (and this tape is a confidential record) (*22 M.R.S.A. § 4322*). Note: a General Assistance appeal is not a public proceeding;
  4. **A record of all board of appeals meetings** must be prepared and kept by the secretary to the board (*30-A M.R.S.A. § 2691*). There is no legal requirement that these meetings be taped, but taping these meetings is a good idea, if only to minimize disputes about the completeness or accuracy of written minutes.
  5. **A record of the votes of the town meeting must be recorded** by the town clerk (*30-A M.R.S.A. § 2524*). There is no law requiring that town meetings be taped, nor do the town meeting minutes have to reflect or summarize the debates. Only the votes—the election outcomes and the final actions taken—need be recorded. An accurate record of the language of any motion and the action taken on it often helps resolve questions about municipal action that arise after the town meeting is adjourned.
  6. When the issue of a **financial conflict-of-interest** comes up during the course of a board's meeting, *30-A § 2605(4)* requires that an official's disclosure of any conflict and abstention from the proceedings must be recorded with the municipal clerk. This law applies generally to all municipal boards and committees.
  7. **Conditional approvals or denials of applications**, licenses or other permits (other than applications or permits for matters which are confidential) require that when a permit is denied or approved with conditions, a written record of the reasons must be made and kept available to the public (*1 M.R.S.A. § 407*).
  8. **In dismissal or failure to renew employment contract situations**, *1 M.R.S.A. § 407* requires a written record of every decision to dismiss or refusal to renew the contract of any public employee, appointee or official. This final decision is not confidential once local administrative appeals have been exhausted; it is an exception to the provisions of confidentiality pertaining to personnel records found at *30-A M.R.S.A. § 2702*.
  9. **A motion to go into executive session** must be made by a public recorded vote of 3/5 of the members present and voting (*1 M.R.S.A. § 405(3)*).

[This information is listed in the MMA Legal Publication – *Municipal Officers Manual*.]

## MINUTES

### **Title 1, §403. Meetings to be open to public**

Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public, any person must be permitted to attend any public proceeding and any public record or minutes of such proceedings that are required by law must be made promptly and must be open to public inspection.

ENTITY	MINUTES REFERENCE	STATUTE
Legislative Council	(The duties of the Executive Director of the Legislative Council are:) To . . . maintain minutes of the regular meetings of the council.	3 MRSA §163, subsection 5
Joint standing committees and joint select committees of the Legislature	A committee shall keep minutes of matters considered and votes take at its meetings	3 MRSA §165, subsection 5
Maine Governmental Facilities Authority	The (conflict of) interests must be disclosed to the authority in writing and must be set forth in the minutes of the authority	4 MRSA §1615
Maine Criminal Justice Commission	Minutes of all meetings must be taken and maintained by the commission	5 MRSA §3358, subsection 5
Maine Fire Protection Services Council	The commission shall take and maintain minutes of all meetings	5 MRSA §3371, subsection 5
Bureau of Human Resources	(The Director of Human Resources shall) . . . keep full and complete minutes of investigatory hearings. These records and minutes must be open to public inspection unless otherwise provided by law	5 MRSA §7036, subsection 22
Boards established by Title 5, chapter 379	Records and minutes of all boards shall be open and readily available in a place convenient and accessible to the public Each board shall . . . keep minutes of all meetings and record all actions	5 MRSA §12003-A, subsection 5  5 MRSA §12014, subsection 1. ¶A
Loring Development Authority	Acquisition/ownership of financial or personal interest . . . disclosure must be entered into the board's minutes	5 MRSA §13080-H, subsection 1 and subsection 2
Midcoast Regional Development Authority	Acquisition/ownership of financial or personal interest . . . disclosure must be entered into the board's minutes	5 MRSA §13083-), subsection 1 and subsection 2

Shaded entries apply to more than one board/commission

ENTITY	MINUTES REFERENCE	STATUTE
Maine Rural Development Authority	Acquisition/ownership of financial or personal interest . . . disclosure must be entered into the board's minutes	5 MRSA 13120-J, subsection 1 and subsection 2
State retirement system	Board must conduct investigation or record in the official minutes of a meeting of the board . . its decision not to do so	5 MRSA 17107, subsection 2, ¶E, sub¶(2-A)
Substance Abuse Services Commission	The commission shall keep minutes of all meetings, including a list of people in attendance	5 MRSA §20066, subsection 3
Political subdivision's board of appeals - airport zoning	The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, . . ., all of which shall immediately be filed in the office of the board and shall be a public record	6 MRSA §243, subsection 3
Animal Welfare Advisory Council	The council shall send notice and minutes of the meetings to the joint standing committee of the Legislature having jurisdiction over animal welfare matters	7 MRSA §3906-C, subsection 6
State Liquor and Lottery Commission	The minutes of every meeting of the commission, including any rules promulgated by the commission or any amendments, revisions, supplements or repeals, shall be immediately transmitted, by and under the certification of the secretary to the commissioner and the Governor	8 MRSA §374, subsection 2
Finance Authority of Maine	The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting	10 MRSA §971, subsection 2
Maine Land Use Regulation Commission	The commission shall keep minutes of all proceedings, which are a public record and on file in the office of the commission	12 MRSA §684, first ¶
Grand juries	May appoint one member to take minutes of their proceedings to be delivery to the attorney, if the jury so directs	15 MRSA §1256
State Board of Education	The state board shall keep a complete record of the minutes of its meetings and other procedures	20-A MRSA §404, subsection 1
Superintendent of school administrative unit	The superintendent is responsible for: . . .Keeping a permanent record of all the votes, orders and proceedings	20-A MRSA §1055, subsection 1

Shaded entries apply to more than one board/commission

ENTITY	MINUTES REFERENCE	STATUTE
Interstate school district, member districts	If a majority of the voters . . . vote in the affirmative, the clerk shall send to the state board . . . minutes of the meeting of the district	20-A MRSA §3611
Maine-New Hampshire Interstate School Board	The secretary or clerk shall keep the minutes of its meetings	20-A MRSA §3628
Maine Educational Loan Authority	. . . and may cause copies to be made of all minutes and other records and documents of the authority	20-A MRSA §11416
Professional Standards Board (Education)	The board shall maintain records and minutes of its meetings and shall file them in the certification office within the department	20-A MRSA §13101, subsection 6, ¶E
Health Facilities Authority	The executive director may cause copies to be made of all minutes and other records and documents of the authority	22 MRSA §2054, subsection 3
Maine Dental Health Council	The council shall keep minutes of all meetings, including a list of people in attendance	22 MRSA §2098, first ¶
Oral health care program boards	Responsible for holding regularly scheduled meetings, of which minutes must be kept	22 MRSA §2127, subsection 2, ¶C, sub-¶(2)
Board of Licensure of Water System Operators	The board shall keep all records and minutes necessary to the ordinary dispatch of its functions.	22 MRSA §2624-A, subsection 8
Medical school/state board (for collection, distribution and delivery of dead bodies)	Shall keep full and complete minutes of its transactions	22 MRSA §2882
Board of Maine's Children's Trust Incorporated	Secretary shall maintain the minutes of board meetings	22 MRSA §3883, subsection 3
Interstate Compact for the Placement of Children	The interstate commission shall keep minutes that fully and clearly describe all matters discussed in any meeting and provide a full and accurate summary of any actions taken and the reasons for taking such actions, including a description of each of the views expressed on any item and the record of any vote by roll call, reflected in the vote of each member on the question. All documents considered in connection with any action must be identified in the minutes	22 MRSA §4260, subsection 2, ¶C
Hospice programs	Shall maintain, at a minimum, . . . minutes of governing body meetings	22 MRSA §8623, subsection 9, ¶A

Shaded entries apply to more than one board/commission



ENTITY	MINUTES REFERENCE	STATUTE
Maine Hospice Council	The minutes of all proceedings of the council shall be a public record available and on file in the office of the council	22 MRSA §8813
Fraternal benefit societies (insurance)	The minutes of the proceedings of the supreme legislative or governing body and of the board of directors or corresponding body of a society shall be in the English language (public board?)	24-A MRSA §4135
Board of Trustees of Dirigo Health	Minutes of meetings of the Board of Trustees of Dirigo Health must be provided to each member of the joint standing committees of the Legislature having jurisdiction over insurance and financial services matters, health and human services matters and appropriations and financial affairs	24-A MRSA 6908, subsection 13
Maine Jobs Council Standing Committee on Apprenticeship	The committee shall keep minutes of all meetings, including a list of people in attendance	26 MRSA §2006, subsection 5-B, ¶D
County commission records; county clerk duties	County clerks must be sworn and shall make a record of the actions of the county commissioners; these records shall be examined by the county commissioners and, when correct, shall certify them and they shall be adopted into the records of the county commissioners by the clerk	30-A MRSA § 81, subsection 2
County personnel board	Shall keep full and complete minutes of its proceedings, which are, subject to reasonable rules, open to public inspection	30-A MRSA §523
Androscoggin County Budget Committee	The budget committee shall enter into its minutes an explanation for any change in the estimated expenditures and revenues as initially presented by the county commissioners	30-A MRSA §725, subsection 3, ¶A
Aroostook County Finance Committee	The finance committee enters into its minutes an explanation for any suggested change in the estimated expenditures and revenues as initially presented by the county commissioners	30-A MRSA §739-B, subsection 2, ¶A

Shaded entries apply to more than one board/commission

ENTITY	MINUTES REFERENCE	STATUTE
Cumberland County Budget Advisory Committee	The budget advisory committee shall conduct its meetings in public in accordance with this subsection and shall record its minutes and votes	30-A MRSA §741-A, subsection 3
Cumberland County Budget advisory committee	The budget advisory committee enters into its minutes an explanation for any suggested change in the estimated expenditures and revenues initially presented by the county commissioners	30-A MRSA §742-A, subsection 3, ¶A
Knox County Budget Committee	The budget committee records in its minutes an explanation for any suggested change in the itemized estimated budget initially presented by the county commissioners	30-A MRSA §753, subsection 2, ¶A
Piscataquis County Budget Committee	The county commissioners shall enter into their minutes and submit to the budget committee a statement of their bases for any rejection of any recommendation of the budget committee	30-A MRSA §825, subsection 5, ¶A
York County Budget Committee	The budget committee enters into its minutes an explanation for any suggested change in the estimated expenditures and revenues as initially presented by the county commissioners	30-A MRSA §833, subsection 2, ¶A
Waldo County Budget Committee	The budget committee shall enter into its minutes an explanation for any change in the estimated expenditures and revenues as initially presented by the county commissioners	30-A MRSA §855, subsection 2, ¶A
Kennebec County Budget Committee	The budget committee shall keep minutes and record votes for every meeting	30-A MRSA §863, subsection 2
Kennebec County Budget Committee	The budget committee enters into its minutes as explanation for any recommended change in the estimated expenditures and revenues as initially presented by the county commissioners	30-A MRSA §864, subsection 2, ¶A
Franklin County Budget advisory committee	The advisory committee enters into its minutes for any suggested change in the estimated expenditures and revenues as initially presented by the county commissioners	30-A MRSA §874, subsection 2, ¶A

Shaded entries apply to more than one board/commission

ENTITY	MINUTES REFERENCE	STATUTE
Somerset County Budget Committee	The budget committee enters into its minutes as explanation for any suggested change in the estimated expenditures and revenues as initially presented by the county commissioners	30-A MRSA §897, subsection 2, ¶A
Regional planning commissions	The minutes of the proceedings of the commission must be filed in the commission's office. These minutes are a public record. Copies of the minutes must be posted on a publicly accessible site on the Internet and be provided to the municipal officers and the planning board of each member municipality upon request.	30-A MRSA §2324
Boards of appeals, municipalities	The secretary shall maintain a permanent record of all board meetings and all correspondence of the board. The secretary is responsible for maintaining those records which are required as part of the various proceedings which may be brought before the board. All records to be maintained or prepared by the secretary are public records. They shall be filed in the municipal clerk's office and may be inspected at reasonable times.	30-A MRSA § 2691, subsection 3, ¶ B
Municipal officers, urban renewal	Acquisition/ownership of financial or personal interest . . . disclosure must be entered into the municipal officers' minutes	30-A MRSA §5122, subsection 1 and subsection 2
Emergency Medical Services Board	The board shall keep records and minutes of its activities and meetings. These records and minutes must be made easily accessible to the public and be provided expeditiously upon request	32 MRSA §88, subsection 2, ¶E
State Board of Licensure for Professional Engineers	The board shall keep such records and minutes as are necessary to the ordinary dispatch of its functions	32 MRSA §1308, first ¶
Board of Licensure in Medicine	Any (fee) waiver request granted and the basis for the waiver must be recorded in the minutes of the board's proceedings	32 MRSA §3280-A, subsection 3, ¶C

Shaded entries apply to more than one board/commission

ENTITY	MINUTES REFERENCE	STATUTE
Board of Licensure in Medicine	The board shall immediately enter the order of reinstatement in the minutes and records of the board	32 MRSA §3289
Board of Underground Oil Storage Tank Installers	The board shall keep such records and minutes as are necessary to the ordinary dispatch of its functions	32 MRSA §10004, subsection 4
State Sentencing and Corrections Practices Coordinating Council	The council shall . . . keep minutes and records of the meetings.	34-A MRSA §1209-A, subsection 4
Policy Review Council (Corrections & Education))	The Council shall . . . keep minutes and records of the meetings. The council shall submit a report each year to the joint standing committee of the Legislature having jurisdiction over education matters	34-A MRSA §3002-A, subsection 5
Interstate Commission for Adult Offender Supervision	The interstate commission shall keep minutes that fully and clearly describe all matters discussed in any meeting and provide a full and accurate summary of any actions taken and the reasons for taking such actions, including a description of each of the views expressed on any item and the record of any vote by roll call, reflected in the vote of each member on the question. All documents considered in connection with any action must be identified in the minutes	34-A MRSA §9877, subsection 6
Interstate Commission for Juveniles	The interstate commission shall keep minutes that fully and clearly describe all matters discussed in any meeting and provide a full and accurate summary of any actions taken and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote. All documents considered in connection with any action must be identified in such minutes	34-A MRSA §9903, subsection 10

Shaded entries apply to more than one board/commission

ENTITY	MINUTES REFERENCE	STATUTE
Children's Mental Health Oversight Committee	The committee shall elect a secretary from among its members who shall work with staff to keep and to distribute minutes to members and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs, the joint standing committee of the Legislature having jurisdiction over corrections matters, the joint standing committee of the Legislature having jurisdiction over educational and cultural affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters	34-B MRSA §15004, subsection 2, ¶B
Public utility's board of directors or trustees	The minutes of the meeting at which approval is given (for insider transaction) shall indicate the nature of the transaction or transactions, that the review was undertaken and approval given and the names of individual directors or trustees who voted; brief statement of each dissenting reason shall be included in the minutes if the dissenting trustee/director so directs (public board?)	35-A MRSA §709, subsection 2
Governing body of consumer-owned water utility	A consumer-owned water utility that chooses to make no investment in water main extensions or service lines under subsection 1 shall notify the commission . . . and shall include the minutes or other record of the decision	35-A MRSA §6106, subsection 4
ConnectME Authority	The interest (of an authority member in any firm, partnership, corporation or association that is party to the contract) must be disclosed to the authority in writing and must be set forth in the minutes of the authority	35-A MRSA §9209
Executive committee of primary assessing area	Chief assessor shall serve as secretary of the executive committee and keep all committee minutes	36 MRSA §474, subsection 1

Shaded entries apply to more than one board/commission

ENTITY	MINUTES REFERENCE	STATUTE
Saco river Corridor Commission	The minutes of all proceedings of the commission shall be a public record available and on file in the office of the commission	38 MRSA §954-A
St. Croix International Waterway Commission	The executive director shall be responsible for preparation of the commission's . . . meeting minutes	38 MRSA §995, subsection 2 38 MRSA §997, subsection 3
St. Croix International Waterway Commission working committees	Committees shall submit, at each meeting of the commission, minutes of their proceedings since the last preceding meeting of the commission	38 MRSA §998, subsection 6

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Shaded entries apply to more than one board/commission



**Public Meetings Minutes/Records Requirements - other states**

August 26, 2009

State	Cite	Minutes requirement	Contents
Alabama	§36-25A-4	Governmental bodies required to maintain accurate records of meetings	<ul style="list-style-type: none"> <li>• Date, time and place</li> <li>• Members present or absent</li> <li>• Actions taken</li> </ul>
Arizona	§38-431.01(B)(1)-(4)	All public bodies except for subcommittees and advisory committees shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions	<ul style="list-style-type: none"> <li>• Date, time and place of meeting</li> <li>• Members of the public body recorded as either present or absent</li> <li>• A general description of the matters considered</li> <li>• An accurate description of all legal actions proposed, discussed or taken, and the names of members who propose each motion</li> <li>• The names of the persons, as given, making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material</li> </ul>
Colorado	§24-6-402	Minutes of any meeting of a state public body shall be taken and promptly recorded Minutes of any meeting of a local public body at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur shall be taken and promptly recorded	
Delaware	29 Del. Code §10004(f)	Each public body shall maintain minutes of its meetings	<ul style="list-style-type: none"> <li>• Record of those members present</li> <li>• Record, by individual members (except where the public body is a town assembly where all citizens are entitled to vote), of each vote taken and action agreed upon</li> </ul>

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**Public Meetings Minutes/Records Requirements - other states**

August 26, 2009

State	Cite	Minutes requirement	Contents
District of Columbia	§1-207.42(b)	A written transcript or a transcription shall be kept for certain meetings and shall be made available to the public during normal business hours of the District government.	
Florida	§286.011	Written minutes of a public meeting be promptly recorded and open to public inspection	<ul style="list-style-type: none"> <li>• AG: a brief written summary or series of notes reflecting the events of the public meetings; do not need to be verbatim transcripts of the meeting</li> </ul>
Georgia	§50-14-1(e)(2)	Minutes of meeting shall be promptly recorded and open to public once approved as official by agency, but in no case later than next regular meeting	<ul style="list-style-type: none"> <li>• Summary of subjects acted upon</li> <li>• Members present</li> </ul>
Hawaii	§92-9	Board shall keep minutes of all meetings	<ul style="list-style-type: none"> <li>• Full transcript not required, but minutes must give true reflection of matters discussed and views of participants</li> <li>• Date, time and place of the meeting</li> <li>• Names of members present and absent</li> <li>• Substance of all matters proposed, discussed or decided</li> <li>• Record, by individual, of all votes taken</li> <li>• Any information that a member requests be included in the minutes</li> </ul>
Idaho	§67-2344	Governing body of a public agency is required to provide written minutes	<ul style="list-style-type: none"> <li>• Full transcript or recording not required</li> <li>• All members present</li> <li>• All motions, resolutions, orders or ordinances proposed and their disposition</li> <li>• Results of all votes and, upon request of a member, the vote of each member by name</li> </ul>

**Public Meetings Minutes/Records Requirements - other states**

August 26, 2009

State	Cite	Minutes requirement	Contents
Illinois	5 ILCS 120/2.06(a)	All public bodies must keep written minutes of all their meetings	<ul style="list-style-type: none"> <li>• Date, time and place</li> <li>• Members of public body recorded as either present or absent</li> <li>• Summary of discussion on all matters proposed, deliberated or decided</li> <li>• Record of any votes taken</li> </ul>
Indiana	§5-14-1.5-4	Governing body of a public agency must keep memorandum of the meeting	<ul style="list-style-type: none"> <li>• Date, time and place</li> <li>• Members of the governing body recorded as either present or absent</li> <li>• General substance of all matters proposed, discussed or decided</li> <li>• Record of all votes taken, by individual members if there is a roll call</li> </ul>
Iowa	§21.3	Each governmental body shall keep minutes of all its meetings	<ul style="list-style-type: none"> <li>• Date, time and place</li> <li>• Members present</li> <li>• Action taken</li> <li>• Results of each vote, vote of each member</li> </ul>
Kentucky	§61.835	The minutes of action taken at every meeting of any certain public agency shall be promptly recorded	<ul style="list-style-type: none"> <li>• Accurate record of votes and actions</li> </ul>

**Public Meetings Minutes/Records Requirements - other states**

August 26, 2009

State	Cite	Minutes requirement	Contents
Louisiana	§42:7	All public bodies shall keep written minutes of their open meetings	<ul style="list-style-type: none"> <li>• Date, time and place</li> <li>• Members of the public body recorded as either present or absent</li> <li>• Substance of all matters decided</li> <li>• At the request of any member, votes taken</li> <li>• Any other information the public body requests to be included or reflected in the minutes</li> </ul>
Maryland	§10-509	As soon as practicable after a public body meets, it shall have written minutes of its session prepared; a session may be tape recorded by a public body Minutes and any tape recording must be preserved for at least one year after the date of the session	<ul style="list-style-type: none"> <li>• Each item the public body considered</li> <li>• The action the public body took on each item</li> <li>• Each vote that was recorded</li> </ul>
Maryland	§10-509	Public body must prepare minutes of the meeting as soon as practicable	<ul style="list-style-type: none"> <li>• Each item considered</li> <li>• Action take</li> <li>• Each recorded vote</li> </ul>
Massachusetts	c. 39, §23B c. 66, §5A	A governmental body shall maintain accurate records of its meetings	<ul style="list-style-type: none"> <li>• Date, time and place</li> <li>• Members present or absent</li> <li>• Action taken</li> <li>• Subjects acted upon</li> </ul>
Michigan	§15.269	Public body shall keep minutes of each meeting	<ul style="list-style-type: none"> <li>• Date, time and place</li> <li>• Members present, members absent</li> <li>• Any decisions made</li> <li>• Roll call votes</li> </ul>

**Public Meetings Minutes/Records Requirements - other states**

August 26, 2009

State	Cite	Minutes requirement	Contents
Mississippi	§25-41-11	Minutes shall be kept of all meetings of a public body	<ul style="list-style-type: none"> <li>• Members present and absent</li> <li>• Date, time and place</li> <li>• An accurate recording of any final actions taken at such meeting</li> <li>• Record, by individual member, of any votes taken</li> <li>• Any other information that the public body requests be included or reflected in the minutes</li> </ul>
Missouri	§610.020.7	A journal or minutes of meetings must be taken and retained	<ul style="list-style-type: none"> <li>• Date, time and place</li> <li>• Members present and absent</li> <li>• Record of votes taken</li> <li>• If roll call taken, individual votes or abstinence</li> <li>• The nature of the good cause justifying the departure from the normal requirements</li> </ul>
Montana	§2-3-212	Minutes must be kept	<ul style="list-style-type: none"> <li>• Date, time and place</li> <li>• List of individual members in attendance</li> <li>• Substance of all matters discussed</li> <li>• Record of any votes taken</li> </ul>
Nebraska	§84-1413	Each public body shall keep minutes of all meetings	<ul style="list-style-type: none"> <li>• Time and place</li> <li>• Members present and absent</li> <li>• Substance of all matters discussed</li> <li>• The record shall state how each member voted or if the member was absent or not voting.</li> </ul>

**Public Meetings Minutes/Records Requirements - other states**

August 26, 2009

State	Cite	Minutes requirement	Contents
Nevada	§241.035(1)	Each public body shall keep written minutes of each of its meetings	<ul style="list-style-type: none"> <li>• Date, time and place</li> <li>• Members who were present and who were absent</li> <li>• Substance of all matters proposed, discussed or decided</li> <li>• At request of any member, record of each member's vote on any matter decided by vote</li> <li>• Substance of remarks made by any member of the general public who addresses the public body if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion</li> <li>• Any other information which any member of the public body requests to be included or reflected in the minutes</li> </ul>
New Hampshire	91-A:2	Minutes of all such meetings shall be promptly recorded	<ul style="list-style-type: none"> <li>• Names of members</li> <li>• Persons appearing before the public body</li> <li>• A brief description of the subject matter discussed and final decisions</li> </ul>
New Jersey	§ 10:4-14	A public body is required to keep reasonably comprehensible minutes of all meetings	<ul style="list-style-type: none"> <li>• Time and place</li> <li>• Members present</li> <li>• Subject considered</li> <li>• Actions taken</li> <li>• Vote of each member</li> <li>• Time, place and manner how public notice was given</li> </ul>

**Public Meetings Minutes/Records/Requirements - other states**

August 26, 2009

State	Cite	Minutes requirement	Contents
New Mexico	§10-15-1(G)	Policymaking body shall keep written minutes of all its meetings	<ul style="list-style-type: none"> <li>• Date, time and place</li> <li>• Names of members in attendance and those absent</li> <li>• Substance of proposals considered</li> <li>• Record of any decisions</li> <li>• Votes taken that show how each member voted</li> </ul>
New York	Pub. Off. Law §106(1)	Minutes shall be taken at all open meetings of a public	<ul style="list-style-type: none"> <li>• Record or summary of all motions, proposals, resolutions and any other matter formally voted upon</li> <li>• Vote</li> </ul>
North Carolina	§143-318	Every public body shall keep full and accurate minutes of all official meetings May be in written form, or at the option of the public body, may be in the form of sound or video and sound recording	
North Dakota	§44-04-21	Minutes must be kept of all open meetings. Disclosure not conditioned on the approval of the minutes by the governing body	<ul style="list-style-type: none"> <li>• Names of members attending</li> <li>• Date and time the meeting was called to order and adjourned</li> <li>• A list of topics discussed regarding public business</li> <li>• A description of each motion made at the meeting and whether the motion was seconded</li> <li>• The results of every vote taken at the meeting</li> <li>• Vote of each member on every recorded roll call vote</li> </ul>
Ohio	§149.43	Minutes of any public body shall be promptly prepared, filed and maintained	

# Public Meetings Minutes/Records Requirements - other states

August 26, 2009

State	Cite	Minutes requirement	Contents
Oklahoma		The proceedings of a public body shall be kept = official summary	<ul style="list-style-type: none"> <li>• Members present and absent</li> <li>• All matters considered</li> <li>• All actions taken</li> </ul>
Oregon	§192.650(1)	The governing body of a public body shall provide for the sound, video or digital recording or the taking of written minutes of all its meetings.	<ul style="list-style-type: none"> <li>• Neither a full transcript nor a full recording of the meeting is required, except as otherwise provided by law, but the written minutes or recording must give a true reflection of the matters discussed at the meeting and the views of the participants</li> <li>• Members present</li> <li>• All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition</li> <li>• The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name</li> <li>• Subject to ORS 192.410 to 192.505 relating to public records, a reference to any document discussed at the meeting</li> </ul>

**Public Meetings Minutes/Records Requirements - other states**

August 26, 2009

State	Cite	Minutes requirement	Contents
Pennsylvania	65 Pa. Cons. Stat. §706 and §705	Minutes are required; not satisfied by an audio tape	<ul style="list-style-type: none"> <li>• Date, time and place</li> <li>• Names of members present</li> <li>• Substance of all official actions</li> <li>• Record by individual member of roll call votes</li> <li>• Names of all citizens who appeared officially and the subject(s) of their testimony</li> <li>• Votes of each member if roll call</li> </ul>
Rhode Island	§42-46-7	All public bodies must keep written minutes of their meetings	<ul style="list-style-type: none"> <li>• Date, time and place</li> <li>• All present and absent members</li> <li>• Record by individual members of any vote taken</li> <li>• Other information relevant to the business of the public body that any member requests to be included or reflected in the minutes</li> </ul>
South Carolina	§30-4-90	Minutes are required of all meetings	
South Dakota	§1-25-3	State agencies required to keep minutes under generic open meetings chapter; various other bodies covered by statutes	
Tennessee	§8-44-104	Minutes of a meeting of any such governmental body shall be promptly and fully recorded	<ul style="list-style-type: none"> <li>• Persons present</li> <li>• All motions</li> <li>• Proposals and resolutions offered</li> <li>• Results of any votes taken</li> <li>• Record of individual votes if roll call</li> </ul>



**Public Meetings Minutes/Records Requirements - other states**

August 26, 2009

State	Cite	Minutes requirement	Contents
Tennessee	§8-44-104	Minutes of a governmental body's meetings must be promptly and fully recorded	<ul style="list-style-type: none"> <li>• Record of persons present</li> <li>• All motions, proposals and resolutions offered</li> <li>• Results of any votes taken</li> <li>• Record of individual votes if roll calls</li> </ul>
Texas	§551.021(a)	Governmental body must prepare and keep minutes or make a tape recording of each open meeting of the body	<ul style="list-style-type: none"> <li>• Subject matter of each deliberation</li> <li>• Each vote, order, decision or other action taken</li> </ul>
Utah	§52-4-203	Written minutes and a recording of all open meetings	<ul style="list-style-type: none"> <li>• Date, time and place of the meeting</li> <li>• Names of members present and absent</li> <li>• Substance of all matters proposed, discussed or decided</li> <li>• Record, by individual, of all votes taken</li> <li>• Names of all citizens who attended and substance of their testimony</li> <li>• Any information that a member requests be included in the minutes</li> </ul>
Vermont	1 VSA §312(b)(1)	Minutes must be prepared that cover all topics and motions that arise and must give a true indication of the business of the meeting	<ul style="list-style-type: none"> <li>• Members present</li> <li>• All active participants</li> <li>• All proposals or motions made or considered and their disposition</li> <li>• Results of any votes or roll calls</li> </ul>

**Public Meetings Minutes/Records Requirements - other states**

August 26, 2009

State	Cite	Minutes requirement	Contents
Virginia	§2.2-3707	Minutes shall be recorded at all public meetings except General Assembly committees and other exceptions Must post on Internet	<ul style="list-style-type: none"> <li>• Minutes shall be in writing</li> <li>• Date, time and</li> <li>• Members of the public body recorded as present and absent</li> <li>• Summary of the discussion on matters proposed, deliberated or decided</li> <li>• Record of any votes taken</li> <li>• For electronic communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall include                             <ul style="list-style-type: none"> <li>• the identity of the members of the public body at each remote location identified in the notice who participated in the meeting through electronic communications means</li> <li>• the identity of the members of the public body who were physically assembled at the primary or central meeting location</li> <li>• the identity of the members of the public body who were not present at the locations identified above, but who monitored such meeting through electronic communications means</li> </ul> </li> </ul>
Washington	RCW §42.32.030	All minutes of regular and special meetings must be promptly recorded	

**Public Meetings Minutes/Records Requirements - other states**

August 26, 2009

State	Cite	Minutes requirement	Contents
West Virginia	§6-9A-5	Every public agency is required to maintain minutes of its meetings	<ul style="list-style-type: none"> <li>• Date, time and place</li> <li>• Name of each member present and absent</li> <li>• All motions, proposals, resolutions, orders, ordinances and measures proposed; name of person proposing; disposition</li> <li>• Results of all votes</li> <li>• Upon request of a member, the vote of each member by name</li> </ul>
Wisconsin	§19.88(1)	Motions and roll call votes of each meeting of a governmental body shall be recorded	<ul style="list-style-type: none"> <li>• Motions</li> <li>• Roll call votes</li> </ul>
Wyoming	§16-4-403	Minutes of a meeting are required to be recorded but not published from meetings when no action is taken by the governing body; are not required to be recorded or published for day-to-day administrative activities of an agency.	

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

## An Act Regarding Document Fees at County Registries of Deeds

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

**Sec. 1. 33 MRSA §651**, as repealed and replaced by PL 2003, c. 55, §1, is amended to read:

### § 651. Records; index

The records and indexes in each registry office must be made and kept for public inspection on at least one of the following media: white, acid-free paper, microfilm, microfiche, or digital image stored on magnetic or optical media. The register shall make an alphabetical index to the records without charge to the county so that the same surnames are recorded together and shall show in addition to the names of the parties and the nature of the instrument, the date of the instrument, the date of its record and the name of the city, town or unincorporated place where the land conveyed is situated. As often as every 10 years the register shall revise and consolidate the index in such manner that all deeds recorded since the last revision of the index are indexed so that the same surnames appear together and all names are in alphabetical order. The revised and consolidated index must contain all data as to each and every deed or other instrument referred to in this section. If it becomes necessary to revise, renew or replace any index, the new index must be made in conformity with this section.

When the register of deeds is required by law or common practice to make a note in the margin of a record, it is determined sufficient if the note is made to the index in such a fashion that the note becomes a permanent part of the indexing of the record to which the marginal note is required to be made.

The register shall prepare, or have prepared, a microfilm record of each page of every instrument, plan or other document recorded in the registry office. The microfilm record made must be stored in a fireproof area. When original record books or plans are considered by the register to be in a condition that warrants withdrawal from regular use, the register may make a true copy of the contents of the record or may provide suitable means for reading the microfilm, microfiche or digital image stored on magnetic or optical media of the instruments withdrawn. The records and certified copies made either from the true copy or from images stored as provided in this section must be received in all courts of law with the same legal effect as those contained in the original.

Notwithstanding Title 1, section 408, subsection 3, this chapter governs fees for copying records maintained under this chapter.

**Sec. 2. 33 MRSA §751, sub-§14**, as amended by PL 1991, c. 497, §8, is further amended to read:

**14. Abstracts and copies.** Making abstracts and copies from the records, a reasonable fee as determined by the county commissioners for each category of abstracts and copies, such as paper copies, attested copies, copies obtained online and bulk transfers of copies. In setting a reasonable fee for each category of abstracts and copies, the commissioners shall consider factors relating to the cost of producing and making copies available, which may include, but are not limited to: the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs or other

PUBLIC Law, Chapter 575 LD 1554, item 1, 124th Maine State Legislature  
An Act Regarding Document Fees at County Registries of Deeds

transmitting costs; amortized infrastructure costs; any direct equipment operating and maintenance costs; costs associated with media processing time; personnel costs, including actual costs paid to private contractors for copying services; contract and contractor costs for database maintenance and for online provision and bulk transfer of copies in a manner that protects the security and integrity of registry documents; and a reasonable rate for the time a computer server is dedicated to fulfilling the request; and

Effective 90 days following adjournment of the 124th Legislature, Second Regular Session, unless otherwise indicated.

**Public Law 2009, chapter 567**

**Sec. 11. Requests for bulk data.** The Right To Know Advisory Committee shall review and make recommendations concerning the issues involved with requests for public records in bulk, including:

1. Public access to databases;
2. Protection of personal information that is not designated as confidential but is contained in databases that include public records;
3. Reasonable costs for copies when public records are requested in bulk;
4. Whether access or costs should be based on the intended or subsequent use of the information requested in bulk;
5. The acceptable formats for responses to requests, including electronic and paper;
6. The appropriate role for InforME in responding to requests for public records in bulk; and
7. Any other issues the advisory committee considers appropriate.

The advisory committee shall include its recommendations in the 2011 annual report required under the Maine Revised Statutes, Title 1, section 411, subsection 10.

**Meeting Record: "Bulk Data" Stakeholders Meeting  
(related to LD 1554, An Act Regarding Document Fees at County Registries of Deeds)**

**Date:** June 22, 2010  
**Time:** 10:00 – 11:30 a.m.  
**Location:** Cross Office Building, Room 300

**Attending:** (see separate list for e-mail and phone contact information)

- Karla Black, Deputy Legal Counsel, Governor's Office
- Anna Broome, Legislative Assistant, Office of Policy and Legal Analysis (OPLA),  
Committee on State and Local Government
- Terry Hayes, State Representative, Committee on State and Local Government
- Gretchen Heldmann, Chair, Maine GeoLibrary Board
- Kelly Hokkanen, General Manager, InforME
- Marion Hylan Barr, Legislative Analyst, Office of Policy and Legal Analysis, Right to Know  
Advisory Committee
- Jim Lopatosky, Associate CIO for Applications, Office of Information Technology
- Greg McNeal, Chief Technology Officer (acting Chief Information Officer as of July 1)
- Carolyn Russo, Legislative Analyst, Office of Policy and Legal Analysis, Right to Know  
Advisory Committee
- Paul Sandlin, Manager of E-gov Services, Office of Information Technology
- John Simpson, MacImage of Maine
- Mike Smith, Manager, Maine Office of Geographic Information Systems
- Eric Stout, IT Project Manager, Office of Information Technology
- Richard Thompson, Chief Information Officer (retiring June 30)
- Robin Watts, Maine State Bar Association

**Recorder:** Eric Stout, Office of Information Technology (OIT)

**Agenda for June 22:**

- Introduction
- Review of Committee request
- Establish goals, ground rules
- Create a schedule of meetings
- Develop/ assign tasks
- Other

**Handouts:**

- Proposed agenda for June 22 meeting (see above)
- May 24, 2010 memo response from Richard B. Thompson, Chief Information Officer assembling a group of stakeholders to focus on issues related to bulk data transfers, evaluation of options to best handle requests, and development of a web portal for the county registry offices.
- March 9, 2010 memo request from the Committee on State and Local Government (signed by co-chairs Senator Deborah L. Simpson and Representative Stephen R.

Beaudette), asking to convene a stakeholders group that specifically relates to county registry records and bulk data.

- LD 1554, An Act Regarding Document Fees at County Registries of Deeds

**Schedule of upcoming meetings** (every 4<sup>th</sup> Tuesday, 10:00 – noon, for the next 6 months).

Cross Office Building room 105 has been booked for:

- July 27
- August 24
- September 28
- October 26
- November 23
- December 28

## **SUMMARY OF ISSUES AND KEY ACTIONS**

(See also next section for additional actions and detailed discussion):

### **Goal:**

- Fulfill assignment from State and Local Government Committee (March 9 letter) by issuing a report by January 15, 2011: “The group should focus on:
  - Defining bulk data transfers
  - Evaluate the best way to handle such requests
  - The development of a web portal for the 18 county registry offices.”

### **Summary of Issues/ General Principles discussed at June 22 meeting:**

- Privacy – what should be protected?
- Transparency of government-held data, balanced with privacy concerns
- Fees – should they be charged? Who should set?
- “Access” versus “ownership” of the data

### **Summary of Key Actions from June 22 meeting (see next section for discussion details and other actions identified):**

- **ACTION (Bulk Data Stakeholders Group):** Dedicated time and place – 4<sup>th</sup> Tuesday?
  - NOTE: Greg suggested 9:00-11:00, but scheduling will work out better for 10:00-noon. Invitation was sent for the recurring meetings (4<sup>th</sup> Tuesday of the next 6 months, from 10:00-noon, always at Cross Office Building, room 105):
    - July 27
    - August 24
    - September 28
    - October 26
    - November 23
    - December 28 (the group may decide to move this up to mid-December because of holiday vacations)
- **ACTION (Terry Hayes, Eric Stout as recorder):** Create a mailing list for the group, but add county contacts and key other stakeholders.



- **ACTION (Bulk Data Stakeholders Group):** Review Maine’s Freedom of Access Act (FOAA) and the Federal Freedom of Information Act (FOIA) provisions, and why they are written that way.
  - What are general principles of FOAA & FOIA?
  - What are the controversies? Have they been addressed?
- **ACTION (InforMe, OIT, Greg McNeal, Jim Lopatosky, Eric Stout):** We need to inventory how bulk data is now handled – data provided and fees for each type. Craft something to go out, requesting an inventory.
  - Requests would come through the Office of Information Technology’s applications teams. We’ll scour those requests to see how we are currently handling data requests.
- **ACTION (Gretchen Heldmann, Mike Smith):** Will compile links for “spatial” data that is shared.
- **ACTION (Bulk Data Stakeholders Group, David Cheever/ State Archives):** How can we make recommendations on archiving? Archive issue and this data issue (on bulk data) needs to be connected. Do we have the internal capacity and infrastructure to support effective archiving? We should consult with State Archivist David Cheever.
- **ACTION (Bulk Data Stakeholders Group):** Issue a report to State and Local Government Committee by January 15, 2011. Also provide information to Right to Know Advisory Committee as created and appropriate, but report is to the State and Local Government Committee.
  - Identify things we can reach consensus; identify things we cannot come to consensus.
  - Give Legislative bodies an analysis where we wound up.
  - Cover the 3 basic tenants in letter, and break down further if necessary. The March 9 letter from the State and Local Government Committee says: “The group should focus on:
    - Defining bulk data transfers
    - Evaluate the best way to handle such requests
    - The development of a web portal for the 18 county registry offices.”
  - How do we make bulk records available and keep the privacy components secure? (e-mail addresses, for example).
  - Describe different perspectives.
- **ACTION (Bulk Data Stakeholders Group, Attorney General’s Office):** Next meeting:
  - Someone from Attorney General’s Office (AG), such as Bill Laubenstein, walk through general principles and answer questions about the Freedom of Access Act (FOAA).

See below for more detailed actions and discussion.

**DETAILS OF DISCUSSION AND ACTIONS:**

Dick Thompson (Chief Information Officer):

## **InforME Bulk Data Services Summary July 2010**

### **IF&W – Bulk Special Request Data:**

Data available to purchase includes moose permittee data, hunting and fishing license data, boat/ATV/snowmobile registration data, and guides/trappers licensee data. These requests tend to be one-time and specific requests from folks who wish to market their business to outdoorsmen (camp owners, guides, outfitters, etc.), as well as from political candidates during election years.

Fees: \$.03 - \$.05 per record

Fee set by: rulemaking

Annual requests: approx 25-30

Annual records sold: approx 27,000

### **BMV – Bulk & Special Request Data:**

Data available to purchase includes vehicle title, registration, and driver license data. In order to obtain personal information in these records (name, address, date of birth, license number), the purchaser must be eligible under the Driver Privacy Protection Act and sign an affidavit regarding their eligibility. Customers for this data vary but it is mostly national data brokers who have standing orders for monthly updates. These records are typically re-sold by those companies to insurance companies for underwriting purposes. Other customers include credit agencies and large local employers.

Fees: Entire reg, title, or license database - \$.02 per record; sub-sets - \$.06 per record

Fee set by: rulemaking

Annual requests: approx 300

Annual records sold: approx 7,175,000

The BMV bulk data service was part of the initial InforME SLA negotiated with the Secretary of State in 1999. SOS was unable to provide a sufficient per-record portal fee on online driver records to support the desired level of baseline portal staff, so SOS offered the bulk data service as supplementary baseline revenue to make up the difference. BMV had previously sold the bulk data themselves, at a financial loss due to staff time. When the service was moved to the portal, BMV increased the per-record fees and negotiated a flat monthly payment from InforME. This provided BMV more revenue and eliminated their staff impact. This service remains a core portion of the portal's funding.

### **CEC – Bulk & Special Request Corporations and UCC Data:**

Data available to purchase includes corporate records, active/inactive corporations records, trademark records, trademark images, corporate/UCC images, UCC records. Standard record updates are available weekly or monthly. There are a handful of customers, primarily large national data brokers who have standing orders for updates.

Fees:

Bulk UCC and Corporate Data Full Data Monthly Data-sets

Batch Corporate & UCC Records	\$600.00
Batch Active/Inactive Corporate & UCC Records	\$1200.00
Batch Corporate & UCC Images	\$1500.00
Batch Service/Trade Mark Records	\$300.00
Batch Service/Trade Mark Images	\$300.00

Bulk UCC and Corporate Data Weekly Updates Data-sets

Corporate Data	\$300.00
Corporate Images	\$500.00
Service/Trade Mark Data	\$150.00
Service/Trade Mark Images	\$150.00
UCC Data	\$300.00
UCC Images	\$500.00

Special Request Corporate & UCC Records \$0.10 per record

Fee set by: rulemaking

Annual Requests: approx 100

Annual Records sold: n/a

**State Police - Crash Reports:**

Data available to purchase consists of state crash reports, including crash date, location, names, injury information, vehicle information, license status. There are just a few customers for this data, primarily large national entities that use this information for consumer protection and data broker services.

Fees: \$0.50 per record

Fee set by: statute specifies that agency may set fees for crash records; fees set in rulemaking

Annual Requests: approx 25

Annual Records sold: approx 70,000

**Board of Medicine - Bulk Physician Licensee Data:**

Online service allows users to specific data parameters to create a downloadable file. These are typically one-time and specific requests.

Fees: \$50 flat fee plus \$.05 per record

Fee set by: rulemaking

Annual requests: approx 50

Annual records sold: approx 150,000

NAME	E-MAIL	TITLE/ROLE	ORGANIZATION	PHONE
<b>Attending June 22, 2010:</b>				
Karla Black	<a href="mailto:Karla.black@maine.gov">Karla.black@maine.gov</a>	Deputy Legal Counsel	Governor's Office	287-3531
Anna Broome	<a href="mailto:Anna.broome@legislature.maine.gov">Anna.broome@legislature.maine.gov</a>	Legislative Analyst	Office of Policy and Legal Analysis (OPLA)	287-1670
Terry Hayes	<a href="mailto:Terry@megalink.net">Terry@megalink.net</a> ; <a href="mailto:reptery.hayes@legislature.maine.gov">reptery.hayes@legislature.maine.gov</a>	State Representative	State and Local Government Committee	689-5484
Gretchen Heldmann	<a href="mailto:hampdenmemaps@gmail.com">hampdenmemaps@gmail.com</a>	Chair	Maine GeoLibrary Board	862-4500
Kelly Hokkanen	<a href="mailto:kelly@informe.org">kelly@informe.org</a>	General Manager	InforME	621-2600
Marion Hylan Barr	<a href="mailto:Marion.hylanbarr@legislature.maine.gov">Marion.hylanbarr@legislature.maine.gov</a>	Legislative Analyst	OPLA, Right to Know Advisory Committee (RTKAC)	287-1683
Jim Lopatosky	<a href="mailto:Jim.lopatosky@maine.gov">Jim.lopatosky@maine.gov</a>	Associate CIO for Applications	Office of Information Technology (OIT)	441-6731 cell
Greg McNeal	<a href="mailto:Greg.mcneal@maine.gov">Greg.mcneal@maine.gov</a>	Acting Chief Information Officer – Chair of the Stakeholders Group (as of July 1)	Office of Information Technology	215-7849 cell
Carolyn Russo	<a href="mailto:carolyn.russo@legislature.maine.gov">carolyn.russo@legislature.maine.gov</a>	Legislative Analyst	OPLA, RTKAC	287-1670
Paul Sandlin	<a href="mailto:Paul.sandlin@maine.gov">Paul.sandlin@maine.gov</a>	Manager of E-Gov Services	OIT	624-9427
John Simpson	<a href="mailto:jsimpson@maine.rr.com">jsimpson@maine.rr.com</a>	Manager	MacImage of Maine	846-0921
Michael Smith	<a href="mailto:Michael.smith@maine.gov">Michael.smith@maine.gov</a>	Manager	Maine Office of Geographic Information Systems, OIT	215-5530 cell
Eric Stout	<a href="mailto:Eric.stout@maine.gov">Eric.stout@maine.gov</a>	IT Project Manager (recorder for Stakeholder Group)	OIT	624-9981
Dick Thompson	<a href="mailto:brooks@fairpoint.net">brooks@fairpoint.net</a>	Chief Information Officer (retiring July 31)	OIT	592-3521
Robin Watts	<a href="mailto:rdwatts@firstam.com">rdwatts@firstam.com</a>	Maine State Counsel, First American Title Insurance Company	Maine State Bar Association	774-6884
<b>Others invited (not attending June 22 meeting):</b>				
Beverly Bustin-Hatheway	<a href="mailto:kcedeeds@kennebeccounty-me.gov">kcedeeds@kennebeccounty-me.gov</a>	County Register of Deeds	Kennebec County Register of Deeds	622-0431



## Statutes and Fees on Access to and Bulk Sale of Electronic Land Records

State	Citation	Summary	Access to (Inspection of) Records?	Fees for Electronic Records in Bulk?
<b>Alabama</b>	Code of Ala. § 41-13-41, § 41-13-44 (2008)	<p>Photocopying of records shall be centralized in the AL Dept. of Archives and History.</p> <p>The Department of Archives and History is authorized to charge any office, court, commission, board, institution, department or agency of the state for the photographing or microphotographing of public records belonging to that office, court, commission, board, institution, department or agency. Such charge shall be on a cost basis.</p>	Unknown	Unknown
<b>Alaska</b>	Alaska Stat. § 40.25.110 (2008)	<p>The fee for copies of records may not exceed the agency's standard unit cost for duplication.</p> <p>Each agency may establish a reasonable fee. If the personnel time needed to satisfy one requester's production of public records exceeds 5 hours, the requester must pay the personnel costs, not to exceed salary or actual costs.</p> <p>A public agency may reduce or waive a fee when the public agency determines that the reduction or waiver is in the public interest.</p>	Yes (reasonable rules during regular hours)	Yes (reasonable fee; not exceed cost of duplication or actual costs)
<b>Arizona</b>	A.R.S. § 39-121.03 (2007)	<p>If the request of public records is for commercial purposes, the requester must provide a statement describing the commercial purpose.</p> <p>The fee shall be a portion of the cost to the agency for furnishing the records, or a reasonable fee for the time and equipment used.</p> <p>The custodian may appeal to the governor if s/he believes the commercial purpose is a misuse of public records.</p>	Unknown	Yes (portion of the cost or reasonable fee for time and equipment; special provisions for commercial purposes)

State	Citation	Summary	Access to (Inspection of) Records?	Fees for Electronic Records in Bulk?
Arkansas	A.C.A. § 25-19-105 (2008)	<p>All public records must be made available for public inspection during regular office hours of the records custodian. A citizen may make a request for records in person, by telephone, by mail, by facsimile transmission, by electronic mail, or by other electronic means provided by the custodian. A citizen may request a copy of a record in any format which the record is available.</p> <p>The fee for public record copies may not exceed the actual cost of furnishing the copies. If the custodian determines the records are for primarily non-commercial purposes, the fee may be reduced or eliminated.</p>	Yes (regular hours)	Yes (fee not to exceed actual cost)
California	Cal Gov Code § 6253 (2007)	<p>All public agencies must adopt rules for making public records available. If the public record is in electronic format, the custodian shall make the record available in electronic format when requested.</p> <p>The cost of duplication shall be limited to the direct cost of duplication, or a statutory fee if applicable.</p> <p>If the record is not available in electronic format, the agency is not required to make it available electronically.</p>	Yes (need to create local rule; example = San Bernardino local code is County Code 16.023A)	Yes (cost limited to direct cost of duplication or statutory fee if applicable)

State	Citation	Summary	Access to (Inspection of) Records?	Fees for Electronic Records in Bulk?
<b>Connecticut</b>	§1-211 and § 1-212	<p>An agency that maintains public records in a computer storage system shall make the records available on paper or in any electronic means requested, if reasonable.</p> <p>The fee for a record provided by a state executive, administrative, or legislative office shall not exceed \$0.25 per page. Records of all other agencies shall not exceed \$0.50 per page, and shall not exceed the cost to the public agency.</p> <p>For electronic records, the fee shall be equal to the hourly salary of the employee locating the record, or the cost to the agency of hiring an outside electronic copying service, if necessary, and the cost of storage devices and computer time to provide the requested record. The fee may be waived if the requester is indigent or providing the records benefits the general welfare.</p> <p>An individual may copy a record by using a handheld scanner. The agency shall establish a fee structure not to exceed \$10.00 for copying records using a scanner.</p>	Yes	Yes (hourly salary of employee locating the record plus cost of storage devices and computer time)
<b>Delaware</b>	§ 10003	<p>Each public agency shall establish rules and regulations and fees charged to access records.</p>	Unknown	Yes (each agency to create rule and fees)
<b>District of Columbia</b>	§2-532	<p>A public agency shall make a public record available in any format requested provided the requester pays the cost of producing the record in that format. The agency shall make reasonable efforts to search for the record in electronic format.</p> <p>Each agency may establish its own fees, not to exceed the actual cost of providing the record. The agency shall make the record available within 15 days of the request.</p>	Yes	Yes (cost of producing in format requested)



State	Citation	Summary	Access to (Inspection of) Records?	Fees for Electronic Records in Bulk?
Florida	Fla. Stat. § 119.07 and § 28.24 (2009)	<p>§ 119.07 - The records custodian may provide remote electronic access to records and shall protect the records from unauthorized remote electronic access.</p> <p>The records custodian may charge a fee for electronic access established in a contractual arrangement with the requester. The fee may include the direct and indirect costs of access.</p> <p>If the volume of the records requested is such that it would require extensive use of personnel time and technology resources, then an additional service fee may be imposed and any additional expenses in providing a room, if necessary. The custodian may supervise the photographing of public records.</p> <p>Copies are \$0.15 one side plus \$0.05 for second side -- these are paper record prices. Certified copy is at least \$1.00 per document per Section 119.07(4)(c). However, it should be noted that Section 28.24(3) says \$2.00 for certifying the document, plus \$1.00 per page.</p> <p>§ 28.24(28) – The clerk of the circuit court may provide the requested public record in electronic format.</p> <p>§ 28.24(5) provides exact fees for paper copies (\$1/page), plus microfilm (\$42/100 foot roll) and microfiche (\$3.50/fiche)</p>	<p>Yes (§ 28.222: land records always open for inspection and extraction under supervision of the recorder)</p>	<p>Yes (direct and indirect costs of access)</p> <p>Fees specified for paper, microfilm and microfiche; no specific fee set for electronic copies</p>
Georgia	O.C.G.A. § 50-18-71; § 15-6-77 (2007)	<p>§ 50-18-71 – Any person may access public records to make photographs or copies under the supervision of the records custodian. If there is no statutory fee for duplicating the records, the custodian may charge a fee not to exceed \$0.25 per page. A reasonable hourly charge not to exceed the salary of the lowest paid full time employee may be charged for search and retrieval of records. If the record is stored on a computer, the custodian may charge for the disk or tape onto which the record is transferred and for any time involved.</p>	<p>Yes</p>	<p>Yes (not to exceed \$0.25/page plus lowest hourly employee time plus media onto which records transferred)</p>

State	Citation	Summary	Access to (Inspection of) Records?	Fees for Electronic Records in Bulk?
<b>Hawaii</b>	HRS § 92F-12; 171-6 (2007); Admin Rules 13-16-22 to 13-16-24	<p>§ 171-6 – The board of land and natural resources shall have the power to set and collect reasonable fees for the preparation of documents and the issuance of certified public records.</p> <p>§ 13-16-22 – The registrar may set fees for public records. The fees for a copy with the seal of office are \$1, or \$0.50 for records without an official seal. The registrar may authorize the use of microfilm. The fee for duplicating a microfilm record is \$0.02 per frame.</p>	Unknown.	Unknown (fees set for paper and microfilm)
<b>Idaho</b>	Idaho Code § 31-2419; § 31-3205 (2008)	<p>§ 31-2419 – The recorder may provide access to electronic records on public access terminals.</p> <p>§ 31-3219 – The county recorder and the district court clerk may charge \$1.00 per page for copies of records. For duplication of recorded documents in excess of 100 pages or continuous copy requests for duplication of records using compact disc, zip disc, floppy disc or other electronic means, the fee shall be negotiated between the county recorder and the purchaser of records. The fee shall not exceed the costs to the county recorder for the retrieval and duplication of the record. These negotiated fees shall be recommended by the county recorder and approved by the board of county commissioners.</p>	Yes	Yes (fees to be negotiated and approved by governing board)
<b>Illinois</b>	55 ILCS 5/5-1106 (2008)	<p>Any county that provides public Internet access to records maintained in electronic form may also enter into a contractual arrangement for the dissemination of the same electronic data in bulk or compiled form.</p> <p>If, but only if, a county provides free Internet access to public records maintained in electronic form, the county may charge a fee for the dissemination of the electronic data in bulk or compiled form, but the fee may not exceed 110% of the actual cost, if any, of providing the electronic data in bulk or compiled form.</p>	Yes	Yes (enter into contract; fee not to exceed 110% of actual cost)

State	Citation	Summary	Access to (Inspection of) Records?	Fees for Electronic Records in Bulk?
<b>Indiana</b>	Burns Ind. Code Ann. § 36-2-7-10.1	<p>The county recorder shall collect the fees prescribed by this section for the sale of recorded documents in bulk form copies to bulk users of public records. The fees prescribed and collected under this section supersede all other fees for bulk form copies required by law to be charged for services rendered by the county recorder to bulk users. The county recorder shall charge bulk users the following for bulk form copies:</p> <p>(1) Seven cents (\$0.07) per page for a recorded document, including the index of the instrument number or book and page, or both, for retrieving the recorded document.</p> <p>(2) Seven cents (\$0.07) per recorded document for a copy of the other indices used by the county recorder for finding, retrieving, and viewing a recorded document.</p>	Yes	Yes (\$0.07/page including indices)
<b>Iowa</b>	§ 22.2 subsection 2	<p>§ 22.2 – Public records shall be made available for inspection and copying.</p> <p>§ 22.3 – The records custodian may adopt rules regarding the inspection and copying of records. The custodian may charge a reasonable fee, not to exceed the actual cost.</p>	Yes	Yes (reasonable fee not to exceed actual cost)
<b>Kansas</b>	§ 45-219	<p>§ 45-219 – Copies of public records may be made under the supervision of the custodian. Each public agency may charge reasonable fees, not to exceed \$0.25 per page, for access to or copies of public records. Fees for computerized records may only include the cost of computer services and staff time.</p>	Yes	Yes (not to exceed \$0.25/page for paper?; fees for electronic only computer services and staff time)

State	Citation	Summary	Access to (Inspection of) Records?	Fees for Electronic Records in Bulk?
<b>Kentucky</b>	§ 61-874	<p>If the agency keeps the records in electronic format, the requester may copy nonexempt records for noncommercial purposes in hard copy or electronic copy. The minimum standard format for electronic records shall be a flat file electronic American Standard Code for Information Interchange (ASCII) format. An alternate format may be used if it complies with the request. The public agency may charge a reasonable fee for copies of nonexempt records for noncommercial purposes, not to exceed actual cost.</p> <p>If the General Assembly has not prohibited disclosing public records intended to be used for commercial purposes, the public agency may charge a reasonable fee and may require a certified statement setting forth the requester's intended commercial purpose. It is unlawful to use public records for a commercial purpose without stating the commercial purpose for which the records are intended.</p>	Yes	Yes (reasonable fee not to exceed cost and statement of commercial purpose)
<b>Louisiana</b>	La. R.S. § 44:32 (2008)	<p>The custodian may collect reasonable fees for copies of public records. The custodian of records may establish uniform procedures for copying records. No fee is charged for reviewing the records. This section also requires the custodian to produce copies of computer disks when requested. <u>Granger v. Litchfield</u>, 645 So. 2d 1262, (1994).</p>	Yes	Yes (reasonable fees and uniform procedure)
<b>Maine</b>	1 M.R.S. § 408 (2007)	<p>Each public agency may charge a reasonable fee for copying records. It also may charge for the actual cost of searching for records, not to exceed \$10 per hour.</p>	Yes	Yes (reasonable fee and not to exceed \$10/hour for search)
<b>Maryland</b>	Md. State Government Code Ann. § 10-621 (2008)	<p>The Custodian may charge a reasonable fee for searching, preparing, or copying records. However, a fee may not be charged for the first 2 hours spent searching and preparing records.</p>	Yes	Yes (reasonable fee and first 2 hours free)
<b>Massachusetts</b>	ALM GL ch. 262, § 38 (2008); ch. 66 § 10	<p>§ 262-38 – All copies of records, whether copied from books or obtained electronically, shall be \$1 per page. Copies from coin operated copy machines shall be \$0.50 per page.</p> <p>§ 66-10 – All public agencies shall allow public records to be inspected and shall furnish one copy for a reasonable fee. The requester shall pay the actual cost of searching for a public record. The custodian has 10 days to comply with a request to inspect a public record.</p>	Yes	Yes (\$1/page for electronic)

State	Citation	Summary	Access to (Inspection of) Records?	Fees for Electronic Records in Bulk?
Michigan	MCLS § 15.233 and § 15.234 (2008)§ 565.551, § 600.2567	<p>§ 15.233 –Providing a computer printout of a record contained on computer tape does not satisfy the statutory duty to provide a requested record. <i>Farrell v City of Detroit</i>, 530 NW2d 105 (1995).</p> <p>§ 15.234 – An agency may charge a fee for search, inspection, and/or copying public records. An agency may waive or reduce the fee if it determines it is in the public interest. The fee may not be more than the hourly wage of the lowest paid employee. Fees must be uniform.</p> <p>§ 565.551 – For a copy other than a paper copy, the fee shall not exceed the reasonable costs.</p> <p>§ 600.2567 – Recorder may charge \$1 for paper copies.</p>	Yes	Yes (reasonable costs for other than paper)
Minnesota	§13.03	<p>Photographic, photostatic, or microfilmed records shall be accessible regardless of size.</p> <p>Each agency shall establish procedures for inspection of records. The public shall have the right to inspect electronic records through remote access to the data and shall have the ability to print or download records from an individual's own computer. If 100 or less pages of copies are requested, the fee shall not exceed \$0.25 per page. For more pages, the fee shall be the actual cost.</p> <p>Any records stored in a computer storage medium shall be made available to the public in that same medium if reasonably possible.</p>	Yes	Yes (if over 100 pages, fee to be actual cost)
Mississippi	Miss. Code Ann. § 25-61-7 (2008)	<p>§ 25-67-7 – Each public agency may charge reasonable fees not to exceed the actual cost of searching, reviewing, and copying records.</p> <p>§ 25-61-1 – Each agency must provide reasonable access to records stored electronically. An agency may establish a fee scale for reimbursement for creating or maintaining electronically accessible data.</p> <p>§ 25-61-10 – An agency shall provide a record in the requested format if it maintains the record in the specified format.</p>	Yes	Yes (agency may set fee scale for creating and maintaining electronically accessible data)
Missouri	§ 50.1190	<p>The fee for copying public records is \$2 for the first page and \$1 for each additional page, or \$5 for a copy of a plat or survey.</p>	Yes	Yes (fees set for paper and now applied to electronic copies)
Montana	M.C.A. § 7-1-4144	The agency may charge reasonable fees for inspection.	Yes	Unknown

State	Citation	Summary	Access to (Inspection of) Records?	Fees for Electronic Records in Bulk?
<b>Nebraska</b>	RRS Neb. § 25-1280	<p>§ 84-712 – Individuals are permitted to inspect and copy using their own equipment any public records free of charge.</p> <p>Copies may be obtained in any format requested in which the record is maintained. The agency may charge a fee, not to exceed the actual cost, for providing the copy of the record. The actual cost of copies of electronic data shall include the cost of computer run time, programming, and producing the record in the requested format. The custodian is not required to produce a record in a format in which it is not maintained.</p>	Yes	Yes (fee not to exceed actual cost, including computer time, media format, programming)
<b>Nevada</b>	NRSA § 239.010	<p>§ 232.052 – An agency may charge a fee, which cannot exceed the actual cost, for providing a copy of a public record. The agency may waive a fee if it adopts a uniform procedure and posts it conspicuously.</p> <p>§ 239.010 – Each agency must make its public records available for inspection during regular business hours. An individual may request a record in any medium which the record is available.</p>	Yes	Yes (not to exceed actual cost)
<b>New Hampshire</b>	RSA § 41:24	§41:24 – The town clerk shall furnish records when requested.	Yes	No
<b>New Jersey</b>	N.J. Stat. § 47:1A-5	Copies of public records may be provided for a fee which shall be the actual cost of duplicating the record. The records custodian shall provide the public record in the medium requested if the agency maintains the record in that medium. If the agency does not maintain the record in that medium, it shall convert the record to the medium requested or provide the record in another meaningful medium. If the medium requested is one not routinely used by the agency, the agency may charge an additional fee.	Yes	Yes (actual cost of duplicating and may charge for media conversation)
<b>New Mexico</b>	N.M. Stat. Ann. § 14-2-9	To preserve the integrity or confidentiality of computer data in a database, a partial printout of data in computer records may be provided instead of the entire record.	Yes (reasonable times)	Yes (not to exceed \$1/page)
		The fee for copies of public records shall not exceed \$1.00 per page.		

State	Citation	Summary	Access to (Inspection of) Records?	Fees for Electronic Records in Bulk?
New York	Public Officers Law § 87(1)(b); CPLR 8019	§ 8019 – The fee for copies of records shall be \$0.65 per page. § 87(1)(b) – A public agency is required to produce electronic information if it can be made available in the format requested. However, if a record is only stored on paper, an agency is not required to provide the information electronically. For either paper or electronic copies of electronically stored records, the fee shall be the actual cost of reproduction.	Yes	Yes (for electronic, actual cost of reproduction)
North Carolina	§ 132-1 and § 132-6.2	§132-1 – Public record shall include documents, film, photographs, books, electronic records, etc. Copies of public records shall be made available to the public for “minimal cost” which shall mean the actual cost. § 132-6.2 – A person requesting copies of public records may obtain them in any format in which the agency is capable of providing them. No requests for records in a particular format may be denied on the grounds that the custodian prefers a different format. A public agency is not required to put into electronic format a record that is not already stored in electronic format  The fee for an uncertified copy of a record may not exceed the actual cost, unless providing the record in the requested format requires greater use of resources.	Yes	Yes (not to exceed actual cost in that format)
North Dakota	Cent. Code § 44-04-18	Public agencies shall make records available during regular business hours. Upon request, the custodian shall provide one copy of a public record. There is no charge for access to electronic records if they may be recovered without the use of a computer backup. The agency may charge a reasonable fee for copies of electronic records. The agency is not required to create a record that does not exist. A custodian is not required to provide a record in a computer file if there is no means to separate confidential information.	Yes	Yes (reasonable fee)
Ohio	ORC Ann. § 149.43(B)	A requester of records may request a public record be provided on paper, in the same medium as it is stored, or in another medium reasonably available.  Copies shall be provided at cost, including storage, labor, & equipment costs. Bulk data defined as 50+ images.	Yes	Yes (over 50 images = bulk; provide at cost including storage, labor and equipments costs)

State	Citation	Summary	Access to (Inspection of) Records?	Fees for Electronic Records in Bulk?
Oklahoma	(see Title 67 'Records' generally)	51 Ok. §24A5 – Public records must be made available, any exempt portions should be segregated. Records custodian may charge a fee for the reasonable cost of providing copies, which shall not exceed \$0.25 per page. Charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy	Yes	Yes (not to exceed \$0.25/page; exception for news media at direct cost)
Oregon	ORS § 92.440	The records custodian must provide the requested public records for copying or inspection, or provide a statement of why the request cannot be fulfilled. If the record is available in electronic form, the custodian shall provide a copy in that format if requested. If the record is not available in the requested format, the custodian shall provide the record in whatever format the record is currently stored. The custodian may charge fees for compiling records or tailoring them to meet a specific request.	Yes	Unknown (fee for compiling to meet request?)
Pennsylvania	No statute or administrative reg found		Unknown	No
Rhode Island	Gen. Laws § 38-2-4	A public agency must provide copies of public records for a fee not to exceed \$0.15 per page. The fee may not exceed the actual cost. The agency shall provide an estimate of the cost prior to providing copies of the record.	Yes	Yes (not to exceed actual cost and/or \$0.15/page)
South Carolina	Code Ann. § 30-4-30	Every person has a right to inspect public records. The agency may charge fees not to exceed the actual cost of providing the record. The records must be provided in a format that is convenient for the requester and the public agency.	Yes	Yes (not to exceed actual cost)
South Dakota	SD Codified Laws § 1-27-1	§7-9-15 - The fee for copies of certified records shall be \$2.00 plus \$0.20 per page, or \$1.00 and \$0.20 per page for uncertified records. The Board of County Commissioners shall establish the fee for copies of microfilm. §1-27-1 Any license holder list maintained by the Dept. of Game, Fish, and Parks shall be made available for a reasonable fee. An automobile insurance provider may access to lists of licensed drivers to verify information.	Yes	Unknown



State	Citation	Summary	Access to (Inspection of) Records?	Fees for Electronic Records in Bulk?
<b>Tennessee</b>	See Title 10-7-123 reasonable fee for electronic access	<p>Each county official may provide computer and remote electronic access to records in that office stored on computer media. The official may charge a reasonable fee to recover the costs of providing access.</p> <p>No fee shall be charged to view electronic or other records at the place where they are maintained. Once an agency has created a remote electronic access information system, access must be given to anyone who requests it, even if the requester intends to use the information for proprietary purposes.</p>	Yes (reasonable fee for access)	Unknown
<b>Texas</b>	Govt. Code § 552.261	The fee for a public record shall be a reasonable cost for reproducing the public information, including costs of materials, labor, and overhead. When the fee includes the cost of labor, the requester shall be provided with a written statement detailing the charge.	Yes	Yes (reasonable fee including materials, labor and overhead)
<b>Utah</b>	§ 17-21-18.5	The county recorder shall charge a reasonable fee for providing copies of any record or document.	Yes	Yes (reasonable fee)
<b>Vermont</b>	1 V.S.A. § 316	<p>Anyone may inspect public records during regular business hours.</p> <p>The agency may charge for the actual cost of providing the copy of the record. The secretary of state shall adopt a uniform schedule of charges for state agencies. In establishing a charge, the secretary shall only consider the cost of paper or the electronic media on which the copy is made.</p> <p>The standard form for copies of electronic records shall be the format in which the record is maintained. An agency may convert paper records to electronic format, but is not required to.</p>	Yes	Unknown (Secy of State sets for state agencies)

State	Citation	Summary	Access to (Inspection of) Records?	Fees for Electronic Records in Bulk?
Virginia	Va. Code Ann. § 2.2-3700	Public records shall be available for inspection during regular business hours.  The fee for copies shall be a reasonable fee not to exceed the actual cost. Public records maintained in a computer database or electronic data processing system shall be made available at a reasonable cost. The agency shall make a reasonable effort to provide the record in the format requested. However, the agency will not be required to produce a record in a format not regularly used by the agency.  Every public body of state government shall compile, and annually update, an index of computer databases that contains at a minimum those databases created by them on or after July 1, 1997.	Yes	Yes (reasonable not to exceed actual cost)
Washington	§ 42.56.070	Each agency shall make its records available for public inspection. Each agency shall post the cost per page for copies of records. An agency may not use staff salaries, benefits, or overhead charges in calculating the fee for copies.	Yes	Yes (must post fees; may not include salaries, benefits or overhead)
West Virginia	W.V. Code § 29B-1-3	Every person has a right to inspect public records.  If the records requested are stored in magnetic, electronic or computer form, the custodian of the records shall make such copies available on magnetic or electronic media, if requested.	Yes	Yes (actual cost?)
Wisconsin	Wis. Stat. § 19.35	Public records that are not exempt shall be available for inspection. The agency is not required to take information from public records and compile it in a new format.  The records custodian may impose a fee that does not exceed the actual cost.	Yes	Yes (not to exceed actual cost)
Wyoming	Wyo. Stat. § 16-4-204	A person may inspect and obtain copies of public records.  The custodian may charge a reasonable fee for making copies.	Yes	Yes (reasonable fee)
<b>TOTALS</b>			45 Yes 5 Unknown	41 Yes 2 No 7 Unknown

# RIGHT TO KNOW ADVISORY COMMITTEE

## LEGISLATIVE SUBCOMMITTEE MEETING

### DRAFT AGENDA

August 30, 2010

1:00 p.m.

Room 438, State House

Welcome and introductions

- I Issues from July 19, 2010 meeting
  - A. Draft legislation: Ensure that decisions are made in proceedings that are open and accessible to the public
  - B. Draft legislation: Protection of private information contained in e-mail and other forms of communication that are sent and received by public officials, particularly communications between elected public officials and their constituents
  - C. Draft legislation: Protection of Social Security Numbers
  - D. Draft legislation: Making and maintaining records of public meetings
  
- II Review of Legislative Subcommittee tasks
  - 1. Examine use of communication technologies to ensure that decisions are made in proceedings that are open and accessible to the public (see I, A above);
  - 2. Consideration of revision of penalties for violations of the freedom of access laws (no change recommended);
  - 3. Whether partisan party caucuses should be specifically excluded from the definition of "public proceedings" (no change recommended);
  - 4. Protection of private information contained in e-mail and other forms of communication that are sent and received by public officials, particularly communications between elected public officials and their constituents (see I, B above);
  - 5. Policy on whether e-mail addresses are public records (no change recommended);
  - 6. Central Voter Registry (no change recommended);
  - 7. Social Security Numbers (see I, C above);
  - 8. Use of technology in attending meetings (recommending draft to full Advisory Committee, not unanimous);
  - 9. Keeping records of public proceedings (see I, D above); and
  - 10. Scope of review process (1 MRSA §434 criteria) (recommending draft to full Advisory Committee)
  
- III Other

No Legislative Subcommittee meetings scheduled Full Advisory Committee meeting scheduled for Thursday, September 23, 2010, 1:00 p.m.
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Adjourn

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Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Meetings in public: 4 options

Sec. 1. 1 MRSA §401 is amended to read:

**§401. Declaration of public policy; rules of construction**

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

1

2

3

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

4

Communications between the members of a public body are not prohibited unless the communications are intended to or used to defeat the purposes of this subchapter.

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

Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Confidential communications

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

R. Information in a communication between a constituent and an elected official if the information:

(1) Would be confidential if it were in the possession of any other public agency or official; or

(2) Is the constituent's personal medical information, the constituent's personal financial information or personal information about the constituent's loss of housing or employment.

This paragraph does not include requests for elected officials to take public actions or votes.

Sec. 1. 1 MRSA §402, sub-§5 is enacted to read:

**5. Elected officials' communications.** A record involving communications between a person and an elected official is a public record except for information contained in the record that:

A. Is excepted from the definition of public record in subsection 3;

B. Is designated as confidential by statute; or

C. Would be confidential if it were in the possession of another public agency or official.

Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Protection of Social Security Numbers

Original draft	Comments (on 2009 draft)
<p><b>Sec. 1. 1 MRSA §402, sub-§3,</b> ¶N is amended to read:</p> <p>N. Social security numbers in the possession of <del>the Department of Inland Fisheries and Wildlife</del> an <u>agency or official</u>. <u>Subchapter 2-A applies to the protection of Social Security numbers in the possession of an agency or official</u>; and</p>	
<p><b>Sec. 2. 1 MRSA §410</b> is amended to read:</p> <p><b>§410. Violations</b></p> <p>For every willful violation of this subchapter <u>or subchapter 2-A</u>, the state government agency or local government entity whose officer or employee committed the violation <del>shall be</del> <u>is</u> liable for a civil violation for which a forfeiture of not more than \$500 may be adjudged.</p>	
<p><b>Sec. 3. 1 MRSA c. 13, sub-c. 2-A</b> is enacted to read:</p> <p style="text-align:center"><b><u>SUBCHAPTER 2-A</u></b> <b><u>PROTECTION OF SOCIAL SECURITY NUMBERS</u></b></p> <p><b><u>§461. Collection and disclosure of Social Security numbers</u></b></p>	

Right to Know Advisory Committee  
 REVISED PROPOSED DRAFT  
 Protection of Social Security Numbers

Original draft	Comments (on 2009 draft)
<p><b><u>1. Collection of Social Security number; prohibition; collection practice.</u></b> <u>An agency or official of this State or any of its political subdivisions may not collect (or maintain?) an individual's Social Security number unless specifically <b>required authorized</b> by state or federal law or court order. When an agency or official is <b>required authorized</b> to collect (or maintain?) an individual's Social Security number, the agency or official shall collect and maintain the Social Security number in manner that facilitates preserving the confidentiality of the Social Security number when it is contained in or associated with an otherwise public record.</u></p>	<ul style="list-style-type: none"> <li>• What does “collect” mean?                             <ul style="list-style-type: none"> <li>• Collect document, and it contains SSN</li> </ul> </li> <li>• Collection of SSN “specifically required” is too narrow</li> <li>• Phrasing the statute in the negative requires amending other statutes to enable existing government operations to continue. Simpler to declare that all government agencies are authorized to collect in order to positively ID or locate information or to contact a person; then prohibit unauthorized release</li> <li>• The legislation should allow SSNs to be collected for workers’ compensation case tracking purposes and the like, but make it clear that disclosure of SSNs is strictly prohibited.</li> <li>• Need lead-time</li> <li>• Many times SSNs are collected because required by a federal agency, but not all of it is in law; federal regulations require the collection, and some collection is required by the federal agency on its own authority</li> <li>• Cover independent authorities, too?</li> <li>• Dept. of Audit’s work cuts across all State agencies and State and Federal programs; would need court orders or change in statute</li> <li>• Limit collection to federal or state law or rule or court order, or for criminal justice purposes</li> <li>• Registries of Deeds are required to file documents that may or may not have SSNs - conflicts with statute that says</li> </ul>

Right to Know Advisory Committee  
 REVISED PROPOSED DRAFT  
 Protection of Social Security Numbers

Original draft	Comments (on 2009 draft)
	<p>cannot redact unless specifically requested?</p> <ul style="list-style-type: none"> <li>• Change to “authorized” to collect rather than “required” to collect</li> <li>• Allow collection “for the purpose of carrying out the agency’s or official’s licensing, examination or investigative responsibilities</li> <li>• Include: unless the SSN is required in connection with an application for or administration of a loan or other financial assistance through the agency or official, or is an application to open or the administration of an account under T. 20, c. 417-E</li> </ul>
<p><b><u>2. Nondisclosure of Social Security number.</u></b> Except as provided in subsection 3, an agency or official <b><u>may not disclose an individual’s Social Security number.</u></b></p> <p><i>(This redraft eliminates the two-stage phase-in.)</i></p>	
<p><b><u>A. May not disclose an individual’s Social Security number if that Social Security number was collected on or after January 1, 2011; and</u></b></p>	<ul style="list-style-type: none"> <li>• In conflict with Registries of Deeds statute that does not allow altering a document?</li> <li>• Is this giving the agency the option?</li> </ul>
<p><b><u>B. May redact or otherwise refuse to disclose an individual’s Social Security number that was collected prior to January 1, 2011.</u></b></p>	<ul style="list-style-type: none"> <li>• In conflict with Registries of Deeds statute that does not allow altering a document?</li> <li>• Is the expectation that agencies go back into files and redact SSNs?</li> </ul>



Right to Know Advisory Committee  
 REVISED PROPOSED DRAFT  
 Protection of Social Security Numbers

Original draft	Comments (on 2009 draft)
<p><b><u>3. Permitted disclosure of Social Security numbers.</u></b> <u>An agency or official may disclose the Social Security number of an individual only in the following circumstances.</u></p>	
<p><u>A. An agency or official may disclose the Social Security number of an individual when the disclosure is expressly required by state or federal law or a court order.</u></p>	<ul style="list-style-type: none"> <li>• In conflict with Registries of Deeds statute that does not allow altering a document?</li> </ul>
<p><u>B. A state or local law enforcement agency may, for purposes of furthering an investigation, disclose the Social Security number of an individual to any individual, state, local or federal agency or other legal entity.</u></p>	<ul style="list-style-type: none"> <li>• Too narrow - many agencies need information, validation, conduct investigations that are not law enforcement agencies (change to “regulatory agency?”)</li> <li>• Allows disclosure to anyone?</li> <li>• Any way to make this a pilot project to see if it works?</li> <li>• Dept. of Audit must disclose fraud to federal authorities (USGAO standards)</li> <li>• Change “law enforcement agency” to “criminal justice agency”</li> </ul>
<p><u>C. An agency or official may disclose the Social Security number of an individual when the individual expressly consents in writing to the disclosure.</u></p>	<ul style="list-style-type: none"> <li>• Delete “expressly”</li> <li>• Expand to consent to disclosure of non-public personal information</li> </ul>

Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Protection of Social Security Numbers

Original draft	Comments (on 2009 draft)
<p><b><u>D. An agency or official may disclose the SSN of an individual to another agency or official if it is necessary to carry out the other agency's or official's duties or responsibilities.</u></b></p>	<ul style="list-style-type: none"><li>• Authorize agencies to share SSNs only for purposes of carrying out responsibilities</li> <li>• Add new ¶: D. A criminal justice agency may disseminate the SSN of an individual to another criminal justice agency for criminal justice purposes</li><li>• Add new ¶: D. An agency or official may disclose the SSN of an individual for purposes of carrying out the agency's or official's licensing, examination or investigative responsibilities</li> <li>• Add new ¶: D. An agency or official may disclose the SSN of an individual to a credit reporting agency when permitted to obtain a credit report from, or to report or receive other information to or from a credit reporting agency under the Fair Credit Reporting Act or other applicable law</li><li>• Add a new ¶: E. An agency or official may disclose the SSN of an individual in connection with the agency's or officials activities related to the application, processing, servicing, reporting or collecting of a loan under the Federal Family Education Loan Program</li><li>• Add a new ¶: F. An agency or official may disclose the SSN of an individual to the Maine Bureau of Revenue</li></ul>

Right to Know Advisory Committee  
 REVISED PROPOSED DRAFT  
 Protection of Social Security Numbers

Original draft	Comments (on 2009 draft)
	<p>Services in connection with collecting an obligation to such agency, and entitle to have obligation offset from any tax refund</p> <ul style="list-style-type: none"> <li>• Add a new ¶: G. An agency or official may disclose the SSN of an individual to the Maine Bureau of Revenue Services in connection with administration of certain benefits under T. 20-A, c. 417-E to verify eligibility</li> <li>• Add a new ¶: H. An agency or official may disclose the SSN of an individual collected in connection with the opening or administration of an account under T. 20-A, c. 417-E</li> <li>• Add a new ¶: I. An agency or official may disclose the SSN of an individual in connection with any audits or other procedures conducted for the agency related to the agency’s financial statements or records of any programs administered by the agency or any benefits awarded by the agency</li> </ul>
<p><u>4. Compliance. An agency or official complies with this section if the agency or official either removes or completely and permanently obscures a Social Security number on a public record before disclosing the public record.</u></p>	<ul style="list-style-type: none"> <li>• Applies only after 1/1/11?</li> </ul>
<p><u>5. Notice. If an agency or official discloses a Social Security number in violation of this section, the agency or official shall provide notice to the person</u></p>	<ul style="list-style-type: none"> <li>• Applies only after 1/1/11?</li> <li>• Do the penalties of Title 10, c. 210-B apply, as well?</li> </ul>

Right to Know Advisory Committee  
 REVISED PROPOSED DRAFT  
 Protection of Social Security Numbers

Original draft	Comments (on 2009 draft)
<p><u>whose Social Security number was disclosed as in Title 10, chapter 210-B.</u></p>	
<p><b><u>6. Require agencies to adopt policies/procedures regarding SSNs?</u></b></p>	<p>Note:</p> <ul style="list-style-type: none"> <li>• Federal criminal justice agencies routinely provide SSNs to the State Bureau of Identification when providing criminal history record information regarding individual</li> <li>• It is standard practice for the Maine Secretary of State’s Office, Bureau of Motor Vehicles to provide SSNs to law enforcement agencies when such agencies request a driving history record report regarding any given individual</li> </ul>

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Minimalist approach:

**Sec. 1. 1 MRSA §402, sub-§3, ¶N** is amended to read:

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

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Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Protection of Social Security Numbers

**Issues Raised at 07/19/10 Legislative Subcommittee Meeting**

Draft above indicates some changes in **bold and double-underlined**, but sounds like there are # of policy questions unanswered – per last meeting:

- Subcommittee expressed interest in reviewing all agency policies:
  - Is there a concern regarding over collection of SSNs?
  - Is there a concern regarding what to do with SSNs in possession of agencies?
- Agency redaction logistics/costs?
- Complexity of definitions/terms – “collection”, “possession”, “maintenance” as to SSNs?
- Is there a reason not to say SSNs are not “public records”?
- Or SSNs are confidential and may not be disclosed, except in identified situations?
- Awareness of need for sharing/exchanging SSNs among state agencies, but complicated

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Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Record/Minutes of Public Proceedings

(Changes from LD 1791 indicated in *italics*)

**Sec. 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 and any public record or minutes of such proceedings that are required by law must be made within a reasonable period of time after the proceeding and must be open to public inspection.*

**2. Record of public proceedings.** Unless otherwise provided by law, *records of all public proceedings 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 proceedings proceeding and must be open to public inspection. At a minimum, a 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;
- C. The general substance of all matters *proposed, discussed or* decided or tabled; and
- D. 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.*

# RIGHT TO KNOW ADVISORY COMMITTEE

## LEGISLATIVE SUBCOMMITTEE MEETING

### DRAFT AGENDA

November 18, 2010

11:00 a.m.

Room 437, State House

Welcome and introductions

#### **I Pending issues**

- A. Draft legislation: protection of private information contained in e-mail and other forms of communication that are sent and received by public officials, particularly communications between elected public officials and their constituents (examples from other states)
- B. Draft legislation: Making and maintaining records of public meetings (amendment proposed by MMA)
- C. Website disclaimer or warnings about public nature of emails
- D. Draft legislation & issues discussed: the requirement for education and training of public officials
- E. Review of 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, and the Workers' Compensation Board

#### **II Other business**

Full Advisory Committee meeting scheduled for Thursday, November 18, 2010, 1:00 p.m.
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Adjourn

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Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Confidential communications

**Sec. 1. 1 MRSA §402, sub-§5** is enacted to read:

**5. Public officials' communications.** A record involving communications between a person and a public official is a public record except for information contained in the record that:

A. Is excepted from the definition of public record in subsection 3;

B. Is designated as confidential by statute; or

C. Would be confidential if it were in the possession of another public agency or official.

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## Legislator/Elected Official E-mail

### Colorado

24-72-202 (6)(II)

(II) "Public records" includes the correspondence of elected officials, except to the extent that such correspondence is:

- (A) Work product;
- (B) Without a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds;
- (C) A communication from a constituent to an elected official that clearly implies by its nature or content that the constituent expects that it is confidential or a communication from the elected official in response to such a communication from a constituent; or
- (D) Subject to nondisclosure as required in section 24-72-204 (1).

### Montana

2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, 22-3-807, or subsection (3) of this section and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing that a citizen has a right to inspect is bound to give the citizen on demand a certified copy of it, on payment of the legal fees for the copy, and the copy is admissible as evidence in like cases and with like effect as the original writing. The certified copy provision of this subsection does not apply to the public record of electronic mail provided in an electronic format.

(3) Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section. Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in 30-14-402, and matters related to individual or public safety.

(4) A public officer may withhold from public scrutiny information relating to individual privacy or individual or public safety or security of public facilities, including jails, correctional facilities, private correctional facilities, and prisons, if release of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility. Security features that may be protected under this section include but are not limited to architectural floor plans, blueprints, designs, drawings, building materials, alarms system plans, surveillance techniques, and facility staffing plans, including staff numbers and locations. A public officer may not withhold from public scrutiny any more information than is required to protect an individual privacy interest or safety or security interest.

### New Jersey

47:1A-1.1 Definitions

A government record shall not include the following information which is deemed to be confidential for the purposes of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented:

- information received by a member of the Legislature from a constituent or information held by a member of the Legislature concerning a constituent, including but not limited to information in written form or contained in any e-mail or computer data base, or in any telephone record whatsoever, unless it is information the constituent is required by law to transmit;

## Legislator/Elected Official E-mail

- any memorandum, correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Legislature in the course of the member's official duties, except that this provision shall not apply to an otherwise publicly-accessible report which is required by law to be submitted to the Legislature or its members;

### Rhode Island

§38-2-2 Definitions.

(4) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities) or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. For the purposes of this chapter, the following records shall not be deemed public:

(A) All records which are identifiable to an individual applicant for benefits, client, patient, student, or employee, including, but not limited to, personnel, medical treatment, welfare, employment security, pupil records, all records relating to a client/attorney relationship and to a doctor/patient relationship, and all personal or medical information relating to an individual in any files, including information relating to medical or psychological facts, personal finances, welfare, employment security, student performance, or information in personnel files maintained to hire, evaluate, promote, or discipline any employee of a public body; provided, however, with respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state or municipality, work location, business telephone number, the city or town of residence, and date of termination shall be public.

...

(M) Correspondence of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities.

(ii) However, any reasonably segregable portion of a public record excluded by this section shall be available for public inspections after the deletion of the information which is the basis of the exclusion, if disclosure of the segregable portion does not violate the intent of this section.

### Delaware

Title 29, § 10002. Definitions.

(g) "Public record" is information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored,

## Legislator/Elected Official E-mail

recorded or reproduced. For purposes of this chapter, the following records shall not be deemed public:

(16) Emails received or sent by members of the Delaware General Assembly or their staff;

(19) Any communications between a member of the General Assembly and that General Assembly member's constituent, or communications by a member of the General Assembly on behalf of that General Assembly member's constituent, or communications between members of the General Assembly.

### Texas

Sec. 552.109. EXCEPTION: CERTAIN PRIVATE COMMUNICATIONS OF AN ELECTED OFFICE HOLDER. Private correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy are excepted from the requirements of Section 552.021 (*availability of public information*).

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Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Record/Minutes of Public Proceedings

(Initial changes from LD 1791 indicated in *italics*; MMA changes double underscored)

Sec. 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 and any public record or minutes of such proceedings that are required by law must be made within a reasonable period of time after the proceeding and must be open to public inspection.*

**2. Record of public proceedings.** Unless otherwise provided by law, *records of all public proceedings 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 *proceedings proceeding* and *must* be open to public inspection. At a minimum, *a 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. The general substance of all matters *proposed, discussed or* decided; and

D. 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.*





Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Public records and proceedings training

Sec. #. 1 MRSA §412 is amended to read:

**§412. Public records and proceedings training for certain elected officials**

**1. Training required.** ~~Beginning July 1, 2008, an~~ An elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official 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. ~~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.~~

**1-A. Training for certain appointed officials.** Beginning July 1, 2011, an appointed county clerk or municipal clerk shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The appointed clerk shall complete the training not later than the 120th day after the date the appointed clerk takes the oath of office to assume the person's duties. For appointed clerks subject to this section serving in office on July 1, 2011, the training required by this section must be completed by November 1, 2011.

**2. Training course; minimum requirements.** The training course under ~~subsection~~ subsections 1 and 1-A must be designed to be completed by an official 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.

An elected official or appointed clerk 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 appointed clerk 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 or appointed clerk shall keep the record or file it with the public entity to which the official was elected.

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;

D.

E. The following county government officials who are elected: Commissioners, commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

E-1. Appointed county clerks;

F. The following municipal government officials who are elected: Municipal municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

F-1. Appointed municipal clerks;

G. Elected Officials officials of school units and school boards; and

H. Elected Officials 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, an airport authority established pursuant to Title 6, chapter 10, 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.

\*\*\*\*\*

**Other issues previously discussed:**

- Require training for legislators every year (or session?), even those trained in prior sessions
- Require training for all appointed officials who perform the same tasks as elected officials who are required to complete training
- Require training for all supervisors who oversee the work of officials who are required to have training
- Initial training enough or repeated training at some interval?

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.

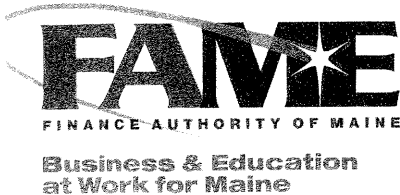
Workers' Compensation Board

**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.

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October 27, 2010

Hon. Barry Hobbins, Chair  
Right to Know Advisory Committee  
c/o Peggy Reinsch  
Office of Policy and Legal Analysis  
13 State House Station  
Augusta, ME 04333

Chris Spruce, Chair  
Legislative Subcommittee  
Right to Know Advisory Committee

Dear Senator Hobbins and Mr. Spruce:

Thank you for your letter dated October 12, 2010 requesting FAME's comments to the proposed draft legislation concerning use of technology to conduct public proceedings. We appreciate the opportunity to respond to the proposed change to our existing statute, which is set forth at 10 M.R.S.A. § 971.

As you noted in your letter, statutory language regarding FAME has been in place regarding this matter for some time now, and use of technology to conduct public proceedings has been used by it rarely, but well. We do have some concerns regarding the proposed changes, however, and wish to offer some suggestions for improvement:

First, as a general matter, the proposed changes appear to allow all agencies that currently are not allowed to use technology in the conduct of public proceedings to now do so (even in cases of non-emergency), but, ironically, would no longer allow FAME this possibility *except in case of emergencies* that meet all of the newly proposed requirements. If one examines the proposed change to FAME's statute, 10 M.R.S.A. § 971 (the shaded box on the sheet you provided), our emergency meetings now must meet all the requirements in proposed 1 M.R.S.A. § 403-A, as well as FAME's current statutory requirements. For obvious reasons, we prefer to maintain our current ability to conduct emergency proceedings electronically in limited circumstances, which constitute an emergency in the realm in which we operate. These include having to make a credit decision on less than three days' notice based on the exigencies of a situation, and may include having to conduct a meeting that was regularly scheduled, but is now impossible for members to attend because of poor weather, so that the businesses awaiting financing may receive a timely decision. Additionally, if other public entities will have the ability to use electronic communications for non-emergency matters, we would like to have that same capacity. More specific concerns follow:

- In proposed 1 M.R.S.A. § 403-A(1)(C), a quorum of the body would now be required to be assembled physically at the meeting location, and a remote participant would not count toward a quorum. Although ideal, this new


- requirement is problematic for FAME in cases of emergency when telephonic participation of members is necessary and quorums are only achievable by counting telephonic participants. We have found this option useful when dealing with business assistance emergencies in the past, and have only used this approximately three times in the past five years. We urge the committee to consider removing this requirement for emergency situations.
- Subsections (1)(H) and (2)(A) create requirements that members not physically present: (1) receive in advance all documents to be discussed at the public meeting; and (2) disallows remote member voting if materials that may influence their decision are presented at the public proceeding but not to the remote member. Although FAME always attempts to furnish all materials in advance to board members, sometimes last-minute business request materials are provided that are not, absent the ability to immediately fax or e-mail it to the absent member, easily able to be transmitted to members in advance. A business seeking board approval may bring an object, large document or display to the meeting that could not practicably be provided instantaneously to a member participating electronically. At a minimum, an exception should be made in cases where substantial information has been presented and it is not practicable to furnish all late-arriving materials.
- Subsection (1)(I) would forbid remote member participation in the case of a public hearing. FAME requests that an exception be made for the common case of *pro forma* public hearings in the rulemaking process. The Administrative Procedures Act requires that one-third of board members be present. FAME prefers to have greater member participation and not inconvenience our members with additional meetings, so we typically conduct our rulemaking hearings on monthly, regular board meeting days (a quorum of seven required here, but remote participation, although rare, counts toward a quorum). To do otherwise would require a minimum of five (of our fifteen) board members (who are busy and live in all parts of the state) to gather physically more frequently for just this purpose. This is impractical and logistically challenging. Besides, written comments for public hearings are already allowed under the law.
- Subsection (3)(A) seemingly limits emergency meetings to cases largely inapplicable to FAME (a Governor-declared emergency or health emergency). What about FAME-related emergencies like potential business closings or payroll issues on a Friday evening? Currently, under 10 M.R.S.A. § 971, FAME is able to conduct emergency meetings provided three days' notice is given. The exceptions here should be broadened to allow for our current statute and other statutory cites, or these requirements should be deleted. We can easily satisfy Subsections (3)(B) and (C), however.

In sum, FAME prefers to keep its current statute on the books, unamended. We are happy and able, however, to comply with the bulk of the proposed changes to Title 1, if necessary, but urge you to consider the needs and practicalities of our members and our

mission. In rare but important cases, FAME members need to meet at a moment's notice to save a business or respond to a financial emergency. Requiring our members who live throughout the state to physically assemble to conduct important business with little notice could result in businesses not receiving financing assistance in a timely manner with potentially devastating results for the business.

Please let me know if you or the Committee have any questions or require further information. We are glad to assist in any way possible.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bill Norbert", with a stylized flourish at the end.

William S. Norbert  
Governmental Affairs and  
Communications Manager



**HylanBarr, Marion**

**From:** Bradshaw, Jay  
**Sent:** Thursday, October 21, 2010 10:27 AM  
**To:** HylanBarr, Marion; Reinsch, Margaret  
**Cc:** Jordan, Anne H  
**Subject:** Right to Know Committee proposed statutory changes

Marion & Peggy,

Thanks for sending the proposed changes to my attention.

I offer for your consideration the following comments:

§403-A

1.C – as part of our ongoing budget curtailments, the Board of EMS only meets every other month. However, there may be times when this extended meeting interval would have a negative effect on our operation. At these times, we may need to conduct a very brief meeting (some have lasted < 30 minutes) and rather than having folks literally travel from all over the state, we set up a conference room with a speaker phone and the majority of members participate using that option. The room is the posted meeting location and is open to the public. MEMS staff, the AG's office, and local Board members attend in person. This proposed change would prevent us from conducting business using this technology and have a negative effect on either our business work flow or the budget (if we went back to more frequent in person meetings). From a budget standpoint, an in person meeting costs us > \$1,000 because of the travel reimbursements (we have 2 members from Aroostook County who come down the night before the meeting). A conference call meeting usually costs us < \$100.

1.D – not sure what is meant by "reasonably practical" or why that would need to be stated. Both the current and prior Administrations have consistently promoted using technology to reduce expenses and expand participation. This seems to be an unclear restriction and a step backwards.

1.G – is it necessary to take a roll call vote if the outcome is unanimous?

1.I – our statute (32 § 88.2.B) requires that we conduct public hearings in each region affected by the change (which in effect means in each of 6 regions) and was amended many years ago to include that we "...may use available technology." We have always met the other staffing requirements at one or more sites, but enabling Board members and the public to attend via videoconference has greatly expanded the ability for input to proposed changes.

The other proposed changes do not seem like they would have an untoward effect on us.

Thanks for the opportunity to comment – and please let me know if you would like additional information.

Regards,  
Jay

Jay Bradshaw, Director  
Maine Emergency Medical Services  
Department of Public Safety  
45 Commerce Dr., Suite 1  
152 State House Station  
Augusta, ME 04333  
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11/9/2010





STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

**By E-Mail and Inter-Office Mail**

To: Legislative Subcommittee of the Right to Know Advisory Committee  
From: Jonathan Wayne, Executive Director  
Cc: Danielle Fox, Analyst, Joint Standing Committee on Legal and Veterans' Affairs  
Date: November 17, 2010  
Re: Comments on Proposal Concerning Telephone Meetings

---

Thank you for the opportunity to comment on the proposal concerning public meetings facilitated with telephone or other electronic participation. During the last 28 days before an election, the Maine Commission on Governmental Ethics and Election Practices is *required to meet within one calendar day* of the filing of any complaint or question with the Commission (21-A M.R.S.A. § 1002(1)). This requirement, itself, poses challenges for the Commission. During this period, the Commission is authorized by § 1002(2) to meet by telephone. In practice, most members prefer to travel to Augusta to meet in person. Once in a while, however, a Commissioner must participate by telephone and is in a location that does not have a high speed internet connection.

Only one element in the subcommittee's proposal would present a practical problem for the Ethics Commission. I view it as a surmountable problem in our case, but I wanted to bring it to your attention because it could affect other agencies or municipal boards. In our case, most matters are considered by the Commissioners and decided within a single meeting. The Commission has an open policy of accepting written materials during the course of a meeting. Sometimes members of the public arrive at the meeting intending to comment and bring written materials with them. Some of them are concise and germane, but some of them are not.

Under proposed 1 M.R.S.A. § 403-A(2)(A), a member who was participating electronically could vote on an issue only if the member has received *all* of the additional materials presented to the members in person. To meet this requirement, an employee of the Commission would have to be on call to ensure that every handout provided by every member of the public could be immediately converted to a pdf and be e-mailed to the Commissioner who is participating by phone. Unfortunately, the part of the state's e-mail system that we use sometimes blocks the transmission of large attachments. The diverse public bodies in Maine subject to the open meetings law may have other technological obstacles to transmitting last-minute written materials to members who are

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

participating remotely. Therefore, I wonder if the authority of the member to vote when last-minute materials are presented to the body should be left to the discretion of the board or to the individual member, rather than a blanket prohibition that applies to all public bodies statewide.

That said, I do not see the need for the Ethics Commission to receive any exception to the general requirements. In my view, we can work around whatever the Legislature enacts.

If the subcommittee's proposal is considered in the 2011 legislative session, I would suggest deleting 21-A M.R.S.A. § 1002(2) within the subcommittee's proposal.

Thank you for taking the time to seek input from the Ethics Commission.



# RIGHT TO KNOW ADVISORY COMMITTEE

## LEGISLATIVE SUBCOMMITTEE MEETING

DRAFT AGENDA

November 24, 2010

12:00 noon

Room 438, State House

Welcome and introductions

### **I Pending issue**

Revised draft legislation: protection of private information contained in e-mail and other forms of communication that are sent and received by public officials, particularly communications between elected public officials and their constituents (confidential exceptions in public records)

### **II Other business?**

G:\Studies - 2010\Right to Know Advisory Committee\Agendas\LegSubcommittee DRAFT AGENDA for November 24, 2010.doc (11/19/2010 1:20:00 PM)



Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Confidential communications

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

(The following are not public records:)

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;

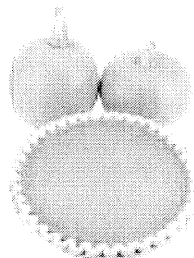
(b) Credit and financial information;

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

(d) Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and 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.





Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Confidential communications

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

(The following are not public records:)

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

(1) Is excepted from the definition of public record in this subsection;

(2) Is designated as confidential by statute; or

(3) 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 and financial information;

(c) The personal history, general character or conduct of the person or any member of the person's immediate family;

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

(e) An individual's Social Security number.



## THE PRIVACY ACT OF 1974

### 5 U.S.C. § 552a

As Amended

#### § 552a. Records maintained on individuals

##### (a) Definitions

For purposes of this section--

(1) the term "agency" means agency as defined in section 552(f) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use or disseminate;

→ (4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 13;

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term "matching program"--

(A) means any computerized comparison of--

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of--

(I) establishing or verifying the eligibility of, or





## 5 §7070. PERSONNEL RECORDS

### 5 §7070. PERSONNEL RECORDS

Every appointment, transfer, promotion, demotion, dismissal, vacancy, change of salary rate, leave of absence, absence from duty and other temporary or permanent change in status of employees in both the classified service and the unclassified service of the Executive and Legislative Departments shall be reported to the director at such time, in such form and together with such supportive or pertinent information as he shall by rule prescribe. [1985, c. 785, Pt. B, §38 (NEW).]

The director shall maintain a perpetual roster of all officers and employees in the classified and unclassified services, showing for each person such data that the director considers pertinent. [2007, c. 466, Pt. A, §21 (AMD).]

Records of the Bureau of Human Resources shall be public records and open to inspection of the public during regular office hours at reasonable times and in accordance with the procedure as the director may provide. [1985, c. 785, Pt. B, §38 (NEW).]

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

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

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

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

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

[ 2007, c. 597, §5 (AMD) .]

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

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

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

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

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

D-1. Personal information pertaining to the employee's race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability and marital status; social security number; personal contact information as provided in Title 1, section 402, subsection 3, paragraph O; and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance. When there is a work requirement for public access to personal information under this paragraph that is not otherwise protected by law, that information may be made public. The Director of the Bureau of Human Resources, upon the request of the employing agency, shall make the determination that the release of certain personal information not otherwise protected by law is allowed; and [2007, c. 597, §6 (AMD) .]

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

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

- (1) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or
- (2) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; [1997, c. 770, §1 (AMD) .]

This subsection does not preclude union representatives from having access to personnel records, consistent with subsection 4, that may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this subsection remain confidential and are not open for public inspection;

[ 2007, c. 597, §6 (AMD) .]

**3. Other information.** Other information to which access by the general public is prohibited by law.

[ 1985, c. 785, Pt. B, §38 (NEW) .]

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

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

- A. The information to be released shall be information only as necessary and directly related to the proceeding as determined by the Director of Human Resources. [1987, c. 673, §1 (NEW) .]
- B. [2007, c. 240, Pt. HH, §12 (RP) .]

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

The State may use this confidential information in proceedings and provide copies to the employee organization that is a party to the proceedings, provided the information is directly related to those proceedings as defined by the applicable collective bargaining agreement. Confidential personnel records in the possession of the Bureau of Human Resources may not be open to public inspection and may not be "public records," as defined in Title 1, section 402, subsection 3.

[ 2007, c. 240, Pt. HH, §12 (AMD) .]

#### SECTION HISTORY

1985, c. 785, §B38 (NEW). 1987, c. 673, §1 (AMD). 1989, c. 402, §1 (AMD). 1991, c. 229, §1 (AMD). 1991, c. 729, §1 (AMD). 1997, c. 124, §2 (AMD). 1997, c. 770, §1 (AMD). 2007, c. 240, Pt. HH, §12 (AMD). 2007, c. 466, Pt. A, §21 (AMD). 2007, c. 597, §§5, 6 (AMD).

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## 20-A §6101. RECORD OF DIRECTORY INFORMATION

### 20-A §6101. RECORD OF DIRECTORY INFORMATION

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

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

- A. Name; [1981, c. 693, §§5, 8 (NEW) .]
- B. Dates of employment; [1981, c. 693, §§5, 8 (NEW) .]
- C. Regular and extracurricular duties, including all courses taught in that school administrative unit; [1981, c. 693, §§5, 8 (NEW) .]
- D. Post-secondary educational institutions attended; [1981, c. 693, §§5, 8 (NEW) .]
- E. Major and minor fields of study recognized by the post-secondary institutions attended; and [1997, c. 452, §1 (AMD) .]
- F. Degrees received and dates awarded. [1997, c. 452, §1 (AMD) .]
- G. [1997, c. 452, §2 (RP) .]

[ 1997, c. 452, §§1, 2 (AMD) .]

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

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

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

- (1) All information, working papers and examinations used in the examination or evaluation of all applicants for employment;
- (2) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
- (3) Performance evaluations, personal references and other reports and evaluations reflecting on the quality or adequacy of the employee's work or general character compiled and maintained for employment purposes;
- (4) Credit information;
- (5) Except as provided by subsection 1, the personal history, general character or conduct of the employee or any member of the employee's immediate family;
- (6) Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action;
- (7) Social security number;
- (8) The teacher action plan and support system documents and reports maintained for certification purposes; and
- (9) Criminal history record information obtained pursuant to section 6103. [1995, c. 547, §4 (AMD) .]

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

[ 1995, c. 547, §4 (AMD) .]

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

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

[ 1987, c. 620, §2 (AMD) .]

#### SECTION HISTORY

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

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## 30-A §503. PERSONNEL RECORDS

### 30-A §503. PERSONNEL RECORDS

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

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

(1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

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

(3) This paragraph does not preclude union representatives from access to personnel records which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection; [1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD); 1989, c. 402, §2 (RPR).]

B. County records containing the following:

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

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

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

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

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

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

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

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

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and [1997, c. 770, §2 (AMD).]

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

[ 1997, c. 770, §2 (AMD) .]

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

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

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

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

[ 1991, c. 729, §6 (NEW) .]

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

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

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

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

#### SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW) . 1989, c. 6, (AMD) . 1989, c. 9, §2 (AMD) . 1989, c. 104, §§C8,10 (AMD) . 1989, c. 402, §2 (AMD) . 1991, c. 229, §2 (AMD) . 1991, c. 729, §6 (AMD) . 1997, c. 770, §2 (AMD) .

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## 30-A §2702. PERSONNEL RECORDS

### 30-A §2702. PERSONNEL RECORDS

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

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

(1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

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

(3) This paragraph does not preclude union representatives from access to personnel records which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection; [1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD); 1989, c. 402, §3 (RPR).]

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

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

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

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

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

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

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

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

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

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and [1997, c. 770, §3 (AMD).]

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

[ 1997, c. 770, §3 (AMD) .]

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

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

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

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

[ 1991, c. 729, §7 (NEW) .]

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

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

#### SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD). 1989, c. 402, §3 (AMD). 1991, c. 229, §3 (AMD). 1991, c. 729, §7 (AMD). 1997, c. 770, §3 (AMD).

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