RIGHT TO KNOW ADVISORY COMMITTEE
LEGISLATIVE SUBCOMMITTEE

DRAFT AGENDA
September 1, 2011
1:00 p.m.
Room 438, State House, Augusta

Convene

1. Welcome and Introductions

2. Criminal History Record Information Act revision: progress report
   Draft: Criminal Law Advisory Commission (Charlie Leadbetter, Special Assistant Attorney General)
   Discussion, identify issues needing further discussion

3. LD 1465, An Act To Amend the Laws Governing Freedom of Access
   Explanation: Chris Cinquemani and Sam Adolphsen, Maine Heritage Policy Center
   Discussion

4. Requests for public records: necessity of formalities
   In writing
   Citation to FOA laws, Title 1, chapter 13
   Guidance?

5. Other?

6. Scheduling future subcommittee meetings

Scheduled meetings:
Monday, September 12, 2011, 9:00 a.m., Bulk Records Subcommittee
Thursday, September 29, 2011, 9:00 a.m., Public Records Exceptions Subcommittee
Thursday, September 29, 2011, 1:00 p.m., Right to Know Advisory Committee

Adjourn

CURRENT CRIMINAL HISTORY RECORD INFORMATION ACT

16 M.R.S.A. ch. 3, sub-ch 8 [§§ 611-623]

Addresses both Criminal History Record Information and Intelligence and Investigative Information – 2 mutually exclusive forms of information in the Act

Criminal History Record Information:
definition (§ 611(3))

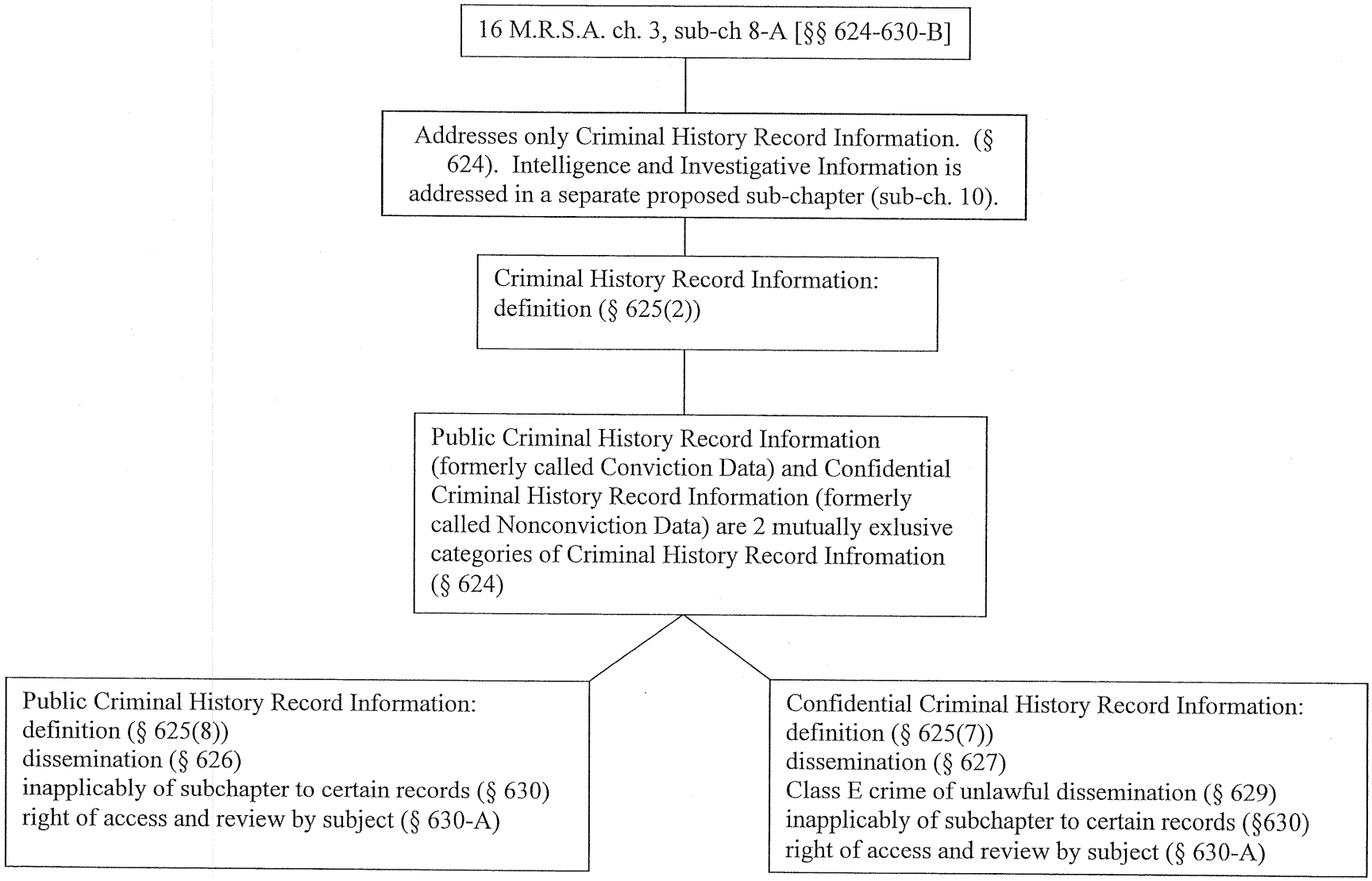
Intelligence and Investigative Information:
definition (§ 611(8))
Limitation on Dissemination (§ 614)
Class E crime for Unlawful dissemination (§ 614(4)

Conviction Data and Nonconviction Data are 2 mutually exclusive categories of Criminal History Record Information

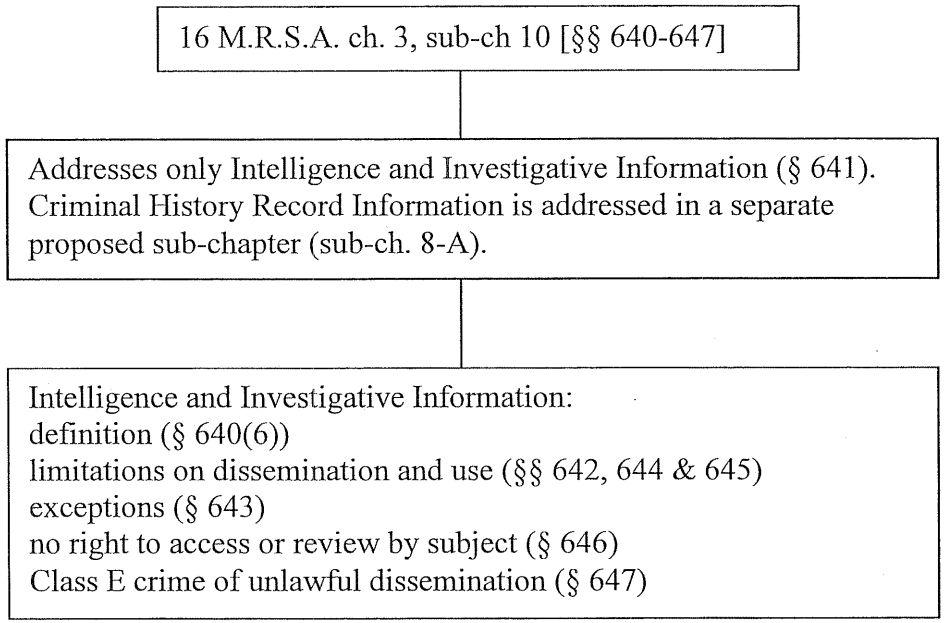
Conviction Data:
definition (§ 611(2))
limitation on dissemination (§§ 615 & 616)
exceptions (§ 612 (2))
Class E crime for unlawful dissemination (§ 619)
Right of access and review by subject (§ 620)

Nonconviction Data:
definition (§ 611(9))
limitation on dissemination (§§ 613, 617 & 618)
exceptions (§ 612 (2) and (3))
Class E crime for unlawful dissemination (§ 619)
Right of access and review by subject (§ 620)

PROPOSED CRIMINAL HISTORY RECORD INFORMATION ACT



PROPOSED INTELLIGENCE AND INVESTIGATIVE INFORMATION ACT



DRAFT
LAST REVISED 08-29-2011

An Act to Amend the Laws Relating to Criminal History Record Information

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

§ 1. 16 MRSA c. 3, sub-c 8 is repealed

§ 2. 16 MRSA c. 3, sub-c 8-A is enacted to read:

SUBCHAPTER 8-A

CRIMINAL HISTORY RECORD INFORMATION ACT

§624. Scope. This subchapter addresses the dissemination of criminal history record information by any Maine criminal justice agency. It creates two separate and mutually exclusive categories of criminal history record information – namely, "public criminal history record information" and "confidential criminal history record information." Unlike the dissemination of public criminal history record information, significant limitations are imposed on the dissemination of confidential criminal history record information by any Maine criminal justice agency.

§625. Definitions.

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

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

2. Criminal history record information. "Criminal history record information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency that connects a specific, identifiable person, including a juvenile treated by statute as an adult for criminal prosecution purposes, with formal involvement in the criminal justice system either as an accused or as a convicted criminal offender. "Formal involvement in the criminal justice system either as an accused or as a convicted criminal offender" means while within the jurisdiction of the criminal justice system commencing with arrest, summons or initiation of formal criminal charges and concluding with the completion of every sentencing alternative imposed as punishment or final discharge from an involuntary commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent. "Criminal history record information" includes, but is not limited to, identifiable descriptions or notations of: summonses and arrests; detention; bail; formal criminal charges such as complaints, informations and indictments; any disposition stemming from such charges; post-plea or post-adjudication sentencing; involuntary

commitment; execution of and completion of any sentencing alternatives imposed; release and discharge from involuntary commitment; any related pretrial and post-trial appeals, collateral attacks and petitions; and petitions for and warrants of pardons, commutations, reprieves and amnesties. The term does not include: identification information such as fingerprints, palmprints, footprints or photographic records to the extent that the information does not indicate formal involvement of the specific individual in the criminal justice system; information of record of civil proceedings, including traffic infractions and other civil violations; intelligence and investigative information as defined in section 640; or information of record of juvenile crime proceedings or their equivalent. Specific information regarding a juvenile crime proceeding is not criminal history record information notwithstanding that a juvenile has been bound over and treated as an adult or that by statute specific information regarding a juvenile crime proceeding is usable in a subsequent adult criminal proceeding.

3. Criminal justice agency. "Criminal justice agency" means a government agency or any subunit thereof that performs the administration of criminal justice pursuant to a statute or executive order. [Maine courts, courts in any other jurisdiction,] the Maine Department of the Attorney General, district attorney offices and the equivalent departments or offices in any federal or state jurisdiction are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government and any federally recognized Indian tribe.

4. Disposition. "Disposition" means information of record disclosing that a criminal proceeding has been concluded, although not necessarily finalized, and the specific nature of the concluding event. It includes, but is not limited to: an acquittal; a dismissal, with or without prejudice; filing of a charge by agreement of the parties or by a court; a defendant who is currently a fugitive from justice; a conviction, including the acceptance by a court of a plea of guilty or nolo contendere; a deferred disposition; a proceeding indefinitely continued or dismissed due to a defendant's incompetence; a finding of not criminally responsible by reason of insanity or its equivalent; a mistrial, with or without prejudice; a new trial ordered; an arrest of judgment; a sentence imposition; a resentencing ordered; an execution of and completion of any sentence alternatives imposed, including but not limited to fines, restitution, correctional custody and supervision, administrative release; a release or discharge from a commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent; death of defendant; any related pretrial and post-trial appeals, collateral attacks and petitions; a pardon, commutation, reprieve or amnesty; or extradition. "Disposition" also includes information of record disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor, that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings, or a grand jury has returned a no bill.

5. Dissemination. "Dissemination" means the transmission of information by any means, including but not limited to,

orally, in writing or electronically, by or to anyone outside the agency that maintains the information.

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

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

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

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

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

D. Information disclosing that a grand jury has returned a no bill;

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

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

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

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

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

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

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

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

8. Public criminal history record information. "Public criminal history record information" means criminal history record information other than confidential criminal history record information.

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

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

§626. Dissemination of public criminal history record information.

1. General rule. Public criminal history record information is public for purposes of Title 1, chapter 13. It may be disseminated by a Maine criminal justice agency to any person or public or private entity for any purpose. It makes no difference whether the public criminal history record information relates to a crime for which a person is currently

within the jurisdiction of the criminal justice system or, instead, is no longer within that jurisdiction. There is no time limitation on dissemination of public criminal history record information.

2. Required inquiry to State Bureau of Identification. A Maine criminal justice agency[, other than a court,] shall query the State Bureau of Identification prior to dissemination of any public criminal history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. As used here, "noncriminal justice purpose" means use of public criminal history record information other than for the administration of criminal justice or criminal justice agency employment.

§627. Dissemination of confidential criminal history record information

1. General rule. Confidential criminal history record information may be disseminated by a Maine criminal justice agency, whether directly or through any intermediary, only to authorized persons or entities.

2. Authorized persons and entities. The following are authorized persons or entities:

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

B. Any person for any purpose when expressly authorized by statute, executive order, court rule, court decision or court order. Express authorization means language in the statute, executive order, or court rule, decision or order that specifically speaks of confidential criminal history record information or specifically refers to one or more of the types of confidential criminal history record information;

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

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

E. Any person upon specific inquiry made to the agency as to whether a named individual was summonsed or arrested, detained or had formal criminal charges initiated on a specific date. The disclosing criminal justice agency shall disclose

therewith any and all confidential criminal history record information in its possession that indicates the disposition of the summons or arrest, detention or formal charges;

F. The public for the purpose of announcing the fact of a specific disposition that is confidential criminal history record information, other than that contained in paragraph A, subsection 7 of section 625, within 30 days of the date of occurrence of that disposition, or at any point in time if the person to whom the disposition relates specifically authorizes that it be made public; and

H. Public entity for purposes of international travel, such as issuing visas and granting of citizenship.

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

4. Required inquiry to State Bureau of Identification. A criminal justice agency[, other than a court,] shall query the State Bureau of Identification prior to dissemination of any confidential criminal history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. As used here, "noncriminal justice purpose" means use of confidential criminal history record information other than for the

administration of criminal justice or criminal justice agency employment.

§ ____. Prohibition against further dissemination of confidential criminal history record information by a person or entity. Confidential criminal history record information dissemination by a Maine criminal justice agency to a person or public or private entity addressed in subsection 1, paragraphs A, B, C, D, or H of section 627 must be used by that person or entity solely for the purpose for which it was disseminated and may not be disseminated further.

Note: CLAC voted not to include this proposed section. It would logically go here if the decision was made to add it. The section would prohibit conduct by a person or entity other than a Maine criminal justice agency.

§ 628. Public information about persons detained following arrest.

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

A. Identity of the arrested person, including name, date of birth, and residence, [and occupation,] if any;

B. Statutory or customary description of the crime or crimes for which the person was arrested including the date and geographic location where the crime is alleged to have occurred;

C. Date, time and place of the arrest; and

D. Circumstances of the arrest including, when applicable, physical force used in making the arrest, resistance, including weapons, or refusal to submit by arrested person, and pursuit.

2. Time and method of recording. The information required to be recorded by this section must be made immediately upon delivery of the person concerned to the agency for detention. It must be recorded and maintained in chronological order and must be kept in a suitable, permanent record of the agency making it. The information required by this section may be combined by a sheriff with the record required by Title 30-A, section 1505.

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

§629. Unlawful dissemination of confidential criminal history record information.

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

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

§630. Inapplicability of this subchapter to criminal history record information contained in certain records. This subchapter does not apply to public and confidential criminal history record information contained in:

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

B. Records of entry, such as calls for service (formerly police blotters), that are maintained by criminal justice agencies, that are compiled and organized chronologically and required by law or longstanding custom to be made public;

C. [Records, retained at and by the District Court and the Superior Court of Maine, of public judicial proceedings, including, but not limited to, docket entries and original court files, and] court records of public judicial proceedings [from federal and state courts];

D. Published court or administrative opinions not impounded or otherwise declared confidential;

E. Records of public administrative or legislative proceedings;

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

G. Petitions for and warrants of pardons, commutations, reprieves and amnesties.

§ 630-A Right to access and review.

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

history record information pertaining to the person on request and payment of a reasonable fee.

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

On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.

Not later than 15 [30?] days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the agency shall notify the requesting person in writing either that the agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal shall include the reasons for the refusal, the procedure established by the agency for requesting a review by the head of the agency of that refusal and the name and business address of that official.

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

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

4. Judicial review. If an administrative appeal brought pursuant to subsection 3 is denied by the head of the agency, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the head of the agency, appeal to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

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

6. Right of release. The provisions of this subchapter do not limit the right of a person to disseminate to any other person criminal history record information pertaining to that person.

§630-B. Application to prior Maine Criminal History Record Information

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

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

§ 3 16 MRSA c. 3, sub-c 10 is enacted to read

SUBCHAPTER 10

INTELLIGENCE AND INVESTIGATIVE INFORMATION ACT

§640. Definitions

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

2. Administration of civil justice. "Administration of civil justice" means activities relating to the anticipation, prevention, detection, monitoring, or investigation of known or suspected civil violations, traffic infractions, juvenile crimes and prospective and pending civil actions. It includes the collection, storage and dissemination of intelligence and investigative information relating to the administration of civil justice.

3. Criminal justice agency. "Criminal justice agency" means a government agency or any subunit thereof that performs the administration of criminal justice or the administration of civil justice pursuant to a statute or executive order. [Maine courts and courts in any other jurisdiction are considered criminal justice agencies.] "Criminal justice agency"

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

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

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

6. Intelligence and investigative information. "Intelligence and investigative information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency while performing the administration of criminal justice or the administration of civil justice. The term also includes information of record concerning security plans and procedures and investigative techniques and procedures prepared or collected by a criminal justice agency or another agency. "Intelligence and investigative information" does not include criminal history record information as defined in section 625. Nor does it include information of record collected to anticipate, prevent or monitor possible juvenile crime activity or information compiled in the course of investigation of known or suspected juvenile crimes to the extent addressed in the Maine Juvenile Code.

7. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the

Commonwealth of the Northern Mariana Islands, the United States Virgin Island, Guam and America Samoa. It also includes the federal government of Canada and any provincial government of Canada and any federally recognized Indian tribe.

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

§ 641. Application

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

§642. Limitation on dissemination of intelligence and investigative information

Except as provided in section 643, a record that contains intelligence and investigative information is confidential and may not be disseminated to any person or public or private entity if there is a reasonable possibility that public release or inspection of the report or record would:

1. Interfere. Interfere with law enforcement proceedings relating to crimes, civil violations, traffic infractions, juvenile crimes or civil actions**;**

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

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

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

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

6. Disclose trade secrets. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;

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

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

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

10. Statutorily confidential information. Disclose information designated confidential by some other statute; or

11. Identify sources of consumer or antitrust complaints. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.

§ 643. Exceptions

Nothing in this subchapter precludes dissemination of intelligence and investigative information by a Maine criminal justice agency to:

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

2. A government agency or subunit statutorily responsible for investigating child or adult abuse, neglect or exploitation. A government agency or subunit thereof that pursuant to statute is responsible for investigating abuse, neglect or exploitation of children [under Title 22, chapter 1071] or incapacitated or dependent adults [under Title 22, chapter 958-A] for use in the investigation of suspected abuse, neglect or exploitation, subject

to reasonable limitations to protect the interests described in section 642.

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

A. The responsible prosecutorial office or prosecutor; or

B. A court rule or court order.

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

4. A crime victim or that victim's agent or attorney. A crime victim or that victim's agent or attorney, subject to reasonable limitations to protect the interests described in section 642. As used in this subsection "agent" means a licensed private investigator, or immediate family if due to death, age, physical or mental disease, disorder or defect, the victim cannot realistically act in their own behalf.

5. A counselor or advocate. A sexual assault counselor, as defined in section 53-A, subsection 1, paragraph B, or an advocate, as defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice agency and subject to reasonable limitations to protect the interests described in section 642. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:

A. Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;

B. Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;

C. Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;

D. Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;

E. Permit the criminal justice agency to perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this paragraph;

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

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

H. Provide sanctions for any violations of this subsection.

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

ALTERNATIVE A

6. A government agency or subunit statutorily responsible for licensing entities or individuals that provide healthcare or social services. A government agency or subunit thereof that pursuant to statute is responsible for licensing entities or individuals that provide healthcare or social services for use in the investigation of potential violations of laws enforced by the government agency or subunit subject to reasonable limitations to protect the interests described in section 642.

ALTERNATIVE B

6. A government agency or subunit statutorily responsible for licensing individuals who engage in a particular occupation or social services. A government agency or subunit thereof that pursuant to statute is responsible for licensing individuals who engage in a particular occupation or social services for use in the investigation of potential violations of laws enforced by the government agency or subunit subject to

reasonable limitations to protect the interests described in section 642.

§ ___. Prohibition against release of identifying information of those providing information as to cruelty to animals. The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.

Note: CLAC voted not to include this proposed section. It would logically go here if the decision was made to add it. CLAC believes this provision, making confidential identifying information under these circumstances, more properly belongs as part of a Department statute expressly addressing persons being encouraged to provide information to the Department pertaining to criminal or civil cruelty to animals.

§ 644. Restriction on use of disseminated intelligence and investigative information

Intelligence and investigative information that is disseminated to a person or public or private entity that is not a criminal justice agency under section 640 may be used solely for the purpose for which it was disseminated and may not be disseminated further.

§ 645. Confirming existence or nonexistence of intelligence and investigative information

Except as provided in section 642 and 643, a criminal justice agency to whom this subchapter applies may not confirm the existence or nonexistence of intelligence and investigative information to any person or public or private entity that is not eligible to receive the information itself.

§ 646. No right to access or review

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

§ 647. Unlawful dissemination of intelligence and investigative information

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

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

125th Legislature
Senate of Maine
Senate District 31

Senator Richard W. Rosen
3 State House Station
Augusta, ME 04333-0003
(207) 287-1505

P.O. Box 877
Bucksport, ME 04416
Residence (207) 469-3779
Office (207) 469-3306

August 31, 2011

Honorable David R. Hastings III, Chairman
Right to Know Advisory Committee
Maine Statehouse
Augusta, ME 04330

Dear Senator Hastings and members of the Right to Know Advisory Committee:

As the Right to Know Advisory Committee undertakes its important work considering issues related to open government, it will be reviewing legislation that I had the privilege of sponsoring during this 125th Legislature.

The bill, LD 1465 – "An Act To Amend the Laws Governing Freedom of Access", would accomplish a series of reforms to strengthen Maine's Freedom of Access Laws and expand government transparency and accountability. I sponsored this bill because I believe it is vitally important that each and every citizen and taxpayer has timely and complete access to the details of government at all levels. LD 1465 helps ensure government cannot operate behind a cloak of secrecy.

The improvements to our Right to Know laws this bill delivers come at a critical moment. Government at all levels has increased in size and complexity. In light of this growth, we must ensure government is as open as possible and always accountable to the people. Operating in the sunshine of transparency will go a long way toward creating goodwill and trust with the people we serve.

This belief in open government does not fall along partisan or ideological lines. Organizations ranging from the Maine Heritage Policy Center to the Maine Civil Liberties Union to the Maine Press Association were involved in the drafting of this legislation. And the 30 Democrat and Republican legislative cosponsors of this bill include the Senate Democrat Leader, the Assistant Senate Democrat leader, the Assistant Senate Republican Leader and the Assistant House Democrat Leader. The level of support this bill has received from a diverse group of individuals and organizations is inspiring, and I hope the Right to Know Committee appreciates the intent of supporters to ensure Maine government is open and accountable.

Recently, we saw a disturbing example of what can happen when publicly-funded organizations lack oversight and accountability. The Maine Turnpike Authority's misuse of public dollars is an important reminder that government offices require a watchful eye. We must do whatever possible to make sure that transparency and accountability is expanded so we can identify and eliminate misuse of taxpayers' dollars. Strengthening our Freedom of Access laws is a vital step toward ensuring events like those that took place at the Maine Turnpike Authority will become a thing of the past.

As you deliberate over this critical issue, I would remind you that government exists by the authority of citizens and taxpayers. At times, public access and government transparency may be inconvenient, frustrating, time consuming and even embarrassing. But guaranteeing and expanding openness must be our responsibility as government officials and stewards of taxpayer dollars.

Thank you for the important work you do on behalf of Maine people, and for your sincere consideration of LD 1465.

Sincerely,

Richard Rosen
State Senator

TITLE 16
COURT PROCEDURE -- EVIDENCE

CHAPTER 3
RECORDS AND OTHER DOCUMENTS

SUBCHAPTER 8
CRIMINAL HISTORY RECORD INFORMATION ACT

§611. Definitions

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

1. Administration of criminal justice. "Administration of criminal justice" means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. Conviction data. "Conviction data" means criminal history record information other than nonconviction data.

3. Criminal history record information. "Criminal history record information" means notations or other written evidence of an arrest, detention, complaint, indictment, information or other formal criminal charge relating to an identifiable person. It shall include the identification or description of the person charged and any disposition of the charge. The term does not include identification information such as fingerprints, palm prints or photographic records to the extent that the information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations.

4. Criminal justice agency. "Criminal justice agency" means a federal, state, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.

5. Disposition. "Disposition" means the conclusion of criminal proceedings, and includes acquittal, acquittal by reason of mental disease or defect, filing of case, dismissal of charge, dismissal of charge due to mental incompentency, continuance due to mental incompetence, guilty plea, nolo contendere plea, nolle prosequi, conviction, sentence, death of defendant, mistrial, new trial granted, release from correctional supervision, parole, pardon, amnesty or extradition. If the disposition is that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, it shall include the nature of the termination or conclusion of the proceedings. If

the disposition is that the proceedings have been indefinitely postponed, it shall include the reason for that postponement.

6. Dissemination. "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency which maintains the information.

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

8. Intelligence and investigative information. "Intelligence and investigative information" means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. "Intelligence and investigative information" does not include information that is criminal history record information.

9. Nonconviction data. "Nonconviction data" means criminal history record information of the following types:

A. Arrest information without disposition, if an interval of one year has elapsed from the date of the arrest and no active prosecution of the charge is pending. To be an active prosecution the case must be still actively in process, with arraignment completed and the case docketed for court trial;

B. Information disclosing that the police have elected not to refer a matter to a prosecutor;

C. Information disclosing that a prosecutor has elected not to commence criminal proceedings;

D. Information disclosing that criminal proceedings have been indefinitely postponed, e.g. a "filed" case, or a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial;

E. A dismissal;

F. An acquittal, excepting an acquittal by reason of mental disease or defect; and

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

10. Person. "Person" means an individual, government agency or a corporation, partnership or unincorporated association.

11. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.

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

§612. Application

1. Criminal justice agencies. This subchapter shall apply only to criminal justice agencies.

2. Exceptions. This subchapter shall not apply to criminal history record information contained in:

A. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

B. Original records of entry, such as police blotters, that are maintained by criminal justice agencies and that are compiled and organized chronologically;

C. Records, retained at and by the District Court and Superior Court, of public judicial proceedings, including, but not limited to, docket entries and original court files;

D. Court or administrative opinions not impounded or otherwise declared confidential;

E. Records of public administrative or legislative proceedings;

F. Records of traffic offenses retained at and by the Secretary of State; and

G. Peitions for and warrants of pardons, commutations, reprieves and amnesties.

3. Permissible disclosure. Nothing in this subchapter shall be construed to prohibit a criminal justice agency from:

A. Disclosing to the public criminal history record information related to an offense for which a person is currently within the criminal justice system;

B. Confirming prior criminal history record information to the public, in response to a specific inquiry that includes a specific name, date and charge or disposition, provided that the information disclosed is based upon data excluded by subsection 2. The disclosing criminal justice agency shall disclose therewith any and all criminal history record information in its possession which indicates the disposition of the arrest, detention or formal charges; and

C. Disseminating criminal history record information for purposes of international travel such as issuing visas and granting of citizenship.

§612-A. Record of persons detained

1. Requirement of record. Every criminal justice agency that maintains a facility for pretrial detention shall record the following information concerning each person delivered to it for pretrial detention for any period of time:

A. Identity of the arrested person, including name, age, residence and occupation, if any;

B. Offenses charged, including the time, place and nature of the offense;

C. Time and place of arrest; and

D. Circumstances of arrest, including force, resistance, pursuit and weapon, if any.

2. Time and method of recording. The record required by this section must be made immediately upon delivery of the person concerned to the agency for detention. It must be made upon serially numbered cards or sheets or on the pages of a permanently bound volume, made and maintained in chronological order, and must be part of the permanent records of the agency making it. The record required by this section may be combined with the record required by Title 30-A, section 1505.

3. Records public. The record required by this section shall be a public record, except for records of the detention of juveniles, as defined in Title 15, section 3003, subsection 14.

§613. Limitations on dissemination of nonconviction data

Except as provided in section 612, subsections 2 and 3, dissemination of nonconviction data by a criminal justice agency, whether directly or through any intermediary, shall be limited to:

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

2. Under express authorization. Any person for any purpose when expressly authorized by statute, executive order, court rule, court decision or court order. Express authorization shall mean language in the statute, executive order, or court rule, decision or order which specifically speaks of nonconviction data or specifically refers to one or more of the types of nonconviction data;

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

4. Research activities. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the confidentiality and security of the data consistent with this subchapter and provide sanctions for any violations.

§614. Limitation on dissemination of intelligence and investigative information

1. Limitation on dissemination of intelligence and investigative information. Reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of a local, county or district criminal justice agency; the Bureau of State Police; the Department of the Attorney General; the Maine Drug Enforcement Agency; the Office of State Fire Marshal; the Department of Corrections; the criminal law enforcement units of the Department of Marine Resources, the Department of Inland Fisheries and Wildlife or the Department of the Secretary of State, Bureau of Motor Vehicles, office of investigations *(added by PL 2011, c. 356, effective September 28, 2011)*; or the Department of Conservation, Division of Forest Protection when the reports or records pertain to arson; or the Department of Agriculture, Food and Rural Resources when the reports or records pertain to animal cruelty *(added by PL 2011, c. 210, effective September 28, 2011)* are confidential and may not be disseminated if there is a reasonable possibility that public release or inspection of the reports or records would:

A. Interfere with law enforcement proceedings;

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

C. Constitute an unwarranted invasion of personal privacy;

D. Disclose the identity of a confidential source;

E. Disclose confidential information furnished only by the confidential source;

F. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;

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

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

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

J. Disclose information designated confidential by some other statute; or

K. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.

1-A. Limitation on release of identifying information; cruelty to animals. The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.

2. Exception to this limitation.

3. Exceptions. Nothing in this section precludes dissemination of intelligence and investigative information to:

A. Another criminal justice agency;

B. A state agency responsible for investigating abuse, neglect or exploitation of children under Title 22, chapter 1071 or incapacitated or dependent adults under Title 22, chapter 958-A for use in the investigation of suspected abuse, neglect or exploitation;

B-1. The division of licensing and regulatory services within the Department of Health and Human Services for use in the investigation of suspected abuse, neglect or exploitation in licensed, certified and registered facilities and programs that provide care to children and adults; *(added by PL 2011, c. 52, effective July 1, 2011)*

C. An accused person or that person's agent or attorney if authorized by:

(1) The district attorney for the district in which that accused person is to be tried;

(2) A rule or ruling of a court of this State or of the United States; or

(3) The Attorney General;

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

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

(1) Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;

(2) Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;

(3) Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;

(4) Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;

(5) Permit the criminal justice agency to perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this paragraph;

(6) Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;

(7) Permit the criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this paragraph; and

(8) Provide sanctions for any violations of this paragraph.

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

4. Unlawful dissemination of reports or records that contain intelligence and investigative information. A person that intentionally disseminates a report or record that contains intelligence and investigative information in violation of this section commits a Class E crime.

§615. Dissemination of conviction data

Conviction data may be disseminated to any person for any purpose.

§616. Inquiries required

A criminal justice agency shall query the State Bureau of Identification prior to dissemination of any criminal history record information for noncriminal justice purposes to assure that the most up-to-date disposition data is being used.

§617. Dissemination to noncriminal justice agencies

Criminal history record information disseminated to a noncriminal justice agency under section 613 shall be used solely for the purpose of which it was disseminated and shall not be disseminated further.

§618. Confirming existence or nonexistence of criminal history record information

Except as provided in section 612, subsection 3, paragraph B, no criminal justice agency shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.

§619. Unlawful dissemination

1. Offense. A person is guilty of unlawful dissemination if he knowingly disseminates criminal history information in violation of any of the provisions of this subchapter.

2. Classification. Unlawful dissemination is a Class E crime.

§620. Right to access and review

1. Inspection. Any person or his attorney may inspect the criminal history record information concerning him maintained by a criminal justice agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to him on request and payment of a reasonable fee.

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

On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.

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

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

Dissemination of the disputed criminal history record information by that agency with which the requesting person has filed a statement of disagreement, occurring after the filing of such statement, shall clearly reflect notice of the dispute. A copy of the statement shall be included, along with, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.

4. Judicial review. If an administrative appeal brought pursuant to subsection 3 is denied by the head of the agency, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the head of the agency, seek relief in the Superior Court.

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

6. Right of release. The provisions of this subchapter shall not limit the right of a person to disseminate to any other person criminal history record information pertaining to himself.

§621. Information and records of the Attorney General (REPEALED)

§622. Application

The provisions of this subchapter shall apply to criminal history record information in existence before July 29, 1976, including that which has been previously expunged under any other provision of Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter.

§623. Attorney General fees

The Attorney General shall analyze the impact of this conformity provision upon the Department of the Attorney General. The Department of the Attorney General shall submit a report to the joint standing committee of the Legislature having jurisdiction over judiciary matters to the First Regular Session of the 117th Legislature on this analysis and recommend a funding mechanism. The funding mechanism must include a fee for services to cover the costs associated with providing access and copying of records available to the public under this chapter.

G:\STUDIES 2011\Right to Know Advisory Committee\CHRIA\CHRIA current law 8-30-11.doc (8/31/2011 4:13:00 PM)

125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document **No. 1465**

S.P. 456 In Senate, April 12, 2011

An Act To Amend the Laws Governing Freedom of Access

Reference to the Committee on Judiciary suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

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

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

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

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

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

§406. Public notice

Public notice ~~shall~~ must 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~~ must be given ~~in ample time to allow public attendance~~ not less than 3 days prior to the public proceeding and ~~shall~~ must 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~~ must 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.

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

§408. Public records available for public inspection and copying

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. The estimated total cost exceeds $100; or

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

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

A. The requester is indigent; or

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

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

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

§408-A. Timelines

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

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

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

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

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

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

§408-B. Inspection by requester

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

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

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

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

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

§410. Violations; injunction

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

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

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

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

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

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

A. The general legal requirements of this chapter regarding public records and public proceedings;

B. Procedures and requirements regarding complying with a request for a public record under this chapter; and

C. Penalties and other consequences for failure to comply with this chapter.

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

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

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

A. The Governor;

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

C. Members of the Legislature elected after November 1, 2008;

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

G. Officials of school units and school boards; and

H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

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

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

§413. Public access officer; responsibilities

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

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

3. Purpose; schedule. A public access officer or other person acting on behalf of an agency or official may not inquire into the purpose of a request. A public access officer may inquire as to the schedule or order of inspection or copying of a public record or a portion of a public record under section 408.

4. Uniform treatment. A public access officer shall treat all requests for information under this chapter uniformly without regard to the requester's position or occupation, the person on whose behalf the request is made or the status of the requester as a member of the media.

5. Comfort and facility. The public access officer shall ensure that a person may inspect a public record in the offices of the agency or official in a manner that provides reasonable comfort and facility for the full exercise of the rights of the public under this chapter.

6. Unavailability of public access officer. The unavailability of a public access officer may not delay a response to a request.

Sec. 9. Appropriations and allocations. The following appropriations and allocations are made.

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General 0310

Initiative: Provides funds for a part-time Assistant Attorney General position to act as the public access ombudsman and general operating expenses required to carry out the purposes of this Act.

	2011-12	2012-13
GENERAL FUND		
POSITIONS - LEGISLATIVE COUNT	0.500	0.500
Personal Services	$62,120	$65,576
All Other	$5,000	$5,000
GENERAL FUND TOTAL	$67,120	$70,576

SUMMARY

This bill increases governmental transparency by enhancing the existing freedom of access laws to provide deadlines for responses to requests for public records, to ensure that requesters can access public records in the format requested and to require the designation of public access officers for every agency and political subdivision.

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

TIME FOR TRANSPARENCY

LD 1465: AN ACT TO AMEND THE LAWS GOVERNING FREEDOM OF ACCESS

Sponsored by Sen. Richard Rosen

Presentation to the Maine Right to Know Advisory Committee
Chris Cinquemani, Director of Communications
The Maine Heritage Policy Center
September 1, 2011

BROAD AND DIVERSE SUPPORT

DRAFTED WITH INPUT FROM:

Maine Heritage Policy Center
Maine Civil Liberties Union
Maine Press Association
Maine Freedom of Information Coalition
Society of Professional Journalists
Individual members of the media

30 LEGISLATIVE CO-SPONSORS

*Sen. Alfond (D-Cumberland)
Rep. Beavers (D-South Berwick)
Sen. Collins (R-York)
Sen. Diamond (D-Cumberland)
Rep. Dunphy (R-Embden)
Rep. Eves (D-North Berwick)
Sen. Farnham (R-Penobscot)
Rep. Guerin (R-Glenburn)
Rep. Harvell (R-Farmington)
*Rep. Hayes (D-Buckfield)
Sen. Hill (D-York)
Rep. Hinck (D-Portland)
*Sen. Hobbins (D-York)
Sen. Katz (R-Kennebec)
Sen. Langley (R-Hancock)
Sen. Martin (R-Kennebec)
Sen. Mason (R-Androscoggin)
Sen. McCormick (R-Kennebec)
Rep. O'Connor (R-Berwick)
Rep. Olson (R-Phippsburg)
*Sen. Plowman (R-Penobscot)
Sen. Rector (R-Knox)
Rep. Rosen (R-Bucksport)
Sen. Sherman (R-Aroostook)
Rep. Sirocki (R-Scarborough)
Sen. Snowe-Mello (R-Androscoggin)
Rep. Strang Burgess (R-Cumberland)
Sen. Thibodeau (R-Waldo)
Rep. Turner (R-Burlington)
Sen. Whittemore (R-Somerset)

**Member of Legislative Leadership*

KEY REFORM #1 - TIMELINES

CURRENT LAW

- NO DEADLINE to acknowledge request
- NO DEADLINE to comply with request
- 5-DAY DEADLINE to deny a request

§408. PUBLIC RECORDS AVAILABLE FOR PUBLIC INSPECTION AND COPYING
"Except as otherwise provided by statute, every person has the right to inspect and copy any public record...within a reasonable period of time after making a request to inspect or copy the public record. An agency or official may request clarification...but in any case the agency or official ***shall acknowledge receipt of the request within a reasonable period of time.***"

§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.*

LD 1465

Request made
↓
Record made available immediately
↓
(if time needed to redact)
↓
Written explanation for delay; 5-day deadline to comply with request
↓
(large or multiple requests requiring more than 5 days)
↓
Portions as available, and/or comply with total request when available

KEY REFORM #1 - TIMELINES

EXAMPLE: 184 DAYS TO RECEIVE MTA RECORDS

Aug. 4, 2010
Maine Heritage Policy Center sends Freedom of Access Request for payroll and vendor payments data to the Maine Turnpike Authority

Aug. 9, 2010 - *5 days after request*
MTA acknowledges request has been received

Sept. 7, 2010 - *34 days after request*
Having received no further correspondence from MTA, MHPC staff attorney e-mails MTA asking to advise on status of request

Sept. 10, 2010 - *37 days after request*
MTA replies, suggesting it will take 20 hours to complete the request

Jan. 31, 2011 - *180 days after request*
Having received no further correspondence from MTA, MHPC staff e-mails MTA asking again to advise on status of request

Feb. 4, 2011 - *184 days after request*
MTA finally complies with request

KEY REFORM #2 - FORM

EXAMPLES: FORM REQUESTS IGNORED

Maine Turnpike Authority

- Records requested in electronic spreadsheet form
- MTA questions how records will be used
- Records initially sent as pdf
- Two months to obtain electronic spreadsheet

Standish

- Records requested in electronic spreadsheet form
- Records sent as paper print-out of spreadsheet

Richmond

- Records requested in electronic spreadsheet form
- Records sent as paper print-out of spreadsheet

Bangor

- Records requested in electronic spreadsheet form
- Records sent as Dot Matrix print-out

KEY REFORM #1 - TIMELINES

TIMELINES FOR PUBLIC RECORDS REQUESTS IN RIGHT TO KNOW LAWS

Colorado (3 days, +7 days firm)
District of Columbia (15 days, 10 days)
Delaware (15 days, extra time)
Georgia (3 days, extra time)
Hawaii (10 days, +20 days, +5 days)
Idaho (3 days, 10 days firm)
Illinois (5 days, +5 days)
Kansas (3 days, extra time)
Kentucky (3 days, extra time)
Louisiana (3 days firm)
Maryland (30 days)
Massachusetts (10 days)
Michigan (5 days, +10 days firm)
Mississippi (7 days, +14 days or agreed time)
Missouri (3 days, extra time)
Nebraska (4 days, extra time)
Nevada (5 days, extra time)
New Hampshire (5 days, extra time)
New Jersey (7 days)
New Mexico (3 days, +15 days or extra time)
New York (5 days, extra time)
Pennsylvania (5 days, extra time)
Rhode Island (10 days, 30 days firm)
South Carolina (15 days)
Tennessee (7 days, extra time)
Texas (10 days, extra time)
Vermont (5 days, +10 days firm)
Virginia (5 days, +7 days)
Washington (5 days, extra time)
West Virginia (5 days, extra time)

---

30 Total

#31 – Maine? (5 days, extra time)

KEY REFORM #2 - FORM

REQUESTED FORM PROVISIONS IN RIGHT TO KNOW LAWS

Connecticut
Florida
Georgia
Hawaii
Iowa
Mississippi
Missouri
Montana
Nevada
North Carolina
Ohio
Rhode Island
Vermont
Virginia
West Virginia
Wisconsin

---

16 Total

#17 – Maine?

KEY REFORM #2 - FORM

CURRENT LAW

- No mention of form of records

LD 1465

- Requester can request copy of record in any form
- Record provided in requested form if able to be produced in that form
- Requester can pay agency's cost to purchase and install ability to produce record in requested form
- If record cannot be produced in requested form, agency identifies every form in which the record can be provided

Key Reform #3 – Public Access Officers

Current Law	LD 1465
• No individual accountable to uphold peoples' right to access and oversee requests	• All governmental agencies/offices subject to FOAA • Responsibilities designated to existing staff member • Undergo same FOAA training as elected officials • Oversee requests and responses to requests • Unavailability of public access officer may not delay response to request

Key Reform #3 – Public Access Officers

Accountable Individuals Provisions in Right to Know Laws

District of Columbia	South Dakota
Illinois	Texas
Kansas	Wisconsin
Massachusetts	
Michigan	8 Total

#9 – Maine?

Additional Reforms

- 3-days notice for public proceedings
- Requests by phone
- Requested records can be mailed or e-mailed
- 3-day deadline to provide cost estimate if more than $100
- Timelines to inspect public records on site
- Funding for Public Access Ombudsman

Other Ideas

- Future technology or data storage purchases must consider ease of access, need to redact confidential information, and prioritize public's right to know.
- Proactively post on agency Web sites as many records/datasets possible.
- Annual reporting from each governmental agency on FOAA requests (i.e. # of requests, # denied, most requested data/records).

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

Sponsored by Senator Richard Rosen

Broad support to strengthen Maine's Freedom of Access Law

- MHPC, Maine Civil Liberties Union, Maine Press Association, Maine Freedom of Information Coalition
- 30 Legislative Co-Sponsors, including Legislative Leadership from both parties

Key Reforms:

1) Timelines

Current Law

- No deadline to acknowledge request
- No deadline to comply with request
- 5-day deadline to deny a request

LD 1465 Process

Request Made

Record made available immediately

(If time needed to redact)

Written explanation for delay; 5-day deadline to comply

(Large or multiple requests requiring more than 5 days)

Portions provided as available, and/or comply with complete request when available

30 states have timelines that government must adhere to when fulfilling public record requests

2) Form

Current Law

- No mention of form of records

LD 1465

- Can request record in any form
- Record to be provided in requested form if available
- Requester can pay cost to produce record in requested form
- If can't provide in request form, every form available must be identified

*16 states have requested form provisions in their Right to Know Law, including 3 New England states

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

Sponsored by Senator Richard Rosen

3) Public Access Officers

Current Law	LD 1465
• No individual is accountable to uphold peoples' right to access and oversee requests	• FOAA responsibilites designated to existing staff member • Undergo same FOAA training as elected officials • Oversee requests and responses to requests • Unavailability of designated FOAA officer can't delay response to request

8 states have Right to Know laws that have accountable individuals provisions

Additional Reforms

- 3-day notice for public meeting
- Requests made by phone
- Requested records can be mailed OR e-mailed
- 3-day deadline to provide cost estimate if more than $100
- **Funding for Public Access Ombudsman**

Other Ideas

- Future technology or data storage purchases must consider ease of access, need to redact confidential information, and prioritize public's right to know.
- **Proactively post on agency web sites as many records/datasets as possible**
- Annual reporting from each governmental agency on FOAA request (# of requests, # denied, most requested records).

Deseret News

Utah lawmakers repeal controversial open records law

Published: Friday, March 25, 2011 4:41 p.m. MDT

SALT LAKE CITY — Utah lawmakers repealed a widely criticized law restricting access to many government records Friday, though not without a tussle between the House and Senate.

The vote, however, doesn't mean changes to the Government Records Access and Management Act or GRAMA aren't coming. Lawmakers intend to draft new legislation in the next few months — this time with public input that Utahns found sorely lacking when the Legislature hurriedly passed HB477 earlier this month.

"Obviously, this one isn't done," said Senate President Michael Waddoups, R-Taylorsville.

The bill largely exempted the Legislature and several forms of electronic communication from GRAMA, allowed for increased fees for records requests and erased language favoring openness.

Lawmakers say they have listened to the voice of the people and want to start with a clean slate.

"It is my opinion that we simply messed up. It was no one's fault but ours," said Sen. Stephen Urquhart, R-St. George.

Gov. Gary Herbert called the Legislature into special session to reconsider the bill after a huge public outcry galvanized the community, bringing together liberals and tea party activists in an effort repeal the law by referrendum.

In a statement afterward, the governor said he was pleased legislators responded to the people's will.

"It was the right thing to do as a first step to restore public confidence. As the Legislature's working group re-examines Utah's GRAMA statutes, I am confident all members will work diligently to craft recommendations which protect the public's right to know, protect an individual's legitimate right to privacy, and protect taxpayer dollars," he said.

A 25-member working group organized by GOP House and Senate leadership to consider changes to the open records law met for the first time Wednesday. No formal action was taken as participants — lawmakers, media representatives and other members of the public — voiced their views about GRAMA. The group intends to meet weekly.

Except for brief comments by House Majority Leader Brad Dee and House Minority Leader David Litvak, the House made quick work of HB1001, voting 60-3 to approve the bill that repeals HB477. Reps. Neal Hendrickson, D-West Valley; Mike Noel, R-Kanab, and Curt Webb, R-Logan, voted against the repeal.

Neither lawmakers nor the working group could move forward in a "forthright manner with HB477 hanging on top of everyone's head," Litvack said.

The Senate, after some lengthy debate, voted 19-5 to repeal the law, including amendments to assure public input and asking Herbert to call them into special session by June 24 to consider a new bill. Sens. Margaret Dayton, R-Orem; Mark Madsen, R-Eagle Mountain, Stuart Reid, R-Ogden; Daniel Thatcher, R-West Valley, and Waddoups cast the dissenting votes.

The House, however, rejected the amendments. The Senate ultimately removed those provisions but approved "intent language" calling for the same thing, except without the June deadline.

Senate Democrats were united in the repeal and restoring "sunlight" to government, said Sen. Ross Romero, D-Salt Lake. "We believe it is better to measure twice and cut once," he said.

Waddoups said in an interview afterward that he thinks lawmakers would be inclined to pass a revised GRAMA bill this summer rather than wait until the 2012 Legislature because "January is closer to the election."

House members said there's no need to rush.

"Given the nature of the topic, that date may be too soon. A later date may be more appropriate." said Rep. John Dougall, R-American Fork, sponsor of HB477 said.

Rep. Holly Richardson, R-Pleasant Grove, a member of the GRAMA working group, said she didn't want to be tied down to a specific date. "We are all here to work," she said.

Though Herbert apparently told senators he liked the failed amendments, he did not say whether he would call another special session soon.

During floor debate, senators found themselves in sharp disagreement over whether to repeal the GRAMA bill at all. Some castigated the media for what they said was biased reporting on the issue.

"This was right when we voted for it the first time," said Sen. Daniel Thatcher, R-West Valley.

Waddoups accused the media of pressing lawmakers on how to vote and to declare their votes in advance.

"We have a word for that up here. That word is lobbyist. I believe they crossed the line and became lobbyists this year," the Taylorsville Republican said.

Urquhart said the statute has little do with the media. "It is the people's window into what we do."

Any attorney for the Utah Media Coalition praised lawmakers for repealing the measure.

"GRAMA is the people's law, and today the people have saved it with this historic vote," said Michael O'Brien, who represents Utah journalists, newspapers and broadcasters.

"We commend the governor and Legislature for fixing the mistake of HB477. As we now discuss ways to improve GRAMA, we must be prudent to preserve the intent and spirit of the law the people have worked so hard to save."

The original bill was rushed through the Legislature in its last week over objections aired in two public hearings. Shortly after the bill passed, a coalition of public interest groups of varying political views banded together to gather enough signatures to repeal the bill by referendum.

Herbert, facing a veto override, agreed to sign the bill if lawmakers would push the implementation date back to July 1 and appoint a working group to examine GRAMA and amend the bill in special session in June. But public protest over changes in the law continued, until Herbert called Friday's special session to repeal HB477 and start over.

First Amendment activist Claire Geddes, speaking at a rally held prior to the special session, said the people have risen up and taken the lead when government leaders failed to act.

"What's really happening here is we're seeing the power of the people," she said. "The public outcry over the passage of HB477 demonstrates how out of touch Utah government is with its people."

Janalee Tobias, a gun rights activist and backer of the petition drive to repeal the bill, said the public anger over the passage of HB477 showed that the pen is mightier than the sword.

"A mouth is more powerful than a Magnum," she said. "A signature is more powerful than a shotgun."

Leaders of Save GRAMA, the citizen referendum drive to overturn HB477, said Friday's repeal means the Legislature recognized the will of the people.

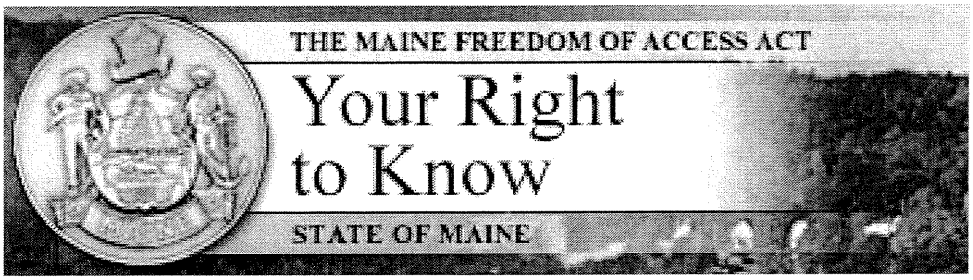
"We declare this a victory, the first, we hope, of many victories," said Steve Maxfield, Save GRAMA

coalition chairman.

Board member Linda Petersen said the Legislature grossly underestimated the electorate's disillusionment over the issue.

"They thought this was a media issue. They thought the only people who would object to HB477 were a few liberals. The people of Utah have shown them they were wrong."

E-mail: romboy@desnews.com, marjorie@desnews.com



Frequently Asked Questions (FAQ)

General Questions | Public Records | Public Proceedings

GENERAL QUESTIONS

What is the Freedom of Access Act?

The Freedom of Access Act ("FOAA") is a state statute that is intended to open the government of Maine by guaranteeing access to the "public records" and "public proceedings" of state and local government bodies and agencies.

Are federal agencies covered by the Freedom of Access Act?

No. The Freedom of Access Act does not apply to federal agencies operating in Maine or to federal government records. A similar but different federal statute called the "Freedom of Information Act" applies to the federal government. This federal statute does not apply to state or local government bodies, agencies or officials.

You can find the text of the Freedom of Information Act, 5 U.S.C. § 551 et seq., at: http://www.usdoj.gov/oip/foiastat.htm *or you can find more general information on the Freedom of Information Act* at: http://answers.usa.gov/cgi-bin/gsaict.cfg/php/enduser/stdadp.php?p_faqid=5940

Who enforces the Freedom of Access Act?

Any aggrieved person may appeal to any Superior Court in the state to seek relief for an alleged violation of the Freedom of Access Act. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful. 1 M.R.S.A. § 410.

What are the penalties for failure to comply with the Freedom of Access laws?

A state government agency or local government entity whose officer or employee commits a willful violation of the Freedom of Access laws commits a civil violation for which a forfeiture of not more than $500 may be adjudged. 1 M.R.S.A. § 410. Under the current law, there are no criminal penalties for failure to comply with a request for public records. It is a Class D crime to intentionally remove, alter, or destroy documents belonging to a state office. 1 M.R.S.A. § 452.

Are elected officials required to take training on the Freedom of Access laws?

Yes. Beginning July 1, 2008, elected officials must complete a course of training on the requirements of the Freedom of Access laws.

Which elected officials are required to take Freedom of Access training?

Elected officials required to complete the training include:

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

What does the training include?

At a minimum, the training must be designed to be completed in less than 2 hours and include instruction in:

- the general legal requirements regarding public records and public proceedings
- the procedures and requirements regarding complying with a request for a public record
- the penalties and other consequences for failure to comply with the law

Elected officials can meet the training requirement by conducting a thorough review of the material in this FAQ section of the State's Freedom of Access website or by completing another training course that includes all off this information but may include additional information.

Do training courses need to by certified by the Right to Know Advisory Committee?

No. Training courses do not need the approval of the Right to Know Advisory Committee, or any other State agency.

How do elected officials certify they have completed the training?

After completing the training, elected officials are required to make a written or electronic record attesting that the training has been completed. The record, which will be available to the public, must be kept by the elected official or filed with the public entity to which the official was elected. A sample training completion form is available (This file requires the free Adobe Reader).

PUBLIC RECORDS

What is a public record?

The Freedom of Access Act defines "public record" as "any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is

composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business". A number of exceptions are specified. (See the discussion of exemptions below) 1 M.R.S.A. § 402 (3).

Do I have to be a citizen of this state to submit a Freedom of Access Act request for a public record?

No. The Freedom of Access Act provides that "every person" has the right to inspect and copy public records. 1 M.R.S.A. § 408 (1).

How do I make a Freedom of Access Act request for a public record?

See the How to Make a Request page on this site.

Is there a form that must be used to make a Freedom of Access Act request?

No. There are no required forms.

Does my Freedom of Access Act request have to be in writing?

No. The Freedom of Access Act does not require that requests for public records be in writing. However, most bodies and agencies ask individuals to submit requests in writing in order to maintain a record of when the request was received and what records were specifically requested.

What should I say in my request?

In order for the body, agency or official to promptly respond to your request, you should be as specific as possible when describing the records you are seeking. If a particular document is required, it should be identified precisely—preferably by author, date and title. However, a request does not have to be that specific. If you cannot identify a specific record, you should clearly explain the type of records you are seeking, from what timeframe and what subject the records should contain. For example, assume you want to obtain a list of active landfills near your home. A request to the state Department of Environmental Protection asking for "all records on landfills" is very broad and would likely produce volumes of records. The fees for such a request would be very high; the agency would likely find your request too vague and ask that you make it more specific. On the other hand, a request for "all records identifying landfills within 20 miles of 147 Main Street in Augusta" is very specific and the request might fail to produce the information you desire because the agency has no record containing data organized in that exact fashion. You might instead consider requesting any record that identifies "all active landfills in Augusta" or "all active landfills in Kennebec County." It is more likely that a record exists which contains this information. You might also want to explain to the agency exactly what information you hope to learn from the record. In other words, if you are really trying to determine whether any active landfills near your home in Augusta accept only wood waste, this additional explanation may help the agency narrow its search and find a record that meets the exact request.

Does an agency have to acknowledge receipt of my request?

Yes. An agency or official must acknowledge receipt of a request within a reasonable period of time. 1 MRSA § 408 (1).

Can an agency ask me for clarification concerning my request?

Yes. An agency or official may request clarification concerning which public record or public records are being requested. 1 MRSA §408 (1).

When does the agency or official have to make the records available?

The records must be made available "within a reasonable period of time" after the request was made. 1 M.R.S.A. § 408 (1). The agency or official can schedule the time for your inspection, translation and copying of the records during the regular business hours of the agency or official, and at a time that will not delay or inconvenience the regular activities of the agency of official. 1 M.R.S.A. §§ 408 (1) & (2).

Does an agency have to produce records within 5 days of my request?

No. The records that are responsive to a request must be made available "within a reasonable period of time" after the request was made. 1 MRSA § 408 (1). Agencies must respond in writing within 5 working days only if your request is denied in whole or in part. 1 MRSA § 409 (1).

Do I have to go to the agency to inspect the records or can I ask the agency or official to mail me the records?

The Freedom of Access Act only requires the agency or official to make the records available to you for inspection and copying, it does not require the agency or official to mail records. However, depending on the volume of records produced in response to your request, some agencies or officials may be willing to mail copies to you. The agency may charge a reasonable fee to cover the cost of making the copies for you. 1 M.R.S.A. § 408 (1) & (3)(A).

When may a governmental body refuse to release the records I request?

The Freedom of Access Act provides that certain categories of documents are not public records. Included among these are records that have been designated confidential by statute, documents subject to a recognized legal privilege such as the attorney-client privilege or the work-product privilege, records describing security plans or procedures designed to prevent acts of terrorism, medical records, juvenile records, and the personal contact information of public employees contained within records. 1 M.R.S.A. § 402 (3)(A)-(O).

For a list of records or categories of records deemed by statute to be confidential or otherwise not a public record, see the Statutory Exceptions List. While this listing may not be totally complete, it contains the vast majority of exceptions to the Freedom of Access Act.

What happens if a public record holds some information that is open to the public and some information that falls within an exception to the Freedom of Access Act?

Some public records contain a mixture of information that is public and information that is confidential or otherwise not subject to public inspection under the Freedom of Access Act. If the record you requested contains any confidential or excepted information, the custodian will decide if the confidential or excepted information can be adequately redacted or blacked out so that public access can be provided or if public access to the document should be denied.

Does an agency have to explain why it denies access to a public record?

Yes. When an agency denies access to a public record, it must provide the reason for its denial in writing within 5 working days of the date of the Freedom of Access Act request. 1 M.R.S.A. § 409 (1).

What can I do if I believe an agency has unlawfully withheld a public record?

If you are unsatisfied with an agency's decision to withhold access to certain records, you are entitled to appeal, within 5 working days of your receipt of the written notice of denial, to any Superior Court within the state. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

May a governmental body ask me why I want a certain record?

The Freedom of Access Act does not specifically prohibit agencies or officials from asking why an individual is requesting a public record. However, if asked, the individual is not required to provide a reason for seeking a record, and the agency cannot deny an individual's request based solely on either the individual's refusal to provide a reason or the reason itself. An agency or official may request clarification concerning which public record or public records are being requested. 1 M.R.S.A. § 408 (1).

Can I ask that public reports or other documents be created, summarized or put in a particular format for me?

No. A public officer or agency is not required to prepare reports, summaries, or compilations not in existence on the date of your request.

Similarly, a public officer or agency is not required to produce a record in an alternate format if the record can be made available for public inspection and copying in the format in which it exists. If the record requires translation in order for it to be made available for public inspection and copying, the agency or official must translate the record but can charge you a fee to cover the actual cost of translation. 1 M.R.S.A. § 408 (3)(C).

I asked a public official a question about a record, but he/she didn't answer. Is he/she required to answer my question?

No. A public officer or agency is not required under the Freedom of Access Act to explain or answer questions about public records. The Act only requires officials and agencies to make public records available for inspection and copying.

What records must a public officer or agency keep, and how long do they have to keep them?

The Freedom of Access law does not control what records must be retained or for how long they must be retained. Public officers and agencies are required to keep all records made or received or maintained by that officer or agency in accordance with other law or rule. 5 MRSA § 92-A (5) (This file requires the free Adobe Reader).

How long records must be kept depends on the type of record and the value of the record's content. The Maine State Archives works with state and local governments to establish rules for the retention and disposition of government records, including the length of time that certain records need to be preserved by the agency before they are either destroyed or sent to the Maine State Archives for long-term or permanent retention.

Are an agency's or official's e-mails public records?

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail is "in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business" and is not deemed confidential or excepted from the Freedom of Access Act, it constitutes a "public record". 1 M.R.S.A. § 402 (3).

Can an agency charge for public records?

There is no initial fee for submitting a Freedom of Access Act request and agencies cannot charge an individual to inspect records. 1 M.R.S.A. § 408 (3)(D). However, agencies can and normally do charge for copying records. Although the Freedom of Access Act does not set standard copying rates, it permits agencies to charge "a reasonable fee to cover the cost of copying". 1 M.R.S.A. § 408 (3)(A).

Agencies and officials may also charge fees for the time spent searching for, retrieving, compiling or redacting confidential information from the requested records. The Act authorizes agencies or officials to charge $10 per hour after the first hour of staff time per request. 1 M.R.S.A. § 408 (3)(B). Where translation of a record is necessary, the agency or official may also charge a fee to cover the actual cost of translation. 1 M.R.S.A. § 408 (3)(C).

The agency or official must prepare an estimate of the time and cost required to complete a request and if the estimate is greater than $20, the agency or official must notify the requester before proceeding. The agency may request payment of the costs in advance if the estimated cost exceeds $100 or if the requester has previously failed to pay a fee properly assessed under the Freedom of Access Act. 1 M.R.S.A. § 408 (4) & (5).

I cannot afford to pay the fees charged by the agency or official to research my request or copy the records. Can I get a waiver?

The agency of official may, but is not required to, waive part or all of the total fee if the requester is indigent, or if release of the public record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. 1 M.R.S.A. § 408 (6)

Is a public agency or official required under the Freedom of Access Act to honor a "standing request" for information, such as a request that certain reports be sent to me automatically each month?

No. A public body is required to make available for inspection and copying (subject to any applicable exemptions) only those public records that exist on the date of the request. Persons seeking to inspect or obtain copies of public records on a continuing basis are required to make a new request for any additional records sought after the date of the original request.

PUBLIC PROCEEDINGS

What is a public proceeding?

The term "public proceeding" means "the transactions of any functions affecting any or all citizens of the State" by the Maine Legislature and its committees and subcommittees; any board or commission of a state agency or authority including the University of Maine and the Maine Community College System; any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; the full membership meetings of any association, the membership of which is comprised exclusively of counties, municipalities, school districts, other political or administrative subdivisions, or their boards, commissions, agencies or authorities; and any advisory organization established, authorized or organized by law, resolve or executive order. 1 M.R.S.A. § 402.

What does the law require with regard to public proceedings?

The Freedom of Access Act requires all public proceedings to be open to the public and any person must be permitted to attend. 1 M.R.S.A. § 403.

When does a meeting or gathering of members of a public body or agency require public notice?

Public notice is required of all public proceedings if the proceedings are a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

What kind of notice of public proceedings does the Freedom of Access Act require?

Public notice must be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency. 1 M.R.S.A. § 406.

Can a public body or agency hold an emergency meeting?

Yes. Public notice of an emergency meeting must be provided to local representatives of the media, whenever practicable. The notice must include the time and location of the meeting and be provided by the same (or faster) means used to notify the members of the public body or agency conducting the public proceeding. 1 MRSA § 406. The requirements that the meeting be open to the public, that any person be permitted to attend and that records or minutes of the meeting be made and open for public inspection still apply. 1 MRSA § 403.

Can public bodies or agencies hold a closed meeting?

Yes. Public bodies or agencies are permitted, subject to certain procedural conditions, to hold closed "executive sessions" on specified subjects after a public recorded vote of 3/5 of the members present and voting. 1 M.R.S.A. § 405 (1)-(5).

Can the body or agency conduct all of its business during an executive session?

Generally, no. The content of deliberations during executive sessions is restricted to the matters listed in the Freedom of Access Act, such as: discussions regarding the suspension or expulsion of a student; certain employment actions; the acquisition, use or disposition of public property; consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and discussion of documents that are confidential by statute. In addition, any body or agency subject to the Freedom of Access Act is prohibited from giving final approval to any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session. 1 M.R.S.A. § 405 (2) & (6).

What if I believe a public body or agency conducted improper business during an executive session?

Upon learning of any such action, any person may appeal to any Superior Court in the State. If the court determines the body or agency acted illegally, the action that was taken by the body or agency will be declared to be null and void and the officials responsible will be subject to the penalties provided in the Act. 1 M.R.S.A. § 409 (2). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

Can members of a body communicate with one another by email outside of a public proceeding?

There is no legal prohibition against email communication between members of a public body outside of a public proceeding. However, email communication among a quorum of the members of a body used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State..." 1 MRSA § 402. The underlying purpose of the Freedom of Access law is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. 1 MRSA § 401. Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. 1 MRSA § 403. In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

Members of a body should refrain from the use of email as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. Email is permissible to

communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Email is a public record (likely even when sent using a member's personal computer) if it contains information relating to the transaction of public or governmental business unless the information is designated as confidential or excepted from the definition of a public record. 1 MRSA § 402, sub-§ 3. As a result, members of a body should be aware that all emails and email attachments relating to the member's participation are likely public records subject to public inspection under the Freedom of Access laws.

Can I record a public proceeding?

Yes. The Freedom of Access Act allows individuals to make written, taped or filmed records of a public proceeding, or to broadcast the proceedings live, provided the action does not interfere with the orderly conduct of the proceedings. The body or agency holding the proceeding can make reasonable rules or regulations to govern these activities so long as the rules or regulations do not defeat the purpose of the Act. 1 M.R.S.A. § 404.

Do members of the public have a right to speak at public meetings under the Freedom of Access Act?

The Freedom of Access Act does not require that an opportunity for public participation be provided at open meetings, although many public bodies or agencies choose to permit public participation. In those instances, the public body or agency can adopt reasonable rules to ensure meetings are conducted in a fair and orderly manner. For example, the body or agency can set a rule that requires the same amount of time be afforded to each person that wants to speak.

Is the public body or agency required to keep running minutes or a record of a public proceeding?

There is no requirement under the Freedom of Access Act that a public body or agency keep running minutes during all public proceedings. The Act does require, however, that public bodies and agencies keep a written record of every decision that involves the conditional approval or denial of an application, license, certificate or permit, and every decision that involves the dismissal or refusal to renew the contract of any public official, employee or appointee. 1 M.R.S.A. § 407 (1) & (2).

If the public proceeding is an "adjudicatory proceeding" as defined in the Maine Administrative Procedure Act, the agency is required to compile a record that complies with statutory specifications, including a recording in a form susceptible of transcription. 5 M.R.S.A. §§ 8002 (1) and 9059.

Is the agency or body required to make the record or minutes of a public proceeding available to the public?

Yes. Any legally required record or minutes of a public proceeding must be made promptly and shall be open to public inspection. In addition, every agency is required to make a written record of any decision that involves conditional approval or denial of any application, license, certificate or other type of permit and to make those decisions publicly available, 1 M.R.S.A. §§ 403, 407; 5 M.R.S.A. § 9059 (3).

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

Paul R. LePage
GOVERNOR

14 July 2011

Right to Know Advisory Committee
State House
Augusta, ME

Dear Members of the Committee:

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

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

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

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

Sincerely,

Paul R. LePage
Governor

PRINTED ON RECYCLED PAPER

PHONE: (207) 287-3531 (Voice) 888-577-6690 (TTY) FAX: (207) 287-1034
www.maine.gov

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS

TITLE 1
GENERAL PROVISIONS

CHAPTER 13
PUBLIC RECORDS AND PROCEEDINGS

SUBCHAPTER 1
FREEDOM OF ACCESS

§401. Declaration of public policy; rules of construction

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

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

- Party alleging violation of FOA has burden of producing evidence that Act violated[1]
- The Act's underlying purposes and policies favor disclosure[2]

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

- New 2011

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

Liberally construe and apply to promote underlying purposes and policies

- Interpretation of the Freedom of Access laws is a matter of law that the Supreme Judicial Court reviews de novo[3]

§402. Definitions

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.

---

[1] Chase et al. v. Town of Machiasport et al., 1998 ME 260, 721 A.2d 636.
[2] Bangor Historic Track, Inc. v. Department of Agriculture, 2003 ME 140, 837 A.2d 129.
[3] Dow v. Caribou Chamber of Commerce and Industry, 2005 ME 113, 884 A.2d 667.

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
1-A. Legislative subcommittee. "Legislative subcommittee" means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.	*Legislative subcommittee* must consist of at least 3 members and be appointed for the purpose of conducting legislative business on behalf of the committee	
2. Public proceedings. The term "public proceedings" as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:	*Public proceeding*: transactions of any functions affecting any or all citizens of the State by listed entities	
A. The Legislature of Maine and its committees and subcommittees;	• Legislature and 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 Technical College System and any of its committees and subcommittees;	• Any board or commission of any state agency or authority • Boards of trustees of state educational institutions and their committees and subcommittees	• Hospital Administrative District subject to FOA laws[4] • "Special civil service study committee" of municipality subject to FOA laws[5] • Court considers four factors when evaluating whether an entity is subject to the Freedom of Access laws: (1) whether the entity is performing a governmental function; (2) whether the funding of an entity is governmental; (3) the extent of governmental involvement or control; and (4) whether the entity was created by private or legislative action[6]
C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;	• Board, commission agency, authority of political or administrative subdivision	• Local school boards subject to FOA laws[7] • Indian tribes when acting in their municipal capacities are subject state laws affecting municipal governments, including

[4] Town of Burlington v. Hospital Administrative District No. 1 et al., 2001 ME 59, 769 A.2d 857.
[5] Lewiston Daily Sun, Inc. v. City of Auburn, 544 A.2d 335 (ME 1988).
[6] Dow v. Caribou Chamber of Commerce and Industry, 2005 ME 113, 884 A.2d 667.
[7] Marxsen v. Board of Directors, M.S.A.D. No. 5, 591 A.2d 867 (ME 1991).

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
		FOA laws[8] • A tribal reservation was acting in its business capacity, rather than its municipal capacity when it entered into lease of tribal land with developer of liquefied natural gas facility. The tribe has more autonomy than a town in light of provisions of Act to Implement Maine Indian Claims Settlement. [9]
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;	• Full membership meetings of associations of political or administrative subdivisions	
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;	• Maine Public Broadcasting Corporation	
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	• Advisory/study commissions set up by Legislature or by Executive Order UNLESS the law, resolve or EO specifically exempts from FOA laws	
G. The committee meetings, subcommittee meetings and full membership meetings of any association that: (1) Promotes, organizes or regulates	• Statewide interscholastic organizations that receive funding from public or private	

[8] Great Northern Paper, Inc. v. Penobscot Nation, 2001 ME 68, 770 A.2d 574, cert. denied 534 U.S. 1019.
[9] Winifred B. French Corp. v. Pleasant Point Passamaquoddy Reservation, 2006 ME 53, 896 A.2d 950.

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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.	schools and are meeting in regard to interscholastic activities. • It does not apply to such meetings in which the subject is limited to personnel issues, allegations of interscholastic athletic rule violations, or student athlete or coach eligibility.	
3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:	Public records defined • Written, printed, graphic, mechanical or electronic • In possession or custody of agency, official or association • Received or prepared for use in connection with the transaction of public or governmental business OR contains info relating to the transaction of public or governmental business • EXCEPTIONS:	• Corollary to FOA laws liberal construction is necessarily strict construction of any exceptions to public disclosure[10] • The records of an uncompensated, advisory group created by State officials and acting without legislative mandate to review alleged improprieties are not public records. Courts look at the function the entity performs in evaluating whether an entity or individual, individually or collectively, qualifies as "an agency or public official."[11]
A. Records that have been designated confidential by statute;	• Designated confidential by statute (see other statutes)	• The plain language of the corporation statute does not provide that specific document is confidential,

[10] Guy Gannett Publishing Co. v. University of Maine et al., 555 A.2d 470 (ME 1989).
[11] Moore v. Abbott, 2008 ME 100, 952 A.2d 980.

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
		nor does the statute implicitly require salary information supplied to the Superintendent of Insurance to be confidential[12] • The location of a municipal employee personnel record has no bearing on its protected status under statute (30-A MRSA §2702(1)(B)(5)).[13]
B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding;	• Within scope of a privilege against discovery or use in civil or criminal trials	• Compensation records of hospital district's management employees not "trade secrets"[14] • "Work product" • Privilege against self-incrimination • Record subject to a court-issued protective order[15] • Compensation records of insurer's board of directors and senior management not "trade secrets"[16]
C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over;	• Legislative papers during the legislative session until signed and publicly distributed • Working papers of legislators and staff for the session or sessions	• The attorney-client privilege does not protect communications in litigation between adverse parties on opposite sides of the bargaining table. The parties did not have a common interest merely because they are willing to negotiate a settlement.[17]
C-1. Information contained in a		• New 2011

[12] Medical Mutual Insurance Co. of Maine v. Bureau of Insurance, 2005 ME 12.
[13] S. Portland Police Patrol Ass'n v. City of S. Portland, 2006 ME 55, 896 A.2d 960.
[14] Town of Burlington v. Hospital Administrative District No. 1 et al., 2001 ME 59, 769 A.2d 857.
[15] Bangor Publishing Co. v. Town of Bucksport, 682 A.2d 227 (ME 1996).
[16] Medical Mutual Insurance Co. of Maine v. Bureau of Insurance, 2005 ME 12.
[17] Citizens Communications Co. v. Attorney General, 2007 ME 114, 931 A.2d 503.

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS

communication between a constituent and an elected official if the information:

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

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

(b) Credit or financial information;

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

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

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

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

D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives;

- Public employer labor negotiation materials

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Technical College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B;

- Faculty and administrative records of state educational institutions, other than boards of trustees

F. Records that would be confidential if

- Otherwise confidential

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;	but in the hands of association	
G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;	• Materials related to legislative positions or insurance in the hands of association of political or administrative subdivisions of the State	
H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct;	• Medical records and reports of municipal rescue and emergency medical services, except available to law enforcement in criminal investigations	
I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter;	• Juvenile fire starter records	
J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization;	• Advisory/study commission working papers	
K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory	• Personally identifying information concerning minors collected/maintained by	• Sections of an independent report of a school employment controversy must be redacted if they

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A;	municipality for recreational and nonmandatory educational services and programs IF ordinance adopted	touch upon the personal history, general character or conduct of an employee or an employee's immediate family (20-A MRSA §6101(2)(B)(5)).[18]
L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure;	• Security plans, security procedures, risk assessments to prepare/ prevent terrorism if expected to jeopardize physical safety of public personnel. Available to Legislature or municipal officials if further protect from disclosure	
M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;	• Information technology infrastructure information	
N. Social security numbers;	• Social Security Numbers	• Amended 2011 - see also new ¶R (was limited to SSNs in possession of IF&W)

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

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph: (1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and (2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials;	• Personal contact information for certain public employees	
P. Geographical information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information;	• Geographical information of recreational trails located on private land, unless landowner authorizes release	
Q. Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials, the Department of Corrections or members of the State Board of Corrections under conditions that protect the information from further disclosure; and	• Department of Corrections or county jail security plans, staffing plans, security procedures or risk assessments prepared for emergency events if the records would endanger one's life or safety. Information in these security plans and procedures can be disclosed to state and county officials if necessary to carry out duties.	

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
R. Social security numbers in the possession of the Secretary of State.		• New 2011 - see ¶N
3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:	• More public records:	
A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, conviction data, address of furlough and dates of furlough;	• Public	
B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, conviction data, address of residence and dates of supervision; and	• Public	
C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, conviction data and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information.	• Not public: Prisoner's, adult probationer's or parolee's info when Commissioner of Corrections determines detrimental to welfare of a client to disclose	
4. Public records of interscholastic athletic organizations. Any records or minutes of meetings under subsection 2, paragraph G are public records.		
§402-A. Public records defined (REPEALED)	(now part of §402)	
§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.	Public proceedings open to public unless • Otherwise provided by statute • Authorized executive session pursuant to §405 Required record/minutes open to public inspection	
2. Record of public proceedings. Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made		• New 2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include: A. The date, time and place of the public proceeding; B. The members of the body holding the public proceeding recorded as either present or absent; and C. All motions and votes taken, by individual member, if there is a roll call.		
3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.		• New 2011
4. Maintenance of record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.		• New 2011
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.		• New 2011
6. Advisory bodies exempt from record requirements. Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.		• New 2011
§404. Recorded or live broadcasts authorized		
In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The body or agency holding the public proceedings may make reasonable rules and regulations governing these	Writing, taping, filming, live broadcasts authorized if does not interfere with orderly conduct of proceedings	• Unemployment Insurance Commission proceedings not open to the public so no right to independently record proceeding[19]

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

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
activities, so long as these rules or regulations do not defeat the purpose of this subchapter.		
§404-A. Decisions (REPEALED)	(see now §407)	
§405. Executive sessions		
Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions.	Executive sessions may be held subject to the following:	
1. Not to defeat purposes of subchapter. These sessions may not be used to defeat the purposes of this subchapter as stated in section 401.	• Not to defeat purposes of FOA	
2. Final approval of certain items prohibited. An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at executive session.	• Not to finally approve an ordinance, order, rule, resolution, regulation, contract, appointment or other official action	• Employee whose contract was not renewed by school committee was not entitled to relief on ground that committee discussed the nonrenewal in executive sessions where the vote to refuse to extend or renew the contract was made in public meeting attended by employee and her counsel[20]
3. Procedure for calling of executive session. An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.	• Must have 3/5s of the vote of the members present and voting	
4. Motion contents. A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent.	• The precise nature of the business to be conducted in executive session must be part of the motion	• Record clearly established that Board of Selectmen, before going into executive session to discuss pending litigation, stated that the session was for purposes of receiving from the town's attorney updated status on that litigation, thereby complying with law[21]

[20] Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).
[21] Vella v. Town of Camden, 677 A.2d 1051 (ME 1996).

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
5. Matters not contained in motion prohibited. Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.	• Motions not contained in the motion are prohibited	
6. Permitted deliberation. Deliberations on only the following matters may be conducted during an executive session:	Only the following deliberations may be conducted during an executive session:	• Public body charged with violating FOA laws during executive session has burden of proving that its actions during executive session complied with FOA laws[22] • Any statutory exceptions to the requirement that deliberations be public must be narrowly construed[23]
A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or person or persons subject to the following conditions:	• Discussion of employment issues, subject to the following limitations	
(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy would be violated;	• Only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy	• The time for a "reasonable" expectation of damage to the reputation of an employee to be determined is before the executive session is conducted.[24]
(2) Any person charged or investigated shall be permitted to be present at an executive session if he so desires;	• The individual can choose to be present	
(3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints	• If the individual requests in writing that the proceeding be open to the public, the	

[22] Underwood v. City of Presque Isle et al., 715 A.2d 148 (ME 1998).
[23] Underwood v. City of Presque Isle, 715 A.2d 148 (ME 1998).
[24] Blethen Maine Newspapers, Inc. v. Portland School Committee, 2008 Me 69, 947 A.2d 479.

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
against him be conducted in open session. A request, if made to the agency, must be honored; and	agency must open the proceeding; and	
(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.	• The person filing the complaint may choose to be present	
This paragraph does not apply to discussion of a budget or budget proposal;	• This paragraph cannot be used to discuss budget issues in executive session.	• Questions asked of employees about fiscal matters during executive session do not amount to discussions of the budget or budget deliberations.[25]
B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:	A school board's discussion of the suspension or expulsion of a student, with the following restriction	
(1) The student and legal counsel and, if the student be a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire.	• The student, parents/guardians, legal counsel may choose to be present	
C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency;	Discussion of property issues that would prejudice the competitive or bargaining position of the public body	
D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives	Negotiations between a public employer and public employees	

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

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;		
E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage.	Consultations between a public body and its attorney concerning pending or contemplated litigation, matters that are confidential under the Maine Code of Professional Responsibility, or matters that would clearly place the public body at a substantial disadvantage	• The mere presence of an attorney cannot be used to circumvent the open meeting requirement by invocation of attorney consultation exception[26]
F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;	Discussion of records made confidential by statute	
G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and	Discussions of professional licensing decisions	
H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.	Discussions with municipal officers and code enforcement officer about enforcement of land use laws and municipal ordinances when the CEO is representing the municipality in court. Similar to attorney-client provision in paragraph E without the requirement that CEO be an attorney	
§405-A. Recorded or live broadcasts authorized (REPEALED)	(see now §404)	

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

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
§405-B. Appeals (REPEALED)	(see now §409)	
§ 405-C. Appeals from actions (REPEALED)	(see now §409)	
§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.	• Notice required if agency or body consists of at least 3 persons • Timing: ample time to allow public attendance • Manner: reasonably calculated to notify the general public in the jurisdiction served by the public body • Emergency meeting: notify representatives of local media whenever practical. By same or faster means	• One day notice of planning board's additional meeting sufficient under the circumstances[27]
§407. Decisions		

1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to apprise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.	• Written record of conditional approval or denial
	  • Reason/reasons
	  • Findings of fact
		• FOA laws require agency to set out its findings with a level of specificity that is sufficient to apprise the applicant and any interested member of the public of the basis of the decision[28]
		• When local agency conditionally approves or denies a permit, the agency must make findings of fact adequate to indicate the basis for the decision and to allow meaningful judicial review[29]

[27] Crispin et al. v. Town of Scarborough et al., 1999 ME 112, 736 A.2d 241.
[28] Yusem v. Town of Raymond, 2001 ME 61, 769 A.2d 865.
[29] Carroll v. Town of Rockport, 2003 ME 135, 837 A.2d 148.

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS

2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.	• Written record of dismissal or refusal to renew a contract of official, employee, appointee
	  • Reason/reasons
	  • Findings of fact
		• The Personnel Committee of a municipality is not required to vote as to each individual reason for termination of an employee as long as the decision included specific findings of fact and conclusions.[30]

§408. Public records available for public inspection and copying		
1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall acknowledge receipt of the request within a reasonable period of time.	• Every person • Right to inspect and copy • During regular business hours • Within a reasonable period of time after request	• When person requests information that falls within FOA laws' disclosure requirements, and governmental entity knows that it has particular records containing that information, entity must at least inform requesting party that material is available and that the requesting party may come in and "inspect and copy" the information sought[31]
2. Inspection, translation and copying scheduled. Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought.	• Translation, inspection and copying scheduled to not delay or inconvenience regular activities	
3. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows.	• Cost of copying paid by requestor	
A. The agency or official may charge a reasonable fee to cover the cost of copying.	• Reasonable fee	
B. The agency or official may charge a	• Actual cost of searching for, retrieving and compiling of max of $10/hour after first hour • "Compiling" includes	

[30] Quintal v. City of Hallowell, 2008 ME 155, 956 A.2d 88.
[31] Bangor Publishing Co. v. City of Bangor, 544 A.2d 733 (ME 1988).

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information. C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation. D. An agency or official may not charge for inspection. **4. Estimate.** The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than $20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 5 applies. **5. Payment in advance.** The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if: A. The estimated total cost exceeds $100; or B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner. **6. Waivers.** The agency or official may waive part or all of the total fee if: A. The requester is indigent; or B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.	reviewing and redacting • Pay State costs to translate • No fee for inspection • Estimate of costs • Notify requestor if greater than $20 • If greater than $100, see subsection 5 • Payment in advance • Waiver of fees	
§409. Appeals		

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS

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.	• Refusal of inspection or copying must be
	  • In writing
	  • Within 5 working days of request
	• Appeal from denial within 5 working days of denial to Superior Court
	• Court may issue order of disclosure
	• Expedited
		• Failure of governmental body to respond to request for records in the time established by statute is deemed a denial of the request[32]
		• In its review, superior court is the forum of origin for a determination of both facts and law with respect to the alleged violation and does not function in an appellate capacity, and thus, procedures for taking additional evidence on judicial review are inapplicable (overruling Marxsen v. Board of Directors, 591 A.2d 867).[33]

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.	• Approval of official action in executive session is illegal; officials subject to penalties • Superior Court shall declare action null and void if action taken illegally • Expedited	• Freedom of Access claim must be filed within 30 days of discovering a possible violation (MRCivP, Rule 80B)[34] • Burden of proof on agency to establish "just and proper cause" for denial of a FOA request[35] • Supreme Judicial Court, sitting as the Law Court, could not create settlement negotiation privilege against disclosure under FOA; Court could only create new privileges pursuant to its rulemaking powers.[36]
3. Proceedings not exclusive. The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.	• Other civil remedies available	
4. Attorney's fees. In an appeal under subsection 1 or 2, the court may award reasonable	• Reasonable attorney's fees and litigation expenses	

[32] Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).
[33] Underwood v. City of Presque Isle, 1998 ME 166, 715 A.2d 148.
[34] Palmer v. Portland School Committee et al., 652 A.2d 86 (ME 1995).
[35] Springfield Terminal Railway Company v. Department of Transportation, 2000 ME 126, 754 A.2d 353.
[36] Citizens Communications Co. v. Attorney General, 2007 ME 114, 931 A.2d 503.

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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. This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.	maybe awarded to the prevailing plaintiff who appealed if the court determines that the refusal or illegal action was committed in bad faith	
§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.	• Willful = intentional or knowing • Agency or entity liable for civil violation; fine of up to $500	• Penalties for official actions taken in executive session in violation of FOA laws may only be sought by the Attorney General or AG's representative[37] • Only Attorney General or AG's representative may enforce FOA laws by seeking imposition of fine[38] • If a requesting party has undertaken successful appeal of denial, that party is entitled to costs[39]
§411. Right To Know Advisory Committee **1. Advisory committee established.** The Right To Know Advisory Committee, referred to in this chapter as "the advisory committee," is established to serve as a resource for ensuring compliance with this chapter and upholding the integrity of the purposes underlying this chapter as it applies to all public entities in the conduct of the public's business. **2. Membership.** The advisory committee consists of the following members: A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over		

[37] Lewiston Daily Sun v. School Administrative District No. 43, 1999 ME 143, 738 A.2d 1239.
[38] Scola v. Town of Sanford,1987 ME 119, 695 A.2d 1194.
[39] Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS

judiciary matters, appointed by the President of the Senate;

B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House;

C. One representative of municipal interests, appointed by the Governor;

D. One representative of county or regional interests, appointed by the President of the Senate;

E. One representative of school interests, appointed by the Governor;

F. One representative of law enforcement interests, appointed by the President of the Senate;

G. One representative of the interests of State Government, appointed by the Governor;

H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House;

I. One representative of newspaper and other press interests, appointed by the President of the Senate;

J. One representative of newspaper publishers, appointed by the Speaker of the House;

K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House;

L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; and

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

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

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

A. Except as provided in paragraph B, members are appointed for terms of 3 years.

B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed.

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

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

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

6. Duties and powers. The advisory committee:

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

B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for agencies and public officials. The advisory committee shall also provide general information about

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS

the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries;

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

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

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

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

that information may appropriately be released;

G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations;

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

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

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

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

7. Outside funding for advisory committee activities. The advisory committee may seek outside funds to fund the cost of public hearings, conferences, workshops, other meetings, other activities of the advisory committee and educational and training materials. Contributions to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution shall certify to the Legislative

Council that it has no pecuniary or other vested interest in the outcome of the advisory committee's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory committee.

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

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

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

§412 Public records and proceedings training for certain elected officials

1. Training required. Beginning July

1, 2008, 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.

2. Training course; minimum requirements. The training course under subsection 1 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 this chapter;

C. Penalties and other consequences for failure to comply with this chapter.

An elected official 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 shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected.

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. Deleted. Laws 2007, c. 576, §2.

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

G. Officials of school units and school boards; and

H. Officials of regional or other political subdivisions who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

SUBCHAPTER 1-A

(headnote revised 2011)

PUBLIC RECORDS EXCEPTIONS AND ACCESSIBILITY

§431. Definitions

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

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS

have the following meanings.

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

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

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

§432. Exceptions to public records; review

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

- Amended 2011

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

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
2-B. Recommendations to review committee. The advisory committee shall report its recommendations under this section to the review committee no later than the convening of the second regular session of each Legislature.		
2-C. Accessibility of public records. The advisory committee may include in its evaluation of public records statutes the consideration of any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.		• New 2011
3. Assistance from committees of jurisdiction. The advisory committee may seek assistance in evaluating public records exceptions from the joint standing committees of the Legislature having jurisdiction over the subject matter related to the exceptions being reviewed. The advisory committee may hold public hearings after notice to the appropriate committees of jurisdiction.		
§433. Schedule for review of exceptions to public records		
1. Scheduling guidelines. (repealed)		
2. Scheduling guidelines. The advisory committee shall use the following list as a guideline for scheduling reviews of public records exceptions.		
A. Exceptions codified in the following Titles are scheduled for review in 2008:		
(1) Title 1;		
(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.

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS

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

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

- Amended 2011

among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed exception or proposed change that affects the accessibility of a public record may not be enacted into law unless review and evaluation pursuant to subsections 2 and 2-B have been completed.

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

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
outweighs the public interest in the disclosure of records; **G.** Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records; **H.** Whether the proposed exception is as narrowly tailored as possible; and **I.** Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception. **2-A. Accountability review of agency or official.** In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.		
2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.		• New 2011
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.		• Amended 2011

Reinsch, Margaret

From: Parr, Christopher

Sent: Wednesday, August 31, 2011 10:08 AM

To: Glessner, James T.; Mal J. Leary; Harry Pringle; Cianchette, Michael; Reinsch, Margaret; ajhiggins@mpbn.net; Bruce Smith; David Hastings (2); heidi.pushard@gmail.com; jmeyer@sunjournal.com; nothymefarm@metrocast.net; kmorgan@seacoastonline.com; McCarthyReid, Colleen; mviolette@portlandradiogroup.com; Nass, RepJoan; Percy L. Brown & Son Inc.; Perry Antone; Pistner, Linda; plbrownplumbing@myfairpoint.net; rflewelling@memun.org; Robb Weaver; Sean OMara; Shenna Bellows

Subject: RE: Right to Know Advisory Committee - request

Dear Members of the Right to Know Advisory Committee (RTKAC):

By way of following up on the inquiry I made in July (please reference the e-mail directly below), and in anticipation of the RTKAC Legislative Subcommittee's meeting on Thursday, which I hope to attend:

> I am writing to provide the following information for you to consider as you review and discuss both the amendments to the Maine Freedom of Access Act (FOAA) that have been proposed in LD 1465 (@ http://www.mainelegislature.org/legis/bills/bills_125th/billtexts/SP045601.asp) and the "necessity of formalities" matters that are included on the subcommittee's agenda.
>
> The Maine State Police Records Management Services Unit (MSP.RMS) is primarily staffed by an office clerk and a Maine State Police Sergeant. In 2009, MSP.RMS alone - just that unit - received 3,136 requests for records (or an average of approximately 60 requests per week). In 2010, the unit received 3,991 requests for records (or an average of approximately 76 requests per week). Through August 1, 2011, the unit has received 2,451 such requests.
>
> Some of the requests MSP.RMS received were made expressly pursuant to the FOAA (i.e., the person making the request cited or "invoked" the FOAA when making the request); however, other requests were made without an express citation to or invocation of the FOAA.
>
> I would simply ask that you consider the above information, and the question I presented in my July e-mail, as you deliberate the amendments to the FOAA that are proposed in LD 1465 - particularly (but not only) with respect to the practicality of the timelines that are proposed in Sec. 4 of the bill.

Thanks very much for your attention to this matter.

Best Regards, C

CHRISTOPHER PARR
COUNSEL | MAINE STATE POLICE
MAINE DEPARTMENT OF PUBLIC SAFETY

From: Parr, Christopher
Sent: Monday, July 18, 2011 11:33 AM
To: Glessner, James T.; Mal J. Leary; Harry Pringle; Cianchette, Michael; Reinsch, Margaret; ajhiggins@mpbn.net; Bruce Smith; David Hastings (2); Dion, RepMark; heidi.pushard@gmail.com; jmeyer@sunjournal.com; nothymefarm@metrocast.net; kmorgan@seacoastonline.com; McCarthyReid, Colleen; mviolette@portlandradiogroup.com; Nass, RepJoan; Percy L. Brown & Son Inc.; Perry Antone; Pistner, Linda; plbrownplumbing@myfairpoint.net; rflewelling@memun.org; Robb Weaver; Sean OMara; Shenna Bellows
Subject: RE: Right to Know Advisory Committee - request

Harry, Mal, Ted:

Thanks very much for your responses; however, I do not think I framed my question quite correctly, as I am neither requesting nor expecting a legal opinion or legal advice from any of the Members of the Right to Know Advisory Committee (RTKAC) in this matter.

Rather, my question relates directly to an aspect of the fundamental public policy intent of the Maine Freedom of Access Act (FOAA). Asked differently (and, in retrospect, more as I intended), my question is this:

> *As a matter of public policy, ought it to be* the case that a request for records *needs to* expressly cite/invoke the Maine Freedom of Access Act in order for the request to be an "official" Freedom of Access Act request that is subject to the requirements and protections of the Act?

I do not pose the question as an academic one. Indeed, by way of some background as to why I ask the question:

- It is not unusual for MSP to receive numerous requests for agency records every week, but not all of the requests cite or "invoke" the FOAA (in fact, I would guess that most do not).

  My question is whether, given the public policy intent of the FOAA, such requests – as a matter of *public policy – ought to be* nonetheless regarded by our agency as "official" FOAA requests that are subject to the requirements and protections of the Act.

- MSP recently received a written request for access to certain agency records; the request was not expressly made pursuant to FOAA. In the same written request, however, the requestor indicated he/she *would file* a FOAA request for access to the subject records, if necessary.

  The structure of the above request implied to me that the requestor did not seem to consider his/her written request for access to the subject records to be an "actual" FOAA request, but presumably some other type of request (seemingly one the requestor did not think was entitled to the requirements and protections of the FOAA).

  My question: As a matter of *public policy, should* government agencies treat the two types of requests (i.e., a request for access to records that expressly cites/invokes FOAA vs. such a request that does not cite/invoke FOAA), differently?

As said above, I am not seeking a legal opinion or legal advice from any of the Members of the RTKAC in this matter; rather, I am only asking for any comments or thoughts (or even informal (non-legal) opinions) any Members of the Committee would be willing to share in response to the public policy-related questions I have raised here.

Thanks again, and thanks in advance.

Best, C

CHRISTOPHER PARR
COUNSEL | MAINE STATE POLICE
MAINE DEPARTMENT OF PUBLIC SAFETY

From: James Glessner [mailto:james.t.glessner@courts.maine.gov]
Sent: Sunday, July 17, 2011 9:12 PM
To: Mal J. Leary
Cc: Harry Pringle; Cianchette, Michael; Reinsch, Margaret; ajhiggins@mpbn.net; Bruce Smith; David Hastings (2); Dion, RepMark; heidi.pushard@gmail.com; jmeyer@sunjournal.com; nothymefarm@metrocast.net; kmorgan@seacoastonline.com; McCarthyReid, Colleen; mviolette@portlandradiogroup.com; Nass, RepJoan; Percy L. Brown & Son Inc.; Perry Antone; Pistner, Linda; plbrownplumbing@myfairpoint.net; rflewelling@memun.org; Robb Weaver; Sean OMara; Shenna Bellows; Parr, Christopher
Subject: Re: Right to Know Advisory Committee - request

I think that Chris raises important questions, but I too agree with Harry.

On Sat, Jul 16, 2011 at 9:18 AM, Mal J. Leary <Mal@mainecapitolnews.com> wrote:
I agree with Harry.

Mal Leary
Capitol News Service
State House Station #127
Augusta, Maine 04333
207-621-0702

From: Harry Pringle [hrpringle@dwmlaw.com]
Sent: Saturday, July 16, 2011 7:35 AM
To: 'Cianchette, Michael'; Reinsch, Margaret; ajhiggins@mpbn.net; Bruce Smith; David Hastings (2); Dion, RepMark; Glessner, James T.; heidi.pushard@gmail.com; jmeyer@sunjournal.com; nothymefarm@metrocast.net; kmorgan@seacoastonline.com; Mal J. Leary; McCarthyReid, Colleen; mviolette@portlandradiogroup.com; Nass, RepJoan; Percy L. Brown & Son Inc.; Perry Antone; Pistner, Linda; plbrownplumbing@myfairpoint.net; Reinsch, Margaret; rflewelling@memun.org; Robb Weaver; Sean OMara; Shenna Bellows

Cc: Parr, Christopher
Subject: RE: Right to Know Advisory Committee - request

I don't object to adding this to an already very long agenda of issues, but I'm not sure we're equipped as a subcommittee to issue legal opinions. Isn't this inquiry better addressed to the AG's office? Harry

---

From: Cianchette, Michael [mailto:Michael.Cianchette@maine.gov]
Sent: Friday, July 15, 2011 3:23 PM
To: Reinsch, Margaret; ajhiggins@mpbn.net; Bruce Smith; David Hastings (2); Dion, RepMark; Glessner, James T.; heidi.pushard@gmail.com; Harry Pringle; jmeyer@sunjournal.com; nothymefarm@metrocast.net; kmorgan@seacoastonline.com; mal@mainecapitolnews.com; McCarthyReid, Colleen; mviolette@portlandradiogroup.com; Nass, RepJoan; Percy L. Brown & Son Inc.; Perry Antone; Pistner, Linda; plbrownplumbing@myfairpoint.net; Reinsch, Margaret; rflewelling@memun.org; Robb Weaver; Sean OMara; Shenna Bellows
Cc: Parr, Christopher
Subject: RE: Right to Know Advisory Committee - request

Concur with Peggy's suggestion to add this to the Legislative Subcommittee agenda.

Michael J. Cianchette

Deputy Counsel and Policy Advisor for Defense, Veterans, and Emergency Management

Office of the Governor

[Direct] (207) 287-3543

From: Reinsch, Margaret [mailto:Margaret.Reinsch@legislature.maine.gov]
Sent: Friday, July 15, 2011 3:20 PM
To: AJ Higgins (ajhiggins@mpbn.net); bwsmith@dwmlaw.com; Cianchette, Michael; David Hastings (2); Dion, RepMark; Glessner, James T.; heidi.pushard@gmail.com; hrpringle@dwmlaw.com; jmeyer@sunjournal.com; Joan Nass (nothymefarm@metrocast.net); kmorgan@seacoastonline.com; mal@mainecapitolnews.com; McCarthyReid, Colleen; mviolette@portlandradiogroup.com; Nass, RepJoan; Percy L. Brown & Son Inc.; Perry Antone; Pistner, Linda; 'plbrownplumbing@myfairpoint.net'; Reinsch, Margaret; rflewelling@memun.org; Robb Weaver; 'Sean OMara'; Shenna Bellows
Cc: Parr, Christopher
Subject: FW: Right to Know Advisory Committee - request

Greetings -

Chris Parr, the FOA contact for the State Police, asked me to forward the following question. Perhaps the Legislative Subcommittee would like to put it on your agenda?

Thanks
Peggy

Margaret J. Reinsch, Esq., Legislative Analyst

Joint Standing Committee on Judiciary

Office of Policy and Legal Analysis

Maine State Legislature

13 State House Station

Augusta, Maine 04333

(207) 287-1670

(207) 287-1673 (direct and voice-mail)

(207) 287-1275 (fax)

margaret.reinsch@legislature.maine.gov

From: Parr, Christopher

Sent: Friday, July 15, 2011 12:06 PM

To: Reinsch, Margaret

Subject: RE: Right to Know Advisory Committee

Peggy:

Would you kindly forward the following informal inquiry to the Members of the Right to Know Advisory Committee?

Thanks very much in advance.

Best, C

####

Dear Members of the Right to Know Advisory Committee:

The purpose of this e-mail is to respectfully ask for any thoughts or comments you would be willing to share regarding the following question:

> Must a request for records expressly cite/invoke the Maine Freedom of Access Act in order for the request to qualify as an "official" Freedom of Access Act request that is subject to the requirements and protections of the Act?

Asked another way: Is there a difference between how the hypothetical State of Maine government agency receiving the following hypothetical requests for records, must respond to the respective requests? (And, if so, what is that difference?):

- Request "A": "Pursuant to the Maine Freedom of Access Act, please forward to me via U.S. mail a copy of the minutes from government agency XYZ's weekly public meeting held last week."

- Request "B": "Pursuant to 1 MRSA c. 13, please forward to me via U.S. mail a copy of the minutes from government agency XYZ's weekly public meeting held last week."

- Request "C": "Please forward to me via U.S. mail a copy of the minutes from government agency XYZ's weekly public meeting held last week."

Any thoughts or comments you would be willing to share would be greatly appreciated.

Thank you very much in advance.

Best,

C

####

CHRISTOPHER PARR

COUNSEL | MAINE STATE POLICE

MAINE DEPARTMENT OF PUBLIC SAFETY

Reinsch, Margaret

From: AJay Higgins [AJHiggins@mpbn.net]

Sent: Wednesday, August 31, 2011 10:24 AM

To: Mal J. Leary

Cc: Harry Pringle; Cianchette, Michael; Reinsch, Margaret; Bruce Smith; David Hastings (2); Dion, RepMark; Glessner, James T.; <heidi.pushard@gmail.com>, ; <nothymefarm@metrocast.net>, ; McCarthyReid, Colleen; " <mviolette@portlandradiogroup.com>, "@legislature.maine.gov; Nass@legislature.maine.gov; RepJoan@legislature.maine.gov; " <RepJoan.Nass@legislature.maine.gov>, "@legislature.maine.gov; Percy@legislature.maine.gov; L.Brown@legislature.maine.gov; &@legislature.maine.gov; Son@legislature.maine.gov; "Inc. <brownplumbing3@myfairpoint.net>, "@legislature.maine.gov; Perry@legislature.maine.gov; Antone@legislature.maine.gov; " <pantone@brewerme.org>, "@legislature.maine.gov; Pistner@legislature.maine.gov; Linda <Linda.Pistner@maine.gov>, ; " <rflewelling@memun.org>, "@legislature.maine.gov; Robb@legislature.maine.gov; Weaver@legislature.maine.gov; " <robbweaver@gmail.com>, "@legislature.maine.gov; Sean@legislature.maine.gov; OMara@legislature.maine.gov; " <sean.omara@maine.edu>, "@legislature.maine.gov; Shenna@legislature.maine.gov; Bellows@legislature.maine.gov; " <sbellows@mclu.org>, "@legislature.maine.gov; Parr@legislature.maine.gov; Christopher@legislature.maine.gov; " <Christopher.Parr@maine.gov>"@legislature.maine.gov

Subject: Re: Right to Know Advisory Committee - request

I also agree with Harry. Sorry, I'm so late getting back to you on this...just got my power turned on this morning.

A.J. Higgins
State House Bureau Chief
Maine Public Broadcasting Network
State House Station 70
Augusta, Me. 04333
Phone: 207-620-7594

Legislative Subcommittee: 2011

1. Criminal History Record Information Act revision

2. LD 1465, An Act To Amend the Laws Governing Freedom of Access

3. Requests for public records: necessity of formalities (Chris Parr)

4. Governor's letter of 14 July 2011: Clarify the parameters of what really constitutes government business. (His example is grocery receipts for the Blaine House.)

5. Governor's letter of 14 July 2011: Address the abuse of FOA for political purposes: requests made simply to gum up the work of the office and keep the office from moving initiatives forward. He suggested looking at increasing the $10/hour rate as well as ways to combat abuses.

6. Status of Maine Public Broadcasting Network records under the Freedom of Access laws (Mike Brown)

7. Request from the Maine Heritage Policy Center to Maine State Housing Authority for information about public employees;

8. Definition of "reasonable time" (Dwight Hines)

9. Application of FOA laws to volunteer fire departments (Dwight Hines)

10. Use of technology for the purpose of remote participation by members of public bodies

11. Drafting templates

12. Storage, management and retrieval of public officials' communications, especially email

G:\STUDIES 2011\Right to Know Advisory Committee\Legislative Subcommittee\responsiblities for 2011.doc (9/1/2011 8:53:00 AM)))

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
Notice of Public Proceedings			
Sec. 2. 1 MRSA §406, as amended by PL 1987, c. 477, §4, is further amended to read: **§ 406.Public notice** Public notice ~~shall~~must 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~~must be given ~~in ample time to allow public attendance~~not less than 3 days prior to the public proceeding and ~~shall~~must 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~~must 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.	**§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.	▪ One day notice of planning board's additional meeting sufficient under the circumstances[1]	
Form of Request and Response			
2-A. Form. If a public record exists in electronic or magnetic form, the requester may request a copy of the public record in a paper, electronic, magnetic or other medium, specify the storage medium and request that the copy be provided by an electronic transfer by the Internet or other means.			

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

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
A. An agency or official shall provide a copy of the public record in the requested medium if: (1) The agency or official has the technological ability to produce the public record in that medium or can obtain the assistance necessary to produce the public record at a reasonable cost; and (2) The requester agrees to pay the agency's or official's costs to purchase and install any additional necessary computer software or hardware to accommodate the request and to copy the public record in a requested medium. B. If an agency or official cannot provide a copy of a public record in a requested medium, the agency or official shall identify every medium in which the public record can be provided for inspection and copying, which must include a paper copy, and the requester must identify the medium that is acceptable to the requester.			

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
Remedies for Violations			
	1 MRSA § 409, sub-§ § 1 and 4: **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. **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.	• Failure of governmental body to respond to request for records in the time established by statute is deemed a denial of the request[2] • In its review, superior court is the forum of origin for a determination of both facts and law with respect to the alleged violation and does not function in an appellate capacity, and thus, procedures for taking additional evidence on judicial review are inapplicable (overruling Marxsen v. Board of Directors, 591 A.2d 867).[3]	

[2] Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).
[3] Underwood v. City of Presque Isle, 1998 ME 166, 715 A.2d 148.

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
Sec. 6. 1 MRSA §410, as repealed and replaced by PL 1987, c. 477, §6, is amended to read: **§ 410.Violations; injunction** For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation ~~shall be~~is liable for a civil violation for which a ~~forfeiture~~fine of not more than $500 may be adjudged. The Superior Court may issue an injunction to enforce the provisions of this chapter against any agency or official. A motion for an injunction is privileged in respect to its assignment for hearing and trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.	**§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.	• Penalties for official actions taken in executive session in violation of FOA laws may only be sought by the Attorney General or AG's representative[4] • Only Attorney General or AG's representative may enforce FOA laws by seeking imposition of fine[5] • If a requesting party has undertaken successful appeal of denial, that party is entitled to costs[6]	
Public Access Officer			
Sec. 1. 1 MRSA §402, sub-§1-B is enacted to read: **1-B. Public access officer.** "Public access officer" means the person fulfilling the duties as described in section 413.			

[4] Lewiston Daily Sun v. School Administrative District No. 43, 1999 ME 143, 738 A.2d 1239.
[5] Scola v. Town of Sanford,1987 ME 119, 695 A.2d 1194.
[6] Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
Sec. 7. 1 MRSA §412, as amended by PL 2007, c. 576, §2, is further amended to read: **§ 412.Public records and proceedings training for certain elected officials and public access officers** **1. Training required.** ~~Beginning July 1, 2008, an~~An elected official and a public access officer, subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or officer shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official or the person is designated as a public access officer pursuant to section 413, subsection 1. ~~For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.~~ **2. Training course; minimum requirements.** The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in: A. The general legal requirements of this chapter regarding public records and public proceedings; B. Procedures and requirements regarding complying with a request for a public	**§412 Public records and proceedings training for certain elected officials** **1. Training required.** Beginning July 1, 2008, 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. **2. Training course; minimum requirements.** The training course under subsection 1 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		

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
record under this chapter; and C. Penalties and other consequences for failure to comply with this chapter. An elected official or public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information. **3. Certification of completion.** Upon completion of the training course required under subsection 1, the elected official or public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected. A public access officer shall file the record with the agency or official that designated the public access officer. **4. Application.** This section applies to the following elected officials: A. The Governor;	record under this chapter; **C**. Penalties and other consequences for failure to comply with this chapter. An elected official 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 **3. Certification of completion.** Upon completion of the training course required under subsection 1, the elected official shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected. **4. Application.** This section applies to the following elected officials: **A.** The Governor;		

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;	**B**. The Attorney General, Secretary of State, Treasurer of State and State Auditor;		
C. Members of the Legislature elected after November 1, 2008;	**C.** Members of the Legislature elected after November 1, 2008;		
E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;	**E.** Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;		
F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;	**F.** Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;		
G. Officials of school units and school boards; and	**G**. Officials of school units and school boards; and		
H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.	**H.** Officials of regional or other political subdivisions who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, “regional or other political subdivision” means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.		

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
This section also applies to a public access officer designated pursuant to section 413, subsection 1.			
Sec. 8. 1 MRSA §413 is enacted to read: **§ 413. Public access officer; responsibilities** **1. Designation; responsibility.** Every agency or official shall designate to an existing staff member the responsibility of serving as a public access officer to oversee responses to requests for public records under this chapter. The public access officer shall oversee the prompt response to a request to inspect or copy a public record. **2. Training.** A public access officer shall complete a course of training on the requirements of this chapter relating to public records and proceedings as described in section 412. **3. Purpose; schedule.** A public access officer or other person acting on behalf of an agency or official may not inquire into the purpose of a request. A public access officer may inquire as to the schedule or order of inspection or copying of a public record or a portion of a public record under section 408. **4. Uniform treatment.** A public access officer shall treat all requests for information under this chapter uniformly without regard to the requester's position or occupation, the person on whose behalf the request is made or the status of			

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
the requester as a member of the media. **5. Comfort and facility.** The public access officer shall ensure that a person may inspect a public record in the offices of the agency or official in a manner that provides reasonable comfort and facility for the full exercise of the rights of the public under this chapter. **6. Unavailability of public access officer.** The unavailability of a public access officer may not delay a response to a request.			
Public Access Ombudsman			
Sec. 9. Appropriations and allocations. The following appropriations and allocations are made. **ATTORNEY GENERAL, DEPARTMENT OF THE** **Administration - Attorney General 0310** Initiative: Provides funds for a part-time Assistant Attorney General position to act as the public access ombudsman and general operating expenses required to carry out the purposes of this Act. **GENERAL FUND** **2011-12** **2012-13** POSITIONS - LEGISLATIVE COUNT 0.500 0.500 Personal Services $62,120 $65,576 All Other $5,000 $5,000	**5 MRSA §200-I. PUBLIC ACCESS DIVISION; PUBLIC ACCESS OMBUDSMAN** **1. Public Access Division; Public Access Ombudsman.** There is created within the Department of the Attorney General the Public Access Division to assist in compliance with the State's freedom of access laws, Title 1, chapter 13. The Attorney General shall appoint the Public Access Ombudsman, referred to in this section as "the ombudsman," to administer the division. **2. Duties.** The ombudsman shall: A. Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right To Know Advisory Committee established in	• *Statute enacted; but never implemented due to lack of funding for position*	

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
GENERAL FUND TOTAL	Title 1, section 411; $67,120 $70,576 B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws; C. Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws; D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved; and E. Make recommendations concerning ways to improve public access to public records and proceedings. **3. Assistance.** The ombudsman may request from any public agency or official such assistance, services and information as will enable the ombudsman to effectively carry out the responsibilities of this section. **4. Confidentiality.** The ombudsman may		

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
	believes are confidential in order to make a recommendation concerning whether the public agency or official may release the records to the public. The ombudsman's recommendation is not binding on the public agency or official. The ombudsman shall maintain the confidentiality of records and information provided to the ombudsman by a public agency or official under this subsection and shall return the records to the public agency or official when the ombudsman's review is complete. **5. Report.** The ombudsman shall submit a report not later than March 15th of each year to the Legislature and the Right To Know Advisory Committee established in Title 1, section 411 concerning the activities of the ombudsman for the previous year. The report must include: A. The total number of inquiries and complaints received; B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials; C. The number of complaints received concerning respectively public records and public meetings; D. The number of complaints received concerning respectively: (1) State agencies; (2) County agencies; (3) Regional agencies;		

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
	(4) Municipal agencies; (5) School administrative units; and (6) Other public entities; E. The number of inquiries and complaints that were resolved; F. The total number of written advisory opinions issued and pending; and G. Recommendations concerning ways to improve public access to public records and proceedings. **6. Repeal.**		
Timelines for Compliance with Requests			
Sec. 3. 1 MRSA §408, as amended by PL 2009, c. 240, §4, is further amended to read: **§ 408.Public records available for public inspection and copying** **1. Right to inspect and copy.** Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within ~~a reasonable period of time after making a request to inspect or copy the public record~~the time limits established in section 408-A. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall	**1. Right to inspect and copy.** Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall acknowledge receipt of	▪ When person requests information that falls within FOA laws' disclosure requirements, and governmental entity knows that it has particular records containing that information, entity must at least inform requesting party that material is available and that the	

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

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
acknowledge receipt of the request within a reasonable period of time. A person may request by telephone that a copy of the public record be mailed or e-mailed to that person.	the request within a reasonable period of time.	requesting party may come in and "inspect and copy" the information sought[7]	
2. Inspection, translation and copying scheduled. Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought, as long as the inspection, translation and copying occur within the time limits established in section 408-A. The agency or official may use a 3rd party to make a copy of an original public record, but a requester may not remove the original of a public record from the agency or official.	**2. Inspection, translation and copying scheduled.** Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought.		
3. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows. A. The agency or official may charge a reasonable fee to cover the cost of copying. B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.	**3. Payment of costs.** Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows. A. The agency or official may charge a reasonable fee to cover the cost of copying. B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.		

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation. D. An agency or official may not charge for inspection. E. If the requester requests that the public record be mailed, the agency or official may charge a fee not greater than the actual cost of mailing the record.	C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation. D. An agency or official may not charge for inspection.		
4. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than $20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 5 applies and the estimate must be provided within 3 business days of the request. **5. Payment in advance.** The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if: A. The estimated total cost exceeds $100; or B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.	**4. Estimate.** The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than $20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 5 applies. **5. Payment in advance.** The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if: A. The estimated total cost exceeds $100; or B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.		

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
6. Waivers. The agency or official may waive part or all of the total fee if: A. The requester is indigent; or B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.	**6. Waivers.** The agency or official may waive part or all of the total fee if: A. The requester is indigent; or B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.		
Sec. 4. 1 MRSA §408-A is enacted to read: **§ 408-A. Timelines** **1. Availability; redaction; location; collection.** A public record must be made available immediately upon request unless time is required to redact the record so as to allow inspection and copying of only those portions of the record containing information that is a public record or to locate and collect a record that is not in active use or that is in storage. **2. Certification.** If a public record is not available immediately, a public access officer shall promptly certify that fact in writing to the requester, provide an explanation for the delay and either provide an opportunity to inspect or copy the public record within 5 business days or mail or e-mail the public record within 5 business days. **3. Large or multiple requests.** If a large			

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
public record is requested or multiple public records are requested and the public access officer or a person acting on behalf of the agency or official cannot in the exercise of due diligence produce the entire record or multiple records within 5 business days after the request, the public access officer shall provide the portion of the public record or public records when available. The requester may waive this requirement and request to see the public record or public records requested as a whole when available. **4. Estimate.** If the cost to comply with a request to inspect or copy a public record is greater than $100, an estimate must be provided within 3 business days of the request. **5. Failure to comply.** Failure to comply with this section may be treated as a denial of a request and is subject to the enforcement provisions of this chapter.			
Sec. 5. 1 MRSA §408-B is enacted to read: **§ 408-B. Inspection by requester** **1. Ten business days.** A requester shall complete an inspection of a public record within 10 business days after the record is made available for inspection. If the inspection is not completed within the 10-business-day period, a public access officer or a person acting on behalf of the agency or official shall inform the requester that a written request for additional time may be filed with the agency or official that has custody of the public record.			

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
2. Additional periods. An agency or official shall allow an additional 20 business days beyond the period in subsection 1 for a requester to review a public record if the requester filed a written request for additional time with the agency or official or its public access officer or a person acting on behalf of the agency or official. If the inspection is not completed upon the expiration of the additional 20 business days, the public access officer or person acting on behalf of the agency or official shall inform the requester that a 2nd written request for an additional 10 days may be filed with the agency or official that has custody of the public record. **3. Interruption of inspection.** The time allowed for inspection of a public record may be interrupted if the agency or official needs to use the public record. If an agency or official invokes this subsection, the public access officer, no later than 5 business days after the agency or official takes the record back, shall inform the requester in writing the dates that the public record will be available for the inspection to resume. The time allowed for an inspection is tolled during the period in which the public record is being used by the agency or official.			

An Act to Amend the Laws Relating to Criminal History Record Information *and Intelligence and Investigative Information*

Proposed to be submitted by the Criminal Law Advisory Commission

Part 1

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
Sec. 1. 16 MRSA c. 3, sub-c 8 is repealed		
Sec. 2. 16 MRSA c. 3, sub-c 10 is enacted to read:		
SUBCHAPTER 10	**SUBCHAPTER 8**	
CRIMINAL HISTORY RECORD INFORMATION ACT	**CRIMINAL HISTORY RECORD INFORMATION ACT**	
§651. Scope; application This subchapter governs the dissemination of criminal history record information. This subchapter establishes 2 distinct categories of criminal history record information and provides for the dissemination of each: **1. Public criminal history record information.** Public criminal history record information, defined in section 652, subsection 8, whose dissemination is governed by section 653; and **2. Confidential criminal history record information.** Confidential criminal history record information, defined in section 652, subsection 2, whose dissemination is governed by section 654.		*New "Scope and application" section to clearly state the two distinct categories of criminal history record information.*

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
§652. Definitions	**§611. Definitions**	
As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.	As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings.	
1. Administration of criminal justice. "Administration of criminal justice" means activities relating to the apprehension or summonsing, detention, pretrial release, post-trial release, prosecution, adjudication, sentencing, correctional custody and supervision or rehabilitation of accused persons or convicted criminal offenders. It includes the collection, storage and dissemination of criminal history record information.	**1. Administration of criminal justice.** "Administration of criminal justice" means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.	
	2. Conviction data. "Conviction data" means criminal history record information other than nonconviction data.	*Deleted. See new definition of "public criminal history record information"*
2. Confidential criminal history record information. "Confidential criminal history record information" means criminal history record information of the following types:	**9. Nonconviction data.** "Nonconviction data" means criminal history record information of the following types:	*Changed from "nonconviction data" to "confidential criminal history record information"*
A. Unless the person remains a fugitive from justice, summons and arrest information without disposition if an interval of more than one year has elapsed since the date the person was summonsed or arrested and no active prosecution of a criminal charge stemming from the summons or arrest is	A. Arrest information without disposition, if an interval of one year has elapsed from the date of the arrest and no active prosecution of the charge is pending. To be an active prosecution the case must be still actively in process, with arraignment completed and the case docketed for court trial;	*Consistent with current law: generally, arrest data is not public after one year has elapsed and no formal action. Exception for fugitives from justice.*

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
pending;		
B. Information disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor;	B. Information disclosing that the police have elected not to refer a matter to a prosecutor;	
C. Information disclosing that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings;	C. Information disclosing that a prosecutor has elected not to commence criminal proceedings;	
D. Information disclosing that a grand jury has returned a no bill;		*New*
E. Information disclosing that a criminal proceeding has been indefinitely postponed or dismissed because the person charged is found by the court to be mentally incompetent to stand trial;	D. Information disclosing that criminal proceedings have been indefinitely postponed, e.g. a "filed" case, or a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial;	*Current ¶D is broken into new ¶E and new ¶F*
F. Information disclosing that a criminal charge has been filed, if the filing period is indefinite or for more than one year;		
G. Information disclosing that a criminal charge has been dismissed by a court with prejudice or dismissed with finality by a prosecutor other than as part of a plea agreement;	E. A dismissal;	*More details about when a dismissal is confidential*
H. Information disclosing that a person has been acquitted of the charge. A verdict or accepted plea of not criminally responsible by reason of insanity, or its equivalent, is not an acquittal of the	F. An acquittal, excepting an acquittal by reason of mental disease or defect; and	*Clarification of what is not an acquittal*

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
criminal charge;		
I. Information disclosing that a criminal proceeding has terminated in a mistrial with prejudice;		*New*
J. Information disclosing that a criminal proceeding has terminated based on lack of subject matter jurisdiction;		*New*
K. Information disclosing that a criminal proceeding has been terminated because the court lacked jurisdiction over the defendant; and		*New*
L. Information disclosing that a person has been granted a full and free pardon or amnesty.	G. Information disclosing that a person has been granted a full and free pardon or amnesty.	
3. Criminal history record information. "Criminal history record information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency that connects a specific, identifiable person, including a juvenile treated by statute as an adult for criminal prosecution purposes, with formal involvement in the criminal justice system either as an accused or as a convicted criminal offender. "Formal involvement in the criminal justice system either as an accused or as a convicted criminal offender" means while within the jurisdiction of the criminal justice system commencing with arrest, summons or initiation of formal criminal charges and concluding with the completion of every sentencing alternative imposed as punishment or	**3. Criminal history record information.** "Criminal history record information" means notations or other written evidence of an arrest, detention, complaint, indictment, information or other formal criminal charge relating to an identifiable person. It shall include the identification or description of the person charged and any disposition of the charge. The term does not include identification information such as fingerprints, palm prints or photographic records to the extent that the information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations.	*This definition has been expanded to cover all items of "criminal history record information"* *No distinction here as to whether confidential or public* *"Formal involvement in the criminal justice system either as an accused or as a convicted offender" defined here and used only in this definition*

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
final discharge from an involuntary commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent. "Criminal history record information" includes, but is not limited to, identifiable descriptions or notations of: summonses and arrests; detention; bail; formal criminal charges such as complaints, informations and indictments; any disposition stemming from such charges; post-plea or post-adjudication sentencing; involuntary commitment; execution of and completion of any sentencing alternatives imposed; release and discharge from involuntary commitment; any related pretrial and post-trial appeals, collateral attacks and petitions; and petitions for and warrants of pardons, commutations, reprieves and amnesties. The term does not include: identification information such as fingerprints, palmprints, footprints or photographic records to the extent that the information does not indicate formal involvement of the specific individual in the criminal justice system; information of record of civil proceedings, including traffic infractions and other civil violations; intelligence and investigative information as defined in section 671; or information of record of juvenile crime proceedings or their equivalent. Specific information regarding a juvenile crime proceeding is not criminal history record information notwithstanding that a juvenile has been bound over and treated as an adult or that by statute specific information regarding a juvenile crime proceeding is usable in a subsequent adult criminal proceeding.		
4. Criminal justice agency. "Criminal justice agency" means a government agency or	**4. Criminal justice agency.** "Criminal justice agency" means a federal, state, district,	*There is a question (not for the RTK AC to decide) about whether the Courts should be included in*

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
any subunit of a government agency that performs the administration of criminal justice pursuant to a statute or executive order. [Maine courts, courts in any other jurisdiction,] the Maine Department of the Attorney General, district attorney offices and the equivalent departments or offices in any federal or state jurisdiction are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government and any federally recognized Indian tribe.	county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.	*the definition of criminal justice agency for the purposes of this Act.*
5. Disposition. "Disposition" means information of record disclosing that a criminal proceeding has been concluded, although not necessarily finalized, and the specific nature of the concluding event. It includes, but is not limited to: an acquittal; a dismissal, with or without prejudice; filing of a charge by agreement of the parties or by a court; a defendant who is currently a fugitive from justice; a conviction, including the acceptance by a court of a plea of guilty or nolo contendere; a deferred disposition; a proceeding indefinitely continued or dismissed due to a defendant's incompetence; a finding of not criminally responsible by reason of insanity or its equivalent; a mistrial, with or without prejudice; a new trial ordered; an arrest of judgment; a sentence imposition; a resentencing ordered; an execution of and completion of any sentence alternatives imposed, including but not limited to fines, restitution, correctional custody and supervision, and administrative release; a release or discharge from a commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent; death of defendant; any related pretrial and post-trial appeals, collateral	**5. Disposition.** "Disposition" means the conclusion of criminal proceedings, and includes acquittal, acquittal by reason of mental disease or defect, filing of case, dismissal of charge, dismissal of charge due to mental incompentency, continuance due to mental incompetence, guilty plea, nolo contendere plea, nolle prosequi, conviction, sentence, death of defendant, mistrial, new trial granted, release from correctional supervision, parole, pardon, amnesty or extradition. If the disposition is that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, it shall include the nature of the termination or conclusion of the proceedings. If the disposition is that the proceedings have been indefinitely postponed, it shall include the reason for that postponement.	*Definition is expanded to cover all dispositions*

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
attacks and petitions; a pardon, commutation, reprieve or amnesty; or extradition. "Disposition" also includes information of record disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor, that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings, or a grand jury has returned a no bill.		
6. Dissemination. "Dissemination" means the transmission of information by any means, including but not limited to, orally, in writing or electronically, by or to anyone outside the agency that maintains the information.	**6. Dissemination.** "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency which maintains the information.	
7. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access.	**7. Executive order.** "Executive order" means an order of the President of the United States or the chief executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.	
(moved to new Subchapter 11)	**8. Intelligence and investigative information.** "Intelligence and investigative information" means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. "Intelligence and investigative information" does not include information that is criminal history record information.	*No definition needed here - it isn't criminal history record information* *See new Subchapter 11*

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
	10. Person. "Person" means an individual, government agency or a corporation, partnership or unincorporated association.	
8. Public criminal history record information. "Public criminal history record information" means criminal history record information that is not confidential criminal history record information.	**2. Conviction data.** "Conviction data" means criminal history record information other than nonconviction data.	*Changed to "public criminal history record information" - which is all criminal history record information that is not confidential*
9. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam and America Samoa. It also includes the federal government of Canada and any provincial government of Canada and any federally recognized Indian tribe.	**11. State.** "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.	
10. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.	**12. Statute.** "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.	
§653. Dissemination of public criminal history record information	**§615. Dissemination of conviction data**	
1. General rule. Public criminal history record information is public for purposes of Title 1, chapter 13. It may be disseminated by a Maine criminal justice agency to any person or public or private entity for any purpose. The information is	Conviction data may be disseminated to any person for any purpose.	*Clarification* *No time limit*

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
public whether the public criminal history record information relates to a crime for which a person is currently within the jurisdiction of the criminal justice system or, instead, is no longer within that jurisdiction. There is no time limitation on dissemination of public criminal history record information.		
	§616. Inquiries required	
2. Required inquiry to State Bureau of Identification. A Maine criminal justice agency, *other than a court*, shall query the State Bureau of Identification prior to dissemination of any public criminal history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. As used here, "noncriminal justice purpose" means use of public criminal history record information other than for the administration of criminal justice or criminal justice agency employment.	A criminal justice agency shall query the State Bureau of Identification prior to dissemination of any criminal history record information for noncriminal justice purposes to assure that the most up-to-date disposition data is being used.	*Question (not for RTK AC to answer) about whether this requirement should apply to courts.* *This requires checking with the SBI before information is released to ensure accurate and up-to-date*
	§617. Dissemination to noncriminal justice agencies Criminal history record information disseminated to a noncriminal justice agency under section 613 shall be used solely for the purpose of which it was disseminated and shall not be disseminated further.	
§654. Dissemination of confidential criminal history record information		
1. General rule. Confidential criminal history record information may be disseminated by a Maine criminal justice agency, whether directly or through any intermediary, only to	**3. Permissible disclosure.** Nothing in this subchapter shall be construed to prohibit a criminal justice agency from:	*Clarification that confidential criminal history record information can be released only to those authorized to receive it. Subsection 2 lists who is authorized.*

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
authorized persons or entities.		
2. Authorized persons and entities. The following are authorized persons or entities:	**§613. Limitations on dissemination of nonconviction data** Except as provided in section 612, subsections 2 and 3, dissemination of nonconviction data by a criminal justice agency, whether directly or through any intermediary, shall be limited to:	
A. Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;	**613 1. Criminal justice agencies.** Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;	
	A. Disclosing to the public criminal history record information related to an offense for which a person is currently within the criminal justice system;	
	B. Confirming prior criminal history record information to the public, in response to a specific inquiry that includes a specific name, date and charge or disposition, provided that the information disclosed is based upon data excluded by subsection 2. The disclosing criminal justice agency shall disclose therewith any and all criminal history record information in its possession which indicates the disposition of the arrest, detention or formal charges; and	*See new ¶E*
B. Any person for any purpose when expressly authorized by statute, executive	**613 2. Under express authorization.** Any person for any purpose when expressly authorized	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
order, court rule, court decision or court order. Express authorization means language in the statute, executive order, court rule, court decision or court order that specifically speaks of confidential criminal history record information or specifically refers to one or more of the types of confidential criminal history record information;	by statute, executive order, court rule, court decision or court order. Express authorization shall mean language in the statute, executive order, or court rule, decision or order which specifically speaks of nonconviction data or specifically refers to one or more of the types of nonconviction data;	
C. Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement must specifically authorize access to data, limit the use of the data to purposes for which given, ensure security and confidentiality of the data consistent with this subchapter and provide sanctions for any violations;	**613 3. Under specific agreements.** Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, insure security and confidentiality of the data consistent with this subchapter and provide sanctions for any violations; and	
D. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement must specifically authorize access to confidential criminal history record information, limit the use of the information to research, evaluation or statistical purposes, ensure the confidentiality and security of the information consistent with this subchapter, and provide sanctions for any violations;	**613 4. Research activities.** Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the confidentiality and security of the data consistent with this subchapter and provide sanctions for any violations.	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
E. Any person upon specific inquiry made to the agency as to whether a named individual was summonsed or arrested, detained or had formal criminal charges initiated on a specific date. The disclosing criminal justice agency shall disclose all confidential criminal history record information in its possession that indicates the disposition of the summons or arrest, detention or formal charges;	B. Confirming prior criminal history record information to the public, in response to a specific inquiry that includes a specific name, date and charge or disposition, provided that the information disclosed is based upon data excluded by subsection 2. The disclosing criminal justice agency shall disclose therewith any and all criminal history record information in its possession which indicates the disposition of the arrest, detention or formal charges; and	
F. The public for the purpose of announcing the fact of a specific disposition that is confidential criminal history record information, other than that contained in section 652, subsection 2, paragraph A, within 30 days of the date of occurrence of that disposition, or at any point in time if the person to whom the disposition relates specifically authorizes that it be made public; and		*New*
H. Public entity for purposes of international travel, such as issuing visas and granting of citizenship.	C. Disseminating criminal history record information for purposes of international travel such as issuing visas and granting of citizenship.	
3. Confirming existence or nonexistence of such information. A criminal justice agency may not confirm the existence or nonexistence of confidential criminal history	**§618. Confirming existence or nonexistence of criminal history record information** Except as provided in section 612, subsection 3, paragraph B, no criminal justice	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
record information to any person or public or private entity that would not be eligible to receive the information itself; and	agency shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.	
4. Required inquiry to State Bureau of Identification. A criminal justice agency, *other than a court*, shall query the State Bureau of Identification prior to dissemination of any confidential criminal history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. As used here, "noncriminal justice purpose" means use of confidential criminal history record information other than for the administration of criminal justice or criminal justice agency employment.		*New* *Question (not for RTK AC to answer) about whether this requirement should apply to courts.*
§ ____. Prohibition against further dissemination of confidential criminal history record information by a person or entity Confidential criminal history record information dissemination by a Maine criminal justice agency to a person or public or private entity addressed in section 654, subsection 1, paragraph B, C, D, or H must be used by that person or entity solely for the purpose for which it was disseminated and may not be disseminated further. *Note: CLAC voted not to include this proposed section. It would logically go here if the decision was made to add it. The section*		

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
would prohibit conduct by a person or entity other than a Maine criminal justice agency.		
§655. Public information about persons detained following arrest **1. Requirement of record.** Every criminal justice agency that maintains a holding facility, as defined in Title 34-A, section 1001, subsection 9, shall record the following information concerning each person delivered to it for pretrial detention for any period of time: A. Identity of the arrested person, including name, date of birth, and residence, [and occupation,] if any; B. Statutory or customary description of the crime or crimes for which the person was arrested including the date and geographic location where the crime is alleged to have occurred; C. Date, time and place of the arrest; and D. Circumstances of the arrest including, when applicable, physical force used in making the arrest, resistance, weapons, refusal to submit by arrested person and pursuit. **2. Time and method of recording.** The information required to be recorded by this section must be made immediately upon delivery of the person concerned to the agency for detention. It	**§612-A. Record of persons detained** **1. Requirement of record.** Every criminal justice agency that maintains a facility for pretrial detention shall record the following information concerning each person delivered to it for pretrial detention for any period of time: A. Identity of the arrested person, including name, age, residence and occupation, if any; B. Offenses charged, including the time, place and nature of the offense; C. Time and place of arrest; and D. Circumstances of arrest, including force, resistance, pursuit and weapon, if any. **2. Time and method of recording.** The record required by this section must be made immediately upon delivery of the person concerned to the agency for detention. It must be	*This information is public now - clarified*

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
must be recorded and maintained in chronological order and must be kept in a suitable, permanent record of the agency making it. The information required by this section may be combined by a sheriff with the record required by Title 30-A, section 1505.	made upon serially numbered cards or sheets or on the pages of a permanently bound volume, made and maintained in chronological order, and must be part of the permanent records of the agency making it. The record required by this section may be combined with the record required by Title 30-A, section 1505.	
3. Information public. The information required to be recorded and maintained by this section is public criminal history record information.	**3. Records public.** The record required by this section shall be a public record, except for records of the detention of juveniles, as defined in Title 15, section 3003, subsection 14.	
§656. Unlawful dissemination of confidential criminal history record information **1. Offense.** A person is guilty of unlawful dissemination of confidential criminal history record information if the person intentionally disseminates confidential criminal history record information knowing it to be in violation of any of the provisions of this subchapter. **2. Classification.** Unlawful dissemination of confidential criminal history record information is a Class E crime.	**§619. Unlawful dissemination** **1. Offense.** A person is guilty of unlawful dissemination if he knowingly disseminates criminal history information in violation of any of the provisions of this subchapter. **2. Classification.** Unlawful dissemination is a Class E crime.	
§657. Inapplicability of this subchapter to criminal history record information contained in certain records	**§612. Application** **1. Criminal justice agencies.** This subchapter shall apply only to criminal justice	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
	agencies.	
This subchapter does not apply to criminal history record information contained in:	**2. Exceptions.** This subchapter shall not apply to criminal history record information contained in:	*No limit on the sharing of this information, whether it would fall into either category of criminal history record information*
1. Posters, announcements, lists. Posters, announcements or lists for identifying or apprehending fugitives from justice or wanted persons;	A. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;	
2. Records of entry. Records of entry, such as calls for service, formerly known as "police blotters", that are maintained by criminal justice agencies, that are compiled and organized chronologically and required by law or longstanding custom to be made public;	B. Original records of entry, such as police blotters, that are maintained by criminal justice agencies and that are compiled and organized chronologically;	
3. Records of public judicial proceedings. Records, retained at and by the District Court and the Superior Court of Maine, of public judicial proceedings, including, but not limited to, docket entries and original court files, and court records of public judicial proceedings from federal and state courts;	C. Records, retained at and by the District Court and Superior Court, of public judicial proceedings, including, but not limited to, docket entries and original court files;	
4. Published opinions. Published court or administrative opinions not impounded or otherwise declared confidential;	D. Court or administrative opinions not impounded or otherwise declared confidential;	
5. Records of public proceedings. Records of public administrative or legislative proceedings;	E. Records of public administrative or legislative proceedings;	
6. Records of traffic crimes. Records		

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
of traffic crimes maintained by the Secretary of State or by a state department of transportation or motor vehicles or the equivalent thereof for the purposes of regulating the issuance, suspension, revocation or renewal of a driver's, pilot's or other operator's license; and		
8. Pardons, commutations, reprieves and amnesties. Petitions for and warrants of pardons, commutations, reprieves and amnesties.	G. Peitions for and warrants of pardons, commutations, reprieves and amnesties.	
§658. Right to access and review	**§620. Right to access and review**	
1. Inspection. Any person or the person's attorney may inspect the criminal history record information concerning that person maintained by a criminal justice agency. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions are to ensure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or the person's attorney with a copy of the criminal history record information pertaining to the person on request and payment of a reasonable fee.	**1. Inspection.** Any person or his attorney may inspect the criminal history record information concerning him maintained by a criminal justice agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to him on request and payment of a reasonable fee.	*Note that highlighted language removed*

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
2. Review. A person or the person's attorney may request amendment or correction of criminal history record information concerning the person by addressing, either in person or in writing, the request to the criminal justice agency in which the information is maintained. The request must indicate the particular record involved, the nature of the correction sought, and the justification for the amendment or correction.	**2. Review.** A person or his attorney may request amendment or correction of criminal justice record information concerning him by addressing, either in person or by mail, his request to the criminal justice agency in which the information is maintained. The request shall indicate the particular record involved, the nature of the correction sought and the justification for the amendment or correction.	
On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.	On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.	
Not later than 15 [30?] days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the agency shall notify the requesting person in writing either that the agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal must include the reasons for the refusal, the procedure established by the agency for requesting a review by the head of the agency of that refusal and the name and business address of that official.	Not later than 15 days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the agency shall notify the requesting person in writing either that the agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal shall include the reasons therefor, the procedure established by the agency for requesting a review by the head of the agency of that refusal and the name and business address of that official.	*Question (not for RTK AC) about how fast an agency must respond*
3. Administrative appeal. If there is a request for review, the head of the agency shall,	**3. Administrative appeal.** If there is a request for review, the head of the agency shall,	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the review and either make the requested amendment or correction or refuse to do so. If the head of the agency refuses to make the requested amendment or correction, the head of the agency shall permit the requesting person to file with the agency a concise statement setting forth the reasons for the disagreement with the refusal. The head of the agency shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4.	not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the review and either make the requested amendment or correction or refuse to do so. If the head of the agency refuses to make the requested amendment or correction, he shall permit the requesting person to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal. He shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4.	
Dissemination of the disputed criminal history record information by that agency with which the requesting person has filed a statement of disagreement, occurring after the filing of such statement, must clearly reflect notice of the dispute. A copy of the statement must be included, along with, if the agency determines it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.	Dissemination of the disputed criminal history record information by that agency with which the requesting person has filed a statement of disagreement, occurring after the filing of such statement, shall clearly reflect notice of the dispute. A copy of the statement shall be included, along with, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.	
4. Judicial review. If an administrative appeal brought pursuant to subsection 3 is denied by the head of the agency, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the head of the agency, appeal to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.	**4. Judicial review.** If an administrative appeal brought pursuant to subsection 3 is denied by the head of the agency, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the head of the agency, seek relief in the Superior Court.	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
5. Notification. When a criminal justice agency has amended or corrected a person's criminal history record information in response to written request as provided in subsection 2 or a court order, the agency shall, within 30 days thereof, advise all prior recipients, who have received that information within the year prior to the amendment or correction, of the amendment or correction. It shall also notify the person of compliance with that requirement and the prior recipients notified.	**5. Notification.** When a criminal justice agency has amended or corrected a person's criminal history record information in response to written request as provided in subsection 2 or a court order, the agency shall, within 30 days thereof, advise all prior recipients, who have received that information within the year prior to the amendment or correction, of the amendment or correction. It shall also notify the person of compliance with that requirement and the prior recipients notified.	
6. Right of release. The provisions of this subchapter do not limit the right of a person to disseminate to any other person criminal history record information pertaining to that person.	**6. Right of release.** The provisions of this subchapter shall not limit the right of a person to disseminate to any other person criminal history record information pertaining to himself.	
§659. Application to prior Maine Criminal History Record Information The provisions of this subchapter apply to criminal history record information in existence before July 29, 1976, including that which has been previously expunged under any other provision of Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter.	**§622. Application** The provisions of this subchapter shall apply to criminal history record information in existence before July 29, 1976, including that which has been previously expunged under any other provision of Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter.	
(whole section moved to new Subchapter 11)	**§614. Limitation on dissemination of intelligence and investigative information**	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
	§623. Attorney General fees The Attorney General shall analyze the impact of this conformity provision upon the Department of the Attorney General. The Department of the Attorney General shall submit a report to the joint standing committee of the Legislature having jurisdiction over judiciary matters to the First Regular Session of the 117th Legislature on this analysis and recommend a funding mechanism. The funding mechanism must include a fee for services to cover the costs associated with providing access and copying of records available to the public under this chapter.	*deleted*

G:\STUDIES 2011\Right to Know Advisory Committee\CHRIA\CHRIA sbs 10-4-11.doc (10/4/2011 5:13:00 PM)

An Act to Amend the Laws Relating to Criminal History Record Information *and Intelligence and Investigative Information*

Proposed to be submitted by the Criminal Law Advisory Commission

Part 2

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
Sec. 3 16 MRSA c. 3, sub-c 11 is enacted to read **SUBCHAPTER 11** **INTELLIGENCE AND INVESTIGATIVE INFORMATION ACT** **§671. Definitions** As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.		
1. Administration of criminal justice. "Administration of criminal justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known or suspected crimes. It includes the collection, storage and dissemination of intelligence and investigative information relating to the administration of criminal justice.	**§611 1. Administration of criminal justice.** "Administration of criminal justice" means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.	
2. Administration of civil justice. "Administration of civil justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known or suspected civil violations, traffic infractions, juvenile crimes and prospective and pending civil actions. It		*New*

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
includes the collection, storage and dissemination of intelligence and investigative information relating to the administration of civil justice.		
3. Criminal justice agency. "Criminal justice agency" means a government agency or any subunit of a government agency that performs the administration of criminal justice or the administration of civil justice pursuant to a statute or executive order. Maine courts and courts in any other jurisdiction are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of the Canadian government and any federally recognized Indian tribe.	**§611 4. Criminal justice agency.** "Criminal justice agency" means a federal, state, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.	
4. Dissemination. "Dissemination" means the transmission of information by any means, including but not limited to, orally, in writing or electronically, by or to anyone outside the agency that maintains the information.	**§611 6. Dissemination.** "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency which maintains the information.	
5. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access.	**§611 7. Executive order.** "Executive order" means an order of the President of the United States or the chief executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.	
6. Intelligence and investigative information. "Intelligence and investigative information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency while performing the administration of criminal justice	**§611 8. Intelligence and investigative information.** "Intelligence and investigative information" means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity,	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
or the administration of civil justice. The term also includes information of record concerning security plans and procedures and investigative techniques and procedures prepared or collected by a criminal justice agency or another agency. "Intelligence and investigative information" does not include criminal history record information as defined in section 652, and does not include information of record collected to anticipate, prevent or monitor possible juvenile crime activity or information compiled in the course of investigation of known or suspected juvenile crimes to the extent addressed in the Maine Juvenile Code.	including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. "Intelligence and investigative information" does not include information that is criminal history record information.	
7. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Island, Guam and America Samoa. It also includes the federal government of Canada and any provincial government of Canada and any federally recognized Indian tribe.	**§611 11. State.** "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.	
8. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.	**§611 12. Statute.** "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.	
§672. Application This subchapter applies to a record that is or contains intelligence and investigative information and that is prepared by, prepared at the direction of or kept in the custody of any Maine criminal justice agency.		

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
§673. Limitation on dissemination of intelligence and investigative information		
Except as provided in section 674, a record that contains intelligence and investigative information is confidential and may not be disseminated to any person or public or private entity if there is a reasonable possibility that public release or inspection of the report or record would:	§614 **1. Limitation on dissemination of intelligence and investigative information.** Reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of a local, county or district criminal justice agency; the Bureau of State Police; the Department of the Attorney General; the Maine Drug Enforcement Agency; the Office of State Fire Marshal; the Department of Corrections; the criminal law enforcement units of the Department of Marine Resources, the Department of Inland Fisheries and Wildlife or the Department of the Secretary of State, Bureau of Motor Vehicles, office of investigations *(added by PL 2011, c. 356, effective September 28, 2011)*; or the Department of Conservation, Division of Forest Protection when the reports or records pertain to arson; or the Department of Agriculture, Food and Rural Resources when the reports or records pertain to animal cruelty *(added by PL 2011, c. 210, effective September 28, 2011)* are confidential and may not be disseminated if there is a reasonable possibility that public release or inspection of the reports or records would:	*The list of agencies is not needed because of new §672*
1. Interfere. Interfere with law enforcement proceedings relating to crimes, civil violations, traffic infractions, juvenile crimes or civil actions**;**	A. Interfere with law enforcement proceedings;	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
2. Result in dissemination of prejudicial information. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;	B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;	
3. Constitute an invasion of privacy. Constitute an unwarranted invasion of personal privacy;	C. Constitute an unwarranted invasion of personal privacy;	
4. Disclose confidential source. Disclose the identity of a confidential source;	D. Disclose the identity of a confidential source;	
5. Disclose confidential information. Disclose confidential information furnished only by the confidential source;	E. Disclose confidential information furnished only by the confidential source;	
6. Disclose trade secrets. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;	F. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;	
7. Disclose investigative techniques, security plans. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;	G. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;	
8. Endanger law enforcement or others. Endanger the life or physical safety of any individual, including law enforcement personnel;	H. Endanger the life or physical safety of any individual, including law enforcement personnel;	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
9. Disclose arbitration or mediation information. Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;	I. Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;	
10. Statutorily confidential information. Disclose information designated confidential by another statute; or	J. Disclose information designated confidential by some other statute; or	
11. Identify sources of consumer or antitrust complaints. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.	K. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.	
§674. Exceptions Nothing in this subchapter precludes dissemination of intelligence and investigative information by a Maine criminal justice agency to:	**§614 3. Exceptions.** Nothing in this section precludes dissemination of intelligence and investigative information to:	*Limited disclosure*
1. Another criminal justice agency. Another criminal justice agency;	A. Another criminal justice agency;	
2. A government agency or subunit statutorily responsible for investigating child or adult abuse, neglect or exploitation. A government agency or subunit of a government agency that pursuant to statute is responsible for investigating abuse, neglect or exploitation of children [under Title 22, chapter 1071] or incapacitated or dependent adults [under Title 22, chapter 958-A] for use in the investigation of suspected abuse, neglect or exploitation, subject to reasonable limitations to protect the interests	B. A state agency responsible for investigating abuse, neglect or exploitation of children under Title 22, chapter 1071 or incapacitated or dependent adults under Title 22, chapter 958-A for use in the investigation of suspected abuse, neglect or exploitation;	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
described in section 673;		
3. An accused person or that person's agent or attorney. A person accused of a crime or that person's agent or attorney for trial purposes if authorized by:	C. An accused person or that person's agent or attorney if authorized by:	
A. The responsible prosecutorial office or prosecutor; or	(1) The district attorney for the district in which that accused person is to be tried;	
B. A court rule or court order.	(2) A rule or ruling of a court of this State or of the United States; or	
	(3) The Attorney General;	
As used in this subsection "agent" means a licensed private investigator, an expert witness, or a parent, foster parent or guardian if the accused person has not attained 18 years of age;		
4. A crime victim or that victim's agent or attorney. A crime victim or that victim's agent or attorney, subject to reasonable limitations to protect the interests described in section 673. As used in this subsection "agent" means a licensed private investigator, or immediate family if due to death, age, physical or mental disease, disorder or defect, the victim cannot realistically act in the victim's own behalf;	D. A victim or victim's agent or attorney, subject to reasonable limitations to protect the interest described in subsection 1; or	
5. A counselor or advocate. A sexual assault counselor, as defined in section 53-A, subsection 1, paragraph B, or an advocate, as	E. An advocate, as defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice agency and subject to reasonable limitations to protect the interests described in section 673. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:	agency and subject to reasonable limitations to protect the interests described in subsection 1. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:	
A. Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;	(1) Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;	
B. Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;	(2) Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;	
C. Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;	(3) Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;	
D. Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;	(4) Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;	
E. Permit the criminal justice agency to	(5) Permit the criminal justice	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this subsection;	agency to perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this paragraph;	
F. Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;	(6) Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;	
G. Permit a criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this subsection; and	(7) Permit the criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this paragraph; and	
H. Provide sanctions for any violations of this subsection.	(8) Provide sanctions for any violations of this paragraph.	
The Commissioner of Public Safety may adopt a model policy to standardize the provisions contemplated in this subsection; or	The Commissioner of Public Safety may adopt a model policy to standardize the provisions contemplated in this paragraph.	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
ALTERNATIVE A		
6. A government agency or subunit statutorily responsible for licensing entities or individuals that provide healthcare or social services. A government agency or subunit of a government agency that pursuant to statute is responsible for licensing entities or individuals that provide healthcare or social services for use in the investigation of potential violations of laws enforced by the government agency or subunit subject to reasonable limitations to protect the interests described in section 673.	B-1. The division of licensing and regulatory services within the Department of Health and Human Services for use in the investigation of suspected abuse, neglect or exploitation in licensed, certified and registered facilities and programs that provide care to children and adults; *(added by PL 2011, c. 52, effective July 1, 2011)*	*Question (not for RTK AC) about whether to write this exception broadly to cover just healthcare and social services providers*
ALTERNATIVE B		
6. A government agency or subunit statutorily responsible for licensing individuals who engage in a particular occupation or social services. A government agency or subunit of a government agency that pursuant to statute is responsible for licensing individuals who engage in a particular occupation or social services for use in the investigation of potential violations of laws enforced by the government agency or subunit subject to reasonable limitations to protect the interests described in section 673.		*or all licensed occupations*
§ ___. Prohibition against release of identifying information of those providing information as to cruelty to animals. The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.	**1-A. Limitation on release of identifying information; cruelty to animals.** The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.	*Move to Title 7 with Animal Welfare/Animal Cruelty statutes*

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
Note: *CLAC voted not to include this proposed section. It would logically go here if the decision was made to add it. CLAC believes this provision, making confidential identifying information under these circumstances, more properly belongs as part of a Department statute expressly addressing persons being encouraged to provide information to the Department pertaining to criminal or civil cruelty to animals.*		
§675. Restriction on use of disseminated intelligence and investigative information Intelligence and investigative information that is disseminated to a person or public or private entity that is not a criminal justice agency under section 671 may be used solely for the purpose for which it was disseminated and may not be disseminated further.		
§ 676. Confirming existence or nonexistence of intelligence and investigative information Except as provided in section 673 and 674, a criminal justice agency to whom this subchapter applies may not confirm the existence or nonexistence of intelligence and investigative information to any person or public or private entity that is not eligible to receive the information itself.		
§677. No right to access or review A person who is the subject of		

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
intelligence and investigative information maintained by a criminal justice agency has no right to inspect or review that information for accuracy or completeness.		
§ 678. Unlawful dissemination of intelligence and investigative information		
1. Offense. A person is guilty of unlawful dissemination of intelligence and investigative information if the person intentionally disseminates intelligence and investigative information knowing it to be in violation of any of the provisions of this subchapter.	**§614 4. Unlawful dissemination of reports or records that contain intelligence and investigative information.** A person that intentionally disseminates a report or record that contains intelligence and investigative information in violation of this section commits a Class E crime.	
2. Classification. Unlawful dissemination of intelligence and investigative information is a Class E crime.		

G:\STUDIES 2011\Right to Know Advisory Committee\CHRIA\III sbs 10-4-11.doc (10/5/2011 8:52:00 AM)

125th Legislature
Senate of Maine
Senate District 31

Senator Richard W. Rosen
3 State House Station
Augusta, ME 04333-0003
(207) 287-1505

P.O. Box 877
Bucksport, ME 04416
Residence (207) 469-3779
Office (207) 469-3306

Testimony of
Senator Richard Rosen
Joint Standing Committee on Judiciary
April 27, 2011

LD 1465: An Act To Amend the Laws Governing Freedom of Access

Good afternoon Senator Hastings, Representative Nass and members of the Joint Standing Committee on Judiciary. I am Richard Rosen and I am honored to represent District 31 in the Maine Senate, which includes parts of Hancock and Penobscot Counties.

Today I present LD 1465: An Act To Amend the Laws Governing Freedom of Access.

LD 1465 is about one thing: expanding the public's right to know.

As elected officials serving Maine people, it is our responsibility to ensure government remains open and accountable. A strong Freedom of Access law is critical. We must provide citizens and taxpayers peace of mind that we respect their right to access public records, and we must seize any and all opportunities to strengthen that right.

LD 1465 achieves these very important goals.

This bill has obtained strong and diverse support. An informal coalition of open government advocates from across the ideological spectrum helped draft this proposal—loosely modeled after Texas' Right to Know laws—and it has earned the support of 30 Democratic and Republican cosponsors.

The provisions within LD 1465 go a long way toward making Maine government more open and accountable to the people.

It creates fair deadlines government must meet to comply with public records requests, requires sufficient notice before official proceedings can be held, expands accountability through the creation of trained public access officers, and funds the already-created position within the Attorney General's office to serve as a resource for government and the public to help resolve disputes without going to court. The bill also accounts for situations that may impact government's ability to comply with provisions included in the bill.

LD 1465 creates a more open government. I am open to revisions that address potential concerns and build even greater support for this proposal, but the goal of greater government transparency and accountability must remain.

I hope members of this Committee will continue to support open government, and help us lead the charge to protect and expand the public's right to know.

Thank you for your time. I am happy to answer any questions.

125th Legislature
Senate of
Maine
Senate District 1

Senator Dawn Hill
Appropriations and Financial Affairs, Member
3 State House Station
Augusta, ME 04333-0003
(207) 287-1515

PO Box 701
Cape Neddick, ME 03902
(207) 337-3689 Business

Testimony in Support of LD 1465, *An Act to Amend the Laws Governing Freedom of Access*

Presented Before the Joint Standing Committee on Judiciary
Wednesday, April 27, 2011

Senator Hastings, Representative Nass, and distinguished members of the Judiciary Committee; I am Senator Dawn Hill serving District 1 which includes York, Kittery, South Berwick, Eliot and Ogunquit. Thank you for the opportunity to speak in support of LD 1465, *An Act to Amend the Laws Governing Freedom of Access*. As a former member of the Right to Know Advisory Committee, I am pleased to be a co-sponsor to this bill.

LD 1465 is about increasing governmental transparency and enhancing the freedom of access laws for the public. I think we all can agree on the importance of an open government, especially in today's society. One just has to watch the news to see the public unrest and government secrecy in some countries around the world. We are fortunate to live in the United States of America where we believe in government transparency, access, and accountability. Even more so, our state has been a national leader in its ongoing efforts to ensure compliance with freedom of access laws. This is something to be proud of.

This bill will require a more reasonable deadline for responses to public information requests; it will improve access by requiring public information be provided in the preferred format (paper, email, etc); it will strengthen the paper trail of a request; and it will create greater accountability in every agency, department, and office.

Recently, a quasi-state agency has received a great amount of negative attention due to a lack of accountability and transparency. We do not want to see this happen again. LD 1465 has been appropriately labeled the "Time for Transparency Act" and I believe that it *is* the time for greater transparency in Maine.

Thank you.

Dwight E. Hines, Ph.D.
715 Green Woods Road
Peru, Maine 04290
207-562-4701

April 27, 2011

Judiciary Committee
State of Maine

I am Dr. Dwight Hines, Ph.D., University of Maine, 1976. I am a resident of Peru, Maine.

Thank you for allowing me to tell you my Three Reasons for Supporting LD 1465/SP0456: An Act to Amend the Laws Governing Freedom of Access.

The three reasons for my supporting the amendment are:

Human Rights,

Innovation, and

Citizen Engagement.

All three will be enhanced by the amendments to Laws Governing Freedom of Access.

Human Rights — From the Inter-American Court for Human Rights to the European Court on Human Rights and from Presidents Obama and Bush, from the Carter Center to the the American Bar Association Human Rights Committee, there is unanimous agreement that the right to know is a fundamental right. Indeed, the U.S. Supreme Court has stated clearly that the right to publish implies the right to gather information. I brought 16 and a half pages of references — with me that is a fair taste of the current academic and practical literature. It is not a fluke or an accident that those countries that have the most open governments are the ones that are the most developed. Development requires innovation, and that is where this amendment will help Maine build on its strengths.

Innovation: A) It was brilliant decision by the Maine government to provide Macintosh Laptops to all Maine students. B) Maine people are creative, that is a fact based on testing thousands of Maine college students on ideational fluency, remote associates, and other measures. They and their friends and family can compete with anyone in a fair market. C) Ready access to specific types of government collected information in electronic formats will allow for exploration and exploitation of data that are currently ignored. As a community, we could not ask for a better situation than creative people who know how to use basic information tools and can readily obtain oodles of information right in their own home town. It is not odd that most FOIA requests at the state and federal levels are made by businesses. A vote for this amendment will further our common goals of achieving healthy, vibrant communities.

Abraham Lincoln gave a speech in 1859, on the eve of a terrible war, about the genius of our system to encourage creativity. Patents protect and support the inventor but at the same time provide the information to the community so the device or process can be improved upon. Think about all the processes that the government has developed over the years and think about how making them public

will stimulate improvements. Those improvements will be in parallel with the third reason I hope you vote for this bill:

Citizen Engagement:

Our system needs citizen involvement because it's our system. This amendment will help reduce some of the information asymmetries that now exist between those who make decisions and those who are affected by the decisions. One of the positive side effects of passing this amendment for you personally will be that it gives you a valid way to respond to those people who complain to you about an agency or an official. Simply tell them that the information that the agency or person is acting on is public and if the one complaining has a better way, tell us about it. Please remember that complainers can be great sources of telling us where innovations are likely to occur.

Citizen engagement includes business and commercial interests who have to face the reality that technology evolves much more rapidly than regulations. An ongoing engagement is the best way to handle problems that will continue to arise because of the rate of change in the system of government and the market place.

Overall, I do not see any technical or enforcement problems from this amendment.

Including money for the Attorney General to act as an ombudsman will more than be repaid in increased trust in the system and in real returns due to increased innovation.

Because of the continuing deterioration in the world's food supply. Maine agriculture, with its established infrastructure, will most likely benefit from the increase in access to records and consequent innovations.

Thank you again for allowing me to comment.

Dwight Hines

MaineHousing
Maine State Housing Authority

Testimony of

PETER MERRILL

Director of Communications and Planning

MaineHousing

before the

The Joint Standing Committees On Judiciary

regarding

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

APRIL 27, 2011

125rd MAINE LEGISLATURE

FIRST REGULAR SESSION

The mission of the Maine State Housing Authority is to assist Maine people to obtain and maintain decent, safe, affordable housing and services suitable to their unique housing needs.

In carrying out this mission, MaineHousing will provide leadership, maximize resources, and promote partnerships to develop and implement sound housing policy.

Senator Hastings, Representative Nass, members of the Joint Standing Committees on Judiciary: I am Peter Merrill, Director of Communications and Planning at the Maine State Housing Authority.

The Maine State Housing Authority is Maine's housing finance agency, created by the legislature in 1969 to address the problems of unsafe, unsuitable, overcrowded, and unaffordable housing. We are authorized to issue bonds to finance single family and multi-family housing units for Maine's low and moderate income citizens. These bonds carry the moral obligation of the state. We are structured to utilize effective private methods of finance for public purposes, to be independent, nimble, and responsive.

We are authorized to act as the agent for the state in administering the federal weatherization and fuel assistance programs, a federal housing block grant, the federal low-income housing tax credit, and homeless grant programs. We collect and disburse federal rental subsidies, state general fund revenue for homeless programs, and receive a dedicated portion of the real estate transfer tax for the Housing Opportunities for Maine (HOME) Fund to support our programs.

MAINEHOUSING IS OPPOSED TO THIS BILL.

We Support access and transparency. But this bill is sweeping in its scope. It is an all-everything wish list of the organizations who do the asking. If there had been even one organization that does the responding involved, there might be a case, but this is dramatic and one sided.

First of all, we agree with those who propose referring it to the Right to Know committee which can take the time to consider it in more detail.

SOME AREAS OF CONCERN

Let me list a few of the concerns that we have:

TELEPHONE REQUESTS

The concern about these is misunderstanding and miscommunication. There is no he said-she said when it is in writing. It is very easy to simply call up and say, I'd like everything you can give me on issue X. Putting it in writing makes the request more clear.

PERMISSION TO USE A THIRD PARTY TO COPY.

We thought we could already do that. Of course, you cannot hire a temp for $10/hour. You might think about indexing that charitable ten dollar rate.

REQUIRE AGENCIES TO INSTALL COMPUTER PROGRAMS

Every day we read about IT security breaches and yet we would be REQUIRED to install software at anyone's request and payment? Wikileaks asks for data and then recommends the software it wants installed? And if they're willing to pay, we have to accept it? Do we trust any comers to provide safe and secure software? Our IT security consultants and staff would go nuts. That doesn't seem like a very smart thing to do.

THREE DAYS TO ESTIMATE

The bigger the job, the less accurate the estimate will be if it must be done within three days. Or the higher it will be to cover the fact that it is a rough estimate.

TIMELINES

What does immediate mean? It seems pretty clear that you drop everything and respond to the request. There is nothing wrong with a defined timeframe. Immediate is neither defined nor reasonable.

If you cannot react immediately, you must certify that AND still respond within five days. That may make sense for a small request but seems a little tight for a large one. And the certification seems like a waste of time since you have to respond in five days anyway. Pretty bureaucratic.

And for the large ones, you have to provide the material on a piecemeal basis. That too needs some definition. Do we send out what we have at the end of each day or at the end of some logical break or when?

Also, as others have pointed out, this sets a priority for customer service over all other customers and clients.

INJUNCTION

As members of the Judiciary Committee you understand better than most the situation in our court system today. A couple of years ago the Legislature appointed a Landlord Tenant Working Group to address those issues and we looked at possible ways to improve the court process. What we learned was that they are living on a very tight budget and have set priorities for the cases they hear. It is remarkable that this bill proposes to insert itself in that process and deem a FOIA request to be the third most important thing the courts do. Is that the right priority and who should set it?

THE PUBLIC ACCESS OFFICER

If the goal is to make sure that someone in each agency has read the law, this might be a bit too formal.

FISHING EXPIDETIONS

There is one last issue we would like to raise that is perhaps an omission here: while reviewing this, please give some consideration to how fishing expeditions should be handled. This process is going to be used as often for non-press or individual information purposes as not. One way, of course is the current controversy over the registry of deeds. Another is the use of the process by advocacy groups to see what they can discover for their own organizational advocacy purposes. These might be broad and general such as, please provide all documents that relate to the production of multi-family housing. While there is no reason that they should not have the information, having to provide it 'immediately' or dropping everything to try to meet a five day deadline seems to allow the tail to wag the dog.

The complexity of all these issues suggests that at a minimum that this bill should be referred to the Right to Know Committee for a more in depth review.

Thank you for your consideration of our concerns.

To Senator Hastings and Representative Nass and distinguished members of the Judiciary Committee

My name is Susan Black and I am writing to you, wearing a couple of hats, in opposition to LD 1465. First, I am the Register of Deeds for Franklin County and secondly, I am a member of the finance committee for my town of Wilton.

As the Register of Deeds, I am fully aware that any document that is recorded in this office is open and available for copying to the public. We charge a copy fee for this service as does any branch of government.

When FOAA was created back in 1975, I believe they addressed all the issues in making government transparent. It has worked for over 35 years. Now that we are in the" computer age", the need to "enhance FOAA" has arisen. There are a lot of government offices that are very busy and under this bill, they will be forced to add extra work for their staff or even hire someone to handle the requests within ALL the timelines listed in section 408-A.

The means of copying documents is easier today than even 20 years ago, however, does that mean we have to virtually give the information away for little or nothing? To make this even harder to swallow, we have to give them the information in whatever format they want.

In a day of high identity theft, I would urge you to take a look at what truly is a public government record. Is it emails that people have given to the IFW for a hunting license, is it a deed from one private person to another private person, is it a mortgage by a private person to a bank and the list goes on. Just because it is housed in a government facility does not make it "public" in my opinion. Government cannot be in the business to set private people up in business. Government should not be forced to give email addresses out to other businesses for their mailing lists.

The taxpayers of my town cannot afford to hire anyone just to handle the potential FOAA requests. We as a state cannot afford to hire an Assistant Attorney General for this purpose at the cost of $138,000 over a two year period.

Having a husband in the legislature, I know the committees get very busy, but I trust you will look very carefully, as I know you will, at this bill.

Thank you for your time and consideration.

Susan A. Black

May 5, 2011

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

Testimony of the Maine Municipal Association

In Opposition to

LD 1465 – *An Act to Amend the Laws Governing Freedom of Access*

April 27, 2011

Senator Hastings, Representative Nass, members of the Judiciary Committee, my name is Greg Connors. I am testifying in opposition to LD 1465 on behalf of the Maine Municipal Association (MMA).

At a meeting on April 14th, MMA's 70-member Legislative Policy Committee (LPC) voted unanimously to oppose LD 1465.

LD 1465 would amend Maine's Freedom of Access Act (FOAA), or "Right to Know" law, in the following ways. The bill: (1) requires notices of public meetings to be provided at least 3 days prior to the meeting; (2) creates an affirmative duty for a governmental entity to provide copies of public records to people at their request rather than just providing an opportunity to examine those records; (3) provides the requestor with the right to obtain the copies of those records in all available formats, such as by photocopy or electronic or magnetic formats if available; (4) creates a duty for the governmental entity to explore obtaining assistance at a reasonable cost, to be borne by the requestor, so that the public record can be provided in the requested medium; (5) requires the public records to be mailed if so requested at a mailing charge no greater than actual mailing costs; (6) requires all records requested to be immediately provided unless the records have to undergo redaction or are not in public use or are in storage; (7) requires a certification be provided to the requestor if there will be any delay in immediately providing the public record and further provide the requestor with the right to copy or inspect the record within 5 business days or have the records mailed or e-mailed within that period of time; (8) creates a special standard for "large or multiple requests" which allows for the records to be provided as they become available if they cannot be provided "in the exercise of due diligence" within the 5-day period; (9) requires a cost estimate to be provided within 3 business days for any request that may exceed $100 in costs calculated at the maximum $10 per hour rate allowed under current law for searching for, retrieving and compiling requested records; (10) treats any failure to comply with the established response-time schedule to be considered a denial of the request and subject to enforcement procedures; (11) establishes a 10-day period of time for a requester to complete an inspection of records being reviewed, with extension periods provided according to a certain process; (12) prohibits a governmental entity from inquiring as to the purpose of a FOAA request; and (13) requires every governmental agency to designate a "public access officer" who must be certified to the FOAA according to the same certification program now required of various elected officials. The public access officer is charged with overseeing that governmental agency's response to FOAA requests.

Before getting into the issues the Policy Committee had with the various requirements under this bill, the first concern with LD 1465 was that it apparently did not go to the Right to Know Advisory Committee before being heard at a public hearing. It is our understanding that as a general rule any

amendments made to the FOAA are first vetted by this Advisory Committee. The other two bills heard today had the recommendation of this Advisory Committee and that was one of the reasons that the LPC decided to support those bills. The Advisory Committee's charge is to review and make recommendations to certain legislative committees about amending sections of the FOAA. If there was ever a piece of legislation that deserved to be thoroughly reviewed by the Advisory Committee, LD 1465 is that legislation.

That said, if the Right to Know Advisory Committee had decided to recommend this bill as currently written, MMA would strongly oppose the bill due to: (1) the unrealistic and unmanageable timelines established (e.g., the "immediate" response requirement except for special circumstances); (2) effectively requiring municipalities to provide documents in formats unavailable to the municipality; (3) placing municipal officials by default in the position of violating the Right to Know law simply because of an inability to comply with unreasonable response mandates; (4) the significant added costs to municipalities for complying with what would unquestionably be a new unfunded state mandate; and (5) the unreasonable prohibition, contradicting current law, on inquiring about the purpose of a request in order to clarify the issue being researched for both the public official and the requester.

Municipalities try very hard to comply with the requirements of the FOAA. They are increasingly being made subject to extremely large and sweeping FOAA requests. Similarly, MMA was presented with a sweeping FOAA request last year by the Maine Heritage Policy Center, originally asking to be provided or review approximately two million documents, so this organization has a sense of what impact large-scale FOAA requests can have on an organization. A summary of that request and MMA's response to that request, is attached to this testimony.

Thank you for your time and consideration.

In April of 2010, the Maine Heritage Policy Center (MHPC) filed a FOAA request with MMA. One of the items requested was all public records subject to FOAA, including but not limited to emails, internal correspondence and other external correspondence with non-MMA third parties, related to "An Act to Provide Tax Relief (otherwise known as "TABOR II"). To follow is how this FOAA request played out:

- A FOAA request dated April 6, 2010 from the MHPC was received by MMA on April 8th. Of the 5 items requested, one asked for all public records related to TABOR II (see above).
- MMA responded to the MHPC on April 15th. Included in MMA's response was the information requested by the MHPC for three of the five items requested. MMA provided the MHPC with a very conservative estimate of time for the TABOR II information request of 750 hours. This estimate was based on the initial review that indicated that in order to comply with this specific request for information approximately 2,000,000 documents and records would need to be reviewed by certain personnel of the organization. MMA was willing to provide this information but requested a deposit of $7,500 (750 hours @ $10/hr.) prior to initiating the work related to MHPC's request.
- On May 3rd, the MHPC responded to MMA by narrowing the request from all public records to the Executive Director's and the Director of State and Federal Relations' email messages (incoming and outgoing) from April 1, 2009 to November 15, 2009.
- On May 10th, MMA again responded to the MHPC's modified and narrowed information request and provided them with an updated estimate of the time required to comply with this request of 100 hours and a deposit of $1,000.
- Once MMA received the payment, the Association compiled the requested information and, on June 28th, informed the MHPC that the information would be available for review at its offices on or after the next business day, the 29th. A time log was kept and the number of staff time hours totaled 109 hours to compile the information requested.
- Based on this log and the individuals involved with the information collection exercise, the actual cost of performing this task was closer to $8,000 rather than the $1,090 actually billed to the requester of the information (not counting direct photocopying costs).

The above example highlights the issues with this bill.

1. Although LD 1465 makes mention of "large scale" or "multiple" requests, it does not define those terms and does nothing to appropriately address or control their impact on governmental entities.
2. Despite the best efforts of MMA, the Association could not have possibly complied with LD 1465's timeline requirements.
3. If MMA could not have entered into discussions about the true nature of the request, MHPC would have had to pay significantly more money to partially compensate MMA for its time to comply with the information request AND would have had to sift through significantly more information in their discovery process. Clarification as a result of questioning the requester of information can benefit the person requesting the information as it gets to the heart of the issue being researched. This can save the requester time by avoiding pouring over irrelevant public records.

4. The difference in the actual cost and the amount billed to the requester demonstrates how significantly expanded compliance requirements will lead to increased municipal expenditures.

Maine Municipal Association

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

To: Senator Hastings
Representative Nass
Members of the Judiciary Committee

From: Greg Connors, Maine Municipal Association

Date: May 11, 2011

Re: Follow-up on mandate elements of LD 1465, *An Act to Amend the Laws Governing Freedom of Access*

This memo is provided as a follow-up to MMA's testimony on LD 1465 which indicated the municipal belief that the bill represents a "state mandate" as that term is defined in Article IX, Section 21 of the state's Constitution.

It is our understanding that a bill is defined as a state mandate if the legislation: (1) requires a modification or expansion of a local government's activities; and (2) the modifications or expansion will result in increased expenditures. If the answer to both questions is 'yes', the legislation represents a state mandate.

Municipal officials believe at least four elements of LD 1465 have mandate impacts:

1. The requirement to immediately respond to all FOAA requests will require increased staffing requirements.
2. The requirement to provide documents in the format requested, including exploring making technological changes, and implementing those changes, to accommodate those requests, will require additional local expenditures. Allowing local governments to charge a fee to recover those costs does not make the mandate designation disappear (see 30-A MRSA, Section 5685 (3)(A)).
3. The requirement to appoint and ensure the certification of a newly required public access officer will lead to increased personnel costs.
4. Because current law does not require a municipality to actually provide public documents to requestors if the community is willing to allow inspection instead, and because the statutory limits on charges that can be applied to FOAA requests (i.e., no more than $10/hour after the first free hour) are typically far less than the actual charges incurred, and because LD 1465 clearly requires a much more extensive level of actually providing public documents to requestors, municipalities will experience increased expenditures from property tax resources to comply with document provision requirements.

Thank you for the opportunity to clarify this issue.

Maine Community College System

OFFICE OF THE PRESIDENT
323 State Street, Augusta, Maine 04330-7131
207.629.4000 • Fax: 207.629.4048
www.mccs.me.edu

May 10, 2011

The Honorable David R. Hastings, Chair
The Honorable Joan M. Nass, Chair
The Joint Standing Committee on Judiciary
125th Maine Legislature
Augusta, ME 04333

Dear Senator Hastings, Representative Nass, and honorable members of the Joint Standing Committee on Judiciary:

This letter addresses L.D. 1465, "An Act To Amend the Laws Governing Freedom of Access" which is scheduled for public hearing on Wednesday, May 11, 2011. The bill would require the Maine Community College System, as well as others, to provide documents regardless of size, age or complexity within five (5) business days of the request date. From our operational perspective, a more manageable and appropriate standard would be fifteen (15) business days.

We appreciate the opportunity to comment on L.D. 1465, and thank you for your consideration. Should you require any additional information, please do not hesitate to contact my office.

Sincerely yours,

John Fitzsimmons
President

JF/ejc

Committee on Judiciary
c/o Legislative Information
100 State House Station
Augusta, ME 04333

Thursday, April 6, 2011

To the Honorable Chairmen and Members of the Joint Standing Committee on Judiciary,

We, the undersigned members of the Falmouth Town Council and School Board, urge you to vote Ought Not To Pass with regard to LD 1465, "An Act to Amend the Laws Governing Freedom of Access", or to defer it to the Right to Know Advisory Committee for review. Prior to outlining our concerns, we would like to go on the record as supporting the Freedom of Access Act and the concept of transparent governance. To that end, we strongly believe that transparent governance must incorporate functional governance.

The concerns outlined below are not theoretical. As public officials in the Town of Falmouth, we have been diverting tens of thousands of dollars complying with the FOAA requests submitted by a small number of individuals under the current statute. Passage of the proposed changes jeopardizes not only the delivery of services in all Maine communities but retention of qualified personnel.

What we do not support are initiatives that, while noble in intent, potentially cause greater harm and cost than good. As such, the following are specific concerns raised by LD 1465 that we would like to bring to your attention.

- The concept of requiring immediate access to public records presents great difficulties particularly in those situations in which vast and complex requests are made. This standard is unrealistic, and while there are provisions to lengthen the time allotted for record compiling, we do not believe these provisions appropriately protect the concept of functional government.
- The requirement of an agency or official to reproduce records in a medium as requested by a citizen, if the agency or official has the technological capability to do so, places a great deal of burden on the agency or official producing the record, such that data re-entry, data re-organization, and/or data translation into a program or format, different from the original, becomes the burden of the agency or official. For example, if a person asks for an Excel spreadsheet with the name, salary, number of classes assigned, and the number of students in each class, this information would have to be compiled from a number of sources and re-input into the spreadsheet in order to fulfill the request.
- Furthermore, the concept of technological capability is vague and concerning. If an official has database software on their computer, are they required to enter data that has been requested into the software, simply because they have it installed? Or, is the standard defined as their having the personal ability to do so? Is it reasonable to require an agency or official to produce documents in a format that is costly, when a more cost efficient methodology is available, solely because they have the capacity to produce the documents in the more costly format? If an electronic copy of the 1000-page school budget is made available, can a person insist that the school district make them a photocopy, thus burning up a school employees' time?
- In situations where a citizen requests a large number of documents as we have experienced on numerous occasions, and the district may only charge a fixed per-hour fee, is it reasonable and appropriate for a community of taxpayers to pay for the remaining costs associated with meeting a FOAA request, even when those costs may run into the tens of thousands of dollars when the questions are so high level that they must be answered by one of the highest paid individuals in the district?

- Opening up the means by which individuals can place an FOAA request (e.g. text messaging on nights and weekends) does not allow a proper protocol to be put into place to efficiently answer FOAA requests. There is no clear line drawn and so therefore, could a school official have to abide by a FOAA request, immediately, during a football game? Protocols are designed to ensure efficiency and equality in process.
- Many agencies, municipalities, and districts are operating with tighter and tighter administrative budgets. This bill, as written, creates the potential to create additional costs that may be unmanageable for that public organization. Examples of concern include not only the production of records in a requested medium, but also the requirement for potentially adding a public access officer to oversee requests. Inundated entities will require additional funding to support that position in order to meet the demands of LD 1465. At what point is it reasonable to sacrifice programming and services to meet the demands of FOAA requests?

To highlight the potential difficulties with this bill, consider the resources you would require as a state legislator if a citizen called you on the phone and requested a copy of all correspondence that you either sent or received since you took office. How would you account for that? How would you manage that? How would LD 1465 affect you? Now think about a small municipality or a school that receives a request for all documents produced by that public entity for the past twenty years, including all documents currently in that public entities' possession. Now consider that situation compounded by a request for those documents to be produced in a specific format as directed by the requestor.

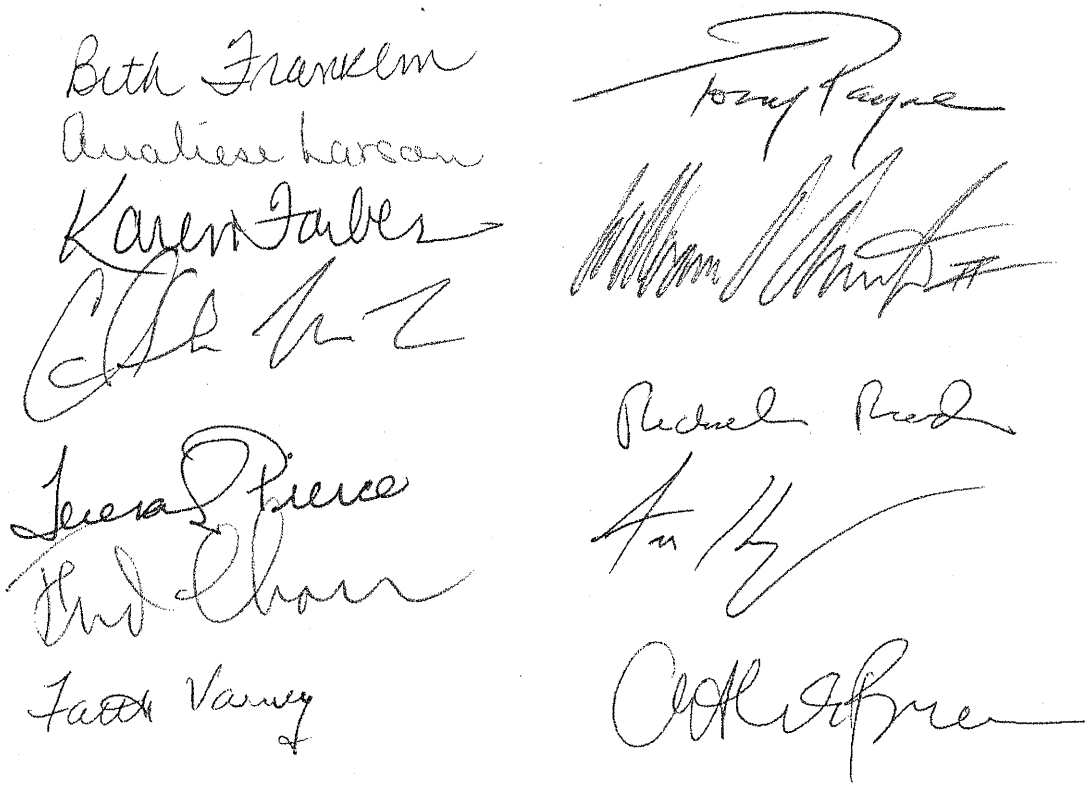
These situations are not foreign or unrealistic; they occur on a regular basis. One must be able to recognize the very potential for abuse and the ramifications of that abuse. Therefore, we must find balance on this issue, so that we maintain a government accountable to the citizenry and protects their "right to know", all while ensuring that the purpose of government, to serve the general welfare of the people, is protected. As written, there is no protection for the services provided by public agencies, municipalities, or school departments in LD 1465.

We would strongly urge the members of this committee either to defeat LD 1465 in committee or to defer this piece of legislation to the Right to Know Advisory Committee for review. This piece of legislation has the potential to create intolerable operating conditions that will inhibit the ability for government to function. We pose this final question to you. Do we as citizens have a right to a transparent functional government that serves our best interest? If so, then how can we enact a system that violates the "functional" component of that right? We thank you for your consideration in these matters and, again, urge you to either defeat this bill or defer it to the Right to Know Advisory Committee for review.

Best Regards,

CC: The Honorable David R. Hastings III, Senator, Oxford
The Honorable Richard G. Woodbury, Senator, Cumberland
The Honorable Philip L. Bartlett II, Senator, Cumberland
The Honorable Joan M. Nass, Representative, Acton
The Honorable G. Paul Waterhouse, Representative, Bridgton
The Honorable Michael G. Beaulieu, Representative, Auburn
The Honorable Ralph W. Sarty, Jr., Representative, Denmark
The Honorable Bradley S. Moulton, Representative, York
The Honorable Karen D. Foster, Representative, Augusta
The Honorable Charles R. Priest, Representative, Brunswick
The Honorable Cynthia A. Dill, Representative, Cape Elizabeth
The Honorable Maeghan Maloney, Representative, Augusta

The Honorable Megan M. Rochelo, Representative, Biddeford
Susan Pinette, Committee Clerk, Joint Standing Committee on Judiciary



The Honorable David R. Hastings, III,
Chair, Joint Standing Committee on Judiciary
955 Main Street
Fryeburg, ME 04037

Tuesday, April 26, 2011

Dear Senator Hastings,

I am writing to you and your colleagues on the Joints Standing Committee on Judiciary to comment on LD 1465 "An Act To Amend the Laws Governing Freedom of Access". This bill, as sponsored by Senator Rosen, takes a noble intent to promote the transparency of our government. I take no objection to that principle, and strongly support the intent. I believe that transparent government encourages individuals to become involved in the process of government, sparks creative problem solving, and promotes self-reflection.

As a member of the Falmouth School Board, I have watched, first hand, the impact of record access requests and the abuse that can be associated with those requests. This important civic tool has routinely been abused by members of our local community, in my opinion, in order to intimidate school officials, obstruct them from conducting their regular professional duties, and assert their civic "authority" over the school department. Without a check on this power, citizens have, and will continue to have the ability to abuse a power such that it detracts from the important efforts that public servants are putting towards the general public welfare.

The bill as presented does provide me with a great deal of concern that, if passed, would have significant adverse impacts on the individuals who must operate under this law. I have concerns over the timeframes and processes outlined in the bill. I feel that the additional steps and requirements placed on an agency or organization increase the liability of said agency or organization in the event that these additional steps and requirements are neither practical nor feasible in operational situations. I have concerns over requiring an agency or official to produce documents in a specific medium, as requested by a citizen, if that agency has the technological capability to do so. This causes great concern such that the burden of data reorganization and reentry could be placed on the agency or the official. While government should provide public access to government documents, and while government should promote the principle of transparent governance, it should not be unduly burdened by potentially irrational or immensely complex access requests.

I think that it is important that the committee bring to consideration the different resources available to the various agencies and officials for whom this legislation would directly affect. The resources of the Falmouth School Department, from an operational and administrative standpoint are limited. In instances in which abuse of the power to request access to records occurs, this has the potential to significantly affect the ability of the district to adequately function in the best interests of the children and taxpayers of Falmouth. I do not feel that this bill, as written, takes into account a very real and unfortunate scenario that I am sure is not foreign to other districts and agencies.

Christopher B. Murry Jr.
(207) 671-1509

In a time when we as a society are creating more "lean" organizations and agencies, we cannot appropriately expect the same quality of service from said organization or agency if we increase their workload. I fear that this bill will do just that. In the case of education, it is my belief that without accounting for the potential abuses of this legislation by individuals, a school department inundated with records access requests could not appropriately serve the needs of its students. We have to find balance such that government is transparent and accountable, but also that the citizenry cannot obstruct work, such as public education, which is truly in the best interest of the public.

I would strongly urge you and the members of your committee to defeat this bill in committee. In the absence of protecting the productivity and ability of public organizations, agencies, and officials to appropriately carry out their duties, this bill has the potential to compound a very real problem. Transparent government must walk hand-in-hand with functional and efficient government, to do so otherwise would be against the best interest of the public. I appreciate your time and applaud your efforts in tackling an issue in order to find reasonable balance. If you have any questions or if I can be of any service, please feel free to contact me at your convenience.

Best Regards,

Christopher B. Murry, Jr.
Member, Falmouth School Board
cbmurryjr@falmouthschools.org
(207) 671-1509

CC: The Honorable Richard G. Woodbury, Senator, Cumberland
The Honorable Philip L. Bartlett II, Senator, Cumberland
The Honorable Joan M. Nass, Representative, Acton
The Honorable G. Paul Waterhouse, Representative, Bridgton
The Honorable Michael G. Beaulieu, Representative, Auburn
The Honorable Ralph W. Sarty, Jr., Representative, Denmark
The Honorable Bradley S. Moulton, Representative, York
The Honorable Karen D. Foster, Representative, Augusta
The Honorable Charles R. Priest, Representative, Brunswick
The Honorable Cynthia A. Dill, Representative, Cape Elizabeth
The Honorable Maeghan Maloney, Representative, Augusta
The Honorable Megan M. Rochelo, Representative, Biddeford

TESTIMONY OF
MICHAEL CIANCHETTE
ON BEHALF OF GOVERNOR PAUL R. LePAGE

NEITHER FOR NOR AGAINST LD 1465: "An Act To Amend the Laws Governing Freedom of Access"

BEFORE THE JOINT STANDING COMMITTEE ON
JUDICIARY
27 April 2011

Senator Hastings, Representative Nass, and Members of the Committee, I am submitting written testimony on behalf of the Governor and the various Executive Branch agencies neither for nor against LD 1465.

As we have testified before, we support the objectives of Maine's Freedom of Access law. Unfortunately, as written, LD 1465 presents some difficult issues.

1. Reasonable v. Immediate

The first issue that many agencies have brought to our attention concerns the language change. Currently, government is required to respond to FOA requests in a "reasonable" time period. This bill changes the requirement to an immediate response period unless it is either (1) not "available immediately," or (2) a "large request." There is no guidance in the bill on how to determine whether something is "available immediately" or if a request is "large."

While we understand that the stakeholder community is not comfortable with the "reasonable" language currently in statute, members of this committee know that "reasonable" is a term of art for courts and attorneys and the interpretation of the term lies with judges and juries with the facts before them. Removing it in favor of an immediacy requirement subject to caveats we do not believe is an improvement to the current law and will only serve to further confuse the issue.

2. Freedom of Access Officers

This provision is likely to add substantial expense to municipalities and counties and may implicate the mandate provisions under the Maine Constitution. Executive Branch policy currently requires State agencies to maintain a FOAA contact and promulgate that person's contact information on the State FOAA website. While we believe it is good policy to have someone within a department take the lead on FOAA responses, adding a mandate on the counties, cities and towns of Maine does not seem to add any particular value.

3. Production

The changes requiring documents to be made available electronically is understandable and something we support in concept but, again, have concerns with the bill as written.

E-mail is an electronic document but can contain sensitive, non-public material. Redacting emails is a difficult prospect. Further, there is a possibility of inadvertent destruction of records as we ask state employees to attempt to redact these documents electronically. The impetus behind this provision appears to be databases and spreadsheets where some in government have sought to frustrate the requests of interested parties by providing them information in a format that is highly difficult to use effectively. We would support the committee's efforts to focus the language to address this specific issue.

4. Timing

The changes to the response time period – from 5 days to 3 for a response with an estimate, respond completely to a FOAA request within 5 days rather than confirm receipt in that period – present real difficulties to the efficient operation of government. Responding to requests for records is an important service provided by government, but so are paving roads, paying teachers, and the myriad of other services done through the day-to-day operations of our State.

We support the objective of adding "teeth" to the FOAA laws and understand that some local governments may not respond within a reasonable time period. We believe that, working with this committee, we can strengthen our laws to address these real concerns while ensuring that the other roles of government are not negatively impacted.

In conclusion, we are neither for nor against LD 1465 as written. There are some good policies contained in the bill and we look forward to working with the committee to focus and clarify the language to achieve those objectives.

Testimony of Harry R. Pringle in Opposition to LD 1465,
An Act to Amend the Law Governing Freedom of Access,
on behalf of the Legislative Committees of the Maine School Boards Association and the Maine School Superintendents Association
April 27, 2011

Senator Hastings, Representative Nass and distinguished members of the Joint Standing Committee on Judiciary, my name is Harry Pringle and I am an attorney at Drummond Woodsum in Portland. I am here today to speak in opposition to LD 1465, on behalf of the Legislative Committees of the Maine School Boards Association and the Maine School Superintendents Association.

In speaking today I would like to make it very clear at the outset that our two Associations fully support the Freedom of Access statute and the public's right to access public documents and attend public proceedings. The school systems we represent work diligently, often under very adverse conditions, to provide that access. But we also believe that the key to the current statute is balance – a delicate balance between the public's right of access, and the public's right to have school systems which can effectively educate our students. This LD totally destroys that balance, threatens to seriously hamper the ability of school districts to do their job, and will be unworkable in practice. That is why we oppose it.

First, a procedural point. I am a member of the Right to Know Advisory Committee, and have been privileged to serve on that Committee and its predecessors since 2004. I am proud of the work the Committee has done. Its members, virtually all of them volunteers, represent very diverse constituencies. The Committee's analysis of the issues has been rigorous, and it has a good record of tackling very tough issues, working through them, and coming up with recommendations that the group as a whole can live with.

And yet, LD 1465 represents the most radical rewriting of the Freedom of Access statute in over 50 years. If the Committee believes that LD 1465 deserves serious consideration, then we urge you to refer it to the Right to Know Advisory Committee. If changes of this magnitude are to bypass the Advisory Committee completely, it is frankly hard to understand why it should continue to exist.

Second, let me make a few comments about how the Freedom of Access statute works in the world of schools. Contrary to what some may think, many right to know requests made of school departments present very complicated issues. This is because there are very strict confidentiality statutes with respect to students, employees and collective bargaining – all of which must be analyzed whenever a request for

records is made. Very often, a school thus faces a difficult choice between violating employee or student confidentiality rights, on the one hand, or public access rights, on the other. Sometimes it takes a little time to get the answer right.

Additionally, it is important to remember that the Freedom of Access statute contains absolutely no limit on the number of requests that an individual or individuals can make, nor – unlike the discovery rules in court cases – any requirement that a request be relevant to anything or that it not be oppressive or unduly burdensome. Nor is there any geographical limitation on the requestor: a request can come from California or China just as easily as from Presque Isle and must be responded to in exactly the same fashion. And, it may surprise you to know that not infrequently requests come from commercial interests seeking information for marketing purposes or large law firms seeking discovery – free of the constraints of the discovery rules – prior to filing a lawsuit. So, the burdens that the current statute imposes on school districts with limited resources can be very substantial.

Against this background, let me comment on just a few aspects of LD 1465:

- Section 408(1) and (2) of the Freedom of Access statute *currently* provide that every person can inspect and copy a public record within a "reasonable" period of time, so as to not to "delay or inconvenience the regular activities" of the agency or official with custody of the records. LD 1465 totally destroys this crucial balance: it requires public records to be made available "immediately" under section 408-A, unless time is required to redact the record or to locate one that is not in use. And if the record is not available immediately, then it must be made available within 5 business days unless it is "large" or there are "multiple public records" – totally undefined terms.

  These time limits are completely unrealistic. For example, assume (as recently happened) that a school district receives a request for the names of all teachers being considered for a reduction in force. Must it produce those names under the Freedom of Access statute, or is it prohibited from producing those names under the collective bargaining statute and the personnel records statute? That is a very difficult question to answer – I doubt anyone in this room has the answer - but under LD 1465, it would nevertheless have to be answered "immediately". And if the

"immediate" answer was wrong, one statute or another would by definition have been violated. As a matter of public policy, does this make any sense at all?

- A second major provision of LD 1465, Section 408(2-A), would require a public entity to provide a public record not only immediately but in the "storage medium" required by the requestor if the record can be produced in that medium with or without assistance "at a reasonable cost". Who knows what this language means, and I for one would need to hear from qualified IT specialists to even begin to get my arms around the issues it raises. But just for starters, would it require a superintendent in a small school district to create an Excel spreadsheet, or create a specific database in a program no one in the school system knew how to use, if that is what the requestor wanted? What if the superintendent in that small unit were out on sick leave – what then? Who is supposed to do this work? And remember, all of this under the terms of LD 1465 must be done "immediately". As a matter of public policy, does this make any sense at all?

- Let's talk about cost, and the burden on local school units with budgets that are in the worst shape in a generation. Under the current statute, agencies may charge no more than $10.00 per hour after the first hour of staff time to search for, retrieve and compile a public record. This is nowhere near enough to compensate local school districts for the cost incurred as things stand right now. Yet the problem will be exponentially greater if spreadsheets, databases, PowerPoint presentations, and who knows what else must be created immediately on demand, as LD 1465 would require. How are those costs going to be covered?

- Section 408((4) requires an estimate of the costs to be made in 3 business days. I recently heard of a request for "all the records" in a school system's office; how can a superintendent possibly estimate that cost accurately in 3 days without dropping everything else on his or her plate?

- Section 413(1) requires the appointment of public access officers who are required to oversee requests but Section 413(6) provides that if the public access officer is unavailable this cannot delay a response. Putting aside the complete logical inconsistency between these two requirements, in a small office with a skeleton staff who exactly is supposed to make the

"immediate" decision on a difficult records request if the public access officer is out on bereavement leave?

- Section 413(3) prohibits a public employee from asking the purpose of a request. Putting aside the issue of whether this provision is constitutional, the fact of the matter is that many requests from ordinary citizens are confusing. Often a couple of questions can help determine exactly what a member of the public wants. Do we – assuming we constitutionally could - really want to make that kind of an inquiry illegal, and subject to a $500 fine?

I could go on and on, for LD 1465 goes on and on; there are many other problems that we could discuss. Suffice it to say that, in our judgment, LD 1465 will prove unworkable, inordinately expensive, and unfairly burdensome to the school districts – especially the small rural school districts – that our Associations represent. For these reasons, we would strongly urge the Committee to vote "ought not to pass" on LD 1465, or at the very least to refer it to the Right to Know Advisory Committee for a rigorous, thoughtful debate and analysis.

Re: LD 1465

Senator Hastings, Rep. Nass and members of the Committee:

My name is Larry Post, and I am the County Administrator of Somerset County. I am here to speak in opposition to LD 1465-An Act to Amend the Laws Governing Freedom of Access.

I have been in municipal and county government for the past 33 years, and have always been in favor of honest, open government, transparent and responsive to the public. The Freedom of Access law has always been understood as having the purpose of not being able to make decisions or keep documents in secret, away from public knowledge or scrutiny.

This bill, however, appears to go far beyond that and places greater burden of public bodies and agencies in several aspects. It has always been that the record(s) requested were provided in the manner and medium available. This bill places more burden on officials to go to great lengths to cater to individual whims or desires for purposes other than getting public information or documents. It even goes to the extreme requirement that the requester can provide computer software or hardware to accommodate their request. This is an unacceptable breach of system security and common sense.

It has been that the public body or agency had 5 days to determine if it could comply with the request being made. This time was sometimes needed to determine if the particular document was indeed a public document. Release of a document which is not a public document can lead to serious liability in some cases. By enacting a hurry-up process, the chance of releasing a protected document is increased.

This bill retains the language that 'inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record' but then adds timelines of 'immediately upon request' etc. that makes such protection of the public's work meaningless, to the detriment of taxpayers expecting normal and usual public work to be conducted.

This bill will be very helpful to those who wish to use the Freedom of Access law to either harass officials or for their personal gain. Indeed, if I did not know better, I would think this bill was crafted to facilitate someone taking the documents of which taxpayers have a significant cost in maintaining, and using those documents for personal gain upon the backs of those taxpayers.

The requirement of a Public Access Officer and an Assistant Attorney General position further adds to the burdens of government way beyond requiring that public documents be available to the public. The presumption is that the Public Access Officer-by

appointing an existing employee-won't cost anything. That premise is very problematic, due to the increased burdens being required by this bill. The extra burdens being placed upon entities by the bill is far more than ensuring compliance with honest, open government where decisions and documents are open to the public.

I would therefore urge you to reject this bill. Thank you.

M.C.C.A.

MAINE COUNTY COMMISSIONERS ASSOCIATION

Amy R. Fowler, President
Waldo County

Jonathan LaBonte, Vice President
Androscoggin County

Stephen E. Joy, Secretary-Treasurer
Hancock County

Robert S. Howe, MPA, Executive Director

11 Columbia Street
Augusta, ME 04330
Tel. 623-4697
Fax: 622.4437

April 27, 2011

Senator David R. Hastings III, Representative Joan M. Nass and distinguished members of the Joint Standing Committee on Judiciary.

My name is Robert Howe and I represent the Maine County Commissioners Association in opposition to LD 1465, "An Act To Amend the Laws Governing Freedom of Access." MCCA opposes the bill for the following reasons:

- It creates unreasonable expectations on state, county and municipal agencies for responding to Freedom of Access Act (FOAA) requests.
- It places the request of a citizen who invokes the Act ahead of the business of any other citizen waiting to be served.
- It would create a potential nightmare for county registries of deeds and probate.
- It appears to facilitate the commercial use of government databases with little or no recognition of the value of those databases created at taxpayer expense.
- It is an unfunded state mandate on local government of the highest magnitude.

Public Notice requirement

The three-day public notice requirement in section 406 may be reasonable in most circumstances, but it removes any flexibility in the law that allows for a meeting in an emergency situation and creates the distinct possibility that the action taken could be rendered null and void.

Immediate response to records requests

The requirement in section 408-A that the agency make a record "available immediately upon request" is unreasonable and unnecessary to protect the public's interest. By invoking FOAA, anyone coming into or telephoning a public agency is placed at the head of the line, before anyone else with any other business.

The "available immediately" language in 408-A seems to negate the language in 408 which says that, "Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought."

County registries of deeds and probate

The vast record holdings of the county registries of deeds and probate are records subject to FOAA, even though they are no records of public proceedings. These are records of private transaction maintained for a public purpose. They are made available for those who wish to search and copy them. There are individuals and businesses who specialize searching these records repositories. A search for a single purpose can involved dozens of documents filed over tens, even hundreds of years, taking hours and even days.

LD 1465 could have a devastating impact on the staffs of the registries who, under this bill, could be required to perform title searches and other document searches for the requestor. The new sentence at the end of section 408, subsection 1 could result in a requestor calling a registry over the phone and asking for all documents related to a title search be mailed or emailed to the requestor. I doubt the drafters of this bill have thought this through.

Commercial use of taxpayer- or user-funded databases

The language in section 408, subsection 2-A could impact current litigation before the Maine Supreme Judicial Court in the case of MacImage of Maine, LLC v. Androscoggin County and John P. Simpson v. Androscoggin County. That case involves a request for the entire body of records in the Androscoggin County Registry of Deeds (and the other counties' registries). Issues before the court include what fee the county is entitled to charge for that information and in what electronic format they must provide it.

The broader public policy issues which this state has yet to address include questions about who can access public databases for commercial purposes, at what cost and for what ultimate purposes. LD 1465 to a large extent pre-empts the discussions that this state needs to have about those questions.

Unfunded local mandate

There seems to be no question but what this is a mandate on local units of government. In our view, it is also an unwarranted one.

In summary, I hope you will give LD 1465 an Ought Not To Pass report.

Public Hearing Testimony Regarding LD 1465

"An Act To Amend the Laws Governing Freedom of Access"

DATE OF HEARING: April 27, 2011

To: Honorable Senator David R. Hastings III, Representative Joan M. Nass, and Distinguished Members of the Joint Standing Committee on Judiciary

From: Nathan Poore, Falmouth Town Manager

Date: April 27, 2011

In Opposition

Thank you for providing an opportunity to offer input regarding LD 1465. Transparent and open government is essential as is the efficient management of the business and services provided by government.

Historically, FOAA requests have been typically about acquiring copies of agendas, minutes, property record files and voter registration lists. Recently, there has been a higher demand for additional information such as employee salaries, supporting documents, draft reports, e-mails and other electronic communication. Many organizations have started to rely more on web sites to provide public information. There are some communities and agencies that receive more request than others. In some cases, there are individuals who have realized how powerful FOAA can be from the perspective of interrupting, perhaps on purpose or perhaps inadvertently, the efficient management of our towns and cities. We need to make sure that the current FOAA requirements and future amendments do not overburden governmental organizations and we need to consider some form of accountability for the requester. This is necessary so that the business of the general public is not jeopardized by a few individuals. This is a difficult task because access to government needs to be open without interference or obstacles. I don't have all the solutions but I am compelled to bring some observations to your attention.

There are many reasons why I have concerns about LD 1465. I offer my testimony in the form of specific questions and comments relevant to specific sections on the proposed amendment.

408.2-A.A This section could force communities to provide information to requesters in a format

that is not available with existing software, requiring time and resources to convert the information to a medium mandated by the requester. While there is a provision to reimburse the community, the total cost of providing the service cannot be recovered at $10 per hour. If the intent is to provide electronic information rather than paper copy or electronic information in a format that can be manipulated, the language could be amended so as to relieve the community from excess burden and cost. Language could be developed to allow information to be provided in standard or typical software applications, such as MS Excel or MS Word. At a minimum, the community should not be forced to provide information in a format that is not customarily used by the community.

The current amendment language will add a great deal of cost to municipalities.

408.4 and 408-A.4 This section only allows 3 days to provide an estimate if the cost of providing the information exceeds $100. Even well-staffed governmental organizations could have trouble meeting that timeframe for the sweeping document requests, but this standard is being applied to even the small communities who have very few employees. There will be times when employees are not available due to sickness, vacation, or urgent town business that will not permit them to provide the estimates within 3 days. There is the possibility that a requester could use this law to file frivolous requests with no intent to pay for or take delivery of the information but the request must be honored with an estimate. Requester accountability needs to be considered.

408-A.1 This section mandates an immediate response to all FOAA requests as a general rule, but permits an extension for limited reasons (such as the need for redaction or retrieval from storage), provided in writing. The term "immediate" would require communities to provide service without delay for a matter that, by law, defines the task as urgent or pressing that will need to be dealt with before anything else. Preparation of written certifications would require time, tracking and resources. Imagine a request for a property assessment card by a citizen who makes the request while the assessor is leaving the building for a field visit. Assume no one else is works in the assessing department. The assessor may not have the option to be late for the field visit and would have to write a letter to the requester certifying why they could not copy the document upon immediate request.

This section also states that a delay in response is appropriate to find a record that is not in active use or that may be in storage. The terms "active" and "storage" could be difficult to interpret. Could a building permit, issued in 1980, that is kept in archived files be considered "active"? It could be if the building inspector needs it to review a new building permit. Is an e-mail received one day prior to the FOAA request "active"? It may not be if the employee or official never intends to look at the document in the future. The term "storage" may have different meanings for hard paper copies

versus electronic archiving.

408-A.3 This section relates to "large" requests or "multiple" records requests. The term "large" is subjective and could be difficult to interpret. Does this mean a 24" x 36" map is larger than an 8.5" x 11" photocopy and could take longer to produce or does it imply many pieces of paper? The term "multiple" could also refer to multiple pieces of paper or many related records.

This section also has a provision that mandates partial submission of documents if the entire document can not be provided within 5 business days. Imagine a scenario where the public access officer finds two pages or two e-mails four days into the request period but is called away to an emergency or is out sick and fails to meet the requirement to submit the partial response within 5 business days. This would constitute a failure to comply with the Freedom of Access Act. Finally, there is the possibility that a requester could use this law to file frivolous requests with no intent to take delivery or inspect the documents but the request must be honored in accordance with the proposed amendment. Requester accountability needs to be considered

408-B.1, 2, and 3 These sections require the community to act as a personal assistant to the requester, having the responsibility to remind the requester up to 3 times, in writing, over a 40 day period that their request is available. The 40 day period includes the initial 10 day period, one 20 day extension and one 10 day extension. The community may also find it is warranted to send the written information via expensive certified mail to be sure the requester receives the written reminder notice. The proposed amendment does not provide for reimbursement of the time, resources and mailing costs. The management of this section will add an unnecessary burden that will also cost the community money that is not reimbursable.

413.5 This section stipulates that a community must provide "reasonable comfort". I agree that the place of inspection should be an area that is as accommodating as possible and not a location that is selected to purposefully be uncomfortable but the term "reasonable comfort" is subjective. Subjectivity leaves too much room for interpretation and endless calls to the Attorney General's office, combined with potential frivolous law suits.

In summary, I offer this testimony in opposition to the proposed amendment. I think there are concepts of the proposal that could enhance the existing FOAA requirements but we should rely on the Right to Know Advisory Committee to review the proposal and offer suggestions that will balance the necessity to provide information to the public and government transparency with the costly burden on agencies to follow unnecessary steps to produce the information.

LD 1465 An Act To Amend the Laws Governing Freedom of Access

Senate Chair, Senator David R. Hastings III

House Chair, Representative Joan M. Nass

To the Chairs and Members of the Joint Standing Committee on Judiciary.

My name is Fred W. Hardy. I live in New Sharon, in Franklin County. I am currently a Commissioner of Franklin County, representing District #2. I have held this position for over 18 years.

I stand before you today in opposition to LD 1465. I am also a firm believer in the Freedom Of Access Act (FOAA). I am also a firm believer in government transparency. To my knowledge all public records at Franklin County are accessable to the public at any time during regular business hours of the County.

I am opposed to tinkering on laws presently on the books. Especially when some of this is being done to line the pockets of an entrepreneur, who by his own admission, in a recent news article said "If he gets all the data, his company could earn up to $ 1 million per year". I have no problem with entrepreneurs but this cool $1 million would be, mainly, at County **property tax payer** expense.

We employ 3 full time people in our Registry of Deeds office at Franklin. The processing of these deeds, printing, filing, tending the puplic and etc. creates a cost to the County **property tax payer.**

If you insist on tinkering on this legislation, I would suggest the following;

1. Exempt land records, in Deeds Registry, and refer to MRSA Title 33.
2. Allow, in charging for the entire data base, an accounting of the cost of producing same.
3. Compensation should be allowed for resulting loss (to the Registry) of revenue.

I would bring to your attention, briefly, a few more concerns I have with LD1465.

1. B. under #2. Under Inspection: "---identify medium that is acceptable to the requester".
2. B. under #3.Payment of Costs: "--- not more than $10 per hour---" you gotta be kidding!

Then in the Summary—" to ensure that requesters can access public records in the **format requested** and to require the designation of public access **officers for every agency and political subdivision.** Generating even more cost to the property tax payer!

LD 1465 does nothing to enhance "public access" as far as the Registry of Deeds is concerned. Franklin County already has guaranteed access to its Deeds Registry. Please kill this Bill.

Fred W. Hardy
887 Weeks Mills Road
New Sharon, ME 04955
Phone (207) 778-4320
e-mail: fwhardy@hciwireless.net

The Portland Press Herald

Posted: April 19
Updated: Today at 12:57 AM

Gregory Rec/Staff Photographer
John Simpson wants the records so he can launch an online database where users can view digital images of deeds, and print them for a fee.

Maine online deed business gains court victory against counties

By J. Hemmerdinger
Staff Writer

CUMBERLAND FORESIDE - Following a favorable court ruling last week, a local entrepreneur is one step closer to launching an online clearinghouse of county deed records.

John Simpson of Cumberland has been in court for the last year and a half, battling six counties – Cumberland, Knox, Penobscot, Aroostook, York and Androscoggin – for electronic copies of property deeds and other documents.

Simpson hasn't yet received the records, but in February a Cumberland County judge ruled in his favor, ordering the counties to provide the documents at a reasonable fee.

And last Tuesday, the counties' request for a stay pending appeal was denied.

Simpson needs the records, millions of pages of scanned documents, including copies of mortgages, property liens and land plans, to launch a comprehensive online database where users can view digital images of deeds, and print them for a fee.

He already operates a database of Hancock County deeds called www.registryofdeeds.com, but is looking to expand.

Deeds prove property ownership and are often referenced by parties in real estate transactions.

The counties already provide most of the documents online, where they can be viewed for free. But they charge between $1 and $3 per page to print the documents, and offer monthly

subscriptions.

Cumberland County, for instance, charges $2 per page, or $1.50 per page for subscribers who pay $50 per month.

Simpson said his website will be less expensive and more convenient than the existing systems.

"We will put it all on one website, and you can select the counties you are interested in," he said.

Simpson hasn't disclosed how much he will charge to print documents, but noted that the price to print on his Hancock County site is 25 cents a page.

He said prices for the additional six counties may be a bit higher, but they will be less than the counties charge.

If he gets all the data, Simpson said his company could earn up to $1 million per year.

But he said start-up costs could be significant.

He has immediate plans to hire two staffers, and may eventually expand to half-a-dozen employees.

Simpson and his company, MacImage of Maine LLC, took the counties to court in October 2010. He had sent a public records request to the counties, but said they either didn't respond or charged what Simpson considered exorbitant fees.

Sigmund Schutz, a Preti Flaherty attorney who represents Simpson, said the counties, collectively, wanted close to $1 million for the records, much more than the cost of transferring them to Simpson.

Bill Collins, Penobscot county administrator, thinks the services the counties were asked to provide justified the costs.

"All counties spend great deals of money to produce these records at taxpayers' expense, and we are being asked to produce the records in bulk for less than what it costs," Collins said.

Edward Gould, a Gross, Minsky & Mogul attorney who represents Penobscot County, said Simpson's request created major logistical challenges for his client.

"The county isn't set up to do that, from a hardware, software and personnel standpoint," he said.

Gould added that the case wasn't about access to information, it was about an individual forcing government to make expensive operational changes.

"It's not an access question. This case is really about the means and costs of access and whether a public records request can force an entity to (make) changes," he said. "This is not a case where a registry is hiding (documents) in the back room."

In February, a judge ruled that the actions violated Maine's Freedom of Access Act and ordered the counties to provide the records at a reasonable fee, which may allow Simpson to buy some of the records for just a few thousand dollars.

On April 12, the judge denied the counties' request for a stay.

They may still appeal to the Maine Supreme Judicial Court.

Simpson, who spent close to $150,000 of his own money on court and lawyer's fees, said the ruling was "exactly what we were hoping for."

And he doubts the supreme court will overrule the lower court.

"The counties will have to comply with the judge's order and give us the documents. In two months we can have our website up and going," he said.

Simpson said he is eager to improve his relationship with the counties.

"I really want to sit down and talk to the county commissions, end the acrimony and find a positive, win-win solution," he said.

SOCIETY OF PROFESSIONAL JOURNALISTS®
Maine Pro Chapter

Testimony of Jeff Inglis, president of the Maine Pro Chapter of the Society of Professional Journalists
Before the Joint Standing Committee on Judiciary, April 27, 2011

IN FAVOR OF LD 1465

Senator Hastings, Representative Nass, Members of the Judiciary Committee:

I am Jeff Inglis, president of the Maine Pro Chapter of the Society of Professional Journalists, the country's largest and most diverse journalism membership organization.

I apologize that personal business has kept me from being able to testify in person. I am writing to testify **in favor of LD 1465**, An Act to Amend the Laws Governing Freedom of Access.

As a working journalist, and as leader of a statewide organization representing the interests of journalists, I can assure you that **these amendments** to the existing language of the Freedom of Access Act **are substantive, useful, and in the public interest**.

These changes make government more open, more accountable, and — crucially — easier to access for members of the public.

While journalists are among the most visible and vocal users of open-government laws, studies repeatedly show that across the nation vastly **more freedom-of-information requests come from members of the public than from media organizations**.

Journalists, though, are usually more experienced at handling such requests, since they have access to colleagues and, through SPJ, fellow journalists at other outlets, who can provide guidance along the way. Though the public collectively asks for more information than the media, individual members of the public are often less experienced at navigating the system.

LD 1465 **makes the system easier to use, and more responsive to requesters**. I want to highlight a few specific instances of this in the proposal before you today:

1) First and foremost is the **creation of both public-access officers and a partial position in the Attorney General's Office** to deal with freedom-of-access issues. Very often state agencies are unclear on what the rules and guidelines are, and sometimes different employees offer different answers about what is or is not public. Having trained in-house experts on the matter, as well as an independent voice in the AG's office, will substantially improve everyone's understanding of how to handle public-records requests.

2) The **prohibition on asking about the purpose of a request**. This is an excellent move that removes a potential point of contention between requesters and officials of the agency they are seeking information about. An official's inquiry about the purpose of a request is often perceived by the requester as intimidating, and may decrease interest in pursuing a request. This is also an important philosophical point — public records are public records, no matter what they might be used for in the hands of a private citizen. The government has no right to determine what a

private citizen can or should do with public information, and need not be informed about what a requestor will or will not do after receiving the information.

3) The **ability to request — and receive — a public record in the format in which it is stored** by the government. This will save time, effort, and cost for everyone involved — including governmental agencies, who will now be able to simply attach a file to an e-mail message and satisfy the request.

4) The **ability to request records be mailed**. For records that cannot be e-mailed, this provision will substantially improve transparency in a state as large as Maine, where a requester might otherwise be required to travel from far-flung reaches of the state to Augusta simply to exercise her right to see what her government is doing.

5) The **provisions for timelines**. They will increase communication between requesters and state agencies, allowing everyone to understand the process more completely and therefore be more comfortable with the experience of asking government agencies to remain accountable to the citizens.

I urge you to vote "ought to pass" for LD 1465, and to support it once it comes to the floor of your respective house. Should you have any questions, I can be reached at jeff@jeffinglis.com or 207.749.4502. Thank you very much for your time.

Joint Standing Committee on Judiciary
State House, Room 438
April 27, 2011
LD 1465: "An Act to Amend the Laws Governing Freedom of Access"

Testimony by Gary Foster

Senator Hastings, Representative Nass, members of the Joint Standing Committee on Judiciary, my name is Gary Foster. I am from the Town of Gray and am here today to urge support for LD1465: "An Act To Amend the Laws Governing Freedom of Access."

Though less obvious now than it once was, government in this country, by design, is a means by which we the people govern ourselves. We choose from among our peers, people to represent us honestly an honorably who in turn select others to perform tasks on our behalf. On rare, or perhaps not so rare occasion, some form of incentive helps to inspire honesty and integrity among public officials, whether elected or appointed. Transparency provides just that incentive, and in my opinion LD 1465 will improve upon that.

As a former member and Chairman of the Gray Town Council, I received numerous informal requests for information, which I happily fulfilled. Where, like most public officials, I respected the trust and expectations my peers placed in me, and the powers and duties of the office, formal requests were unnecessary.

Nonetheless, I did receive formal requests for information, the apparent intent of which was to intimidate or harass rather than research or review information.

If an official honors his oath of office and has nothing to hide, fulfilling a request for information is merely part of the responsibilities and duties of a public official. The law currently addresses circumstances whereby a request may be intended to harass or prevent an official from performing his duties.

If there is something to hide, however, as has recently come to light, the importance of transparency, or rather the means to enforce it becomes ever more evident.

One of the more important aspects of LD 1465 is defining timelines for both requests and fulfillment of requests. Though sad but true, subjectivity is often a window to abuse or defy the intent and purpose of a law. Under the changes proposed by LD 1465, what no two people will likely agree is a reasonable amount of time, becomes a definite period of time.

Having served in a public capacity, and with an understanding of the role of government in our country and state, I urge this committee to recommend that LD 1465 "Ought to Pass."

MAINE CIVIL LIBERTIES UNION

TESTIMONY OF SHENNA BELLOWS

In Support Of

LD 1465: An Act To Amend the Laws Governing Freedom of Access

JOINT STANDING COMMITTEE ON JUDICIARY

April 27, 2011

Dear Senator Hastings, Representative Nass and Distinguished Members of the Joint Standing Committee on the Judiciary, my name is Shenna Bellows, and I am Executive Director of the Maine Civil Liberties Union, a non-profit dedicated to defense of the Bill of Rights and the Constitution through advocacy, education, and litigation. I also serve as a member of the Right to Know Advisory Committee. On behalf of our more than 3,300 members statewide, we urge you to support LD 1465.

We view the public's right to know as fundamental to our democracy. The citizenry can only make informed decisions about who represents us in government if we have full access to information about the government's work on our behalf. The achievement of government of and by the people requires that the people know what the government is doing. We are deeply concerned that government agencies have often arbitrarily suppressed news and information of public interest, thereby narrowing "the marketplace of opinion." Government secrecy inevitably leads to abuse of power.

The MCLU supports clear deadlines for prompt government response to information requests and advertisement of public meetings. Eliminating any ambiguity in the law empowers the people of Maine to more fully understand and demand compliance with their legal right to know about a public meeting that has been scheduled or to obtain a public document in a timely manner.

LD 1465 brings Maine's Right to Know laws up to date with current technology and creates new accommodations for Maine people who live far away from Augusta or agency offices by allowing request for information to happen via telephone or email and requiring that a record be mailed or emailed to the requester or otherwise provided in electronic form. This will increase access to public records for people for whom a trip to Augusta is a significant barrier. It's appropriate and important that records kept in electronic form be available in electronic form to ease the public's review of the records.

The MCLU supports the legal remedy contained in LD 1465 for failure to comply with a public records request. A right can only be meaningful if it can be enforced. This is also a reason that the MCLU supports creation of the position of public access ombudsman at the Attorney General's Office. The MCLU gets calls on a frequent basis from members of the public who have been denied records to which they are entitled under the law. With only two attorneys on staff, we simply do not have the resources to take these individuals as clients in legal cases. Moreover, most of these problems can be resolved, not with a lawsuit, but with a phone call from a person in authority to the offending official. The Attorney General's Office is the most logical authority to serve as a resource to the public and to elected officials who are confused about the laws itself. Please vote "ought to pass."

MPA Maine Press Association
1079 River Rd., Buxton, ME 04093-6021
1-800-799-6008

Statement before the Judiciary Committee
In Support of LD 1465 "An Act to Amend the Laws Governing Freedom of Access"
Prepared by Anthony J. Ronzio
Editor & Publisher of the Kennebec Journal & Morning Sentinel
President, Maine Press Association

April 28 2011

Sen. Hastings, Rep. Nass, distinguished members of the Judiciary Committee, it is a pleasure to appear before you this afternoon.

My name is Anthony Ronzio, and I'm the editor and publisher of the Kennebec Journal in Augusta and Morning Sentinel in Waterville. Today, I'm here in my capacity as President of the Maine Press Association to testify in support of LD 1465.

The MPA, representing the state's newspaper industry, consists of more than 40 weekly and daily papers across the state. We employ over 2,000 Mainers, pay over $70 million in annual wages.

Maine's newspapers are consistent and vigilant in protecting and improving this state's landmark Freedom of Access Act. The members of the Maine Press Association believe strongly that Maine's governments best serve their citizens when they operate in the open and make their records accessible to the people they serve.

We believe LD 1465 contains several important and sensible revisions to Maine's FOAA law to improve its overall effectiveness not only for the public, but also Maine government. FOAA is a two-way street that should work well for all involved.

Every government office, agency or subdivision deals with FOAA requests, yet no two government offices, agencies or subdivisions handles them the same way. This can make utilizing FOAA, even for simple record requests, unpredictable and unwieldy.

LD 1465's prescription of instituting timelines for answering record requests, installing guidelines for how public records can and should be transmitted to requesters, and most important, installing an overdue public records ombudsman within the Office of the Attorney General will make FOAA procedures better.

The process needs predictability. Timelines for answering requests will allow requesters to know when their request should be fulfilled, and let agencies know how long they have

to fulfill it – regardless if they're part of the state, county, town or village level.

Designating public record officers within government organizations is sensible; FOAA requests are important, but can also be time-consuming for government offices with limited resources. A record officer with expertise in FOAA can not only perform a valuable service to the public, but also to their office by managing requests.

And the ombudsman – a position long-supported by the MPA – will serve a critical position as arbiter for FOAA issues. The spirit of public access laws is collaboration and cooperation between the public and government, yet the only current recourse for FOAA disagreements are the courts.

An ombudsman should help rectify disputes before reaching litigation, a role that, again, should make FOAA a more pleasant experience for all sides.

LD 1465 deserves an ought-to-pass vote from this esteemed committee. FOAA is a crucial part of governing. Its presence is essential to the public trust. Making it better would serve only to improve public confidence in those entrusted to lead.

And LD 1465 makes FOAA better.

Thank you very much, and I'm happy to answer any questions.

April 27, 2011

Testimony in Support of LD 1465 by John Simpson of Cumberland Maine.

Good Afternoon Members of the Judiciary Committee.

My name is John Simpson. I live in Cumberland and am the owner of MacImage of Maine LLC, a Maine business that provides computer software, websites and other services used by registries of deeds and the public.

Thank you for the opportunity to testify in support of LD 1465 today. I believe the provisions of LD 1465 will improve access to public records by clarifying the law relating to such access. Thus, I support the bill. However, the bill could be improved to clarify exactly what fees government may charge for copies of public records. I know from personal experience that government officials can and will exploit ambiguous provisions in the Freedom of Access Act to block access to public records.

If I may, I would like to tell you a little about my company's experience with county government and the Freedom of Access Act.

My business, MacImage of Maine, wants to build a statewide land records website. Today, title researchers, bankers, lawyers, realtors and other people who need copies of deeds must deal with 18 different county websites, each of which works a little differently and requires a separate subscription. A statewide registry website would allow these people save time and money by providing more efficient access to the records they use every day. At least 10,000 people would use a statewide land records website each year, and construction of a the website could generate several dozen jobs in Maine.

As some of you may know, Maine Counties have refused to provide access to copies of the electronic land records MacImage needs to build a statewide website. MacImage offered to pay all costs associated its request for public records, but the counties demanded fees totaling millions of dollars. After the counties refused to offer access to their records for a reasonable fee, I asked for help from the courts. The Superior Court recently ordered six counties to provide copies to MacImage at fees which conform to the limits specified in the Freedom of Access Act. However, the counties have appealed the court's order to the Maine Supreme Judicial Court.

The Counties are concerned that their copy revenue will decline if a statewide land records website operated by MacImage competes with their individual registry websites. I understand county commissioners are struggling to balance their budgets and I want to work with them to address their revenue concerns. My company has offered specific proposals to counties which could actually increase their revenue. Unfortunately, most county commissioners have refused to talk with my company.

It has now been 20 months since I made my public records request. I have incurred more than $100,000 in legal fees, and even though the court has several times ruled in my favor, it may be another year before I have access to copies of the records I requested.

I am here today to ask that you consider an amendment to LD 1465 that would clarify the Freedom of Access Act's fee provisions and prevent government officials from exploiting ambiguities in the law. It may be too late for this law to help my business, but the bill could help other people avoid the difficulties and expense I have incurred.

The text of the proposed amendment is attached to my written testimony.

The amendment does three things: first it clarifies that "the cost of copying" means only those costs actually incurred by an agency in response to a request for copies. Second, the amendment addresses a problem that occurs when other statutes could be interpreted to permit charging excessive fees for copying public records. A government agency would only be permitted to charge higher fees for copying records if the legislature approved specific copy fee amounts or created an exemption in the Freedom of Access Act. Lastly, the amendment clarifies that an agency may not charge for copies made by a requestor when the agency incurs no additional costs due to such copying. An example could be a person photographing public records with his or her own digital camera.

Thank you for your time and consideration. I would be pleased to answer questions.

John Simpson

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

Proposed Committee Amendment to LD 1465, An Act To Amend the Laws Governing Freedom of Access

This amendment strikes out all text included within 1 MRSA §408, sub-§3 and inserts the following text:

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

3. Payment of Costs. Except ~~as otherwise~~ when specific~~ally~~ fee amounts are established ~~provided~~ by law or court order, an agency or official having custody of a public record may charge fees for copying only as follows~~.~~:

A. The agency or official may charge a reasonable fee to ~~cover the cost of copying~~ recover costs incurred specifically to produce copies for a requestor.

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

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

D. An agency or official may not charge for inspection and may not charge for copies made by the requestor when the agency incurs no additional costs due to such copying.

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

SUMMARY

This amendment further amends the original bill to clarify that "the cost of copying" means only those costs actually incurred by an agency specifically to respond to a request for copies. The amendment eliminates ambiguity in statutes that might otherwise be interpreted to permit government agencies to charge fees for copying public records that exceed a reasonable amount as determined in the FOAA. A government agency would only be permitted to charge higher fees for copying records if the legislature approved specific copy fee amounts for a class of records or created an exemption for those records in the FOAA (1 MRSA §401 et al.). This amendment also clarifies that an agency may not charge for copies made by a requestor without any assistance from agency staff when the agency incurs no additional costs due to such copying. An example would be photographing records with a digital camera owned by the requestor.

FOAA TESTIMONY
APRIL 27, 2011
LD 1465

I am Michael Doyle of Falmouth. I don't work for a news organization. I am only a citizen and taxpayer. I support this bill and want to suggest additions or clarifications to what is being considered in these amendments.

1. This law should prohibit government units supplying locked data disks. I asked the Falmouth School Dept for a list of professional staff showing total compensation. The School Director of Finance gave me a disk with an Excel spreadsheet listing the staff in alphabetical order (about 200 names) however; he locked the disk so I could not sort the data. He told me he locked it because I had altered data on a previous disk. This was not accurate, all I did was download his Excel spreadsheet onto my computer and sort the data. I never changed numbers or switched between staff.

2. This law should prohibit government units considering separate requests as one continuous request in order to deny the free hour. Our Town Manager has treated EVERY SEPARATE request I make concerning the Town Council as ONE CONTINUOUS request so he can deny me the one free hour per request as required by this law.

3. This law should prohibit government units from refusing to comply with the current provision for offsite copying to be done at the requester's expense, for a town employee to be present, and for the first hour of such copying oversight to be free. The Town Manager in violation of this provision recently denied me this offsite provision and charged me $90 for 242 pages of copies. Something I could have done for $12 at another location.

4. This law should keep the time limits proposed in the current changes. It has been my experience that often there are questions regarding time limits, and these proposed time limits will add certainty to the process.

Respectfully submitted this 27th day of April 2011.

Michael Doyle
3 Shady Lane
Falmouth, ME 04105
207.766.6644

Testimony in Support of LD 1465:
An Act To Amend the Laws Governing Freedom of Access

Chris Cinquemani
Director of Communications
The Maine Heritage Policy Center

April 27, 2011

Good afternoon Senator Hastings, Representative Nass, and members of the Legislature's Joint Standing Committee on Judiciary. My name is Chris Cinquemani. I am a resident of Augusta, and I serve as Director of Communications for The Maine Heritage Policy Center.

Today I testify in support of LD 1465: An Act To Amend the Laws Governing Freedom of Access.

A representative government must be open and accountable to remain legitimate in the eyes of the people. Our laws should guarantee citizens the right to access public records in a timely fashion, and those laws should ensure that politics will never trump the people's Right to Know.

LD 1465 in a critical step to guarantee those rights and protections to the people and to make sure government transparency and accountability are always a priority.

The idea for these types of reforms began in 2007 when I worked for then-Senate Minority Leader Carol Weston during the 123rd Legislature. After she submitted a Freedom of Access request to Governor Baldacci's office related to the controversy and mismanagement of PIN Rx—a government-backed mail order pharmacy program—the weaknesses within our current Freedom of Access law became clear to us, which led to her proposal of LD 1881 to strengthen our Right to Know laws. Carol Weston is here today and will share the details of that experience, and the circumstances that led to the downfall of that bill.

During Sunshine Week in March 2010, the movement to strengthen our Right to Know law was revived. The Maine Heritage Policy Center partnered with the Maine Civil Liberties Union and the Maine Press Association to propose reforms that create a more open and accountable government. Since then, we have worked with other transparency advocates to develop a proposal that gives Maine people peace of mind that they could easily access records that are rightfully theirs. LD 1465 is the result of that more than year-long endeavor.

Today, this bill has wide-ranging support. In addition to the informal coalition involved in the drafting of this proposal, 30 legislators from both parties have cosponsored LD 1465.

The movement to expand the public's Right to Know is strong and growing.

One of the most important provisions of LD 1465 creates a five business day deadline to comply with requests for public records if those records are not immediately available. Today, the only deadline placed on government is to acknowledge within five days that a request has been received.

LD 1465 also includes provisions to extend that deadline. If a government agency needs additional time beyond five days to compile large requests or redact confidential information, this bill simply requires the agency to certify that fact in writing, and provide the requester an explanation for the delay. If after the additional time the entire request still cannot be fulfilled, the government agency would provide portions of the request as they become available, unless the requester chooses to wait until the entire request is available.

There is a very real need for a deadline process for government to comply with public records requests. Such a process would minimize the role politics play in guaranteeing the people's right to public information.

Included with my testimony are e-mail correspondences between Maine Heritage Policy Center staff and the staff attorney for the Maine Turnpike Authority. This e-mail chain clearly demonstrates the need for deadlines to comply with Freedom of Access requests, and shows how the weaknesses of our current law easily allow a government entity to shield potentially damaging information from the public.

These e-mails show the following timeline of events:

- **Aug. 4, 2010**
  MHPC sends Freedom of Access Request for payroll and vendor payments data to the Maine Turnpike Authority

- **Aug. 9, 2010 - *5 days after request***
  MTA complies with current law and acknowledges our request has been received

- **Sept. 7, 2010 - *34 days after request***
  Having received no further correspondence from MTA, MHPC staff attorney e-mails MTA asking to advise on status of request

- **Sept. 10, 2010 - *37 days after request***
  MTA replies, suggesting it will take 20 hours to complete the request

- **Jan. 31, 2011 - *180 days after request***
  Having received no further correspondence from MTA, MHPC staff e-mails MTA asking again to advise on status of request

- **Feb. 4, 2011 - *184 days after request***
  MTA finally complies with request

Despite our staff attorney's involvement, we still had to wait 184 days for the Maine Turnpike Authority to comply with our request for this public information. Would an average citizen without an attorney be forced to wait even longer? Would they still be waiting today?

We know from recent events that the Maine Turnpike Authority has been under fire for poor financial management. Was their stalling politically motivated to delay the public finding out the details of salary increases for top management and detailed MTA spending?

Regardless, our laws should ensure that members of the public do not become victims of loopholes and political obfuscation when trying to access public records. Had LD 1465 been law, MTA would have had to comply with our request in a timely fashion, and if it refused, we would have had the open records ombudsman position this bill funds as a resource to help resolve the problem.

This example is not meant to show how a governmental agency has evaded The Maine Heritage Policy Center's requests for public information. Rather, it shows how easy it is for a government agency to manipulate our current Freedom of Access statute, and how an agency can legally delay the release of public records until it is politically expedient.

Maine people deserve reforms to our Freedom of Access law to guarantee their rights will be respected, and to hold government to a higher standard of responsiveness and accountability.

LD 1465 also compels each government agency to designate from existing staff the responsibilities of public access officer. These individuals would oversee requests for public records, and would be required to undergo the same training on our Freedom of Access laws that elected officials receive. This ensures government will have staff well-versed in our Right to Know laws and will have the responsibility to uphold them.

This Legislature has, in the past, been vigilant in promoting greater accountability within government, and many of our statues reflect that commitment.

For example, candidates for office are required to submit signatures for ballot placement within a predetermined period of time. And candidates who seek taxpayer funding to run their campaigns face a deadline for submitting their qualifying checks. Citizens seeking to create new laws through the citizen initiative process, or to overturn laws passed by the Legislature through the People's Veto, also face deadlines to submit petition signatures.

With this deadline precedent established and well-respected, it is common sense to apply the same set of standards to government when facing requests for public information.

LD 1465 is a Sunshine Law to protect and expand the public's Right to Know. This proposal represents the right reforms to create a more open, accountable and responsive government for Maine people.

The Maine Heritage Policy Center is proud to support LD 1465, and we are honored to be a part of a diverse movement to expand openness within Maine government. I urge members of the Committee to join this movement by unanimously supporting LD 1465 and the greater accountability and transparency it creates.

Thank you for allowing me to testify today. I will try to answer any questions you may have at this time.

Sam Adolphsen

From: Sam Adolphsen
Sent: Monday, January 31, 2011 1:44 PM
To: 'Arey, Jonathan A.'
Cc: 'David P. Crocker'
Subject: RE: Maine Heritage Policy Center - FOAA Update

Jonathan,

Any progress on this? It's been quite awhile.

Thanks,
Sam

-----Original Message-----
From: Sam Adolphsen
Sent: Friday, September 10, 2010 11:09 AM
To: 'Arey, Jonathan A.'
Cc: David P. Crocker
Subject: RE: Maine Heritage Policy Center - FOAA Update

Jonathan,

1) For payroll information:

We will just go with the 1998 - 20010 payroll data that can done in the format we requested. Latest title is acceptable if that's what you can provide. Cost of benefit by percentage is acceptable if that's what you can provide. We understand and accept the charges of up to 20 hours or time.
* I would note that there were no overtime figures provided in previous data, that's why we asked for repeat years, to make sure we capture that information accurately.

2) For Vendor information:

Yearly totals for Vendors are acceptable if that's what you can provide. One major thing missing from the previous data - that would be particularly important to include is the "Category of Expense" field, which would add context to the data. Please provide that field if possible.

Please feel free to contact me with any further questions.

Thanks,

Sam Adolphsen
(207) 975-6617

-----Original Message-----
From: Arey, Jonathan A. [mailto:JArey@maineturnpike.com]
Sent: Friday, September 10, 2010 10:02 AM
To: David P. Crocker
Cc: Sam Adolphsen
Subject: RE: Maine Heritage Policy Center - FOAA Update

I met with the Director of our Finance/Accounting department on this yesterday to determine what we had that was responsive to your request.
The personnel side of the request is similar to what you asked for before and we can provide something similar to what we provided before, at least from 1998 on. This does require writing some script / queries and we anticipate it could take up to 20 hours of staff time which we would bill according to the statute. Please see the attached table for more specific details.

On the vendor side the request, as written, is quite a bit more complicated than your previous request. If you wanted something similar to what we provided last time, which was yearly totals for vendors that
can be provided for most of the years cited. It is not possible,
however, to provide a good deal of what you are asking for, as written, because our records are not kept in the kind of format that would allow
that. We should probably discuss this side of the request so I can
understand what you want and try to get you whatever we have that is as close to that as possible.

Anyway, please take a look at the attached and let me know how you would like to proceed.

Jonathan Arey

(207) 482-8136

-----Original Message-----
From: David P. Crocker [mailto:dpc@davidcrocker.com]
Sent: Tuesday, September 07, 2010 3:20 PM
To: Arey, Jonathan A.
Cc: 'Sam Adolphsen'
Subject: Maine Heritage Policy Center - FOAA Update

Mr. Arey:

Could you please advise me on MTA's progress in fulfilling MHPC's FOAA request? The last communication I received from you was your letter of August 9, 2010.

Regards,

David P. Crocker
Center for Constitutional Government
The Maine Heritage Policy Center
P.O. Box 7829
Portland, ME 04112
www.mainepolicy.org

PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
BOARD OF DENTAL EXAMINERS
143 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0143

April 20, 2011

Senator David R. Hastings, III, Chair
Representative Joan M. Nass, Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333-0100

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

Dear Senator Hastings, Representative Nass, and Members of the Judiciary Committee:

The Maine Board of Dental Examiners would like to indicate its opposition to LD 1465. This proposed legislation would require undo burden on the Board's limited staff. In the Board's experience, we have not had any issues relating to a Freedom of Access request made to our Board and we feel that this legislation is unwarranted.

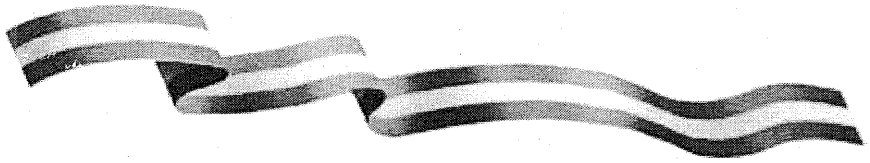
If the Committee has questions regarding LD 1465, or if the Board of Dental Examiners can ever be of assistance, do not hesitate to contact me.

Sincerely,

Philip W. Higgins, Jr., DMD
Board President

PHONE: (207) 287-3333
FAX: (207) 287-8140

WEBSITE ADDRESS: www.mainedental.org
E-MAIL ADDRESS: dental.board@maine.gov



Maine Freedom of Information Coalition

Testimony of Mal Leary, President, MFOIC on LD 1082, LD 1154, LD 917 and LD 1465

April 27, 2011

Senator Hastings, Representative Nass and members of the Judiciary Committee:

My name is Mal Leary and I appear before you as President of the Maine Freedom of Information Coalition, a state wide group of individuals and organizations united to advocate for openness and transparency in their government. I also serve on the legislature's Right to Know Advisory Committee.

Today you are considering several proposals that would amend the state's public access and public records laws. Let me address them in order.

LD 1082 is the recommendations of a majority of the Right to Know Advisory Committee. We spent considerable time seeking to respond to the request of the Legislature, in the form of a resolve, asking that we craft legislation to protect certain information that may be in the custody of a lawmaker as a result of communications from a constituent. In essence, this measure says if another section of state law makes a particular piece of information, for example a medical record, confidential, than it would also be confidential in the custody of a lawmaker.

Accompanying this legislation is the strong suggestion that all legislative websites spell out that communications with lawmakers are public.

LD 1154 is the omnibus bill from the Right to Know Advisory Committee. Most of the bill deals with cleaning up language and removing unneeded references. But there are several significant provisions.

One section expands the ability of public bodies to make use of technology to allow participation of its members through technology from locations outside the meeting room. For example, allowing a member of a city council to participate in the council meeting by phone or a web connection, as long as the majority of the council agrees.

Another section deals with the concern of serial communications between members of a public body that are used to defeat the purposes of the freedom of access laws. This section strikes a balance between the free speech rights of members of a public body with the public's right to know how decisions are reached on issues of concern.

One section responds to the resolve from the legislature asking for recommendations on establishing minimum record keeping of public bodies that make decisions.

It also clarifies the ability of the Judiciary Committee to include in its review of proposed public records exceptions any factors that may affect public accessibility to records, including, but not limited to the cost of copying fees.

LD 917 seeks to declare that names, addresses, telephone numbers and email addresses provided to the Department of Inland Fisheries and Wildlife are confidential. It also directs the Right to Know Advisory Committee to look at similar records in other departments and whether they should be confidential. This is clearly a case of putting the cart before the horse. IF&W should not receive preferential treatment over all other state agencies. If the committee and the legislature believe the study is warranted, than IF&W should be part of that study.

LD 1465 seeks to overhaul the process for requesting public records by establishing timelines for responses to requests. While the establishment of timelines will improve the process, I and other members of the MFOIC board are not sure if the timelines in the bill are the best.

We would suggest that portion of the bill be sent to the Right to Know Advisory Committee for their recommendations. Other sections of the legislation improve the law such as requiring the designation of a public access officer and the funding of a public access ombudsman in the Attorney General's office will improve the ability of the public to access the proceedings of their government and are worth of your support.

I will try to answer any of your questions on these bills.

Summary of Concerns with Respect to LD 1465,
An Act to Amend the Law Governing Freedom of Access,
Submitted on behalf of the Legislative Committees of the Maine School Boards Association and the Maine School Superintendents Association
May 11, 2011

The Associations are strongly opposed to LD 1465 for many reasons, but the following bullets summarize some of the more obvious ones:

- LD 1465 is the most radical revision of the Freedom of Access statute in over 50 years, but it was never referred to the Right to Know Advisory Committee. This should be done, so that it can receive an appropriately rigorous, thoughtful debate and analysis.

- The requirement in Section 408(2-A) that school systems provide public records in the requested "medium" is completely open ended. Would it require the creation of spreadsheets or the creation of databases that no one in the school system is trained to use, if that is what the requester wants?

- The requirement in Section 408(2-A)(A) that schools must install any computer software or hardware paid for by the requester raises extremely serious network security concerns. Additionally, who is to pay for the training on the software, its maintenance, and the integration of software and hardware with existing school computer systems? Is this not an unfunded mandate?

- The requirement in Section 408-A that public records must be made "immediately upon request" unless time is required to redact the record (in which case they must be provided in 5 business days) is completely unrealistic and will be extraordinarily burdensome for schools. If the custodian of the records is not available on the date the request is made, the school committee will immediately be in violation of the statute.

- The requirement in Section 408-A(4) that cost estimates greater than $100 must be provided within 3 business days may be impossible to meet. If large or multiple records are requested, it may not be possible to even determine their size and location within that time.

- The provision in Section 413 that public access officers must oversee prompt responses to requests but that the unavailability of a public access officer may not delay a request are completely inconsistent; what if the public access officer is simply not available on the day the request is made?

- The extreme nature of LD 1465 can best be understood by specific scenarios; here is one:

  Assume that a member of the public at a public hearing (a) asks a School Committee (or a Legislative Committee) for all emails, texts, or other documents received or sent by any committee member within the past 7 days; (b) requests that they be scanned and emailed in PDF format; and (c) demands under Section 408-A that they be produced "immediately".

  Under LD 1465:

  - ***Would unredacted documents have to be provided "immediately"?***

(Over)

- *If so, how could this be done, given that the School Committee is in the middle of an important hearing?*

- *If there were redaction questions posing difficult legal issues, would those documents nevertheless have to be emailed as PDF's within 5 business days?*

- *What would happen if a Committee member was not at the hearing because they were seriously ill or out of the country?*

- *How could you reasonably estimate the time and cost of responding to this request within three business days?*

OFFICE OF POLICY AND LEGAL ANALYSIS
Public Hearing Summary

To: Joint Standing Committee on Judiciary

From: Peggy Reinsch, Legislative Analyst

LD 1082 **An Act Concerning the Protection of Personal Information in Communications with Elected Officials**

LD 1154 **An Act to Implement the Recommendations of the Right to Know Advisory Committee**

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

Public Hearing Date: April 27, 2011

SUMMARY

LD 1082 consists of the recommendations of the majority of the members of the legislative subcommittee of the Right to Know Advisory Committee in response to Resolve 2009, chapter 184.

LD 1082 amends the definition of "public record" in the freedom of access laws to provide that certain information in communications between constituents and elected officials is not a public record. Specifically, information is not a public record if the information would be confidential if it were in the possession of another public agency or official or if the information is of a personal nature. Information of a personal nature consists of:

1. An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
2. Credit or financial information;
3. Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;
4. Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or
5. An individual's social security number.

LD 1154 implements the recommendations of the Right to Know Advisory Committee as included in the advisory committee's 5th annual report.

PART A

The recommendations resulting from the review of existing public records exceptions are contained in Part A. The Maine Revised Statutes, Title 1, section 433 directs the advisory committee to review existing public records exceptions found in Titles 22 to 25 in 2012.

Part A:

1. Repeals Title 22, section 1065 to eliminate reporting requirements regarding influenza immunization agents because the information is no longer collected;

2. Makes changes to achieve language consistency. These changes are not intended to change the effect of the law;

3. Repeals Title 24A, section 2315 to eliminate obsolete language referring to "stamping bureaus," which are no longer in existence; and

4. Makes a substantive change to provide that specific modified property and casualty policy form and rate filings are confidential until approved in accordance with applicable law. Current law refers to confidentiality until the filings are effective.

PART B

Part B is in response to Resolve 2009, chapter 171, which, among other charges, directed the advisory committee to examine the use of technologies to ensure that decisions are made in public proceedings that are open and accessible to the public. Part B amends the public policy section of the freedom of access laws to specifically allow communications outside of public proceedings between members of a public body if those communications are not used to defeat the purposes of the freedom of access laws.

PART C

Part C contains the advisory committee's recommendations pursuant to Resolve 2009, chapter 186. Part C requires that public bodies keep records of their meetings if they are required under the freedom of access laws to give notice of their meetings and the public body is not purely advisory in its authority.

The meeting records must include:

1. The date, time and place of the public proceeding;

2. The members of the body holding the public proceeding recorded as either present or absent; and

3. All motions and votes taken, by individual member, if there is a roll call.

An audio, video or other electronic recording of a public proceeding is an acceptable record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to these meeting records. The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required.

PART D

Part D consists of the advisory committee's recommendations to broaden the review requirements for both existing public records exceptions and the Legislature's review of proposed public records exceptions. Part D provides that the review and evaluation process includes language that affects the public accessibility of a public record. Any factors that affect the accessibility may be considered, including but not limited to fees, request procedures and timeliness of responses.

PART E

Part E exempts social security numbers from the definition of "public records" under the freedom of access laws.

LD 1465 increases governmental transparency by enhancing the existing freedom of access laws to provide deadlines for responses to requests for public records, to ensure that requesters can access public records in the format requested and to require the designation of public access officers for every agency and political subdivision.

LD 1465 provides funding for an Assistant Attorney General position located in the Office of the Attorney General to act as the public access ombudsman, which is a part-time position.

TESTIMONY

- Rep. Nass, presenter, LD 1082 and LD 1154 for Right to Know Advisory Committee
- Sen. Rosen, sponsor, LD 1465 (written testimony)
- Sen. Hill, cosponsor, LD 1465 (written testimony)
- Linda Pistner, Deputy Attorney General, Member of Right to Know Advisory Committee, LD 1082 and LD 1154
- Chris Cinquemani, Maine Heritage Policy Center, LD 1465 (written testimony)
- Michael Doyle (written testimony)
- Mal Leary, Maine Freedom of Information Coalition, Member of Right to Know Advisory Committee (written testimony)
- Dwight Hines (E-mail)
- Michael Cianchette, Deputy Counsel for Governor LePage, LD 1082 and LD 1154 (written testimony)
- John Simpson, MacImage (written testimony, PROPOSED AMENDMENT)
- Suzanne Goucher, Maine Association of Broadcasters, Former Member of Right to Know Advisory Committee
- Harry Pringle, Maine School Boards Association, Maine Superintendents Association (Member of Right to Know Advisory Committee), LD 1082, LD 1154 (Parts B and C) (written testimony)
- Carol Weston, Americans for Prosperity
- Shenna Bellows, Maine Civil Liberties Union, LD 1154 and LD 1465 (written testimony)
- Jeff Inglis, Society of Professional Journalists, Maine Pro Chapter (written testimony)

Opponents

- Harry Pringle, Maine School Boards Association, Maine Superintendents Association (Member of Right to Know Advisory Committee), LD 1465 (written testimony)
- Peter Merrill, Maine Housing
- Larry Post, County Administrator for Somerset County (written testimony)
- Fred Hardy, Commissioner Franklin County (written testimony and article)
- Nathan Poore, Falmouth Town Manager (written testimony)
- Susan Boulay, Register of Deeds Penobscot County, LD 1465
- Dan Walker, Maine Press Association (written testimony)
- Gary Foster (written testimony)

- Greg Connors, Maine Municipal Association, LD 1082 and LD 1154 (written testimony)
- Christopher Murry, Jr., LD 1465 (written testimony only)
- Philip W. Higgins, Maine Board of Dental Examiners (written testimony only)
-

Neither for nor against

- Michael Cianchette, Deputy Counsel for Governor LePage, LD 1465 (written testimony
- Rep. Hayes
- Eric Stout, Assistant to Chief Information Officer, FOA Coordinator for Office of Information Technology
- Beverly Bustin-Hatheway, Register of Deeds, Kennebec County
- Shenna Bellows, Maine Civil Liberties Union, LD 1082 (written testimony)
- Greg Connors, Maine Municipal Association, LD 1465 (written testimony)
- Tim Leet, Maine County Commissioners Association (written testimony)

FISCAL IMPACT:

LD 1082: No fiscal impact
LD 1154: Not determined as of May 8, 2011
LD 1465: Not determined as of May 8, 2011

G:\COMMITTEES\JUD\BILLALYS\125th 1st\LD 1082 & LD 1154 & LD 1465.doc (5/9/2011 8:19:00 AM)

RIGHT TO KNOW ADVISORY COMMITTEE
LEGISLATIVE SUBCOMMITTEE

DRAFT AGENDA
October 21, 2011
11:00 a.m.
Room 438, State House, Augusta

Convene

1. Welcome and Introductions

2. 11:00 a.m.
   FOA requests and responses: Form (from LD 1465, overlaps with Bulk Records Subcommittee)
   Discussion, recommendations

3. 11:30 a.m.
   FOA requests and responses: Practical problems with FOA requests and responses
   Comments from invited guests
   Invited presenters: Sam Adolphsen (MHPC), Michael Doyle, Dr. Dwight Hines, Dana Lee, Peter Merrill (MaineHousing), Nathan Poore (Falmouth Town Manager)
   Discussion, recommendations

4. 12:30 p.m.
   FOA requests and responses: Timelines and fees (from LD 1465)
   Discussion, recommendations

5. Review Subcommittee responsibilities

6. Scheduling future subcommittee meetings

Scheduled meetings:
~~Thursday, October 27, 2011, 1:00 p.m., Public Records Exceptions Subcommittee~~ *(cancelled)*
Thursday, November 10, 2011, 1:00 p.m., Legislative Subcommittee
Thursday, November 17, 2011, 1:00 p.m., Right to Know Advisory Committee
Thursday, December 8, 2011, 1:00 p.m., Right to Know Advisory Committee

Adjourn

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
Notice of Public Proceedings			
Sec. 2. 1 MRSA §406, as amended by PL 1987, c. 477, §4, is further amended to read: **§ 406.Public notice** Public notice ~~shall~~must 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~~must be given ~~in ample time to allow public attendance~~not less than 3 days prior to the public proceeding and ~~shall~~must 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~~must 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.	**§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.	▪ One day notice of planning board's additional meeting sufficient under the circumstances[1]	*Opposed; do not include*
Form of Request and Response			
2-A. Form. If a public record exists in electronic or magnetic form, the requester may request a copy of the public record in a paper, electronic, magnetic or other medium, specify the storage medium and request that the copy be provided by an electronic transfer by the Internet or other means.			*Tabled; Refer to Bulk Records Subcommittee for input*

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

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
A. An agency or official shall provide a copy of the public record in the requested medium if: (1) The agency or official has the technological ability to produce the public record in that medium or can obtain the assistance necessary to produce the public record at a reasonable cost; and (2) The requester agrees to pay the agency's or official's costs to purchase and install any additional necessary computer software or hardware to accommodate the request and to copy the public record in a requested medium. B. If an agency or official cannot provide a copy of a public record in a requested medium, the agency or official shall identify every medium in which the public record can be provided for inspection and copying, which must include a paper copy, and the requester must identify the medium that is acceptable to the requester.			

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
Remedies for Violations			
	1 MRSA § 409, sub-§ § 1 and 4: **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. **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.	• Failure of governmental body to respond to request for records in the time established by statute is deemed a denial of the request[2] • In its review, superior court is the forum of origin for a determination of both facts and law with respect to the alleged violation and does not function in an appellate capacity, and thus, procedures for taking additional evidence on judicial review are inapplicable (overruling Marxsen v. Board of Directors, 591 A.2d 867).[3]	

[2] Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).
[3] Underwood v. City of Presque Isle, 1998 ME 166, 715 A.2d 148.

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
Sec. 6. 1 MRSA §410, as repealed and replaced by PL 1987, c. 477, §6, is amended to read: **§ 410.Violations; injunction** For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation ~~shall be~~is liable for a civil violation for which a ~~forfeiture~~fine of not more than $500 may be adjudged. The Superior Court may issue an injunction to enforce the provisions of this chapter against any agency or official. A motion for an injunction is privileged in respect to its assignment for hearing and trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.	**§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.	• Penalties for official actions taken in executive session in violation of FOA laws may only be sought by the Attorney General or AG's representative[4] • Only Attorney General or AG's representative may enforce FOA laws by seeking imposition of fine[5] • If a requesting party has undertaken successful appeal of denial, that party is entitled to costs[6]	*Opposed; do not include*
Public Access Officer			
Sec. 1. 1 MRSA §402, sub-§1-B is enacted to read: **1-B. Public access officer.** "Public access officer" means the person fulfilling the duties as described in section 413.			*Agreed to Ask Staff to Redraft; Amend to include requirement that governmental units (state agencies, counties, cities,*

[4] Lewiston Daily Sun v. School Administrative District No. 43, 1999 ME 143, 738 A.2d 1239.
[5] Scola v. Town of Sanford,1987 ME 119, 695 A.2d 1194.
[6] Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
			towns) designate a FOA contact person and require FOA training for that person; remove other provisions
Sec. 7. 1 MRSA §412, as amended by PL 2007, c. 576, §2, is further amended to read: **§ 412.Public records and proceedings training for certain elected officials and public access officers** **1. Training required.** ~~Beginning July 1, 2008, an~~An elected official and a public access officer, subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or officer shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official or the person is designated as a public access officer pursuant to section 413, subsection 1. ~~For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.~~ **2. Training course; minimum requirements.** The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:	**§412 Public records and proceedings training for certain elected officials** **1. Training required.** Beginning July 1, 2008, 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. **2. Training course; minimum requirements.** The training course under subsection 1 must be designed to be completed by an official in less than 2 hours. At a minimum, the training must include instruction in:		

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
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 public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information. **3. Certification of completion.** Upon completion of the training course required under subsection 1, the elected official or public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected. A public access officer shall file the record with the	**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; **C.** Penalties and other consequences for failure to comply with this chapter. An elected official 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 **3. Certification of completion.** Upon completion of the training course required under subsection 1, the elected official shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected.		

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
agency or official that designated the public access officer. **4. Application.** This section applies to the following elected officials: A. The Governor; B. The Attorney General, Secretary of State, Treasurer of State and State Auditor; C. Members of the Legislature elected after November 1, 2008; E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments; F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments; G. Officials of school units and school boards; and H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special	**4. Application.** This section applies to the following elected officials: **A.** The Governor; **B.** The Attorney General, Secretary of State, Treasurer of State and State Auditor; **C.** Members of the Legislature elected after November 1, 2008; **E.** Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments; **F.** Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments; **G.** Officials of school units and school boards; and **H.** Officials of regional or other political subdivisions who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose		

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2. This section also applies to a public access officer designated pursuant to section 413, subsection 1.	district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.		
Sec. 8. 1 MRSA §413 is enacted to read: **§ 413. Public access officer; responsibilities** **1. Designation; responsibility.** Every agency or official shall designate to an existing staff member the responsibility of serving as a public access officer to oversee responses to requests for public records under this chapter. The public access officer shall oversee the prompt response to a request to inspect or copy a public record. **2. Training.** A public access officer shall complete a course of training on the requirements of this chapter relating to public records and proceedings as described in section 412. **3. Purpose; schedule.** A public access officer or other person acting on behalf of an agency or official may not inquire into the purpose of a request. A public access officer may inquire as to the schedule or order of inspection or copying of a public record or a portion of a public			

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
record under section 408. **4. Uniform treatment.** A public access officer shall treat all requests for information under this chapter uniformly without regard to the requester's position or occupation, the person on whose behalf the request is made or the status of the requester as a member of the media. **5. Comfort and facility.** The public access officer shall ensure that a person may inspect a public record in the offices of the agency or official in a manner that provides reasonable comfort and facility for the full exercise of the rights of the public under this chapter. **6. Unavailability of public access officer.** The unavailability of a public access officer may not delay a response to a request.			
Public Access Ombudsman			
Sec. 9. Appropriations and allocations. The following appropriations and allocations are made. **ATTORNEY GENERAL, DEPARTMENT OF THE** **Administration - Attorney General 0310** Initiative: Provides funds for a part-time Assistant Attorney General position to act as the public access ombudsman and general operating expenses required to carry out the purposes of this Act. **GENERAL FUND** 2011-12 2012-13	**5 MRSA §200-I. PUBLIC ACCESS DIVISION; PUBLIC ACCESS OMBUDSMAN** **1. Public Access Division; Public Access Ombudsman.** There is created within the Department of the Attorney General the Public Access Division to assist in compliance with the State's freedom of access laws, Title 1, chapter 13. The Attorney General shall appoint the Public Access Ombudsman, referred to in this section as "the ombudsman," to administer the division.	• *Statute enacted; but never implemented due to lack of funding for position*	*Agreed to recommend funding for full-time position*

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
POSITION-LEGISLATIVE COUNT 0.500 0.500 Personal Services $62,120 $65,576 All Other $5.000 $5.000 Total $67,120 $70,576	**2. Duties.** The ombudsman shall: A. Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right To Know Advisory Committee established in Title 1, section 411; B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws; C. Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws; D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved; and E. Make recommendations concerning ways to improve public access to public records and proceedings. **3. Assistance.** The ombudsman may		

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
	request from any public agency or official such assistance, services and information as will enable the ombudsman to effectively carry out the responsibilities of this section. **4. Confidentiality.** The ombudsman may access records that a public agency or official believes are confidential in order to make a recommendation concerning whether the public agency or official may release the records to the public. The ombudsman's recommendation is not binding on the public agency or official. The ombudsman shall maintain the confidentiality of records and information provided to the ombudsman by a public agency or official under this subsection and shall return the records to the public agency or official when the ombudsman's review is complete. **5. Report.** The ombudsman shall submit a report not later than March 15th of each year to the Legislature and the Right To Know Advisory Committee established in Title 1, section 411 concerning the activities of the ombudsman for the previous year. The report must include: A. The total number of inquiries and complaints received; B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials; C. The number of complaints received concerning respectively public records and public meetings;		

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
	D. The number of complaints received concerning respectively: (1) State agencies; (2) County agencies; (3) Regional agencies; (4) Municipal agencies; (5) School administrative units; and (6) Other public entities; E. The number of inquiries and complaints that were resolved; F. The total number of written advisory opinions issued and pending; and G. Recommendations concerning ways to improve public access to public records and proceedings. **6. Repeal.**		
Timelines for Compliance with Requests			
Sec. 3. 1 MRSA §408, as amended by PL 2009, c. 240, §4, is further amended to read: **§ 408.Public records available for public inspection and copying** **1. Right to inspect and copy.** Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within	**1. Right to inspect and copy.** Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record	▪ When person requests information that falls within FOA laws' disclosure requirements, and governmental entity	*Tabled*

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
~~a reasonable period of time after making a request to inspect or copy the public record~~the time limits established in section 408-A. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall acknowledge receipt of the request within a reasonable period of time. A person may request by telephone that a copy of the public record be mailed or e-mailed to that person.	within a reasonable period of time after making a request to inspect or copy the public record. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall acknowledge receipt of the request within a reasonable period of time.	knows that it has particular records containing that information, entity must at least inform requesting party that material is available and that the requesting party may come in and "inspect and copy" the information sought[7]	
2. Inspection, translation and copying scheduled. Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought, as long as the inspection, translation and copying occur within the time limits established in section 408-A. The agency or official may use a 3rd party to make a copy of an original public record, but a requester may not remove the original of a public record from the agency or official.	**2. Inspection, translation and copying scheduled.** Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought.		
3. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows. A. The agency or official may charge a reasonable fee to cover the cost of copying.	**3. Payment of costs.** Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows. A. The agency or official may charge a reasonable fee to cover the cost of copying.		

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

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information. C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation. D. An agency or official may not charge for inspection. E. If the requester requests that the public record be mailed, the agency or official may charge a fee not greater than the actual cost of mailing the record.	B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information. C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation. D. An agency or official may not charge for inspection.		
4. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than $20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 5 applies and the estimate must be provided within 3 business days of the request. **5. Payment in advance.** The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:	**4. Estimate.** The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than $20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 5 applies. **5. Payment in advance.** The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:		

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
A. The estimated total cost exceeds $100; or B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner. **6. Waivers.** The agency or official may waive part or all of the total fee if: A. The requester is indigent; or B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.	A. The estimated total cost exceeds $100; or B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner. **6. Waivers.** The agency or official may waive part or all of the total fee if: A. The requester is indigent; or B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.		
Sec. 4. 1 MRSA §408-A is enacted to read: **§ 408-A. Timelines** **1. Availability; redaction; location; collection.** A public record must be made available immediately upon request unless time is required to redact the record so as to allow inspection and copying of only those portions of the record containing information that is a public record or to locate and collect a record that is not in active use or that is in storage. **2. Certification.** If a public record is not available immediately, a public access officer shall promptly certify that fact in writing to the			

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
requester, provide an explanation for the delay and either provide an opportunity to inspect or copy the public record within 5 business days or mail or e-mail the public record within 5 business days. **3. Large or multiple requests.** If a large public record is requested or multiple public records are requested and the public access officer or a person acting on behalf of the agency or official cannot in the exercise of due diligence produce the entire record or multiple records within 5 business days after the request, the public access officer shall provide the portion of the public record or public records when available. The requester may waive this requirement and request to see the public record or public records requested as a whole when available. **4. Estimate.** If the cost to comply with a request to inspect or copy a public record is greater than $100, an estimate must be provided within 3 business days of the request. **5. Failure to comply.** Failure to comply with this section may be treated as a denial of a request and is subject to the enforcement provisions of this chapter.			
Sec. 5. 1 MRSA §408-B is enacted to read: **§ 408-B. Inspection by requester** **1. Ten business days.** A requester shall complete an inspection of a public record within 10 business days after the record is made available for inspection. If the inspection is not completed			

Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Current Law	Interpretation of Current Law and Comments	Subcommittee Recommendation
within the 10-business-day period, a public access officer or a person acting on behalf of the agency or official shall inform the requester that a written request for additional time may be filed with the agency or official that has custody of the public record. **2. Additional periods.** An agency or official shall allow an additional 20 business days beyond the period in subsection 1 for a requester to review a public record if the requester filed a written request for additional time with the agency or official or its public access officer or a person acting on behalf of the agency or official. If the inspection is not completed upon the expiration of the additional 20 business days, the public access officer or person acting on behalf of the agency or official shall inform the requester that a 2nd written request for an additional 10 days may be filed with the agency or official that has custody of the public record. **3. Interruption of inspection.** The time allowed for inspection of a public record may be interrupted if the agency or official needs to use the public record. If an agency or official invokes this subsection, the public access officer, no later than 5 business days after the agency or official takes the record back, shall inform the requester in writing the dates that the public record will be available for the inspection to resume. The time allowed for an inspection is tolled during the period in which the public record is being used by the agency or official.			

Legislative Subcommittee
LD 1465's Public Access Officer Provision: Proposed draft language changes

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

1-B. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.

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

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

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

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

A. The general legal requirements of this chapter regarding public records and public proceedings;

B. Procedures and requirements regarding complying with a request for a public record under this chapter; and

C. Penalties and other consequences for failure to comply with this chapter.

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

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

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

Legislative Subcommittee
LD 1465's Public Access Officer Provision: Proposed draft language changes

A. The Governor;

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

C. Members of the Legislature elected after November 1, 2008;

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

G. Officials of school units and school boards; and

H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

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

Sec. 3. **1 MRSA §413** is enacted to read:

§ 413. Public access officer; responsibilities

1. Designation; responsibility. Each State agency, county and municipality shall designate an existing employee as its public access officer to serve as the contact person for that agency, county or municipality with regard to requests for public records under this chapter. *[add language about making name of contact available to public?? Need to mention that the contact person is not solely responsible for fulfilling request or that request has to be made to POA??]]*

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

Legislative Subcommittee: 2011

1. Criminal History Record Information Act revision

2. LD 1465, An Act To Amend the Laws Governing Freedom of Access

3. Requests for public records: necessity of formalities (Chris Parr)

4. Governor's letter of 14 July 2011: Clarify the parameters of what really constitutes government business. (His example is grocery receipts for the Blaine House.)

5. Governor's letter of 14 July 2011: Address the abuse of FOA for political purposes: requests made simply to gum up the work of the office and keep the office from moving initiatives forward. He suggested looking at increasing the $10/hour rate as well as ways to combat abuses.

6. Status of Maine Public Broadcasting Network records under the Freedom of Access laws (Mike Brown)

7. Request from the Maine Heritage Policy Center to Maine State Housing Authority for information about public employees;

8. Definition of "reasonable time" (Dwight Hines)

9. Application of FOA laws to volunteer fire departments (Dwight Hines)

10. Use of technology for the purpose of remote participation by members of public bodies

11. Drafting templates

12. Storage, management and retrieval of public officials' communications, especially email

G:\STUDIES 2011\Right to Know Advisory Committee\Legislative Subcommittee\responsiblities for 2011.doc (9/1/2011 8:55:00 AM)))

FAQ suggested updates
10-21-11

GENERAL QUESTIONS

What is the Freedom of Access Act?

The Freedom of Access Act ("FOAA") is a state statute that is intended to open the government of Maine by guaranteeing access to the "public records" and "public proceedings" of state and local government bodies and agencies.

Are federal agencies covered by the Freedom of Access Act?

No. The Freedom of Access Act does not apply to federal agencies operating in Maine or to federal government records. A similar but different federal statute called the "Freedom of Information Act" applies to the federal government. This federal statute does not apply to state or local government bodies, agencies or officials.

You can find the text of the Freedom of Information Act, 5 U.S.C. § 551 et seq., at: http://www.usdoj.gov/oip/foiastat.htm *or you can find more general information on the Freedom of Information Act* at: http://answers.usa.gov/cgi-bin/gsaict.cfg/php/enduser/stdadp.php?p_faqid=5940

Who enforces the Freedom of Access Act?

Any aggrieved person may appeal to any Superior Court in the state to seek relief for an alleged violation of the Freedom of Access Act. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

Relief can be in the form of an injunction issued by the court that directs the government body, agency or official to comply with the law, such as by providing access to a public proceeding or by making public records available for inspection or copying.

In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful. 1 M.R.S.A. § 410.

What are the penalties for failure to comply with the Freedom of Access laws?

A state government agency or local government entity whose officer or employee commits a willful violation of the Freedom of Access laws commits a civil violation for which a forfeiture of not more than $500 may be adjudged. 1 M.R.S.A. § 410. Under the current law, there are no criminal penalties for failure to comply with a request for public records. It is a Class D crime to intentionally remove, alter, or destroy documents belonging to a state office. 1 M.R.S.A. § 452.

FAQ suggested updates
10-21-11

Are elected officials required to take training on the Freedom of Access laws?

Yes. Beginning July 1, 2008, elected officials must complete a course of training on the requirements of the Freedom of Access laws.

Which elected officials are required to take Freedom of Access training?

Elected officials required to complete the training include:

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

What does the training include?

At a minimum, the training must be designed to be completed in less than 2 hours and include instruction in:

- the general legal requirements regarding public records and public proceedings
- the procedures and requirements regarding complying with a request for a public record
- the penalties and other consequences for failure to comply with the law

Elected officials can meet the training requirement by conducting a thorough review of the material in this FAQ section of the State's Freedom of Access website or by completing another training course that includes all off this information but may include additional information.

Do training courses need to by certified by the Right to Know Advisory Committee?

No. Training courses do not need the approval of the Right to Know Advisory Committee, or any other State agency.

How do elected officials certify they have completed the training?

After completing the training, elected officials are required to make a written or electronic record attesting that the training has been completed. The record, which will be available to the public, must be kept by the elected official or filed with the public entity to which the official was elected. A sample training completion form is available (This file requires the free Adobe Reader).

PUBLIC RECORDS

What is a public record?

The Freedom of Access Act defines "public record" as "any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business". A number of exceptions are specified. (See the discussion of exemptions below) 1 M.R.S.A. § 402 (3).

Do I have to be a citizen of this state to submit a Freedom of Access Act request for a public record?

No. The Freedom of Access Act provides that "every person" has the right to inspect and copy public records. 1 M.R.S.A. § 408 (1).

How do I make a Freedom of Access Act request for a public record?

See the How to Make a Request page on this site.

Is there a form that must be used to make a Freedom of Access Act request?

No. There are no required forms.

Does my Freedom of Access Act request have to be in writing?

No. The Freedom of Access Act does not require that requests for public records be in writing. However, most bodies and agencies ask individuals to

submit requests in writing in order to maintain a record of when the request was received and what records were specifically requested.

What should I say in my request?

In order for the body, agency or official to promptly respond to your request, you should be as specific as possible when describing the records you are seeking. If a particular document is required, it should be identified precisely—preferably by author, date and title. However, a request does not have to be that specific. If you cannot identify a specific record, you should clearly explain the type of records you are seeking, from what timeframe and what subject the records should contain. For example, assume you want to obtain a list of active landfills near your home. A request to the state Department of Environmental Protection asking for "all records on landfills" is very broad and would likely produce volumes of records. The fees for such a request would be very high; the agency would likely find your request too vague and ask that you make it more specific. On the other hand, a request for "all records identifying landfills within 20 miles of 147 Main Street in Augusta" is very specific and the request might fail to produce the information you desire because the agency has no record containing data organized in that exact fashion. You might instead consider requesting any record that identifies "all active landfills in Augusta" or "all active landfills in Kennebec County." It is more likely that a record exists which contains this information. You might also want to explain to the agency exactly what information you hope to learn from the record. In other words, if you are really trying to determine whether any active landfills near your home in Augusta accept only wood waste, this additional explanation may help the agency narrow its search and find a record that meets the exact request.

Does an agency have to acknowledge receipt of my request?

Yes. An agency or official must acknowledge receipt of a request within a reasonable period of time. 1 MRSA § 408 (1).

Can an agency ask me for clarification concerning my request?

Yes. An agency or official may request clarification concerning which public record or public records are being requested. 1 MRSA §408 (1).

When does the agency or official have to make the records available?

The records must be made available "within a reasonable period of time" after the request was made. 1 M.R.S.A. § 408 (1). The agency or official can schedule the time for your inspection, translation and copying of the records during the regular business hours of the agency or official, and at a time that will not delay or inconvenience the regular activities of the agency of official. 1 M.R.S.A. §§ 408 (1) & (2).

FAQ suggested updates
10-21-11

Does an agency have to produce records within 5 days of my request?

No. The records that are responsive to a request must be made available "within a reasonable period of time" after the request was made. 1 MRSA § 408 (1). Agencies must respond in writing within 5 working days only if your request is denied in whole or in part. 1 MRSA § 409 (1).

Do I have to go to the agency to inspect the records or can I ask the agency or official to mail me the records?

The Freedom of Access Act only requires the agency or official to make the records available to you for inspection and copying, it does not require the agency or official to mail records. However, depending on the volume of records produced in response to your request, some agencies or officials may be willing to mail copies to you. The agency may charge a reasonable fee to cover the cost of making the copies for you. 1 M.R.S.A. § 408 (1) & (3)(A).

When may a governmental body refuse to release the records I request?

The Freedom of Access Act provides that certain categories of documents are not public records. Included among these are records that have been designated confidential by statute, documents subject to a recognized legal privilege such as the attorney-client privilege or the work-product privilege, records describing security plans or procedures designed to prevent acts of terrorism, medical records, juvenile records, and the personal contact information of public employees contained within records. 1 M.R.S.A. § 402 (3)(A)-(O).

For a list of records or categories of records deemed by statute to be confidential or otherwise not a public record, see the Statutory Exceptions List. While this listing may not be totally complete, it contains the vast majority of exceptions to the Freedom of Access Act.

What happens if a public record holds some information that is open to the public and some information that falls within an exception to the Freedom of Access Act?

Some public records contain a mixture of information that is public and information that is confidential or otherwise not subject to public inspection under the Freedom of Access Act. If the record you requested contains any confidential or excepted information, the custodian will decide if the confidential or excepted information can be adequately redacted or blacked out so that public access can be provided or if public access to the document should be denied.

Does an agency have to explain why it denies access to a public record?

Yes. When an agency denies access to a public record, it must provide the reason for its denial in writing within 5 working days of the date of the Freedom of Access Act request. 1 M.R.S.A. § 409 (1).

What can I do if I believe an agency has unlawfully withheld a public record?

If you are unsatisfied with an agency's decision to withhold access to certain records, you are entitled to appeal, within 5 working days of your receipt of the written notice of denial, to any Superior Court within the state. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

May a governmental body ask me why I want a certain record?

The Freedom of Access Act does not specifically prohibit agencies or officials from asking why an individual is requesting a public record. However, if asked, the individual is not required to provide a reason for seeking a record, and the agency cannot deny an individual's request based solely on either the individual's refusal to provide a reason or the reason itself. An agency or official may request clarification concerning which public record or public records are being requested. 1 M.R.S.A. § 408 (1).

Can I ask that public reports or other documents be created, summarized or put in a particular format for me?

No. A public officer or agency is not required to prepare reports, summaries, or compilations not in existence on the date of your request.

Similarly, a public officer or agency is not required to produce a record in an alternate format if the record can be made available for public inspection and copying in the format in which it exists. If the record requires translation in order for it to be made available for public inspection and copying, the agency or official must translate the record but can charge you a fee to cover the actual cost of translation. 1 M.R.S.A. § 408 (3)(C).

I asked a public official a question about a record, but he/she didn't answer. Is he/she required to answer my question?

No. A public officer or agency is not required under the Freedom of Access Act to explain or answer questions about public records. The Act only requires officials and agencies to make public records available for inspection and copying.

What records must a public officer or agency keep, and how long do they have to keep them?

~~The~~ Generally, the Freedom of Access law does not control what records must be retained or for how long they must be retained. Public officers and

agencies are required to keep all records made or received or maintained by that officer or agency in accordance with other law or rule. 5 MRSA § 92-A (5) (This file requires the free Adobe Reader).

However, the Freedom of Access law does require that a public body keep a summary of its public proceedings. The summary must include: the date, time and place of the proceeding; the members of the public body, recorded as either present or absent; and all motions and votes taken, by individual member if the vote is by roll call. The summary can be in any medium, including audio, video and electronic. This requirement applies to public bodies that do more than serve in an advisory capacity. 1 MRSA §403 (2)

How long records must be kept depends on the type of record and the value of the record's content. The Maine State Archives works with state and local governments to establish rules for the retention and disposition of government records, including the length of time that certain records need to be preserved by the agency before they are either destroyed or sent to the Maine State Archives for long-term or permanent retention.

Are an agency's or official's e-mails public records?

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail is "in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business" and is not deemed confidential or excepted from the Freedom of Access Act, it constitutes a "public record". 1 M.R.S.A. § 402 (3).

Can an agency charge for public records?

There is no initial fee for submitting a Freedom of Access Act request and agencies cannot charge an individual to inspect records. 1 M.R.S.A. § 408 (3)(D). However, agencies can and normally do charge for copying records. Although the Freedom of Access Act does not set standard copying rates, it permits agencies to charge "a reasonable fee to cover the cost of copying". 1 M.R.S.A. § 408 (3)(A).

Agencies and officials may also charge fees for the time spent searching for, retrieving, compiling or redacting confidential information from the requested records. The Act authorizes agencies or officials to charge $10 per hour after the first hour of staff time per request. 1 M.R.S.A. § 408 (3)(B). Where translation of a record is necessary, the agency or official may also charge a fee to cover the actual cost of translation. 1 M.R.S.A. § 408 (3)(C).

The agency or official must prepare an estimate of the time and cost required to complete a request and if the estimate is greater than $20, the agency or official must notify the requester before proceeding. The agency may request payment of the costs in advance if the estimated cost exceeds $100 or if the requester has previously failed to pay a fee properly assessed under the Freedom of Access Act. 1 M.R.S.A. § 408 (4) & (5).

I cannot afford to pay the fees charged by the agency or official to research my request or copy the records. Can I get a waiver?

The agency of official may, but is not required to, waive part or all of the total fee if the requester is indigent, or if release of the public record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. 1 M.R.S.A. § 408 (6)

Is a public agency or official required under the Freedom of Access Act to honor a "standing request" for information, such as a request that certain reports be sent to me automatically each month?

No. A public body is required to make available for inspection and copying (subject to any applicable exemptions) only those public records that exist on the date of the request. Persons seeking to inspect or obtain copies of public records on a continuing basis are required to make a new request for any additional records sought after the date of the original request.

PUBLIC PROCEEDINGS

What is a public proceeding?

The term "public proceeding" means "the transactions of any functions affecting any or all citizens of the State" by the Maine Legislature and its committees and subcommittees; any board or commission of a state agency or authority including the University of Maine and the Maine Community College System; any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; the full membership meetings of any association, the membership of which is comprised exclusively of counties, municipalities, school districts, other political or administrative subdivisions, or their boards, commissions, agencies or authorities; and any advisory organization established, authorized or organized by law, resolve or executive order. 1 M.R.S.A. § 402.

What does the law require with regard to public proceedings?

The Freedom of Access Act requires all public proceedings to be open to the public and any person must be permitted to attend. 1 M.R.S.A. § 403.

FAQ suggested updates
10-21-11

When does a meeting or gathering of members of a public body or agency require public notice?

Public notice is required of all public proceedings if the proceedings are a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

What kind of notice of public proceedings does the Freedom of Access Act require?

Public notice must be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency. 1 M.R.S.A. § 406.

Can a public body or agency hold an emergency meeting?

Yes. Public notice of an emergency meeting must be provided to local representatives of the media, whenever practicable. The notice must include the time and location of the meeting and be provided by the same (or faster) means used to notify the members of the public body or agency conducting the public proceeding. 1 MRSA § 406. The requirements that the meeting be open to the public, that any person be permitted to attend and that records or minutes of the meeting be made and open for public inspection still apply. 1 MRSA § 403.

Can public bodies or agencies hold a closed meeting?

Yes. Public bodies or agencies are permitted, subject to certain procedural conditions, to hold closed "executive sessions" on specified subjects after a public recorded vote of 3/5 of the members present and voting. 1 M.R.S.A. § 405 (1)-(5).

Can the body or agency conduct all of its business during an executive session?

Generally, no. The content of deliberations during executive sessions is restricted to the matters listed in the Freedom of Access Act, such as: discussions regarding the suspension or expulsion of a student; certain employment actions; the acquisition, use or disposition of public property; consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and discussion of documents that are confidential by statute. In addition, any body or agency subject to the Freedom of Access Act is prohibited from giving final approval to any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session. 1 M.R.S.A. § 405 (2) & (6).

What if I believe a public body or agency conducted improper business during an executive session?

Upon learning of any such action, any person may appeal to any Superior Court in the State. If the court determines the body or agency acted illegally,

the action that was taken by the body or agency will be declared to be null and void and the officials responsible will be subject to the penalties provided in the Act. 1 M.R.S.A. § 409 (2). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

Can members of a body communicate with one another by email outside of a public proceeding?

~~There is no legal prohibition against email communication between members of a public body outside of a public proceeding.~~

The law does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of the Freedom of Access law. 1 MRSA § 401.

~~However, email~~ Email or other communication among a quorum of the members of a body that is used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State..." 1 MRSA § 402. The underlying purpose of the Freedom of Access law is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. 1 MRSA § 401. Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. 1 MRSA § 403. In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

Members of a body should refrain from the use of email as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. Email is permissible to communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Email is a public record (likely even when sent using a member's personal computer) if it contains information relating to the transaction of public or governmental business unless the information is designated as confidential or excepted from the definition of a public record. 1 MRSA § 402, sub-§ 3. As a result, members of a body should be aware that all emails and email attachments relating to the member's participation are likely public records subject to public inspection under the Freedom of Access laws.

Can I record a public proceeding?

Yes. The Freedom of Access Act allows individuals to make written, taped or filmed records of a public proceeding, or to broadcast the proceedings live, provided the action does not interfere with the orderly conduct of the proceedings. The body or agency holding the proceeding can make reasonable rules or regulations to govern these activities so long as the rules or regulations do not defeat the purpose of the Act. 1 M.R.S.A. § 404.

Do members of the public have a right to speak at public meetings under the Freedom of Access Act?

The Freedom of Access Act does not require that an opportunity for public participation be provided at open meetings, although many public bodies or agencies choose to permit public participation. In those instances, the public body or agency can adopt reasonable rules to ensure meetings are conducted in a fair and orderly manner. For example, the body or agency can set a rule that requires the same amount of time be afforded to each person that wants to speak.

Is the public body or agency required to keep running minutes or a record of a public proceeding?

There is no requirement under the Freedom of Access Act that a public body or agency keep running minutes during all public proceedings. The Act does require, however, that public bodies and agencies keep a written record of every decision that involves the conditional approval or denial of an application, license, certificate or permit, and every decision that involves the dismissal or refusal to renew the contract of any public official, employee or appointee. 1 M.R.S.A. § 407 (1) & (2).

If the public proceeding is an "adjudicatory proceeding" as defined in the Maine Administrative Procedure Act, the agency is required to compile a record that complies with statutory specifications, including a recording in a form susceptible of transcription. 5 M.R.S.A. §§ 8002 (1) and 9059.

Is the agency or body required to make the record or minutes of a public proceeding available to the public?

Yes. Any legally required record or minutes of a public proceeding must be made promptly and shall be open to public inspection. In addition, every agency is required to make a written record of any decision that involves conditional approval or denial of any application, license, certificate or other type of permit and to make those decisions publicly available, 1 M.R.S.A. §§ 403, 407; 5 M.R.S.A. § 9059 (3).

RIGHT TO KNOW ADVISORY COMMITTEE
BULK RECORDS SUBCOMMITTEE

DRAFT AGENDA
October 21, 2011
9:00 a.m.
Room 438, State House, Augusta

Convene

1. Welcome and Introductions

2. Definition of bulk data
   - Is definition necessary or useful? Differentiate from "regular" FOA requests?
   - If so, what should it be?

3. Arriving at a cost
   - Process now included in Title 33?
   - Commercial vs. noncommercial?
   - Other factors?

4. Agency-specific concerns (deeds, IF&W, law enforcement, etc.)

5. Providing responses in a certain form or format (overlap with Legislative Subcommittee discussion?)

6. Other?

7. Scheduling future subcommittee meetings

Scheduled meetings:
~~Thursday, October 27, 2011, 1:00 p.m., Public Records Exceptions Subcommittee~~ *(cancelled)*
Thursday, November 10, 2011, 1:00 p.m., Legislative Subcommittee
Thursday, November 17, 2011, 1:00 p.m., Right to Know Advisory Committee
Thursday, December 8, 2011, 1:00 p.m., Right to Know Advisory Committee

Adjourn

Fri 10/14/2011 12:49 PM

The following comments have been provided by John Simpson, owner and General Manager of MacImage of Maine LLC, an information technology business located in Cumberland, Maine.

MacImage of Maine has challenged the fees several Maine registries of deeds charge for copies of public records in court. The Maine Supreme Judicial Court will hear oral arguments in the case on Dec. 12-13, 2011. Court records related to the case can be found online at:

http://www.macimage.com/foaa/case.html

John Simpson can be reached by phone at (207) 838-5823 or email at jsimpson@me.com

1. What is bulk data and how should it be defined?

Bulk data can not and should not be distinguished from other types of public. Why?

First, the term "bulk" will have different meanings depending on the type of public records at issue or the content of those records. For example, consider the following public records:

(a) a single 200-page report printed on paper
(b) 200 one-page paper documents
(c) one electronic file containing a list of 200 addresses
(d) one electronic file containing 200 scanned pages
(e) 200 electronic files which each contains a single scanned page

There could be considerable debate about whether a request for any of the above records would be "bulk" requests.

Second, even if there were a way to define "bulk" records, quantity is often not a good measure of either the cost of producing records or the value of those records.

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

People concerned about the cost issue generally have one of the following goals:

(1) to allow government to recover costs associated with responding to requests for public records
(2) to allow a government agency to recover unrelated operating costs (costs that would be incurred even if no copies of bulk records were requested)

(3) to allow government to profit by selling public records ... and use those profits instead of taxes and other sources of revenue to fund unrelated operations
(4) to prevent or limit access to certain public records
(5) to prevent anyone from reselling products or services derived from public records for a profit.

Goal 1 (recovering copy costs) is permitted under current law and enables the public to obtain copies of public records at no cost to taxpayers. A person must only pay for costs incurred because of her request. Copy costs are fairly easy to calculate. Thus, it is fairly easy to ensure that persons requesting copies pay all costs associated with their request.

In this case, the agency should charge a requestor for incremental expenses incurred solely to make the requested copies. In addition to incremental expenses, an agency could allocate overhead costs incurred solely to provide copies proportionally to all persons requesting copies. For example; a portion of the cost of a photocopier or fax machine used only to make copies for the public could be recovered through copy fees. However, an agency should not recover overhead costs more than once by over-allocating overhead costs to multiple requestors.

The basic rule must be that operating costs that would be incurred even if no copies were made may not be recovered through copy fees. An agency may only recover costs only when the agency makes or assists in making copies by providing equipment, materials or labor. For example; an agency could not charge a copying fee to persons who use their own cameras to copy public records. The FOAA gives every person the right to inspect public records at no cost. Thus, all costs related to photographing records would be required to allow inspection, and would be incurred even if no copies/photographs were made.

Goal 2 and Goal 3 (recovering agency operating costs) shifts the burden of funding some or all costs of operating a government agency from all taxpayers to persons requesting copies of public records.

The question of who should pay agency operating costs is a policy question. There is no inherent benefit to funding an agency through fees instead of taxes. A tax is a fee to the person paying the fee, and in most cases copy fees are paid by taxpayers either directly or indirectly (when they purchase products or services from a business that bought the copy).

However, there can be a hidden cost to funding agencies with profits obtained by selling copies of public records. Whenever fees exceed the cost of producing copies, there is a risk that the fees will block access to public records. Persons who could afford to pay fees based on the incremental cost of producing a copy may not be able to afford higher copy fees. Thus, the public may be denied access to the value of public records with no offsetting public benefit.

Goal 4 (blocking access to certain records) is more effectively addressed by creating an exemption in the FOAA for specific types of records.

Goal 5 (blocking some or all commercial uses of public records) is contrary to the policy behind the FOAA. Allowing public resources to be used for commercial purposes allows companies to provide products and services that government can not or does not provide. Public records are no different than other public resources such as water and roads. Public benefits are maximized when more people have access to a public resource. In short, profit is a good thing.

3(a). Should a requestor of bulk data be entitled to the records in the format and type of access requested?

The public will benefit if access is provided in different formats upon request, especially when the records already exist in multiple formats. People request a specific formats because they will benefit from that format. There is simply no reason to deny a request for a specific format if the requestor is willing to all costs of producing copies in that format.

3(b). Should a distinction be made between a requester seeking access to records and a requester seeking ownership of records?

Clearly the government has an interest in preserving the integrity of its records. Thus, the government must maintain possession of original records and an official electronic copy if one exists. However, the distinction between access and ownership serves no purpose (other than to restrict access) with regards to copies of public records. People need to have copies of public records in their possession for many reasons. In theory, the government could retain "ownership" of all copies of public records and attempt to force people to pay a copy fee whenever they made a copy of a copy of a public record in their possession. Practically, however, a law forcing people to pay such copy fees could not be enforced. And, in any case, such a law would restrict access to public records with little or no offsetting benefit. Taxpayers do not benefit by paying copy fees instead of taxes because virtually all copy fees are paid by or passed on to taxpayers.

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

The public benefits when commercial entities use public records to provide services that government does not provide or services that are better or less expensive than services provided by government. The public incurs no costs when businesses pay copy fees equal to the cost of producing copies of public records. However, charging higher copy fees to businesses could be counter-productive The businesses will either stop offering a valuable service or pass on the higher fees to their customers (the public).

The notion that the public would benefit if government use profits from selling copies of public records instead of taxes to pay its bills is false. Businesses must pass on their

costs to their customers (the public) or go out of business. Its a zero-sum game. Every dollar of government operating expenses that is funded by higher fees will be passed on to the public.

If out-of-state businesses purchased large numbers of copies of Maine public records, and these copy costs were not passed on to Mainers, then charging higher copy fees to businesses could reduce our tax burden. But, there is no evidence this happens. Out-of-state businesses buy Maine public records because they can resell products or services based on these records to Mainers. There is no out-of-state market for copies of Maine public records.

ACLU MAINE
AMERICAN CIVIL LIBERTIES UNION OF MAINE

121 Middle Street, Suite 301
Portland, Maine 04101
T/ (207) 774-5444
F/ (207) 774-1103
www.aclumaine.org

TESTIMONY OF SHENNA BELLOWS

Regarding: Appling Maine's Freedom of Access Laws to Requests for Bulk Data

Submitted to the

BULK RECORDS SUBCOMMITTEE OF THE RIGHT TO KNOW ADVISORY COMMITTEE

October 14, 2011

The American Civil Liberties Union of Maine (the "ACLU of Maine") is a nonprofit, nonpartisan organization dedicated to protecting the basic civil liberties and civil rights of the people of Maine.[1] The ACLU of Maine has a long history of involvement through policy making, political efforts, and litigation in support of the public's right to open government proceedings and records.

Fortunately, Maine policy makers have taken clear steps to ensure public access to public records. In passing the Freedom of Access Act (the "FOAA"), the Legislature explicitly intended to open public records to the public and for the definition and scope of protected information to be interpreted expansively. 1 M.R.S.A. § 401; *Medical Mut. Ins. Co. of Maine v. Bureau of Ins.*, 866 A.2d 117, 120 (Me. 2005).[2] Under the FOAA, "[p]ublic records are subject to the right of the public to inspect and copy." *Medical Mut. Ins. Co. of Maine v. Bureau of Ins.*, 866 A.2d 117, 120 (Me. 2005).

The law "declares as a matter of public policy that records of public action shall be open to public ins pection. It leaves little room for qualification or restriction." *Bangor Pub. Co. v. City of Bangor*, 544 A.2d 733 (Me. 1988).

[1] The ACLU of Maine was organized in 1968 as the Maine Civil Liberties Union. It changed its name in 2011 in order to better reflect its status as the Maine affiliate of the American Civil Liberties Union.

[2] The FOAA is to be "liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent." *Id.* In fact, Maine 's Supreme Court has declared, in interpreting the FOAA, that "to a maximum extent the public's business must be done in public." *Moffett v. City of Portland*, 400 A.2d 340, 347-348 (Me. 1979). In its application and interpretation, "[t]he most effective right-to-know law should assist the public in gaining access to information that is open to the public." Anne C. Lucey, Comment, *A Section-By-Section Analysis of Maine's Freedom of Access Act*, 43 Me. L. Rev. 169, 224 (1991) (arguing that "[t]he benefits to both the agency and public outweigh the expense an open government brings").

ACLU MAINE
AMERICAN CIVIL LIBERTIES UNION OF MAINE

121 Middle Street, Suite 301
Portland, Maine 04101
T/ (207) 774-5444
F/ (207) 774-1103
www.aclumaine.org

Therefore, any analysis of policies surrounding requests to copy public records should begin with the premise that access to public records must be maximized. It is from this vantage point and perspective that we offer the following.

Question 1.

What is the definition of bulk record?

Bulk records could reasonably be defined in multiple ways. Bulk data includes information and records that have been compiled into a single, most likely electronic, file or database. This is fast becoming the most common way for government to store new and old data. The definition should not lead to a disparate treatment of the information under Maine's FOAA laws.

Question 2.

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

The fee for copying public records should be reasonably related to the actual cost of copying. Prior to 2003, Maine's FOAA provided that "the cost of copying any public record . . . shall be paid by the person requesting the copy." 1 M.R.S.A. § 408 (2002). However, in response to the recommendations of the Committee to Study Compliance with Maine's Freedom of Access Laws, the Maine legislature completely rewrote the section on fees and explicitly required that any fees charged for the cost of copying must be "reasonable." P.L. 2003, ch. 709, § 2.

Therefore, for example if a government agency has an electronic database containing hundreds or thousands of compiled records, a person requesting a copy of that database should be charged only for the related cost of copying the database in its current electronic form – not for what it would cost to duplicate the records individually with paper photocopies or another format.

This only makes sense: copying an electronic file from one device to another is a task most people in today's world are familiar with. It involves initiating the copy process and walking away from the device (such as an external hard drive costing less than $1,000) while it runs. Again, the bottom line is that regardless of whether the data is bulk or not, there should be a rational connection to the actual cost of copying the data to the fees charged.

ACLU MAINE
AMERICAN CIVIL LIBERTIES UNION OF MAINE

121 Middle Street, Suite 301
Portland, Maine 04101
T/ (207) 774-5444
F/ (207) 774-1103
www.aclumaine.org

Question 3.

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

A requestor of bulk data should be entitled to access records in manner they wish and in the formats requested if it already exists or is reasonably available. They may be charged only reasonably related fees. Anything else would be considered a constructive denial of the request and a violation of the Act. This is a crucial point. Public agencies cannot be permitted to provide public data in an intentionally inconvenient format in order to burden or limit public access.

Further, if already converted, the public has a right to share in the benefits of this conversion. When substantial amounts of taxpayer funds are used to convert paper files into electronic streams of data, among the resulting conveniences are dramatically lowered copying costs. This is precisely the type of benefit that the public has already paid for and which the public should receive in return. *See Margolius v. City of Cleveland*, 584 N.E.2d 665, 669 (1992) ("[A] set of public records stored in an organized fashion on a magnetic medium also contains an added value that inherently is a part of the public record. Here, the added value is not only the organization of the data, but also the compression of the data into a form that allows greater ease of public access").

Finally, there should be no distinction made between a requestor seeking access to records and a requestor seeking ownership of records. An individual or entity seeking public records for whatever reason should be treated without prejudice or differentiation. It should not be the legislature's job to create a hierarchy of more or less access depending on what the requestor intends to do with the records.

Question 4.

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

As with the second part of question 3 – the answer is no – the law should not distinguish between those seeking data for commercial and those seeking it for noncommercial purposes. The legislature should not be

ACLU MAINE
AMERICAN CIVIL LIBERTIES UNION OF MAINE

121 Middle Street, Suite 301
Portland, Maine 04101
T/ (207) 774-5444
F/ (207) 774-1103
www.aclumaine.org

in the business of determining more or less worthy motives for accessing public information and burdening some more than others.

Again – because the requestor is a member of the public, fundamentally we are talking about information that *belongs to her already.* If the FOAA is to be effective, all segments of the population must have access to public records.

Conclusion.

There are few public policies more vital than an open government. Maine's Freedom of Access Act is designed to support transparency by providing access to governmental activities and records for all – not just for those with money or those who promise to use the information for non-commercial purposes. Any decisions governing the public's access to bulk information should be made with the intended result of ensuring access to the widest swath of information by the broadest spectrum of the public.

Re: Answers to Questions Posed by the Right to Know Advisory Committee/Bulk Records Subcommittee

Introduction

InforME, as the State's official electronic portal, offers bulk data access as one of its information access services. These services are created from data assembled through value-added processes, from agency repositories for access to authorized InforME customers on behalf of state agencies. The InforME Board is mindful that there are many complex issues related to this discussion and that the services it provides and the terminology it uses varies significantly from others supplying information to the subcommittee. It hopes that this submission will provide information helpful in the committee's deliberations and is committed to supporting the committee's efforts on improving public information access and related issues going forward.

1. What is bulk data and how should it be defined?

Bulk data defined:

Bulk data is an electronic collection of data composed of information from multiple records, whose primary relationship to each other is their shared origin from a single or multiple databases. The data is generally extracted from a database and provided in a common electronic file type. Bulk data does not include paper copies of records. A request for bulk data is also different from a request for multiple records, if we consider a record to be a "document" such as an individual deed, copy of a license, birth certificate, or even the data collected and stored related to a single event, person or other data element (for example). Requesting multiple records (paper or electronic images) is different from requesting a data file with information from multiple records - the latter is bulk data. Each individual agency determines which bulk data sets are eligible for public request and is responsible for ensuring the state laws, regulations, and privacy requirements are adhered to whenever bulk data is made available for access.

Databases themselves may be proprietary, or complex and unusable to a requester without special software or instructions. A request for data is not the same as a request for a database.

InforME bulk data services defined:

InforME, as the State's official electronic portal, offers bulk data assembled through value-added processes, from agency repositories (electronic databases) to provide access to authorized InforME customers on behalf of state agencies. InforME may modify the data from its original form in various ways, including removal of sensitive information, selection, sorting or combining records for a particular use or to customer specifications, and reformatting or restructuring of data, as well as a variety of delivery mechanisms including self-service online services and FTP delivery. InforME offers data for one-time access or on recurring schedules such as monthly or quarterly, and manages customer requests, customer service, payments and invoicing.

Information Resource of Maine
45 Commerce Drive, Suite #10 | Augusta, ME 04330
207-621-2600 | Fax 207-621-9950 | Toll free 877-4ME-EGOV

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

Fees for InforME bulk data access are determined by statute, agency rulemaking, or through board oversight as defined in Title 1 §534 5. G. which specifies that fees for InforME services must be:

- Sufficient to maintain, develop, operate and expand InforME on a continuing basis.
- Reasonable but sufficient to support the maximum amount of information and services provided at no charge.
- Sufficient to ensure that, to the extent possible, data custodians do not suffer loss of revenues from sources that are approved or authorized by law due to the operations of InforME.
- Sufficient to ensure that data custodians are reimbursed for the actual costs of providing data to InforME.
- Sufficient to meet the expenses of the statutory InforME board.

InforME's service and data delivery model is designed to enhance electronic access to public information and transactions for citizens and businesses, by pooling fees from all services that have commercial value, to provide those services plus other services which have no commercial value but are needed or desired by Maine citizens and businesses. Recapturing some of the commercial value of the taxpayer-assembled data in order to provide services to Maine citizens and businesses allows InforME to increase the availability of all state electronic information and online services. Revenue from bulk data services supports not only bulk data distributions but also the provisioning of many other electronic services to the public, and also to state agencies. Those other services are then provided to the public and agencies at no cost to them. The elimination of its bulk data services or reductions to pricing would likely reduce InforME's ability to provide access to public information via existing and future portal services, with resulting effect on the ability of state agencies to provide efficient, cost-effective online services for the public.

Examples of InforME public access services supported in part by bulk data services:

- Maine.gov - the State of Maine's official web site
- Hosting of nearly all Maine state agency websites
- Agency webmaster support, tools, and training
- Online Absentee Ballot Request system
- Maine.gov DataShare public data catalog
- HireME online state job application system
- Online Sex Offender Registry Search
- Online State Parks Search
- Unclaimed Property Search/Claim service
- Voter Information service
- Qualifying Contributions for Clean Elections Candidates system
- Maine Organ Donor Registry

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

Data distributed via InforME's bulk data services is delivered in an electronic file format that is developed based upon a balance of considerations between minimizing assembly costs and providing the greatest utility to the largest number of customers possible. It is not practical for a requester to have the right to receive data in any format they desire, as that may be impossible in some cases, and very expensive in others. If multiple formats are already available, then it is reasonable for the requester to choose which format they prefer.

Access vs. Ownership

In the digital age, it is very difficult to distinguish sometimes between access and ownership. The information being accessed as bulk data is assembled at taxpayer expense for the purpose of allowing the agency to do its statutorily required work. While agreements can limit rights to use records, it is often difficult to determine, without an after-the-fact audit, whether the records were actually used in accordance with the contract restrictions, once out of sight of InforME or the agency. Similarly, while an agreement can withhold ownership and only grant a license to use, because bulk data is by definition an extract of information from a record, it may also be impossible to tell whether someone's address came from a state record or from other sources. Certainly any information that can *only* come from a state record would be easier to track for compliance purposes. For requestors of information, the issue will be whether they are entitled under "access" to use the data however they wish.

An example may be helpful. Certain requestors use vehicle registration information to send safety recalls on behalf of vehicle manufacturers. Such information is subject to the Driver Privacy Protection Act ("DPPA"), which restricts its use to certain purposes, including safety recalls. If the bulk requester was to assert ownership to the information which it *obtained* from the bulk data -- for example, vehicle owner address information -- and used it for a purpose outside the limits of the DPPA, then this could be a violation of the law. But it might be difficult to establish that the address information came from a state database. However, a vehicle identification number, which is not generally available from other sources, might be more easily proven to have come from a state database.

In the case of vehicle registrations, *access* might be the appropriate level of permission—access to use for a specific purpose, or any purpose permitted by the DPPA. Ownership is not similarly restricted, so ownership might be inappropriate for such data.

However, in the digital age, again, once a "copy" of the extracted data is delivered to a requestor, it may become very difficult to prevent the requestor from asserting that it purchased non-exclusive "ownership" rather than only a license to access for a specific purpose, and even more difficult to restrict what the owner does with the data in its possession.

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

Yes. The great majority of InforME bulk data requests are for commercial use, since most individuals have little use for bulk data. Pricing for InforME's services, including bulk data access, to commercial entities is designed to conform with InforME's statutory constraints

(above) and is additionally limited by the data's market value. The provision of bulk data services requires resources for customer service, invoicing, compiling and delivering data, and creating and maintaining electronic systems specifically for the purpose of meeting bulk data requests. By leveraging InforME to provide these services on behalf of all state agencies, state agencies offer an economical value-added service to customers, save significant staff time and expense, and contribute to the support of other InforME services for the public's benefit.

Freedom of access requires provision of access to government records, which obligation is met by making individual records available for viewing. This prevents government processes and decisions from being made secretly or without accountability. Commercial entities have many legitimate reasons for purchasing bulk government data and there is no reason they should not be allowed to do so with the intention of making a profit, so long as those efforts are balanced against the public's privacy interest and do not undermine the government's service delivery missions including public access efforts. Commercial requests for bulk data services are not about "access to government records" as the records are already available in individual formats; rather, they are about the commercial desire for a value-added compilation and delivery of data with commercial value. The market value of bulk data is a cost of business that commercial entities can absorb. Commercial entities should not obtain valuable bulk data for their commercial use at a nominal cost.

On the other side, there are a small number of requests for bulk data for non-commercial purposes such as academic research or news reporting. It makes sense to offer a simpler (less resource intensive) data service for these requestors at lower cost, with use restricted to those limited purposes.

How does privacy fit into the discussion?

InforME is mindful of the threat to privacy for individuals posed by bulk data ac that goes beyond personally identifiable information contained in individual records. Wide distribution of large volumes of public information can be subjected to modern computer processing treatments involving multiple databases which can yield a depth of information about individuals that goes beyond the anticipated disclosure. This is generally known as data mining. InforME does not perform data mining and distributes no data, public or not, without authorization by agency data custodians and the InforME Board, and then only in accordance with the requirements of the law.

The difficulty is in permitting bulk record access for worthwhile uses (selective service registration compliance, vehicle safety recalls, voter roll verification, jury duty rolls, and even mortgage marketing) while preventing abuses of bulk data availability.

APPROVED CHAPTER

JUN 10 '11 299

BY GOVERNOR PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND ELEVEN

H.P. 963 - L.D. 1317

An Act Concerning Sex Offender Registry Information

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

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

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

A. Information provided to the public pursuant to subsection 9; and

B. Applications and bureau decisions, including any documents made part of those decisions, pursuant to section 11202-A.

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

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

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

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

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

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

APPROVED CHAPTER

JUN 16 '11 378

STATE OF MAINE BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD

TWO THOUSAND AND ELEVEN

H.P. 1100 - L.D. 1499

An Act Concerning Fees for Users of County Registries of Deeds

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

Whereas, the registry of deeds offices provide a valuable public service in recording and maintaining the land records of the State; and

Whereas, current law allows the county commissioners to set fees for copying at only the cost of providing the copies; and

Whereas, the cost to the counties to maintain the information and to make it accessible cannot be adequately reimbursed by fees defined by copying cost; and

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

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

Sec. 1. 33 MRSA §751, sub-§14, as amended by PL 2009, c. 575, §2, is repealed.

Sec. 2. 33 MRSA §751, sub-§§14-B and 14-C are enacted to read:

14-B. Abstracts and copies. Making abstracts and copies of records at the office of the register of deeds as follows:

A. Five dollars per page for paper abstracts and copies of plans;

B. One dollar per page for other paper abstracts and copies; and

C. Fifty cents per page for digital abstracts and copies, except that the fee is 5¢ per page for copies of 1,000 or more digital abstracts and copies of consecutive records.

This subsection is repealed July 31, 2012;

14-C. Abstracts and copies. Beginning August 1, 2012, 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 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

Sec. 3. Legislative intent; retroactivity. The Legislature finds that the following fees charged by an office of a register of deeds for making abstracts and copies from records, whether in paper or digital form, including for bulk copies or transfers of such copies, between September 1, 2009 and the effective date of this Act are reasonable and in accordance with the legislative intent of Public Law 2009, chapter 575, section 2 and are expressly authorized: a fee of up to $1.50 per page for paper copies and a fee of up to $1.50 per page for digital copies. Nothing in this section may be interpreted as a legislative finding that a higher fee charged by an office of a register of deeds between September 1, 2009 and the effective date of this Act to persons who were not subscribers to the online services of a register of deeds is unreasonable. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this section applies retroactively to September 1, 2009.

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

APPROVED CHAPTER

JUN 20 '11 390

BY GOVERNOR PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND ELEVEN

H.P. 865 - L.D. 1167

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

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

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

7. Report information. An accident report made by an investigating officer or a ~~48-hour~~ report made by an operator as required by ~~former~~ subsection ~~5~~ 2 is for the purposes of statistical analysis and accident prevention.

A report or statement contained in the accident report, or a ~~48-hour~~ report as required by ~~former~~ subsection ~~5~~ 2, a statement made or testimony taken at a hearing before the Secretary of State held under section 2483, or a decision made as a result of that report, statement or testimony may not be admitted in evidence in any trial, civil or criminal, arising out of the accident.

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

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

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

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

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

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

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

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

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

(b) A vehicle registration number;

(c) An insurance policy number;

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

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

B. The Department of Public Safety, Bureau of State Police may not publicly disseminate personally identifying accident report data that are contained in an accident report database maintained, records administered or contributed to by the Bureau of State Police. Such data are not public records for the purposes of Title 1, chapter 13.

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

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
Connecticut	**Sec. 1-211. (Formerly Sec. 1-19a). Disclosure of computer-stored public records. Contracts. Acquisition of system, equipment, software to store or retrieve nonexempt public records.** (a) Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, if the agency can reasonably make such copy or have such copy made. Except as otherwise provided by state statute, the cost for providing a copy of such data shall be in accordance with the provisions of section 1-212. (b) Except as otherwise provided by state statute, no public agency shall enter into a contract with, or otherwise obligate itself to, any person if such contract or obligation impairs the right of the public under the Freedom of Information Act to inspect or copy the agency's nonexempt public records existing on-line in, or stored on a device or medium used in connection with, a computer system owned, leased or otherwise used by the agency in the course of its governmental functions. (c) On and after July 1, 1992, before any public agency acquires any computer system, equipment or software to store or retrieve nonexempt public records, it shall consider whether such proposed system, equipment or software adequately provides for the rights of the public under the Freedom of Information Act at the least cost possible to the agency and to persons entitled to access to nonexempt public records under the Freedom of Information Act. In meeting its obligations under this subsection, each state public agency shall consult with the Department of Information Technology as part of the agency's design analysis prior to acquiring any such computer system, equipment or software. The Department of Information Technology shall adopt written guidelines to assist municipal agencies in carrying out the purposes of this subsection. Nothing in this subsection shall require an agency to consult with said department prior to acquiring a system, equipment or software or modifying software, if such acquisition or modification is consistent with a design analysis for which such agency has previously consulted with said department. The Department of Information Technology shall consult with the Freedom of Information Commission on matters relating to access to and disclosure of public records for the purposes of this subsection. The provisions of this subsection shall not apply to software modifications which would not affect the rights of the public under the Freedom of Information Act.
Iowa	**22.3A Access to data processing software.** 1. As used in this section:

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
	a. "Access" means the instruction of, communication with, storage of data in, or retrieval of data from a computer. *b. "Computer"* means an electronic device which performs logical, arithmetical, and memory functions by manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, and communication facilities which are connected or related to the computer including a computer network. As used in this paragraph, *"computer"* includes any central processing unit, front-end processing unit, miniprocessor, or microprocessor, and related peripheral equipment such as data storage devices, document scanners, data entry terminal controllers, and data terminal equipment and systems for computer networks. *c. "Computer network"* means a set of related, remotely connected devices and communication facilities including two or more computers with capability to transmit data among them through communication facilities. *d. "Data"* means a representation of information, knowledge, facts, concepts, or instructions that has been prepared or is being prepared in a formalized manner and has been processed, or is intended to be processed, in a computer. Data may be stored in any form, including but not limited to a printout, magnetic storage media, disk, compact disc, punched card, or as memory of a computer. *e. "Data processing software"* means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data, and includes any program or set of programs, procedures, or routines used to employ and control capabilities of computer hardware. As used in this paragraph *"data processing software"* includes but is not limited to an operating system, compiler, assembler, utility, library resource, maintenance routine, application, or computer networking program. 2. A government body may provide, restrict, or prohibit access to data processing software developed by the government body, regardless of whether the data processing software is separated or combined with a public record. A government body shall establish policies and procedures to provide access to public records which are combined with its data processing software. A public record shall not be withheld from the public because it is combined with data processing software. A government body shall not acquire any electronic data processing system for the storage, manipulation, or retrieval of public records that would impair the government body's ability to permit the examination of a public record and the copying of a public record in either written or electronic form. If it is necessary to separate a public record from data processing software in order to permit the examination or copying of the public record, the

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
	government body shall bear the cost of separation of the public record from the data processing software. The electronic public record shall be made available in a format useable with commonly available data processing or database management software. The cost chargeable to a person receiving a public record separated from data processing software under this subsection shall not be in excess of the charge under this chapter unless the person receiving the public record requests that the public record be specially processed. A government body may establish payment rates and procedures required to provide access to data processing software, regardless of whether the data processing software is separated from or combined with a public record. Proceeds from payments may be considered repayment receipts, as defined in section 8.2. The payment amount shall be calculated as follows: *a*. The amount charged for access to a public record shall be not more than that required to recover direct publication costs, including but not limited to editing, compilation, and media production costs, incurred by the government body in developing the data processing software and preparing the data processing software for transfer to the person. The amount shall be in addition to any other fee required to be paid under this chapter for the examination and copying of a public record. If a person accesses a public record stored in an electronic format that does not require formatting, editing, or compiling to access the public record, the charge for providing the accessed public record shall not exceed the reasonable cost of accessing that public record. The government body shall, if requested, provide documentation which explains and justifies the amount charged. This paragraph shall not apply to any publication for which a price has been established pursuant to another section, including section 2A.5. *b*. If access to the data processing software is provided to a person for a purpose other than provided in paragraph *"a"*, the amount may be established according to the discretion of the government body, and may be based upon competitive market considerations as determined by the government body. 3. A government body is granted and may apply for and receive any legal protection necessary to secure a right to or an interest in data processing software developed by the government body, including but not limited to federal copyright, patent, and trademark protections, and any trade secret protection available under chapter 550. The government body may enter into agreements for the sale or distribution of its data processing software, including marketing and licensing agreements. The government body may impose conditions upon the use of the data processing software that is otherwise consistent with state and federal law.

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
Mississippi	**§ 25-61-10. Use of sensitive software** (1) Any public body that uses sensitive software, as defined in Section 25- 61-9, or proprietary software must not thereby diminish the right of the public to inspect and copy a public record. A public body that uses sensitive software, as defined in Section 25-61-9, or proprietary software to store, manipulate, or retrieve a public record will not be deemed to have diminished the right of the public if it either: (a) If [if] legally obtainable, makes a copy of the software available to the public for application to the public records stored, manipulated, or retrieved by the software; or (b) ensures that the software has the capacity to create an electronic copy of each public record stored, manipulated, or retrieved by the software in some common format such as, but not limited to, the American Standard Code for Information Interchange. (2) A public body shall provide a copy of the record in the format requested if the public body maintains the record in that format, and the public body may charge a fee which must be in accordance with Section 25-61-7. (3) Before a public body acquires or makes a major modification to any information technology system, equipment, or software used to store, retrieve, or manipulate a public record, the public body shall adequately plan for the provision of public access and redaction of exempt or confidential information by the proposed system, equipment or software. (4) A public body may not enter into a contract for the creation or maintenance of a public records data base if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are on-line or stored in an information technology system used by the public body.
Missouri	**§ 610.029. Governmental agencies to provide information by electronic services, contracts for public records databases, requirements, electronic services defined--division of data processing may be consulted.** 1. A public governmental body keeping its records in an electronic format is strongly encouraged to provide access to its public records to members of the public in an electronic format. A public governmental body is strongly encouraged to make information available in usable electronic formats to the greatest extent feasible. A public governmental body may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are online or stored in an electronic record-keeping system used by the agency. Such contract may not allow any impediment that as

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
	a practical matter makes it more difficult for the public to inspect or copy the records than to inspect or copy the public governmental body's records. For purposes of this section, a usable electronic format shall allow, at a minimum, viewing and printing of records. However, if the public governmental body keeps a record on a system capable of allowing the copying of electronic documents into other electronic documents, the public governmental body shall provide data to the public in such electronic format, if requested. The activities authorized pursuant to this section may not take priority over the primary responsibilities of a public governmental body. For purposes of this section the term "electronic services" means online access or access via other electronic means to an electronic file or database. This subsection shall not apply to contracts initially entered into before August 28, 2004. 2. Public governmental bodies shall include in a contract for electronic services provisions that: (1) Protect the security and integrity of the information system of the public governmental body and of information systems that are shared by public governmental bodies; and (2) Limit the liability of the public governmental body providing the services. 3. Each public governmental body may consult with the division of data processing and telecommunications of the office of administration to develop the electronic services offered by the public governmental body to the public pursuant to this section.
North Carolina	**§ 132-6.1. Electronic data-processing records.** (a) After June 30, 1996, no public agency shall purchase, lease, create, or otherwise acquire any electronic data-processing system for the storage, manipulation, or retrieval of public records unless it first determines that the system will not impair or impede the agency's ability to permit the public inspection and examination, and to provide electronic copies of such records. Nothing in this subsection shall be construed to require the retention by the public agency of obsolete hardware or software. (b) Every public agency shall create an index of computer databases compiled or created by a public agency on the following schedule: State agencies by July 1, 1996; Municipalities with populations of 10,000 or more, counties with populations of 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1997; Municipalities with populations of less than 10,000, counties with populations of less than 25,000, as

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
	determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1998; Political subdivisions and their agencies that are not otherwise covered by this schedule, after June 30, 1998. The index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of the data fields; a description of the format or record layout; information as to the frequency with which the database is updated; a list of any data fields to which public access is restricted; a description of each form in which the database can be copied or reproduced using the agency's computer facilities; and a schedule of fees for the production of copies in each available form. Electronic databases compiled or created prior to the date by which the index must be created in accordance with this subsection may be indexed at the public agency's option. The form, content, language, and guidelines for the index and the databases to be indexed shall be developed by the Office of Archives and History in consultation with officials at other public agencies. (c) Nothing in this section shall require a public agency to create a computer database that the public agency has not otherwise created or is not otherwise required to be created. Nothing in this section requires a public agency to disclose security features of its electronic data processing systems, information technology systems, telecommunications networks, or electronic security systems, including hardware or software security, passwords, or security standards, procedures, processes, configurations, software, and codes. (d) The following definitions apply in this section: (1) Computer database. – A structured collection of data or documents residing in a database management program or spreadsheet software. (2) Computer hardware. – Any tangible machine or device utilized for the electronic storage, manipulation, or retrieval of data. (3) Computer program. – A series of instructions or statements that permit the storage, manipulation, and retrieval of data within an electronic data-processing system, together with any associated documentation. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software. (4) Computer software. – Any set or combination of computer programs. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software. (5) Electronic data-processing system. – Computer hardware, computer software, or computer programs or any combination thereof, regardless of kind or origin.

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
North Dakota	**44-04-18. Access to public records - Electronically stored information.** 1. Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. As used in this subsection, "reasonable office hours" includes all regular office hours of a public entity. If a public entity does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the public entity's records must be posted on the door of the office of the public entity, if any. Otherwise, the information regarding the contact person must be filed with the secretary of state for state-level entities, for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city auditor or designee of the city for city-level entities, or the county auditor or designee of the county for other entities. 2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. A request need not be made in person or in writing, and the copy must be mailed upon request. A public entity may charge up to twenty-five cents per impression of a paper copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated copy of a size not more than eight and one-half by fourteen inches [19.05 by 35.56 centimeters]. For any copy of a record that is not a paper copy as defined in this section, the public entity may charge a reasonable fee for making the copy. As used in this section, "reasonable fee" means the actual cost to the public entity of making the copy, including labor, materials, and equipment. The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records, including electronic records, if locating the records requires more than one hour. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for excising confidential or closed material under section 44-04-18.10 from the records, including electronic records. If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity. This subsection does not apply to copies of public records for which a different fee is specifically provided by law. 3. Automation of public records must not erode the right of access to those records. As each public entity increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law. A public entity may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
	public records online or stored in an electronic recordkeeping system used by the agency. An electronic copy of a record must be provided upon request at no cost, other than costs allowed in subsection 2, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the agency may charge no more than the actual cost incurred for the extensive use of information technology resources incurred by the public entity. "Extensive" is defined as a request for copies of electronic records which take more than one hour of information technology resources to produce. 4. Except as provided in this subsection, nothing in this section requires a public entity to create or compile a record that does not exist. Access to an electronically stored record under this section, or a copy thereof, must be provided at the requester's option in either a printed document or through any other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of any closed or confidential information contained in that file. Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format, or organization. This section does not require a public entity to provide a requester with access to a computer terminal. 5. A state-level public entity as defined in subdivision a of subsection 12 of section 44-04-17.1 or a political subdivision as defined in subsection 10 of section 44-04-17.1, may establish procedures for providing access from an outside location to any computer database or electronically filed or stored information maintained by that entity. The procedures must address the measures that are necessary to maintain the confidentiality of information protected by federal or state law. Except for access provided to another state-level public entity or political subdivision, the state or political subdivision may charge a reasonable fee for providing that outside access. If the original information is keyed, entered, provided, compiled, or submitted by any political subdivision, the fees must be shared by the state and the political subdivision based on their proportional costs to make the data available. 6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action, adjudicative proceeding as defined in subsection 1 of section 28-32-01, or arbitration in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules or orders and be made to the attorney representing that entity in the criminal or civil action, adjudicative proceeding, or arbitration. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules. 7. A denial of a request for records made under this section must describe the legal authority for the denial and must be

Right to Know Advisory Committee: Bulk Records Subcommittee
Examples of Other State Laws: Requirements for Public Access to Electronic Records and Databases

State	Statutory Provision
	in writing if requested. 8. This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed or when a fee is charged in excess of the amount authorized in subsections 2 and 3. 9. It is not an unreasonable delay or a denial of access under this section to withhold from the public a record that is prepared at the express direction of, and for presentation to, a governing body until the record is mailed or otherwise provided to a member of the body or until the next meeting of the body, whichever occurs first. It also is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, the record is distributed to a member of a governing body or discussed by the body at an open meeting, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. 10. For public entities headed by a single individual, it is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. A working paper or preliminary draft shall be deemed completed if it can reasonably be concluded, upon a good-faith review, that all substantive work on it has been completed. 11. A disclosure of a requested record under this section is not a waiver of any copyright held by the public entity in the requested record or of any applicable evidentiary privilege.

THE MAINE HERITAGE POLICY CENTER
SAM ADOLPHSEN, DIRECTOR - CENTER FOR OPEN GOVERNMENT
PUBLIC TESTIMONY
LEGISLATIVE SUBCOMMITTEE OF RIGHT TO KNOW ADVISORY COMMITTEE
OCTOBER 21, 2011

Good morning Ms.Meyer, members of the Legislative Subcommittee of the Right to Know Advisory Committee. Thank you for the opportunity to briefly present to you this morning.

Before I begin, I want to quickly remind the committee of something that should be the foundation for all of discussions regarding FOA and FOA law. Public records do not belong to the government. They are owned by the public, and government is the custodian of those records.

You've asked today for us to address practical problems with FOA, so I will discuss just a couple main issues that I see come up often in the FOA issues I've dealt with.

In my experience, the lack of some kind of timeline for agencies to fulfill FOA requests is a very practical problem with our FOA law. I will give you two examples of where this issue came into play for requests that I made.

- Maine Turnpike Authority:
    - 184 days to produce requested data (see attachment)

It took the Maine Turnpike 184 days to produce basic salary and spending information. At the time, Maine Turnpike Authority had a political motivation to keep us from seeing that spending information, but we had no way of knowing they were stalling for political reasons. The practical problem here is that the onus was on us to keep following up, sending reminders and having our lawyer make phone calls in order to finally get this information from them, a half year after we requested it. The other practical is that it's clear that MTA was using the lax timeline requirements in the current FOA law to stall on fulfilling our request. What's to stop any agency from doing this if they want to?

Now I know some people believe it should be the burden of the requestor to chase after the FOA requests, and sue if anything goes wrong, but I disagree. The burden should be on government to produce these records in a timely fashion. Having some kind of formal timeline structure in place would help make sure this type of abuse doesn't continue to happen.

- Biddeford School District
    - A month between correspondence because superintendent was "on vacation"

Another example of this problem surfaced when we requested similar information from the Biddeford School Department. In the midst of the request, after it was already in process, the

communication from them simply stopped. A full month after we had sent our last communication to them, we received word back, saying that the superintendant had been "on vacation" and that was the cause for the delay in the response. This is unacceptable. The FOA law needs provisions to make sure public records requests don't go months without being fulfilled.

These are two brief examples, and I can tell you from experience there are many more similar to this. It's important that the average citizen can have FOA requests fulfilled in a timely manner, even if an agency doesn't want to fulfill the request for political reasons or because someone is on vacation. Right now, there is no practical way to keep those abuses from occurring.

Another practical problem with FOA requests is the form in which they are requested and produced. In my experience, the problems most often arise when the information is requested in electronic format, and the government agency is insistent on providing only paper records.

I will not go into great detail on these, but I want to quickly run through a few examples of what I'm talking about. Each of these was a simple request for the entities payroll records in excel format.

- Bangor (Sent the data in dot-matrix printout instead of Excel)
- Standish (Paper records sent when it was clearly printed from an Excel sheet)
- Richmond (Mailed a printed copy of an Excel sheet to the requestor)
- Naples (Excel sheet printed out and mailed to requestor)

When someone asks for public data in a certain form, and it's obvious that it's available, but the government agency doesn't provide it that way, that's abuse. It certainly isn't in keeping with the spirit of the FOA law. I've had letters from towns telling me "I don't have to provide the information in Excel" even when it was clear that they easily could. There is a tremendous opportunity to save time and money by being able to produce records electronically and emailing them to requestors. We need to make sure that when public records are requested in a common electronic medium like Excel, they are provided to the requestor that way, if at all possible.

Having said that, I believe technology offers answers to many of the practical problems we face with public records requests. One of the most important things we can do going forward, is to ask government agencies to consider public records and FOA's when they purchase or upgrade software. Some states even have in statute that when purchasing or upgrading data management software, agencies are required to have a process in place to make sure the entity can easily run reports to provide the data to the public when requested, and ensure they can easily parse out public versus confidential components of the data. I think Maine should strongly consider this approach.

Lastly I want to give two quick plus for other provisions found in LD 1465. I believe that having a person in each government office designated specifically as the "Freedom of Access" person would go a long way towards helping solve some of these FOA conflicts. And finally, I believe we all agree that an Open Records Ombudsman in the AG's office would be a big help to make sure our Freedom of Access Law isn't abused and resolving many of the issues we have discussed.

Thank you, I'm happy to answer any questions.

EXAMPLE: 184 DAYS TO RECEIVE MTA RECORDS

Aug. 4, 2010
Maine Heritage Policy Center sends Freedom of Access Request for payroll and vendor payments data to the Maine Turnpike Authority

Aug. 9, 2010 - *5 days after request*
MTA acknowledges request has been received

Sept. 7, 2010 - *34 days after request*
Having received no further correspondence from MTA, MHPC staff attorney e-mails MTA asking to advise on status of request

Sept. 10, 2010 - *37 days after request*
MTA replies, suggesting it will take 20 hours to complete the request

Jan. 31, 2011 - *180 days after request*
Having received no further correspondence from MTA, MHPC staff e-mails MTA asking again to advise on status of request

Feb. 4, 2011 - *184 days after request*
MTA finally complies with request

FOAA TESTIMONY
OCTOBER 21, 2011
L. D. 1465

Michael Doyle
3 Shady Lane
Falmouth, ME 04105
207.766.6644

FOAA TESTIMONY
OCTOBER 21, 2011
L.D. 1465

Mr. Chairman, Ms. Vice Chair, and members of the Committee, I am Michael Doyle of Falmouth. I will briefly cover a small sample of what I have uncovered in the Town of Falmouth all the while fighting Nathan Poore, Falmouth's Town Manager, for him to comply with the spirit of this law as well as the letter of this law. I'm forced by Falmouth's management, mostly Nathan Poore to file FOAA requests over and over to get one answer. It's Falmouth's fault that I have to ask questions several different ways to get the answer. Falmouth won't volunteer any financial information without a FOAA request. Even if I just ask a question in an email the Town treats it as a FOAA.

1. **Continuous over billing to answer requests.** EXHIBITS 1 to 5
During an interview with Alex Kimball, Director of Finance, for Cumberland, Alex was asked how long it would take to sort and print the payroll record of a seasonal employee? **Answer: Less than 30 minutes at no cost to me.**
The same question was posed to Dawn Madden, Finance Director for Yarmouth. **Answer: 5 minutes at no charge.**
The same question asked and actual time and charges at Falmouth under Nathan Poore's control to uncover the employment of the Police Chief's son and the Lt. nephews as Harbor Rangers at nearly $400/wk. against Town printed rules. **Answer: Two and one half hours at a cost of $15.00.**
The cost and time to get the list of teachers and their total compensation from highest to the lowest from Cape Elizabeth. **There answer was zero dollars and the next day.**
The cost and time to get the same item from Falmouth was **$71.20 and eight hours to complete the request, and over two weeks time** plus the disk was supplied blank at first, then locked in alphabetical format, which required another $158.00 to have it reformatted from highest to lowest income.

2. **Lying in answers provided and paid for by me.** EX. 6 to 9
In seeking an explanation of why the Falmouth Police Boat was at the Lobster Boat Races in Harpswell and Portland with the Police Chief and/or the Harbor Master at the wheel I was told in a letter from Poore's office that the Coast Guard had called the Boat to service. **I checked with Lt. Nick Barrows of the Coast Guard station in South Portland. There were no**

records of the Falmouth Boat being called out on either date. Two weeks after notifying the Town, Poore repeated the lie in yet another letter from his office. Poore failed to explain why the Police Boat was taken by the Police Chief and his wife to dinner on Chebeague Island. Poore included in this lie that a boat that burns 30 gallons of fuel per hour only needed to buy 31 gallons during the Sat. Sun. and Mon. on the weekend of the Harpswell race which alone was a 5 hour round trip.

3. The continuous denial of the free hour per request by treating each new request as one unending request. EX. 10 to 11
I would think that a citizen of any community in Maine should be able to get answers to questions at no cost in the community they live in. Or at the minimum not have a Town Manager deny the free hour at his whim for only one reason, to suppress the access to embarrassing information. This has continued since June of 2010.

What have the various requests turned up over the last two years, during which time I had to overcome the roadblocks from Nathan Poore to obtain documentation on the waste of our tax dollars?

1. Overpaying for copy equipment, supplies, and service to Specialized Purchasing Consultants (SPC) by 11% over the retail cost in a five-year contract due to no bids on file and sending thousands of dollars to a New Hampshire Company, while Portland and Scarborough canceled their contracts with SPC. EX. 12 to 15
2. Overpayment of $274,000 for heating oil due to no bids on file. EX. 16
3. Paying over $26,000 in bank fees while having an average monthly balance of over $433,000 due to no bids on file. EX. 17 to 28
4. Overpaying for electricity through Maine Power Options (MPO), a State sponsored organization, by over $107,000 due to no bids on file and sending thousands of dollars to a Connecticut company. EX. 29 to 32
5. Overpaying Business Equipment Unlimited (BEU) by over $26,000 in a three-year contract due to no bids on file and sending thousands of dollars to a New Hampshire company. EX. 33
6. Overpaying W.B. Mason 20% for office supplies every year until a consultant was hired to reduce that cost by $32,800 due to no bids on file. The consultant took half the savings as his fee of $16,400. EX. 34 to 35
7. Selling athletic field lights for a loss of $44,000 in order to substitute new field lights in the contract for the new elementary school just completed for

an additional $137,702. Which makes the new lights real cost of $181,702 EX. 36 to 39

8. Disposal of the previous artificial turf, due to improper storage rendering it useless, that had an estimated cost of $127,000 to be replaced with what is reported to have cost $400,000. EX. 40 to 41 (see Cape cost)

These requests developed over $1,000,000 in overspending, wasted money, and mismanagement of our tax dollars.

I respectfully request you strengthen the FOAA Law by requiring a time limit to answer the question, requiring the answer and billing hours be certified as to their truthfulness, and require the answer to be in a format that is generally used in the responder's system, such as Excel if requested.

Thank you for the opportunity to bring this information to your attention.

Michael Doyle
3 Shady Lane
Falmouth, ME 04105
207.766.6644

Ex. 1

Invoice – Michael Doyle
Freedom of Access Request
July 14, 2011

Re: Nepotism/James Tolan Check History

Staff time to produce a response to the FOAA request
1.5 hours x $10.00 = $15.00 (2.5 hours total, first hour free)

Total = $15.00

Please remit payment by August 15, 2011, and make check payable to:
Town of Falmouth

PAID
AUG 30 2011

Ex. 2

Re: FOAA REQUEST ATTACHED

From: **Pauline Apportria** (pauline_aportia@cape.k12.me.us)
Sent: Tue 5/11/10 8:01 AM
To: Michael Doyle (seller99@msn.com)
Cc: Alan H. Hawkins (ahawkins@cape.k12.me.us)
2 attachments
08-09 Teacher Sal & Ben.xls (36.0 KB) , 09-10 Teacher Sal & Ben.xls (36.5 KB)

Attached is the information you requested from the Cape Elizabeth School Department.
--Pauline Aportria, Business Manager

Pauline Aportria, Business Manager
Cape Elizabeth School Department
(207)799-2217 fax (207)799-2914
pauline_aportria@cape.k12.me.us

Ex. 3

May 4, 2010

Cape Elizabeth School Dept.

FOAA REQUEST

This is to request that the Cape Elizabeth School Dept. provide me with access to public or copies of records in the possession or custody of the School Dept. showing the following information by year for each School Dept. employee covered by the Agreement with the Cape Teachers Association for the school years below:

1. Salary of each employee per the "Schedule A- Teacher Scale" and the name and position of each employee.
2. Gross pay of each employee.
3. The benefits or fringes provided to each employee and the cost of, or the value of, the benefit or fringe.

I am requesting access to this information for these school years:

2008/2009

2009/2010

If available please send them in excel spread sheet format as an attachment to your reply.

THIS REQUEST IS MADE PURSUANT TO THE MAINE FREEDOM OF ACCESS ACT.

Michael Doyle
Falmouth, ME
seller99@msn.com
766.6644

CAPE ELIZABETH SCHOOL DEPARTMENT - EMPLOYEES COVERED BY CAPE ELIZABETH EDUCATION ASSOCIATION/MEA/NEA AGREEMENT

Position		NAME Last	NAME First	08-09 SALARY	08-09 TOTAL STIPEND	08-09 TOTAL SALARY	08-09 Health Benefit	08-09 Dental Benefit	08-09 Life Benefit	08-09 Taxes Benefit	08-09 Total Benefit	08-09 TOTAL SALARY & BENEFITS
				$8,326,447.69	$246,717.98	$8,573,165.67	$1,587,878.78	$32,700.00	$1,508.00	$147,756	$1,769,843	$10,343,008
Library	PC	Robinson	Shari	$68,061.49	$4,700.00	$72,761.49	$12,576	$250	$13	$1,316	$14,155	$86,917
Teacher	HS	Hayward	Christopher	$59,271.99	$9,261.60	$68,533.59	$15,307	$250	$0	$1,150	$16,707	$85,241
Teacher	MS	Walsh	Kathy	$65,447.51	$2,730.00	$68,177.51	$15,307	$250	$13	$1,267	$16,837	$85,014
Guidance	MS	Sturgeon	Kim	$66,117.02	$1,950.00	$68,067.02	$15,307	$0	$0	$1,280	$16,586	$84,653
Teacher	HS	Efron	Michael	$68,061.49	$2,000.00	$70,061.49	$12,576	$250	$13	$1,316	$14,155	$84,217
Library	HS	Bell	Joyce	$65,179.06	$4,095.00	$69,274.06	$12,576	$250	$0	$1,262	$14,088	$83,362
Guidance	HS	Merrill	Sharon	$72,646.74	$3,250.00	$75,896.74	$5,580	$250	$0	$350	$6,180	$82,076
Teacher	HS	Worthley	Doug	$57,965.00	$7,404.47	$65,369.47	$15,307	$250	$13	$1,126	$16,695	$82,065
Teacher	HS	Shroder	Joel	$59,762.11	$4,472.00	$64,234.11	$15,307	$250	$13	$1,160	$16,729	$80,963
Teacher	HS	Nilsen	Elizabeth	$61,722.59	$2,100.00	$63,822.59	$15,307	$250	$13	$1,197	$16,766	$80,589
Teacher	HS	Raymond	Ben	$50,057.71	$13,939.64	$63,997.35	$15,307	$250	$13	$976	$16,546	$80,543
Teacher	MS	White	Terry	$61,722.59	$1,300.00	$63,022.59	$15,307	$250	$13	$1,197	$16,766	$79,789
Teacher	HS	Peary	David	$61,722.59	$1,150.00	$62,872.59	$15,307	$250	$13	$302	$15,871	$78,744
Teacher	PC	Swift	Rebecca	$61,722.59	$1,150.00	$62,872.59	$15,307	$250	$13	$302	$15,871	$78,744
Teacher	PC	Dulac	Mary	$57,017.43	$4,700.00	$61,717.43	$15,307	$250	$0	$1,108	$16,664	$78,382
Teacher	HS	Ray	James	$56,690.68	$5,834.40	$62,525.08	$15,307	$250	$13	$279	$15,849	$78,374
Teacher	MS	Ramsbotham	Claire	$60,415.60	$1,150.00	$61,565.60	$15,307	$250	$0	$1,172	$16,729	$78,294
Teacher	MS	Doane	Joe	$57,017.43	$5,300.54	$62,317.97	$15,307	$250	$13	$281	$15,851	$78,169
Teacher	HS	Trippe	Laura	$60,742.35	$195.00	$60,937.35	$15,307	$250	$13	$1,178	$16,748	$77,685
Nurse	MS	Tselikis	Julie	$61,722.59		$61,722.59	$15,307	$250	$0	$302	$15,858	$77,581
Teacher	PC	Saffer	Susan	$61,722.59	$2,600.00	$64,322.59	$12,576	$250	$0	$302	$13,128	$77,450
Guidance	HS	Snell	Belinda	$69,047.12	$1,150.00	$70,197.12	$5,580	$250	$13	$1,335	$7,178	$77,375
Teacher	HS	Gwyther	Alison	$58,291.75	$2,350.00	$60,641.75	$15,307	$0	$13	$1,132	$16,452	$77,093
Teacher	MS	Welch	Margaret	$61,722.59	$975.00	$62,697.59	$12,576	$250	$13	$1,197	$14,036	$76,733
Teacher	HS	Ghidoni	Tony	$58,618.49	$1,300.00	$59,918.49	$15,307	$250	$13	$1,138	$16,708	$76,626
Teacher	MS	Strout	Andrew	$56,690.68	$3,908.80	$60,599.48	$15,307	$250	$0	$279	$15,836	$76,436
Teacher	HS	Lizotte	Tom	$60,088.86	$9,145.00	$69,233.86	$5,580	$250	$13	$1,166	$7,009	$76,242
Teacher	HS	Ely	Dwight	$62,016.67		$62,016.67	$12,576	$250	$0	$1,202	$14,028	$76,045
Teacher	HS	Brewington	William	$59,271.99		$59,271.99	$15,307	$250	$13	$1,150	$16,720	$75,992
Teacher	HS	Guerrette	Shawn	$63,977.15	$4,945.20	$68,922.35	$5,580	$0	$0	$1,239	$6,819	$75,741
Teacher	HS	Newell	Christine	$58,651.17		$58,651.17	$15,307	$250	$13	$1,139	$16,708	$75,360
Teacher	MS	Michaud	Jamie	$58,618.49		$58,618.49	$15,307	$250	$13	$1,138	$16,708	$75,326
Teacher	HS	Rioux	Roger	$56,363.94	$2,000.00	$58,363.94	$15,307	$250	$0	$1,095	$16,652	$75,016
Teacher	MS	Lawler-Rohner	Marguerite	$58,291.75		$58,291.75	$15,307	$250	$13	$1,132	$16,702	$74,993
Teacher	MS	Roberts	Terese	$58,291.75		$58,291.75	$15,307	$250	$13	$1,132	$16,702	$74,993
Teacher	HS	Pendarvis	Mark	$58,291.75		$58,291.75	$15,307	$250	$0	$1,132	$16,689	$74,980

Ex. 5

FOAA Invoice
August 31, 2010

Michael Doyle
3 Shady Lane
Falmouth, ME 04105

7 hrs. Compiling of data and review (teachers' pay and benefits for the past 3 years) by Accountant and Director of Finance & Operations

7 hrs @ $10 per hour - $70.00
Cost of CD - $1.20

Total Due: $71.20

Payable to: Falmouth Schools
51 Woodville Road
Falmouth, ME 04105

Due Date: 30 days

Ex. 6

TOLAN COAST GUARD DUTY

From: **Michael Doyle** (seller99@msn.com)
Sent: Thu 8/18/11 3:09 PM
To: NATHAN POORE (npoore@town.falmouth.me.us)

Nathan,

Thank you for your recent answers received today by USPS.

You note that Chief Tolan was on "...assignment to assist the Harbor Master and the USGC on July 24, 2011...", provide a copy of the signed order that initiated this duty with the Coast Guard. If this was an emergency call for service, provide that incident number. This is not a request for the Emergency Communication logs records at this time.

This is a FOAA request.

Michael Doyle

Ex. 7

Town of Falmouth, Maine

September 7, 2011

Mr. Michael Doyle
3 Shady Lane
Falmouth, ME 04105

Mr. Doyle,

I am responding to a request outlined in your recent email as follows: "*You note that Chief Tolan was on "...assignment to assist the Harbor Master and the USGC on July 24, 2011...", provide a copy of the signed order that initiated this duty with the Coast Guard. If this was an emergency call for service, provide that incident number.*"

We do not have any documents that fit these parameters. The Coast Guard does not utilize written orders when they ask other agencies, i.e., Falmouth Marine Unit, Maine Marine Patrol, Portland Harbormaster and other harbormasters, to support and assist them. This is considered a mutual aid response, similar to when we assist neighboring police departments or they assist us.

Regards,

Melissa Tryon

Melissa Tryon
Administrative Assistant

Ex. 8

RE: COMMENT REQUESTED ON STORY

From: **Smith, Glynn CDR** (Glynn.C.Smith@uscg.mil)
Sent: Tue 9/06/11 3:44 PM
To: Michael Doyle (seller99@msn.com)

Mike,

I have forwarded your e-mail to our Public Affairs office. They should be in touch with you shortly. If not, please follow up with me.

V/r

CDR Glynn Smith

Sent with Good (www.good.com)

-----Original Message-----
From: Michael Doyle [mailto:seller99@msn.com]
Sent: Tuesday, September 06, 2011 03:31 PM Eastern Standard Time
To: Smith, Glynn CDR
Subject: COMMENT REQUESTED ON STORY

Commander Smith:

I am a reporter for www.falmouthnews.me in Falmouth, ME. We have a story running called Lobster Boat Races Update where our Police Chief was caught using our Police Boat for his personal recreation and claimed that the USCG required this use.

Does the CG have any comment on being falsely implicated in a government corruption cover up lie using the USCG to further a conspiracy to defraud Falmouth tax payers by theft, of over $1,300 in marine fuel?

I look forward to your reply.

Michael Doyle
207.766.6644

Ex. 9

THE DOCK
LAT. 43° 43'.7 LONG. 70° 12'.5
Gas, Oil, Water and Ice at our Float

HANDY BOAT SERVICE, INC.

FALMOUTH FORESIDE, MAINE 04105
TELEPHONE 781-5110
FAX 781-7534

Date 23 JULY 11

M FALMOUTH P.D.

Address

Boat Name

Boat Number

SOLD BY	CASH	CHARGE	SAIL	POWER	HULL COLOR

QUAN	DESCRIPTION	PRICE	AMOUNT
	GALS. GAS	14260	31.7
	GALS. DIESEL		
	QTS. OIL		
	ICE		
	MOORING		
		14260	31.7
		TAX	
		TOTAL	

All claims and returned goods MUST be accompanied by this bill.

38244 RECEIVED BY

SULTAN BUSINESS FORMS & SYSTEMS 878-0123

Ex. 10

(No Subject)

From: Nathan Poore (npoore@town.falmouth.me.us)
Sent: Wed 6/02/10 7:10 AM
To: 'Michael Doyle' (seller99@msn.com)
Attachments:
council rules.JPG (583.1 KB), PPH_Opinion.jpg (5.9 KB), Falmouth Town Council Resolution-3.doc (24.5 KB), pls call.eml (22.0 KB), please read resolution asap.eml (23.9 KB), bully.doc (25.0 KB), Sec22RuleChange.doc (26.0 KB), Falmouth Town Council Resolution-3.doc (24.5 KB), image001.png (6.9 KB), TC PISTNER $200.doc (38.5 KB), TC NATHAN FOAA TONW LAWYER.doc (26.5 KB), council rules.JPG (583.1 KB), image001.png (6.9 KB), L-Falmouth-5.12.10.pdf (82.1 KB), Sec22RuleChange (2) May 24, 2010.doc (67.0 KB), image001.png (6.9 KB), L-Falmouth-5.12.10.pdf (82.1 KB), Sec22RuleChange (2) May 24, 2010.doc (67.0 KB), image001.png (6.9 KB), Rule Change -- Pierce.doc (22.0 KB), council rules.mht (809.8 KB), All Councilors.mht (8.2 KB), Council Rules.mht (7.4 KB), Portland City Council.mht (22.4 KB), MCLU Op-Ed Sunday.mht (22.3 KB), Fw revised resolution.mht (37.2 KB), FOAA Request on Resolution and Rules.mht (53.5 KB), RE Rule Change.mht (24.4 KB), RE Council Rules Amendments.mht (12.4 KB), RE FOAA REQUEST.mht (114.4 KB), RE MCLU Letter to Falmouth Town Council.mht (23.9 KB), RE FOAA requesf.mht (8.2 KB), RE FOAA REQUEST.mht (9.2 KB), RE FOAA REQUEST.mht (14.6 KB), RE FOAA REQUEST.mht (9.9 KB), RE FOAA REQUEST.mht (26.4 KB), FW FOAA REQUEST.mht (74.5 KB), RE FOAA REQUEST.mht (19.6 KB), FOAA REQUEST.mht (39.7 KB), RE FOAA REQUEST.mht (23.6 KB), RE FOAA REQUEST.mht (16.4 KB), RE FOAA REQUEST.mht (10.4 KB), RE FOAA REQUEST.mht (13.9 KB), FW council rules.mht (812.9 KB), RE council rules.mht (13.7 KB), FW MCLU Letter to Falmouth Town Council.mht (147.2 KB), FW Sec22RuleChange (2) May 24, 2010.mht (95.5 KB), FW MCLU Letter to Falmouth Town Council.mht (139.4 KB), Sec22RuleChange (2) May 24, 2010.mht (95.0 KB), FW MCLU Letter to Falmouth Town Council.mht (32.8 KB), Rule Change.mht (53.0 KB), RE FOAA REQUEST.mht (10.1 KB), MCLU.mht (7.9 KB), RE Council Rules Amendments.mht (24.6 KB), Doyle Invoice June 2, 2010.doc (27.0 KB)

Mr. Doyle,

I have attached all recorded documents in the Town's possession relating to the FOAA request made by you on May 16, 2010 and clarified in an email sent by you on May 20, 2010. There may be additional information related to the proposed Council Rules within the attached documents. This completes my response to your FOAA request regarding this matter.

Per previous communications with you, I am considering all FOAA requests for records about Town Council related business from you as one continuing or rolling FOAA request. We have offered the first hour of time, for previous FOAA requests, at no charge and in accordance with the state law. I have attached an invoice for the time spent by all parties to produce a response to your FOAA request. This invoice is not negotiable and is a conservative estimate of the time spent to respond to your request. I will forward a copy of the invoice via USPS today.

Regards,

Nathan A. Poore, Town Manager
Town of Falmouth
271 Falmouth Road
Falmouth Maine 04105

Telephone: 207-781-5253 ext 5314
Email: npoore@town.falmouth.me.us

Ex. 11

Town of Falmouth, Maine

July 28, 2011 ✓

Mr. Michael Doyle
3 Shady Lane
Falmouth, ME 04105

Dear Mr. Doyle:

In response to your FOAA request dated July 24, 2011 asking to inspect documents authorizing the mutual aid to the US Coast Guard in Harpswell, Maine, we will make available, copies of the Memorandum of Agreement between the United States Coast Guard and the Town of Falmouth. This document will be available for you at the Falmouth Police Station on Friday, July 29. The cost owed to the Town of Falmouth to prepare these documents is $2.50 (0.25 hours). An invoice is attached and payment should be directed to the Town Manager. I have determined that this request is a continuing request for public information related to the operations of the Town of Falmouth Harbor operations, therefore, the first free hour of staff time has already been accounted for in previous FOAA requests made by you.

You may take the documents off site and inspect them at a location convenient for you. We require you to return the documents to the Falmouth Police Station by August 29, 2011 or make payment to the Town of Falmouth for the cost of copying the documents. The charge to keep the documents beyond August 29, 2011 will be $0.10/copy.

Regards,

Nathan Poore
Town Manager

Ex 12

Specialized Purchasing Consultants, Corp.

Serving Maine, New Hampshire & Vermont since 1988

Skip Tilton
President

Corporate Office:
PO Box 190
Gorham, NH 03581
(800) 750-1538
(866) 281-7596 Fax

Corporate Email Address:
stilton@spccopypro.com

VISIT US ON THE WEB:
www.spccopypro.com

CONTRACT

THIS CONTRACT (the "Contract") is made this 31 day of July, 2007 by and between Specialized Purchasing Consultants ("Contractor" or "SPC") and «Town of Falmouth» ("Client"). For and in consideration of the mutual covenants and performance set forth herein, Contractor and Client agree as follows

1. Term. a. The term of this Contract is five years from the date hereof, unless earlier terminated or extended by written agreement of the parties; terminated pursuant to sub-paragraph b; or extended pursuant to paragraph 7.

   b. The Client may terminate this Contract at any time for any reason, after one year following an extension of this Contract to effect an upgrading of equipment covered by this Contract, provided that Client provides Contractor with 30 days written notice and further provided that, if at the time of termination there are bids from vendors to effect an upgrading of equipment covered by this Contract that have been presented by Contractor to Client and Client enters into a contract with any other person to provide the same or similar services covered by the bids any time within one year of the termination, then Client shall be liable to the Contractor for the fees which Contractor would have been due had Client accepted any of the bids during the term of this Contract.

2. Fees.
   The fees payable by Client to Contractor under this Contract are: (a) eleven percent (11%) of the Total Cost Per Copy of all copies scheduled to be made on all service and supply agreements for reprographic equipment (Photocopiers, High-Speed Duplicators, Network Printers, or other equipment) leased, purchased, lease-purchased, financed, refinanced, or refunded by Client as a result of services performed by Contractor under this Contract (In other words, if the Total Cost Per Copy for services and supplies for equipment leased, purchased, lease-purchased, financed, refinanced, or refunded as a result of services performed by Contractor under this Contract is $.0065 per scheduled copy, the Contractor's fee is $.000715 per such copy); and (b) eleven percent (11%) of the principal amount (cost) of all such reprographic equipment. (In other words, if the total principal amount of reprographic equipment leased, purchased, lease-purchased, financed, refinanced, or refunded by Client as a result of services performed by Contractor under this Contract is $3,000, the Contractor's fee is $330). The "Total Cost Per Copy" for equipment covered by this Contract is defined as the total cost per copy charged for service and supply contracts between Client and servicing vendors for equipment acquired by Client as a result of services performed by Contractor under this Contract. Excluded from such service and supply contracts are the cost of paper described in subparagraph (m) below and the cost of staples. No fees are payable by Client to Contractor hereunder, other than the $400 retainer described in Paragraph 8 hereof, unless Client accepts a bid for reprographic services arranged by Contractor pursuant to this Contract, or unless Client breaches this Contract under Paragraph 4 hereof.

SPC guarantees that Client's initial new total cost of obtaining and operating reprographic equipment pursuant to this Contract will be less than Client's current total cost of obtaining and operating Client's current reprographic equipment, even after SPC's fees have been included in this new total cost. If SPC fails to achieve this, SPC will terminate this Contract, refund SPC's retainer received from Client, and provide an additional $500.00 check to Client to cover any loss of time on Client's part.

3. Services Performed By Contractor.
   a. Initial Needs and Capabilities Analysis. Contractor will provide to Client a written Initial Needs and Capabilities Analysis of Client's existing reprographic system including Client's current photocopiers, offset presses, high-speed duplicators, and outside printing requirements. Based on this Initial Needs and Capabilities Analysis, Contractor will design, with Client's approval, an overall reprographic system for Client, with the goal of increasing Client's reprographic capabilities, while reducing Client's reprographic costs. Specifically, throughout the term of this Contract, Contractor will provide Client with initial long-term service and supply contract savings and capital savings of up to two-thirds of retail. Annually thereafter, Contractor will provide Client with guaranteed ceilings on any annual price increases for service and supply contracts covering equipment obtained under this Contract of 5% or the annual increase in the Consumer Price Index (CPI-U), whichever is less.
   b. Annual Use Report. On an annual basis hereafter, Contractor will provide to Client a written Annual Use Report analyzing the use of reprographic equipment and services and supplies by Client, with recommendations that identify for Client how to use such equipment, services and supplies, and other items in the most efficient and effective manner possible.
   c. Two-Year Needs and Capabilities Analysis. Every two years hereafter, Contractor will perform a Needs and Capabilities Analysis for Client covering the same matters contained in the Initial Needs and Capabilities Analysis. Client must provide written authorization to Contractor to perform the Two-Year Needs and Capabilities Analysis.
   d. Bid Specifications. Based on the results of the Initial Needs and Capabilities Analysis, Annual Use Report, and Two-Year Needs and Capabilities Analysis, as applicable, Contractor will prepare and distribute bid specifications to qualified contractors to obtain for Client reprographic equipment and services desired by Client.
   e. Selection of Vendors. Contractor will analyze all bids received by Client for reprographic equipment and services pursuant to subparagraph (d) above and make recommendations to Client regarding how Client can obtain the most effective and lowest-cost reprographic equipment and services.

Ex. 13

Specialized Purchasing Consultants, Corp.
Serving Maine, New Hampshire & Vermont since 1988

Skip Tilton
President

Corporate Office:
PO Box 190
Gorham, NH 03581
(800) 750-1538
(866) 281-7596 Fax

Corporate Email Address:
stilton@spccopypro.com

VISIT US ON THE WEB:
www.spccopypro.com

f. **Negotiation With Vendors**. After bids described in subparagraph (e) above are received, if further negotiation with vendors on behalf of Client is desired by Client, Contractor will undertake such negotiations with vendors at Client's direction so that contracts in compliance with Client's requirements can be executed.

g. **Financing**. Contractor will arrange tax-exempt lease-purchase financing or other appropriate financing for the reprographic equipment selected by Client. Contractor shall submit all transactions to Contractor's bond counsel listed in the Bond Buyer's Municipal Marketplace ("Bond Counsel"), at no cost to Client, for the preparation of all documents, for legal compliance review, and for the provision of any legal validity and tax opinions necessary to complete and finance such transactions. In addition, Client may arrange, at Client's sole expense, for its own counsel ("Issuer Counsel") to participate in the transaction.

h. **Assumption of Existing Contracts**. Contractor will assume all financial obligations and hold Client harmless from such obligations under all existing contracts, leases, or financing agreements to which Client is a party and relating to all equipment being leased, purchased, lease-purchased, financed, refinanced, or refunded pursuant to this Contract. In order to facilitate the payment by Contractor of all obligations of Client under such contracts, leases, or financing arrangements, Client hereby authorizes Contractor, to change the billing addresses on such contracts, leases, or financing arrangements to the business address of Contractor. Client also agrees to hold Contractor harmless for, and to pay, any Federal, State, or local taxes lawfully assessed and due, now or hereafter, upon all equipment covered by such contracts, leases, or financing agreements being repaid by Contractor pursuant to this Contract. Any such equipment being leased, purchased, lease-purchased, financed, refinanced, or refunded pursuant to this Contract will be identified in a Five Year Equipment Schedule prepared by Contractor pursuant to subparagraph (l) below.

i. **Cancellation and Renegotiation of Existing Service Contracts and Establishing New Service Contracts.** Contractor, at Client's direction, will cause existing service and supply contracts for reprographic equipment used by Client to be cancelled, and will negotiate new service and supply contracts at new terms acceptable to Client, including full replacement warranties for all equipment identified by Client. Contractor's fee for such a service shall be eleven percent (11%) of the Total Cost per Copy of all copies scheduled to be made under such service and supply contracts, as described in paragraph 2(a) above.

j. **Annual Monitoring of Service Contracts**. During the term of this Contract, Contractor will monitor annually all reprographic service and supply contracts entered into by Client to verify correct billing and to identify over-usage and under-usage of particular equipment.

k. **Installation of Equipment**. After contracts have been awarded to vendors for reprographic equipment pursuant to this Contract, Contractor will communicate with such vendors to assure proper installation of equipment pursuant to the terms of any applicable lease-purchase or other financing agreement and to assure proper commencement of service and supply contracts.

l. **Provision of Equipment Replacement Schedule**. Contractor will provide to Client, and will update as necessary, a Reprographic Equipment Replacement Schedule for all equipment to be replaced, reconditioned, upgraded, or otherwise covered by this Contract.

m. **Provision of Annual Paper Bid**. . Contractor will submit an annual paper bid to Client designed to provide Client with the highest quality paper consistent with Client's needs, at the lowest possible cost. Contractor's fee for such a paper bid shall be contained within the price quoted. Client is under no obligation to accept any such bids for paper. If Client chooses not to accept any such bids for paper for any reason, then Client is under no obligation to pay Contractor for any fees associated with providing such bids for paper.

n. **Provision of Key Operator Instruction Forms**. Contractor will provide Client with a Key Operator Instruction Form for posting adjacent to each copying machine of Client describing proper use, key operator name, machine serial number, life expectancy of such machine, location and telephone number of vendor's service manager, and warranties for the machine.

o. **Annual Equipment Performance Survey**. Contractor will submit an annual copying machine performance survey to the key operator of each machine to assure continuing reliability of each machine and to identify poorly operating equipment. Based on this survey, and based on ongoing input from Client, Contractor will assure that appropriate servicing vendors repair or replace any equipment covered by this Contract to Client's satisfaction.

4. **Exclusive Agency for Bidding and Selection of Vendors and Equipment**. All bidding, analysis, and selection of vendors and equipment by Client pursuant to this Contract shall be effected exclusively through Contractor. If, during the term of this Contract, Client executes a contract separate from Contractor with any vendor to provide services or equipment such as that covered by this Contract, then Client shall be in breach of this Contract and shall pay to Contractor all fees due and unpaid by Client to Contractor under this Contract, including all fees which would have been payable by Client to Contractor under this Contract had Client accepted an actual bid meeting the terms of this Contract and arranged by Contractor for Client under this Contract, plus all costs including attorney's fees incurred by Contractor to collect such fees. If Client rejects all of the bids arranged by Contractor for Client pursuant to this Contract, then Contractor shall be allowed exclusively to re-bid for Client the services and equipment desired by Client according to Client's specifications.

5. **Warranties**. Throughout the term of this Contract, Contractor will attempt to obtain for Client from vendors five-to- ten-year average warranties on all new equipment obtained for Client under this Contract, five-year average warranties for all reconditioned equipment obtained for Client under this Contract, and three-to-five year average warranties for all existing equipment of Client left in place and monitored by Contractor under this Contract. If, for any reason, a vendor cannot or does not perform its obligations to Client under such a warranty given to Client by such a vendor, Contractor shall perform such obligations to Client.

Ex. 14

Specialized Purchasing Consultants, Corp.

Serving Maine, New Hampshire & Vermont since 1988

Skip Tilton
President

Corporate Office:
PO Box 190
Gorham, NH 03581
(800) 750-1538
(866) 281-7596 Fax

Corporate Email Address:
stilton@spccopypro.com

VISIT US ON THE WEB:
www.spccopypro.com

6. **Equipment Upgrades and Adjustment of SPC Fees.** If any equipment which is covered by this Contract is upgraded or replaced during the term of this Contract, then Total Cost Per Copy fees payable by Client to Contractor under paragraph 2(a) above shall be adjusted by the net increase or decrease in copy volume from the original copy volume negotiated by Contractor for Client pursuant to this Contract. (For example, three years after execution of this Contract, Contractor is asked to do an upgrade by Client on certain of Client's equipment. After the upgrade is approved by Client, total copy volume on Client's equipment is scheduled to be 2,000,000 copies per year for the remaining two years of this Contract instead of the 1,500,000 copies per year originally scheduled under this Contract. Under such circumstances, Contractor would be entitled to receive a fee under paragraph 2(a) above including the additional 500,000 copies per year scheduled under the upgrade for the remaining two years of the Contract).

7. **Extending Contract Term.** If, in carrying out the provisions of this Contract, Contractor, with Client's written approval, negotiates for Client an equipment or service and supply contract that extends beyond the original term of this Contract, then the term of this Contract shall be extended automatically to a date that coincides with the latest expiration date of any such equipment or service and supply contract, subject to the Client's right of termination in paragraph 1.

8. **Retainer.** Upon execution of this Contract, Client agrees to pay Contractor a retainer of **$400.00.** This amount shall be credited in its entirety, however, to any fee earned by Contractor on the selection of reprographic equipment or services by Client pursuant to this Contract.

9. **Economic Municipal Relief Fund.** Manufacturers of reprographic equipment sometimes give rebates to vendors for reprographic equipment sold or otherwise disposed of by such vendors, and such vendors sometimes forward a portion of such rebates to Contractor. It is the practice of Contractor to use any such rebates received by Contractor exclusively for the benefit of its clients by reducing the costs of leases, purchases, or lease-purchases of equipment to its clients, providing free equipment to its clients, or providing other services to its clients with no cost to such clients. Contractor has established an Economic Municipal Relief Fund Account to handle such expenditures for the benefit of its clients. During the 2004 – 2005 economic and municipal school year, approximately $125,000 in equipment or services was provided by Contractor to its clients from this fund.

No Conflicts-of-Interest by Contractor. Contractor warrants to Client that Contractor has no monetary or other self-interest in the selection of any vendor to provide reprographic equipment or services to Client pursuant to this Contract, and that the performance of Contractor's obligations pursuant to this Contract shall be solely in the interests of Client to provide Client with the best possible reprographic equipment and services at the lowest possible price.

CLIENT

Company	**Town of Falmouth**
Signature	**X**
Authorized by (please print)	**Nathan Poore**
Title	
Address 1	**271 Falmouth Road**
Address 2	
City, State, Zip	**Falmouth, Maine 04105**
Telephone Number	**207-781-5253**
Fax Number	**207-781-3640**
E-mail address	

CONTRACTOR (SPECIALIZED PURCHASING CONSULTANTS)

Signature	**X**
SPC Contact-	
SPC Corporate Signature	**Skip Tilton**

Ex. 15

FW: SPC contract

From: **Nathan Poore** (npoore@town.falmouth.me.us)
Sent: Tue 5/11/10 11:10 AM
To: 'Michael Doyle' (seller99@msn.com)
Cc: DAN O'SHEA (doshea@fps.k12.me.us); Randy Davis (rdavis@town.falmouth.me.us)
1 attachment
SPC - July 2007.pdf (180.1 KB)

Mr. Doyle,

I have attached a copy of the SPC contract. We do not have any additional recorded contract or bidding related documents. This completes our response to your FOAA request regarding printing, photocopying, etc related contracts and bidding documents.

Nathan A. Poore, Town Manager
Town of Falmouth
271 Falmouth Road
Falmouth Maine 04105

Telephone: 207-781-5253 ext 5314
Email: npoore@town.falmouth.me.us

HEATING OIL RATES

Month	Avery Oil	Webber Oil	Difference (-)	Gallons	Savings/ (More)
10-08	1.90	2.49	.59	12,281	$ 7,245
12-08	1.60	to	.99	12,505	12,380
01-09	1.38	10-09	1.11	16,400	18.204
02-09	1.39		1.10	16,079	17,686
03-09	1.20		1.29	31,022	40,018
04-09	1.26		1.35	12,559	16,955
05-09	1.14		1.35	2,992	4,039
06-09	1.14		.94	8,872	8,340
07-09	1.55		1.09	none	N/A
08-09	1.40		1.09	none	N/A
09-09	1.58		.91	none	N/A
10-09	1.73	1.93	.20 & .29	5,999	1,200
11-09	1.86	Lunt 2.02	N/A	none	N/A
12-09	1.93	"	-- & .09	16,464 &1046	94
01-10	2.09	"	(.16) & (.07)	25,440 & 544	4,070 & 38 = (4,108)

1. Net savings $126,161 less $4,108 over Webber cost = Net Overpayment $122,053
2. Gallons based on invoice date and rounded to nearest gallon
3. Rates supplied by Sally Avery sister of owner
4. **Avery rates net of .40 residential discount. Commercial discount 2.25 times greater ($274,619 total $90,041 in March)**
5. Rates rounded up to next cent ie. 1.599 is stated as 1.60 for both companies

Ex. 16

JANUARY Ex. 17

Bank of America

Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Statement Period
01/01/10 through 01/31/10
E00 P PA 0A 49
Enclosures 0
Account Number 0000 6600 2128

BD 02/05 0 0134 307 000 003402 #@02 SP 0.482

TOWN OF FALMOUTH
C/O PETER A LUND
271 FALMOUTH RD
FALMOUTH ME 04105-2005

Customer Service Information

www.bankofamerica.com

For additional information or service, you may call:
1.888.400.9009

Or you may write to:
Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Deposit Accounts

Public Funds Interest Checking

TOWN OF FALMOUTH

Your Account at a Glance

Account Number	0000 6600 2128	Statement Beginning Balance	$574,016.20
Statement Period	01/01/10 through 01/31/10	Amount of Deposits/Credits	$8,161,811.56
Number of Deposits/Credits	143	Amount of Withdrawals/Debits	$8,041,864.91
Number of Withdrawals/Debits	373	Statement Ending Balance	$693,962.85
Number of Days in Cycle	31	Average Ledger Balance	$565,923.33
		Service Charge	$3,676.31

Interest Information

Amount of Interest Paid	$0.00	Interest Paid Year-to-Date	$0.00
Annual Percentage Yield Earned This Statement Period	0.00%	Withholding Year-to-Date	$0.00

Ex. 18 HH

TOWN OF FALMOUTH

Deposit Accounts

Public Funds Interest Checking

TOWN OF FALMOUTH

Your Account at a Glance

Account Number	0000 6600 2128	Statement Beginning Balance	$693,962.85
Statement Period	02/01/10 through 02/28/10	Amount of Deposits/Credits	$3,491,460.87
Number of Deposits/Credits	126	Amount of Withdrawals/Debits	$4,052,559.51
Number of Withdrawals/Debits	372	Statement Ending Balance	$132,864.21
Number of Days in Cycle	28	Average Ledger Balance	($240,039.68)
		Service Charge	$1,694.49

Interest Information

Amount of Interest Paid	$0.00	Interest Paid Year-to-Date	$0.00
Annual Percentage Yield Earned This Statement Period	0.00%	Withholding Year-to-Date	$0.00

Deposits and Credits

Date Posted	Customer Reference	Amount ($)	Description	Bank Reference
02/01		3,586.11	New England Inte Des:Rapidrenew ID:05070 Indn:Falmouth Co ID:1010522581 Ccd	900629009207350
02/01		1,039.37	New England Inte Des:Rapidrenew ID:05070 Indn:Falmouth Co ID:1010522581 Ccd	900629005682605
02/01		954.95	New England Inte Des:Rapidrenew ID:05070 Indn:Falmouth Co ID:1010522581 Ccd	900629005682580
02/01		910.90	Deposit	813001170721416
02/01		301.60	Deposit	813001170721411
02/01		61.80	New England Inte Des:Boat ID:05070 Indn:Falmouth Co ID:2010522581 Ccd	900629009207364
02/02		331,891.29	Bofa-Trust 61-16-204-8503447 Trust Cr. Transfer	949002023101162
02/02		68,291.08	Deposit	813001170091715
02/02		3,006.93	New England Inte Des:Rapidrenew ID:05070 Indn:Falmouth Co ID:1010522581 Ccd	900633011609183
02/02		751.85	Deposit	813000170782627
02/02		685.99	Deposit	813000170782634
02/02		31.00	New England Inte Des:Boat ID:05070 Indn:Falmouth Co ID:2010522581 Ccd	900633011609206
02/03		59,885.51	Deposit	813000870625732
02/03		53,902.75	Bofa-Trust 61-16-204-8503447 Trust Cr. Transfer	949002033101576
02/03		2,157.85	Stateofmaine Cln Des:Payment ID:201001291324814 Indn:Falmouthme.Finance Co ID:5010532275 Ccd	900633012292887
02/03		856.16	New England Inte Des:Rapidrenew ID:05070 Indn:Falmouth Co ID:1010522581 Ccd	900633011609202
02/03		80.40	New England Inte Des:Boat ID:05070 Indn:Falmouth Co ID:2010522581 Ccd	900633011609208

MARCH Ex. 19 H

Bank of America

Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Statement Period
03/01/10 through 03/31/10
E00 P PA 0A 49
Enclosures 0
Account Number 0000 6600 2128

BD 04/07 0 0134 874 1 608 011390 #@02 MB 0.507

TOWN OF FALMOUTH
C/O PETER A LUND
271 FALMOUTH RD
FALMOUTH ME 04105-2005

Customer Service Information

www.bankofamerica.com

For additional information or service, you may call:
1.888.400.9009

Or you may write to:
Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Deposit Accounts

Public Funds Interest Checking

TOWN OF FALMOUTH

Your Account at a Glance

Account Number	0000 6600 2128	Statement Beginning Balance	$132,864.21
Statement Period	03/01/10 through 03/31/10	Amount of Deposits/Credits	$5,767,576.25
Number of Deposits/Credits	176	Amount of Withdrawals/Debits	$5,619,653.66
Number of Withdrawals/Debits	453	Statement Ending Balance	$280,786.80
Number of Days in Cycle	31	Average Ledger Balance	($225,612.77)
		Service Charge	$1,674.70

Interest Information

Amount of Interest Paid	$0.00	Interest Paid Year-to-Date	$0.00
Annual Percentage Yield Earned This Statement Period	0.00%	Withholding Year-to-Date	$0.00

APRIL Ex. 20

Bank of America

Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Statement Period
04/01/10 through 04/30/10
E00 P PA 0A 49
Enclosures 0
Account Number 0000 6600 2128

BD 05/05 0 0134 620 2 824 006181 #@02 MB 0.507

TOWN OF FALMOUTH
C/O PETER A LUND
271 FALMOUTH RD
FALMOUTH ME 04105-2005

Customer Service Information

www.bankofamerica.com

For additional information or service, you may call:
1.888.400.9009

Or you may write to:
Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Deposit Accounts

Public Funds Interest Checking

TOWN OF FALMOUTH

Your Account at a Glance

Account Number	0000 6600 2128	Statement Beginning Balance	$280,786.80
Statement Period	04/01/10 through 04/30/10	Amount of Deposits/Credits	$10,926,728.64
Number of Deposits/Credits	157	Amount of Withdrawals/Debits	$10,824,770.30
Number of Withdrawals/Debits	332	Statement Ending Balance	$382,745.14
Number of Days in Cycle	30	Average Ledger Balance	$564,432.69
		Service Charge	$2,099.53

Interest Information

Amount of Interest Paid	$0.00	Interest Paid Year-to-Date	$0.00
Annual Percentage Yield Earned This Statement Period	0.00%	Withholding Year-to-Date	$0.00

MAY

Ex. 21

HH

Bank of America

Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

BD 06/02 0 0134 802 2 692 027227 #@02 AT 0.482

TOWN OF FALMOUTH
C/O PETER A LUND
271 FALMOUTH RD
FALMOUTH ME 04105-2005

Customer Service Information

www.bankofamerica.com

For additional information or service, you may call:
1.888.400.9009

Or you may write to:
Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Deposit Accounts

Public Funds Interest Checking

TOWN OF FALMOUTH

Your Account at a Glance

Account Number	0000 6600 2128	Statement Beginning Balance	$382,745.14
Statement Period	05/01/10 through 05/31/10	Amount of Deposits/Credits	$10,621,883.00
Number of Deposits/Credits	178	Amount of Withdrawals/Debits	$10,586,723.23
Number of Withdrawals/Debits	422	Statement Ending Balance	$417,904.91
Number of Days in Cycle	31	Average Ledger Balance	($697,132.82)
		Service Charge	($2,274.38)

Interest Information

Amount of Interest Paid	$0.00	Interest Paid Year-to-Date	$0.00
Annual Percentage Yield Earned This Statement Period	0.00%	Withholding Year-to-Date	$0.00

Ex. 22 HH

TOWN OF FALMOUTH

Deposit Accounts

Public Funds Interest Checking

TOWN OF FALMOUTH

Your Account at a Glance

Account Number	0000 6600 2128	Statement Beginning Balance	$417,904.91
Statement Period	06/01/10 through 06/30/10	Amount of Deposits/Credits	$8,264,737.74
Number of Deposits/Credits	180	Amount of Withdrawals/Debits	$8,406,839.41
Number of Withdrawals/Debits	471	Statement Ending Balance	$275,803.24
Number of Days in Cycle	30	Average Ledger Balance	($568,521.74)
		Service Charge	$2,242.84

Interest Information

Amount of Interest Paid	$0.00	Interest Paid Year-to-Date	$0.00
Annual Percentage Yield Earned This Statement Period	0.00%	Withholding Year-to-Date	$0.00

Deposits and Credits

Date Posted	Customer Reference	Amount ($)	Description	Bank Reference
06/01		63,153.00	Stateofmaine Cln Des:Payment ID:201005261504894 Indn:Falmouthme.Finance Co ID:5010532275 Ccd	900648012378362
06/01		6,823.44	New England Inte Des:Rapidrenew ID:05070 Indn:Falmouth Co ID:1010522581 Ccd	900652010869522
06/01		2,534.27	New England Inte Des:Rapidrenew ID:05070 Indn:Falmouth Co ID:1010522581 Ccd	900652010869553
06/01		2,458.98	New England Inte Des:Rapidrenew ID:05070 Indn:Falmouth Co ID:1010522581 Ccd	900652010869524
06/01		2,022.61	New England Inte Des:Rapidrenew ID:05070 Indn:Falmouth Co ID:1010522581 Ccd	900648009807525
06/01		813.35	Deposit	813000770088088
06/01		727.78	Stateofmaine Cln Des:Payment ID:201005261503613 Indn:Falmouthme.Finance Co ID:5010532275 Ccd	900648012377890
06/01		544.50	Deposit	813000770088076
06/01		102.39	Merche-Solutions Des:Merch Dep ID:000941000082526 Indn:Town Of Falmouth, Main Co ID:1943346153 Ccd	900648013630386
06/01		53.00	New England Inte Des:Boat ID:05070 Indn:Falmouth Co ID:2010522581 Ccd	900652010869549
06/01		38.00	New England Inte Des:Boat ID:05070 Indn:Falmouth Co ID:2010522581 Ccd	900652010869586
06/01		34.40	New England Inte Des:Boat ID:05070 Indn:Falmouth Co ID:2010522581 Ccd	900652010869550
06/02		38,855.87	Deposit	813000170576899
06/02		14,786.89	BofA-Trust 61-16-204-8503447 Trust Cr. Transfer	949006023101500
06/02		314.51	New England Inte Des:Rapidrenew ID:05070 Indn:Falmouth Co ID:1010522581 Ccd	900652010869576

JULY

Ex. 23 IH

Bank of America

Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Statement Period
07/01/10 through 07/31/10
E00 P PA 0A 49
Enclosures 0
Account Number 0000 6600 2128

BD 08/09 0 0134 997 4 071 010483 #002 AV 0.460

TOWN OF FALMOUTH
C/O PETER A LUND
271 FALMOUTH RD
FALMOUTH ME 04105-2005

Customer Service Information

www.bankofamerica.com

For additional information or service, you may call:
1.888.400.9009

Or you may write to:
Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Effective 8/7/10, Overdraft Protection transfers from a savings account will generally be made for the amount required to cover the overdraft & the transfer fee. Overdraft protection can be a great way to help avoid overdrafts on your checking account. If you haven't already signed up, call the number on your statement or visit your nearby banking center.

Deposit Accounts

Public Funds Interest Checking

TOWN OF FALMOUTH

Your Account at a Glance

Account Number	0000 6600 2128	Statement Beginning Balance	$275,803.24
Statement Period	07/01/10 through 07/31/10	Amount of Deposits/Credits	$3,474,540.27
Number of Deposits/Credits	119	Amount of Withdrawals/Debits	$3,620,069.82
Number of Withdrawals/Debits	381	Statement Ending Balance	$130,273.69
Number of Days in Cycle	31	Average Ledger Balance	$246,378.37
		Service Charge	$1,808.81

AUGUST

Ex. 24 H

Bank of America

Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Statement Period
08/01/10 through 08/31/10
E00 P PA 0A 49
Enclosures 0
Account Number 0000 6600 2128

BD 09/08 0 0134 530 755 023196 #@02 AV 0.460

TOWN OF FALMOUTH
C/O PETER A LUND
271 FALMOUTH RD
FALMOUTH ME 04105-2005

Customer Service Information

www.bankofamerica.com

For additional information or service, you may call:
1.888.400.9009

Or you may write to:
Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Deposit Accounts

Public Funds Interest Checking

TOWN OF FALMOUTH

Your Account at a Glance

Account Number	0000 6600 2128	Statement Beginning Balance	$130,273.69
Statement Period	08/01/10 through 08/31/10	Amount of Deposits/Credits	$5,488,357.42
Number of Deposits/Credits	113	Amount of Withdrawals/Debits	$5,633,576.43
Number of Withdrawals/Debits	515	Statement Ending Balance	$14,945.32-
Number of Days in Cycle	31	Average Ledger Balance	($201,286.77)
		Service Charge	$1,619.54

Interest Information

Amount of Interest Paid	$0.00	Interest Paid Year-to-Date	$0.00
Annual Percentage Yield Earned This Statement Period	0.00%	Withholding Year-to-Date	$0.00

SEPTEMBER Ex. 25

Bank of America

Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Statement Period
09/01/10 through 09/30/10
E00 P PA 0A 49
Enclosures 0
Account Number 0000 6600 2128

BD 10/07 0 0134 224 3 464 019935 #@02 AT 0.482

TOWN OF FALMOUTH
C/O PETER A LUND
271 FALMOUTH RD
FALMOUTH ME 04105-2005

Customer Service Information

www.bankofamerica.com

For additional information or service, you may call:
1.888.400.9009

Or you may write to:
Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Deposit Accounts

Public Funds Interest Checking

TOWN OF FALMOUTH

Your Account at a Glance

Account Number	0000 6600 2128	Statement Beginning Balance	$14,945.32-
Statement Period	09/01/10 through 09/30/10	Amount of Deposits/Credits	$6,557,053.99
Number of Deposits/Credits	147	Amount of Withdrawals/Debits	$5,653,492.52
Number of Withdrawals/Debits	344	Statement Ending Balance	$888,616.15
Number of Days in Cycle	30	Average Ledger Balance	($424,088.30)
		Service Charge	($2,906.98)

Interest Information

Amount of Interest Paid	$0.00	Interest Paid Year-to-Date	$0.00
Annual Percentage Yield Earned This Statement Period	0.00%	Withholding Year-to-Date	$0.00

OCTOBER Ex. 26

Bank of America

Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Statement Period
10/01/10 through 10/31/10
E00 P PA 0A 49
Enclosures 0
Account Number 0000 6600 2128

BD 11/03 0 0134 542 522 020505 #@02 AT 0.482

TOWN OF FALMOUTH
C/O PETER A LUND
271 FALMOUTH RD
FALMOUTH ME 04105-2005

Customer Service Information

www.bankofamerica.com

For additional information or service, you may call:
1.888.400.9009

Or you may write to:
Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Deposit Accounts

Public Funds Interest Checking

TOWN OF FALMOUTH

Your Account at a Glance

Account Number	0000 6600 2128	Statement Beginning Balance	$888,616.15
Statement Period	10/01/10 through 10/31/10	Amount of Deposits/Credits	$16,483,341.04
Number of Deposits/Credits	142	Amount of Withdrawals/Debits	$14,860,890.50
Number of Withdrawals/Debits	393	Statement Ending Balance	$2,511,066.69
Number of Days in Cycle	31	Average Ledger Balance	($911,210.43)
		Service Charge	($1,722.05)

Interest Information

Amount of Interest Paid	$0.00	Interest Paid Year-to-Date	$0.00
Annual Percentage Yield Earned This Statement Period	0.00%	Withholding Year-to-Date	$0.00

NOVEMBER Ex. 27 H

Bank of America

Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Statement Period
11/01/10 through 11/30/10
E00 P PA 0A 49
Enclosures 0
Account Number 0000 6600 2128

BD 12/07 0 0134 509 559 004622 #@02 AT 0.482

TOWN OF FALMOUTH
C/O PETER A LUND
271 FALMOUTH RD
FALMOUTH ME 04105-2005

Customer Service Information

www.bankofamerica.com

For additional information or service, you may call:
1.888.400.9009

Or you may write to:
Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Deposit Accounts

Public Funds Interest Checking

TOWN OF FALMOUTH

Your Account at a Glance

Account Number	0000 6600 2128	Statement Beginning Balance	$2,511,066.69
Statement Period	11/01/10 through 11/30/10	Amount of Deposits/Credits	$11,094,983.13
Number of Deposits/Credits	148	Amount of Withdrawals/Debits	$13,367,159.24
Number of Withdrawals/Debits	367	Statement Ending Balance	$238,890.58
Number of Days in Cycle	30	Average Ledger Balance	($1,046,340.62)
		Service Charge	$2,001.18

Interest Information

Amount of Interest Paid	$0.00	Interest Paid Year-to-Date	$0.00
Annual Percentage Yield Earned This Statement Period	0.00%	Withholding Year-to-Date	$0.00

DECEMBER Ex 28

Bank of America

Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Statement Period
12/01/10 through 12/31/10
E00 P PA 0A 49
Enclosures 0
Account Number 0000 6600 2128

BD 01/07 0 0134 372 446 002607 #@02 AT 0.482

TOWN OF FALMOUTH
C/O PETER A LUND
271 FALMOUTH RD
FALMOUTH ME 04105-2005

Town Warrant Act.

Customer Service Information

www.bankofamerica.com

For additional information or service, you may call:
1.888.400.9009

Or you may write to:
Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Deposit Accounts

Public Funds Interest Checking

TOWN OF FALMOUTH

Your Account at a Glance

Account Number	0000 6600 2128	Statement Beginning Balance	$238,890.58
Statement Period	12/01/10 through 12/31/10	Amount of Deposits/Credits	$6,806,514.40
Number of Deposits/Credits	157	Amount of Withdrawals/Debits	$6,929,543.61
Number of Withdrawals/Debits	454	Statement Ending Balance	$115,861.37
Number of Days in Cycle	31	Average Ledger Balance	($406,013.88)
		Service Charge	($2,787.92)

Interest Information

Amount of Interest Paid	$0.00	Interest Paid Year-to-Date	$0.00
Annual Percentage Yield Earned This Statement Period	0.00%	Withholding Year-to-Date	$0.00

Ex. 29

FW: THANK YOU FOR THE BILLS

From: **Michael Doyle** (seller99@msn.com)
Sent: Fri 4/09/10 8:01 AM
To: NATHAN POORE (npoore@town.falmouth.me.us); DAN O'SHEA (doshea@fps.k12.me.us)
Attachments:
image001.png (34.0 KB)

Some interesting observations from the state manager of Glacial. Using the school at 153,333 kwh/month average we can multiply the $64,202 by 1.533 to get $98,422 savings.
Your thoughts?

Michael Doyle
766.6644

From: Mike.White@glacialenergy.com
To: Bruce.Shoebottom@glacialenergy.com
CC: seller99@msn.com; doshea@fps.k12.me.us
Date: Fri, 9 Apr 2010 04:03:29 -0700
Subject: RE: THANK YOU FOR THE BILLS

Please review the Maine standard offer average .06992 MPO has not done a good job for this customer! and continues to extract critical budget dollars from their customers.

http://www.maine.gov/mpuc/electricity/standard_offer_rates/current_sorates_cmp_med.shtml

This is a great example of contracts gone bad. The best they can do is extend it and hope the extended average looks better over a greater period of time. In reality they should give back the excess profit from the first BAD contract and start fresh.

Based on the last 18 months historical average and the *stability* in the market 0.0791 is still too high!

. "MPO has negotiated a rate this Spring that would extend our current contract out an additional 36 months beyond Dec. 2011 at .0791/kwh.

in for electricity rates (December 2008 to December 2011) through Maine Power Options (MPO), a buying cooperative of hospitals, towns, schools, and higher education facilities. We are paying .108/kwh for electricity"

Ex. 30

Based on a 100,000 KWH use per month the last contract with MPO has cost the town an excess of $64,202 and climbing!!! This is just with the Standard offer service from the utility as a guide line.

Glacial Energy has outperformed the standard offer and continues to do so with market indexed pricing.

Daily LMP/ISO average (price raw energy cost) +ISO ancillary fees (passed through to all suppliers at same rate) + GL Admin fee= Customer Cost

Without the need of bad contracts!!!!

Ex. 31

	Last contract has cost the town		64,202		
Monthly KWH	100,000				
			Contract		Loss
Falmouth Dec 08 to Dec 10	Standard Offer	SO Cost	MPO	Contract Cost	
Dec-08			0.108000		
Jan-09	0.135996	$ 13,598.60	0.108000	$ 10,800.00	$ 2,798.60
February	$0.137606	$ 13,760.60	0.108000	$ 10,800.00	$ 2,960.60
March	$0.069374	$ 6,937.40	0.108000	$ 10,800.00	$ (3,862.60)
April	$0.066272	$ 6,627.20	0.108000	$ 10,800.00	$ (4,172.80)
May	$0.065548	$ 6,554.80	0.108000	$ 10,800.00	$ (4,245.20)
June	$0.068272	$ 6,827.20	0.108000	$ 10,800.00	$ (3,972.80)
July	$0.072956	$ 7,295.60	0.108000	$ 10,800.00	$ (3,504.40)
August	$0.074444	$ 7,444.40	0.108000	$ 10,800.00	$ (3,355.60)
September	$0.054236	$ 5,423.60	0.108000	$ 10,800.00	$ (5,376.40)
October	$0.058404	$ 5,840.40	0.108000	$ 10,800.00	$ (4,959.60)
November	$0.062634	$ 6,263.40	0.108000	$ 10,800.00	$ (4,536.60)
December	$0.071644	$ 7,164.40	0.108000	$ 10,800.00	$ (3,635.60)
Jan-10	$0.080454	$ 8,045.40	0.108000	$ 10,800.00	$ (2,754.60)
February	$0.081924	$ 8,192.40	0.108000	$ 10,800.00	$ (2,607.60)
March	$0.070030	$ 7,003.00	0.108000	$ 10,800.00	$ (3,797.00)
April	$0.068530	$ 6,853.00	0.108000	$ 10,800.00	$ (3,947.00)
May	$0.066530	$ 6,653.00	0.108000	$ 10,800.00	$ (4,147.00)
June	$0.067030	$ 6,703.00	0.108000	$ 10,800.00	$ (4,097.00)
July	$0.072030	$ 7,203.00	0.108000	$ 10,800.00	$ (3,597.00)
August	$0.074030	$ 7,403.00	0.108000	$ 10,800.00	$ (3,397.00)
September					
October					
November					
December					
Jan-10					
Feb-10					
Mar-10					
Apr-10					
May-10					
Jun-10					
Jul-10					
Aug-10					

CMP Historic Standard Offer Prices: Medium Commercial Class

Docket No.	Period	Price ($/kWh)
2010-20	Mar-10	$0.07003
	Apr-10	$0.06853
	May-10	$0.06653
	Jun-10	$0.06703

Ex. 32

	Jul-10	$0.07203
	Aug-10	$0.07403
	Average	**$0.06992**
2009-171	Feb-10	$0.081924
	Jan-10	$0.080454
	Dec-09	$0.071644
	Nov-09	$0.062634
	Oct-09	$0.058404
	Sep-09	$0.054236
	Average	**$0.067632**
2009-37	Aug-09	$0.074444
Suppliers: Dominion (80%), Integrys (20%)	Jul-09	$0.072956
	Jun-09	$0.068272
	May-09	$0.065548
	Apr-09	$0.066272
	Mar-09	$0.069374
	Average	**$0.069826**

From: Bruce Shoebottom
Sent: Wednesday, April 07, 2010 8:24 PM
To: Mike White
Subject: FW: THANK YOU FOR THE BILLS

Mike

Take a look and let me know your thoughts

Thanks

shoe

Ex. 33

BUSINESS EQUIPMENT UNLIMITED

A Global Imaging Systems Company

275 Read Street
Portland, ME 04104

Remit To:
10 Capitol Street
Nashua, NH 03063-1007
Phone (207) 878-8500
Fax (207) 878-7715

LOCATION: FALMOUTH SCHOOL DEPT
51 WOODVILLE ROAD
FALMOUTH ME
04105

INVOICE NO. 706708
INVOICE DATE 10/28/10

PO # 201565

TERMS: Net Upon Receipt

CUSTOMER NO	MODEL AND SERIAL NO	LEASE ID	REPRESENTATIVE	PROG. TYPE
201565	ZSYST 201565PRINT	MA		H2R DI

DATE	PREVIOUS METER	DATE	CURRENT METER
INVOICE PERIOD 07/15/10		TO 10/15/10	

QUANTITY	CODE NO.	DESCRIPTION	AMOUNT
		DLJ40 USEB024822, ID# 2P871	
		LIBRARY ADMIN.	
		BLACK METER	
		Meters: Previous 102760 Current 102801	
		DLJ40 USEK077840, ID# 2P845	
		HEALTH/UA	
		BLACK METER	
		Meters: Previous 63133 Current 64776	
		DLJ40 USEK077844, ID# 2P881	
		OFFICE	
		BLACK METER	
		Meters: Previous 70893 Current 71020	
		EK503 APE6Y08843, ID# 2R758	
		COMPUTER LAB	
		BLACK METER	
		Meters: Previous 1752 07/15/10 Current 1967 10/15/10	
		COLOR METER	
		Meters: Previous 14416 07/15/10 Current 15296 10/15/10	

1342.90
TOTAL DUE
1342.90

COMMENTS: GRP USAGE QTRLY SVC CONTRACT
W/SUPPLIES (BLK/CLR PRINTER)
EXCESS AT .01570

BILL TO: FALMOUTH SCHOOL DEPT
51 WOODVILLE ROAD
FALMOUTH ME 04105

PLEASE PAY FROM THIS INVOICE
OVERDUE ACCOUNTS WILL BE CHARGED A LATE PAYMENT FEE OF 1.5% PER MONTH OR TO THE EXTENT ALLOWED BY LAW

Falmouth's tab to save on supplies: $16,400

A consultant's work will net the school district at least $32,800, but a critic says the town should do the job itself.

By KELLEY BOUCHARD
Staff Writer

FALMOUTH — A purchasing consultant has saved Falmouth's school district more than $16,000 on office and classroom supplies this year, leading one resident to question whether similar savings can be found elsewhere without help from a paid expert.

The savings also have pushed the Greater Portland Council of Governments to reconsider its bidding practices on behalf of 85 municipalities and school districts across southern Maine.

James Caldwell, a Falmouth resident who works for an international expense-reduction firm, reviewed the Falmouth School District's annual spending on everything from index cards to glue sticks.

"Whatever we save on supplies we can put into educational programs," said Dan O'Shea, the district's finance and operations director.

Annual spending on supplies exceeded $111,000 under a cooperative purchasing agreement with W.B. Mason that was negotiated for the district as a member of the Greater Portland Council of Governments.

Caldwell sought bids from other major suppliers, including Staples and Office Depot, and ultimately negotiated better prices and payment incentives with W.B. Mason. That resulted in savings for the district of about $16,400 (17 percent) per year for three years, according to Caldwell's report, which he issued in May and the district released

Please see **FALMOUTH**, Page C2

Continued from **Page C1**

Monday.

Caldwell's fee is 50 percent of the district's annual savings over two years – $16,400, according to his contract. He negotiated potential additional savings of as much as $2,500 per year, which the district may receive through rebates and by making early payments.

In all, the district will save at least $32,800 on supplies over three years after paying Caldwell for his purchasing expertise.

O'Shea has been working for about two years with Randy Davis, the town's purchasing agent, to share and reduce costs. In addition, the school district has reduced costs for supplies and other discretionary spending by 22.4 percent in recent years, from $625,000 in 2005-06 to $485,000 in 2011-12, said Superintendent Barbara Powers.

O'Shea hired Caldwell in February at the recommendation of Beth Franklin, a former School Board member and chairwoman. Caldwell is a former manufacturing efficiency manager who owns a regional franchise of Expense Reduction Analysts, a network of cost-cutting experts in 30 countries, including 250 analysts in the United States.

The firm helps companies and government agencies reduce spending on everything from telecommunications to waste management. Its analysts charge nothing for their services if they cannot identify savings.

Caldwell said Monday that the Greater Portland Council of Governments had negotiated good prices with W.B Mason. In fact, he couldn't beat the cooperative's bulk price for copier paper, which is $2.59 per ream.

However, he did negotiate lower prices on many other supplies, with help from a network colleague in Indianapolis who's an office-supply purchasing expert. Staples beat W.B. Mason's bid by about $500 per year, but Caldwell recommended that Falmouth schools stick with W.B. Mason to maintain product quality and customer service.

The resulting savings didn't surprise Michael Doyle, a Falmouth resident who believes savings can be found in other areas, including the district's contracts for fuel, electricity, copiers and printers.

Doyle said town officials should always seek competitive bids for school and municipal contracts, rather than accept prices negotiated by cooperatives such as the Greater Portland Council of Governments and Maine Power Options.

"I think Dan O'Shea ought to be able to do the work we pay him for," Doyle said. "It's crazy to pay (a consultant) $8,000 to save $8,000 on office supplies. We're hiring people to come in and tell us what furniture to buy for the new elementary school and predict how many students will be at the high school. Why are we farming out everything?"

Caldwell said he has offered to do a similar review of the district's telecommunications, copier and printer contracts.

The district generally seeks competitive bids for major purchases, as required by written policy, but it also gets significant savings through cooperative bidding, O'Shea said. He hopes the district will be able to negotiate lower prices with W.B. Mason in the future without Caldwell's help.

Eben Marsh, cooperative services director for the Greater Portland Council of Governments, was surprised when he learned Monday that Caldwell had negotiated lower prices from W.B. Mason for Falmouth schools. He said the cooperative renegotiated a price agreement for office supplies last fall without seeking competitive bids.

"The difference has to be a matter of timing and the market," Marsh said. "You can be sure we'll be putting office supplies out to bid this time, probably by the end of the year."

Marsh said he plans to contact W.B. Mason today to find out why the Brockton, Mass., company underbid its own contract with a member of the council, which seeks competitive prices on 16 commodities each year, from road salt to street signs. Members buy $16 million worth of goods through cooperative agreements each year, Marsh said, saving about 10 percent or what they would spend individually.

"Our approach has worked for over 40 years," he said. "There's always someone coming up with a different way to do things, but 50 percent is quite a fee he's getting."

Staff Writer Kelley Bouchard can be contacted at 791-6328 or at: *kbouchard@pressherald.com*

Ex. 43

Portland Press Herald

Ex. 35

W.B. Mason Cost reduction

ERA Fees

ERA's fee is 50% of the *actual* savings for 24 months. The estimated fees are based upon the selection of Mason as the Falmouth preferred Office Consumables supplier and is payable as follows:

1. 10% deposit of the *projected* savings less rebates ($16,408 x 2 years = $32,816) upon acceptance of this successful Recommendation Report = $3,281.
2. *Waived in good faith by ERA* – the 10% deposit ($3,281) of the *projected* savings ($32,816) upon implementation of this successful Recommendation Report.
3. Balance over ~~24 monthly~~ 8 quarterly payments (Each payment is 50% of the actual savings minus 1/~~24~~8th of the acceptance and implementation deposit).
4. 50% of any credits, discounts, rebates or incentives. The ERA share for credits and incentives are invoiced after receipt by Falmouth.

ERA understands that separate fee invoices are required for the Town of Falmouth and the Falmouth School District. Subject to Falmouth approval, ERA recommends that the ERA savings fee be shared based upon the percent Baseline spend by each entity. This would result in the Town of Falmouth ERA invoice share equal to 36% and the Falmouth School District invoice share equal to 64%.

9. Disclaimer

All information presented in this Report is made in good faith on the basis of the information available to the authors at the time it was prepared and is subject to the influence of third parties, including the client, over which the authors have no control.

Expense Reduction Analysts® and its Associates, Employees, Subcontractors and Agents will not be liable — except as the law requires — for any loss or other consequences arising out of information contained in this Report.

10. Copyright

Ex. 36

PURCHASE ORDER

DIANE VIVEIROS

IMPORTANT
THIS ORDER NUMBER MUST APPEAR ON ALL INVOICES PACKING SLIPS. CORRESPONDENCE. SHIPPING PAPERS AND CONTAINERS

PURCHASE ORDER NO.	9931-05-CC
TAX EXEMPT NUMBER	01-0385086
PAGE	1 of 1

PH
005426 MUSCO LIGHTING
5142 WEST HURLEY POND ROAD
FARMINGDALE, NJ 07727

FX 732 751 9115

SHIP TO:
SUPERINTENDENT'S OFFICE
FALMOUTH SCHOOL DEPARTMENT
51 WOODVILLE ROAD
FALMOUTH, ME 04105

ORDER DATE	DATE REQUIRED	SHIP VIA	TERMS	REQUESTED BY	REQUISITION NO
06/24/04				D 'O"SHEA	000097

QUANTITY	CATALOG NO.	DESCRIPTION	UNIT PRICE	AMOUNT
1		STADIUM FIELD LIGHTING PER 6/23/04 QUOTE	53000.00	53000.00
			TOTAL	53000.00
10-035-6-00-100-890		CAPITAL IMPROVEMENT PROGRAM		53000.00

* Original purchase price

SEND BILL TO:

FALMOUTH SCHOOL DEPARTMENT
51 WOODVILLE ROAD
FALMOUTH, ME 04105

BY David A. O'Shea

Ex. 37

Poland Regional High School
1457 Maine Street
Poland, ME 04274
(207) 998-5400 FAX (207) 998-5060
www.rsu16.org

Cari Medd
Principal
carimedd@rsu16.org
Raymond Lafreniere
Dean of Students
rlafreniere@rsu16.org
Donald King
Director of Co-Curricular Activities
dking@rsu16.org

September 13, 2010

Dan O'Shea
Business Manager
Falmouth Public Schools
51 Woodville Road
Falmouth, ME 04105

Mr. O'Shea,

Poland Regional High School is pleased to offer the amount of $9000 to Falmouth Public Schools for the purchase of your used lighting system. I understand that we are purchasing the Musco Lighting System that your school purchased in 2005. The system includes four light poles with a total of 60 fixers, as well as 4 controller boxes.

Thank you,

Donald J. King, Co-Curricular Director

Ex. 38

The infill shall be installed in a layered process with sand on the bottom, homogeneous mix in the middle and a top coat of a larger particle size rubber: Fourteen Thousand One Hundred Eighty Six Dollars ($14,186.00)

Alternate No. 7: Provide generator as specified and indicated on drawings: Ninety Eight Thousand Eight Hundred Forty Six Dollars ($98,846.00)

Alternate No. 8: Provide sod in lieu of seed and mulch for athletic fields indicated on CS102: Twenty One Thousand Nine Hundred Eighty Eight Dollars ($21,988.00)

Alternate No. 9: Provide new athletic field lighting in lieu of reusing existing as specified and indicated on drawings: One Hundred Thirty Seven Thousand Seven Hundred Two Dollars ($137,702.00)

Article 3B. Unit Prices

The following are unit prices for materials and services added to or deducted from the Contract Sum by appropriate modification, if estimated quantities of Work required by the Contract Documents are increased or decreased:

Unit Price #1 - Trench Rock Excavation For Utilities	Add $ 0.01	Deduct $ 0.01
Unit Price #2 - Open Rock Removal	Add $ 0.01	Deduct $ 0.01

ARTICLE 4 CONTRACT BONDS

§ 4.1 Contract bonds are not required if the contract amount is less than $100,000 unless bonds are specifically mandated by the contract documents.

§ 4.2 On this project, the *Contractor* ***shall*** furnish the *Owner* the appropriate contract bonds in the amount of 100% of the contract amount.

ARTICLE 5 PROGRESS PAYMENTS

§ 5.1 The *Owner* shall make payments on account of the contract as provided therein as follows: Each month 95% of the value, based on contract prices of labor and materials incorporated in the work and of materials suitably stored at the site thereof up to the first day of that month, as certified by the Architect or Engineer.

§ 5.2 The *Owner* may cause the *Contractor* to be paid such portion of the amount retained hereunder as he deems advisable.

ARTICLE 6 FINAL PAYMENT

§ 6.1 Final payment shall be due 60 days after completion and acceptance of the work, provided the *Contractor* has submitted evidence satisfactory to the *Owner* that all payrolls, material bills and other indebtedness connected with the work has been paid.

Ex. 39

SECTION 2-E

BGS Project No.: 720

Harvey

STATE OF MAINE
CONSTRUCTION CONTRACT

Public School Project

THIS AGREEMENT made the 30 of October in the year 2009 by and between the State of Maine through the **Falmouth Public Schools** hereinafter called the *Owner*, and **Harvey Construction Corporation** hereinafter called the *Contractor*.

WITNESSETH, That the *Owner* and the *Contractor* for the consideration hereinafter named agree as follows:

ARTICLE 1 SCOPE OF WORK

§ 1.1 The *Contractor* shall furnish all of the materials and perform all the work described in the specifications and shown on the drawings for the project entitled: *Falmouth Elementary School*.

§ 1.2 The specifications and the drawings have been prepared by **Oak Point Associates**, acting as Designer and named in the documents as the Architect or Engineer. This firm has responsibilities for defining the scope of work governed by their agreement with the *Owner*, the specifications and the drawings, and the General Conditions and Special Provisions of the contract.

ARTICLE 2 COMPLETION DATE

§ 2.1 The work to be performed under this contract shall be completed on or before **July 31, 2011** . For each calendar day the project remains uncompleted **$3,900.00** shall be charged as liquidated damages.

ARTICLE 3 CONTRACT SUM

§ 3.1 The *Owner* shall pay the *Contractor* for the performance of the contract, subject to additions and deductions provided by approved Change Orders in current funds as follows:
Twenty Five Million One Hundred Seventy Seven Thousand, Seven Hundred Seventy Six dollars and *00*cents,
$25,177,776.00

Article 3A. Alternates

The contract sum includes the Base Bid of Twenty Four Million, Eight Hundred Ninety Eight Thousand Dollars ($24,898,000.00) and the following alternates:

Alternate No. 2 Provide trophy case, bench and soffit in vestibule A121 as indicated on drawings: Seven Thousand Fifty Four Dollars ($7,054.00.)

Alternate No. 5 In lieu of product specified in Division 32 Section "Synthetic Field Surfacing," provide Dura Spine Monofilament 2.5 inch fiber with a minimum of 9 lbs of infill synthetic field surfacing. The sand rubber infill shall have 55 percent sand and 45 percent rubber by weight.

Ex. 40

Town of Falmouth, Maine

September 8, 2011

Mr. Michael Doyle
3 Shady Lane
Falmouth, ME 04105

Mr. Doyle,

I am responding to your request for "*Provide ALL documents concerning the turf that was purchased for the the old football/soccer field.*"

We do not have any documents that fit these parameters. The field was installed over 20 years ago and we do not have invoices, etc. from that long ago. The disposal of the turf was part of the elementary school construction bid award, which does not contain any detail regarding this topic.

Regards,

Melissa Tryon

Melissa Tryon
Administrative Assistant

Ex 41

NET Sports Group Design-Build Projects:

Project	***Year***	***Project Value***
1) Boston University	2001	$1.4 Million
2) Husson College	2002	$1.3 Million
3) Endicott College	2003	$1.1 Million
4) Framingham State College	2003	$1.6 Million
5) Bentley College	2004	$2.2 Million
6) Colby College	2004	$2.6 Million
7) Berkshire School	2004	$1.5 Million
8) Brown University	2004	$1 Million
9) Xavarian Brothers HS	2005	$1.8 Million
10) Quinnipiac University	2005	$1.3 Million
11) Governor's Academy	2006	$1.2 Million
12) St. John's College HS	2006	$750,900
13) Cape Elizabeth, Maine *	2007	$600,000
14) Kingswood Oxford	2007	$1.3 Million
15) Taft School	2007	$1.2 Million
16) Hyde School, CT	2007	$1.6 Million
17) UMaine Football Stadium	2008	$800,000
18) UMaine Baseball Stadium	2008	$1.2 Million
19) UMaine Field Hockey Field	2008	$1 Million
20) Kents Hill Prep School	2008	$2.6 Million
21) Boston University #2	2008	$1.8 Million
22) Gould Academy	2008	$750,000
23) UMass Lowell Field #2	2009	$800,000
24) Western New England College *	2010	$600,000
25) Portsmouth, NH	2010	$1.2 Million

In summary, the NET team brings a blend of depth, experience and expertise, along with the best available products to any Project.

Sincerely,

Harlan L. Michaud
Regional Vice President

* The base layer is now $280,000
the field turf is $400,000

Northeast Turf, Hue Inc. 1122 Broadway, South Portland, ME 04106
Tel: (207) 767-4522 Fax: (207) 767-4551 www.FieldTurf Tarkett.com

Thank you for the opportunity to address you today about LD 1465 and the Freedom of Access Act generally.

No one disputes the rights of citizens to be able to transparently see what government is doing, to obtain documents and information used by their elected and appointed officials.

I'm an old school liberal who believes in honest, open government, and I got into government to do good work for communities, but I would never consider serving again in today's corrosive atmosphere.

I have been a town manager for more than twenty years, but recently resigned due to abuses of the existing version of the Freedom of Access Act, much less this LD 1465 version of FOAA.

I have now become a consultant, assisting local and county governments. As I speak to my colleagues around

the state, the current abusive use of FOAA is widespread, demoralizing, and forcing good managers and staff out of their professions.

There is no need for further "weaponizing" of the FOAA law by adding LD 1465. More on the flaws and further dangers of LD 1465 in a moment.

Sometimes, a single resident in my community used to submit 4 or 5 FOAA requests daily. This went on for months. These were unrelated, fishing expeditions.

She singularly came to believe that something bad was going on and decided to inundate our small staff with FOAA requests. Often, we'd have to contact an attorney to determine if the information was public or protected.

I reported to the Selectmen that she was on track to cost our town approximately $14,000 in staff time over the course of the year (not including the legal costs) on small,

non-cost inquiries. These are still very time-consuming to manage and react to.

Four months into this abuse, three of our very small staff were physically sick due to the stress this caused, and I was near a breakdown, before I quit. My wife was ready to leave me, the job had become so terrible because of this one person.

This person then recruited a couple more disaffected persons (including an ex-employee) and taught them how to inundate an office with FOAA requests, It seems as though the motive was just to watch us dance, just to punish us, and to stop all productivity.

Her FOAA requests were filled with snide insinuation, defaming, slanderous comments (thief, liar, bitch) – for which there is no protection for government employees.

The anti-government sentiment is strong, fanned by the likes of the Maine Policy Heritage Center whose opening commentary regarding "Open Government" goes thusly:

"It stands to reason, that in light of the current state of government with all of its scandal, corruption and illegal wasting of taxpayers' dollars that we should consider strengthening laws that protect the right of the people to know what their government is up to."

Essentially, the message is that no government employees can be trusted.

LD 1465 is deeply flawed in at least three ways.

The term "Immediate": You don't even see an emergency room doctor immediately, even if you're bleeding. Do you know why? They only have so many doctors, and they have to do triage and take the most serious patients first.

Why would a FOAA request be so important that government needs to stop what it's doing and respond immediately?

Have you ever been to a small town office with two ladies behind the counter, no town manager, 3 hard-working, part-time selectmen getting a $700 a year stipend for the thrill of serving their town?

Which lady will be the "public access" officer? Can she ever take a vacation or get sick? Does the other lady stop mid-way through a car registration to IMMEDIATELY RESPOND to a FOAA request?

Make NO MISTAKE, there are people out there that will show up with this law in hand and bully their way to the front of the line for a FOAA request – just to be rude and disruptive. It's a game or hobby to some folks.

These same people would also be able to get the data they seek in any format they want, including formats that can be readily changed from the original format, and then spread throughout town with entirely false information in the guise of an official document.

Have you ever tried to debunk intentional misinformation coursing through the community's gossip channels?

There is no accountability for these FOAA people. If they want an official government document, I for one, would very much expect that document to be unalterable. If they want to manipulate government data, re-enter it.

Have any of you considered the practical implications for a FOAA request in a small town. First, these FOAA requests are embedded in long, negative haranguing e-mails. They will consume 5 or 10 minutes badgering a government official before they ever get around to "the request."

Then someone has to log the nature, time and date of request. Then the request has to be communicated to the person that has or can find the document, or determine if there is no such document.

Then you need to search a computer or a file cabinet, and photocopy it, go back and log when the document was made available.

Then, if the person just wants to view the document calls have to be made, and a meeting time set for them to come in and view the document. Sometimes, these folks never even show up.

Two very angry, urgent FOAA requests are still sitting in an Outbox awaiting the requestor to return to my old town office some six months later.

What if the request may run into "costs." Staff has do a fair estimate of the research time and copying. And, what if the requestor believes the costs are trumped up? Do we

then have to spend time "proving" our estimate? Who is the final arbiter of what is the correct estimate of costs?

And who is working at a town office with official documents making $10.00 / hour? Is that realistic?

Sumner, Peru, Falmouth, Poland (show articles).

What this group might want to consider is a check and balance system on FOAA. In the U.K., they have a term called "vexation" that sets a limit on abusive uses of FOAA. I am leaving you copies of what vexation is and how it is applied.

You should focus on limiting the damage that can be done to government by FOAA abusers. LD 1465 is a harsh solution in search of a genuine problem. Examples like the Maine Turnpike Authority are few and far between in Maine.

From my laptop, at home, I can generate more FOAA requests than any local or state agency could manage, and if I want to haunt the hallways of the state offices demanding immediate documents, I could single-handedly bring an agency's productivity to a crawl while they deal with me – day in, day out.

Please be very, very thoughtful and careful about further weaponizing FOAA. It is already causing unnecessary disruption to government operations. And please do add the concept of vexation to your discussions.

Every system needs a check and balance; FOAA – even as it stands today - has virtually none.

Thank you.

Dana K. Lee

Lee Facilitation Services

207-754-2881

Freedom of Information Act

Information Commissioner's Office
Promoting public access to official information and protecting your personal information

Vexatious requests – a short guide

The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities. This is part of a series of guidance notes to help public authorities understand their obligations and to promote good practice.

This is a short guide for public authorities on how to identify a vexatious request. More detailed information is available in our Vexatious and repeated requests guidance.

Overview

- Section 14(1) states that public authorities do not have to comply with vexatious requests. There is no public interest test.

- To decide whether a request is vexatious, you need to look at its context and history. The key question is whether the request is likely to cause unjustified distress, disruption or irritation.

- In particular, you should consider the following:

  - Can the request fairly be seen as obsessive?
  - Is the request harassing the authority or causing distress to staff?
  - Would complying with the request impose a significant burden in terms of expense and distraction?
  - Is the request designed to cause disruption or annoyance?
  - Does the request lack any serious purpose or value?

- If a request is vexatious, you do not have to provide any information or confirm or deny whether you hold it. However, you will usually still need to issue a refusal notice (unless you have previously issued one and it would be unreasonable to issue another).

Relevant factors

Deciding whether a request is vexatious is a balancing exercise, taking into account all the circumstances of the case. The key question is whether the request is likely to cause unjustified distress, disruption or irritation.

To help you identify a vexatious request, we recommend that you consider the following questions, taking into account the context and history of the request:

- **Can the request fairly be seen as obsessive?** If so, this will be a strong indication that a request is vexatious. Relevant factors could include a

very high volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been considered (particularly if there has been an independent investigation). The wider context and history of a request will be important here, as it is unlikely that a one-off request could be obsessive.

- **Is the request harassing the authority or causing distress to staff?** The request must be likely to harass a reasonable person. It is the request itself that is relevant rather than any potential embarrassment resulting from disclosure. Relevant issues here could include a very high volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations and complaints.

- **Would complying with the request impose a significant burden in terms of expense and distraction?** You need to look at more than just the cost of compliance here. You should consider whether responding would divert or distract staff from their usual work. However, if resources are your only concern, you should instead consider section 12 (exemption where cost of compliance exceeds appropriate limit). For more information on using section 12, see our guidance on Using the Fees Regulations and Redacting and extracting information.

- **Is the request designed to cause disruption or annoyance?** As this factor relates to the actual intention of the requester, it can be difficult to prove. Cases where this is a strong argument will be rare. However, if a requester states that the request is actually meant to cause maximum inconvenience, the request will almost certainly be vexatious.

- **Does the request lack any serious purpose or value?** The FOIA is not generally concerned with why requesters want information, so an apparent lack of value should not be enough on its own to make a valid request vexatious. However, if you can show a real lack of value this may add weight to arguments under the other headings above. On the other hand, if there is a serious purpose or value behind a request, this may be enough to prevent it being vexatious, even if it imposes a significant burden and is harassing or distressing your staff. If the request forms part of a wider campaign or pattern of requests, the purpose or value must justify both the request itself and the lengths to which the campaign or pattern of behaviour has been taken.

To judge a request vexatious you should be able to make relatively strong arguments under several of these headings. You do not need to be able to answer yes to every question.

The questions are likely to overlap. The weight you can place on each issue will depend on the circumstances, and there may also be other case-specific factors to consider.

Context and history

You should take account of the context and history of the request when considering the questions above. An individual request may not be vexatious in isolation, but in context it may form part of a wider pattern of vexatious behaviour (for example if there is a wider dispute, or it is the latest in a lengthy series of overlapping requests or other correspondence).

However, you should not automatically refuse a request simply because it is made in the context of a dispute or forms part of a series of requests. You must still ask whether the request is vexatious in that context by considering the questions listed above.

An important point is that it is the request, not the requester, that must be vexatious. You should not automatically refuse a request just because the individual has caused problems in the past. You must look at the request itself.

Example case

Example
In Coggins v Information Commissioner EA/2007/0130 (13 May 2008), the requester suspected that the council had fraudulently charged an elderly lady for care services not provided. A council investigation, a Committee for Social Care investigation and the police all found no evidence of dishonesty. But the requester persisted with the allegations and made 20 requests in 73 letters and 17 postcards over a two-year period. The Tribunal found the request vexatious because:

- The volume and haranguing tone of the correspondence indicated that the request was obsessive, and the requester was not justified in persisting with his campaign in the light of three independent enquiries.
- The requests had affected the health and wellbeing of certain officers having to deal with them.
- The volume, length and overlapping nature of the requests would be a distraction from the council's core functions and impose a significant burden.
- The genuine desire to uncover fraud was a serious and proper purpose, but it did not justify persisting with the campaign to these lengths.

Other considerations

If a requester keeps asking for information already provided to them or refused, you may find it easier to refuse the request as "repeated". For more information, see our detailed guidance on Vexatious and repeated requests.

Some types of requests should not be considered as vexatious. Examples include:

- Requests for information that should be published under your publication scheme – you will need to provide this information, or direct the requester to where it is available (eg your website).

- Subject access requests – requests for the individual's own personal data must be dealt with under the Data Protection Act 1998 and cannot be vexatious. See our Checklist for handling requests for personal information (subject access requests).

- Requests for environmental information – you must consider these under the Environmental Information Regulations 2004. You cannot refuse requests as vexatious, but you can refuse a request that is "manifestly unreasonable", subject to a public interest test. See An introduction to the EIR exceptions.

More information

See our detailed guidance on Vexatious and repeated requests.

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach to this area, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us.

Phone: 08456 30 60 60
01625 54 57 45

Email: please use the online enquiry form on our website

Website: www.ico.gov.uk

We the people of Maine...

THE MAINE HERITAGE POLICY CENTER

February 17, 2011

MAINE HOUSING

- $1.8B FINANCIAL INSTITUTION
- 90,000 PEOPLE SERVED / YEAR
- 70,000 TRANSACTIONS / YEAR
- 13 YEARS
- 800,000 + TRANSACTIONS
- SOME COMPUTERIZED, SOME PAPER

Executive Director
Ms. Dale McCormick
Maine State Housing Authority
353 Water Street
Augusta, Maine 04330

Dear Executive Director McCormick:

Under Maine's Freedom of Access Act, I write requesting the following public data in electronic format (MS Excel compatible):

- For all employees of The Maine State Housing Authority please provide the following data for each year for calendar years 1998 – 2010:
  - first name
  - middle initial
  - last name
  - job class title
  - position number
  - department/division
  - department/division number
  - sum of regular wages
  - sum of actual stipends paid (using a reasonable person's standard of what constitutes a wage stipend)
  - sum of overtime pay
  - cost of benefits (by category of benefit, if possible)
  - current hire date ← REQUIRES UNIQUE CALCULATION FOR EACH EMP EACH YR
- For each expenditure (check written) by the Maine State Housing Authority please provide the following data for each year for fiscal years 1998 – 2010 including:
  - Vendor Name → INCLUDE VENDORS AND PROGRAMS
  - Vendor Address
  - Vendor City
  - Vendor State
  - Vendor Zip Code

  ONLY AVAILABLE IN SEPERATE FILE
  - Department/division that made the expenditure
  - Category of expense
  - Total Amount of each expenditure

You may email me the files at sam@mainepolicy.org or I can stop by your office and pick up a CD.

Thank you for your assistance in providing this public information. Please do not hesitate to contact me at 207.975.6617 (cell) with any questions.

Best regards,

Sam Adolphsen
Director, Center for Open Government
The Maine Heritage Policy Center

MaineHousing

Maine Heritage Policy Center (MHPC) Freedom of Access Act (FOAA) Request Timeline

February 17, 2011	MHPC sends FOAA request via email to MaineHousing asking for payroll/benefit and expenditure data from 1998-2010.
February 18 - 21	MaineHousing Human Resources and Finance Departments assemble an estimate for gathering data and redacting statutorily-designated confidential information.
February 22	MaineHousing responds with an initial estimate of 250 hours for 2004-2010 payroll/benefit and operating expenditures. The rough estimate for 1998-2003 is an additional 500 hours as they are neither computerized nor readily available.
March 7	MHPC requests a meeting to discuss the FOAA request. MaineHousing responds with availability on March 17.
March 15	MaineHousing Director reports to Board that MaineHousing received a FOAA from MHPC and that MaineHousing responded with the cost to provide the information requested.
March 17	MHPC (Tarren Bragdon and Sam Adolphsen) meets with MaineHousing (John Bobrowiecki). MHPC clarifies and expands request to include program expenditures in addition to payroll/benefit and operating expenditures. MHPC requests a revised estimate broken down to show payroll/benefit estimates and all other expenditure estimates for the years 2004 - 2010.
March 18 - 22	With additional time to refine the estimate, MaineHousing Finance Department is able to reduce the cost estimate of payroll/benefits and operating expenditures. MaineHousing Deputy Director and Controller meet with program department staff to estimate reporting and redacting times for program expenditures.
March 23	MaineHousing responds to MHPC with a refined estimate that addresses program expenditures as requested. New estimates for 2004-2010 data are approximately 42 hours for payroll/benefits and 330 hours for all other expenditures.
April 4	MHPC telephones MaineHousing to request email addresses for members of the Board of Commissioners.
April 8	MaineHousing provides MHPC with the email addresses of Commissioners that are either not protected by statute or that a Commissioner gave explicit permission to share.
April 19	MaineHousing Counsel updates Board on the status of the MHPC request.
May 23	MHPC emails the Chair of MaineHousing's Board of Commissioners and copies the remaining Commissioners asking them to waive the fee.
May 25	MaineHousing Board Chair responds to MHPC stating that she is away and will reply the following week.

May 26	Office of the State Treasurer calls MaineHousing expressing the Treasurer's and the Governor's displeasure with the way MaineHousing has handled the MHPC FOAA.
June 2	Governor's office calls MaineHousing's Chief Counsel and leaves a message inquiring as to the status of MaineHousing's actions with respect to the MHPC FOAA request.
June 3	MaineHousing Board Chair emails MHPC that the Board has been kept updated all along by MaineHousing staff and that the specific request in the May 23 letter to waive fees will be placed on the agenda for the next board meeting.
	MaineHousing Chief Counsel responds to Governor's Office with the dates of all MaineHousing responses.
June 8	Governor LePage asks the Director and Deputy Director for an update on the status of the request during a meeting.
June 13	MHPC tells reporter that their initial request had not been changed; that it still includes all data back to 1998.
June 21	MaineHousing Board of Commissioners considers the MHPC request to waive fees. Board votes unanimously to charge the statutorily allowed fee of $10/hour.
June 27	MaineHousing Board Chair emails MHPC the Board decision. Hard copy is mailed to MHPC.
August 4	MaineHousing Chief Counsel emails MHPC reiterating that costs could be reduced by using data in structures currently available, provides specific examples, and encourages additional contact.
September 6	MHPC's new Executive Director telephones MaineHousing Chief Counsel to follow up.
September 7	MaineHousing Chief Counsel contacts MHPC Executive Director to ask for a meeting about the data and to discuss formats and with their computer consultant.
Week of Sept 12	In a series of emails, MHPC and MaineHousing set a meeting for September 20.
September 20	Lance Dutson (MHPC) and Michael Walker (Visible Government Online, under contract to MHPC) meet with Adam Krea, Peter Merrill, and John Bobrowiecki of MaineHousing. Gerrylynn Ricker of MaineHousing attends to take notes.
September 22	John Bobrowiecki emails summary of meeting to MHPC (Lance and Michael) for confirmation of the new request and the steps MaineHousing will take.
September 26	Lance Dutson emails confirmation of meeting summary to MaineHousing.
September 30	MaineHousing emails MHPC estimates based on revised request.
October 6	MaineHousing emails MHPC the salary and benefit information which MHPC designated as their top priority. Based upon the revised request, this could be responded to in an hour.

MaineHousing Response to MHPC E-Mail Campaign

Subject: Transparency and public access to information

I have received your email about the need for MaineHousing to support transparency and access to public information. Thank you for taking the time to write.

First, let me say that you are absolutely right – MaineHousing should and does strongly support transparency. In fact, five years of audited financial statements and annual reports are posted on our website at www.mainehousing.org/DATAFinancialReports.aspx.

Some have made a leap that because this Freedom of Access Act (FOAA) request began in February, MaineHousing is dragging its feet or has something to hide. In fact, MaineHousing has responded within 5 days as required by law to each request that MHPC has made. Let me assure you that MaineHousing finances are in good order, and the only thing we don't want to disclose is the personal information of our clients to protect their identities.

We are doing our best to be good stewards of taxpayer dollars:

- MaineHousing is the only quasi-governmental organization in Maine that has an internal auditor that reports to its Board.
- Because we administer various federal programs, MaineHousing is routinely reviewed and audited by the U.S. Department of Energy, the U.S. Department of Health and Human Services, and U.S. Department of Housing and Urban Development, and the U.S. Department of the Treasury.
- Each year certified public auditor Baker Newman & Noyes does a financial and program audit.
- MaineHousing mortgage revenue bonds are rated AA+ and Aa2 by Standard and Poors and Moody's – bond rating agencies that stay on top of our finances.

We try to make the best possible use of our resources and every dollar spent – and that includes dollars spent on staff time.

The request from the Maine Heritage Policy Center (MHPC) may be the most sweeping to date in State government-- because responding to it would involve providing detail on nearly a million financial transactions. Specifically, MHPC asked for eight pieces of information on each and every financial transaction for 13 years. MHPC also requested payroll and benefit information for the same time period.

There is no question that MHPC and members of the public have a right to that information. Because providing that information will take a significant amount of staff time away from other public business, our Board of Commissioners decided to ask for the payment that the law allows.

When we met with MHPC in March, we made a number of suggestions to help make the response less time consuming and less expensive. For example, providing aggregated information by vendor,

rather than copies of individual transactions, would avoid having to cross out personal and confidential information from individual records; excluding checks paid to fuel vendors on behalf of recipients of fuel assistance (more than 60,000 households last year alone); and excluding checks paid to landlords on behalf of Section 8 Housing Choice Voucher holders (about 4000 a month) could dramatically reduce volume. Going back seven years instead of thirteen years would allow us to work with only electronic rather than paper records, making retrieval from 2004 on easier.

After that March meeting, MHPC did in fact revise its request to focus on 2004-2010, the years where electronic records are available. This also reduced the number of individual transactions involved from nearly a million to about half a million, and as a result, the estimated time and cost for responding to the request was reduced from 872 hours and $8,720,to 372 hours and $3,072. (Please note that the MHPC press release refers only to the original estimate of 872 hours, and not the more recent estimate of 372 hours.)

If, in addition to revising the time period of focus, MHPC were willing to accept summary information, or, if they decide not to include routine transactions involving LIHEAP and Section 8, the time and cost involved could be reduced more dramatically still.

MHPC maintains, however, that they want the detail on individual financial transactions. And they do have that right.

I hope this provides some insight into the practical side of this issue and the reasons we decided to charge for this information.

Thank you again for taking the time to share your thoughts.

Sincerely,

Dale McCormick

Dale McCormick

From: Linda Uhl
Sent: Thursday, August 04, 2011 5:33 PM
To: 'dcrocker@mainepolicy.org'; 'sam@mainepolicy.org'
Cc: Dale McCormick; John Bobrowiecki
Subject: FOAA request

David and Sam:

I am Chief Counsel at MaineHousing. John Bobrowiecki is out of the office until August 15th.

I am following up on Maine Heritage Policy Center's (MHPC) FOAA request. MaineHousing has not heard from MHPC since our Chair, Carol Kontos, notified David Crocker by letter dated June 27th that the Commissioners voted not to waive the fees set by law. MaineHousing has previously suggested ways to reduce the estimated cost by refining the detailed nature of your request. The estimated time to provide all the information, as outlined in the twenty data points requested in your initial email, has already been established. I am reaching out to remind you there are less labor intensive alternatives.

In the time since we shared our estimate with you and offered to work with you to refine your request we have learned that both the Maine Health and Higher Educational Facilities Authority and the Maine Turnpike Authority released what was readily available rather than taking the time to compile the detail requested. We want to reiterate that MaineHousing would be happy to share data that fits within whatever amount MHPC would like to spend on this request. Since you have not attempted to refine your request, we thought we would give you an example in each of the three areas where you requested data.

Most of the time required to respond to the payroll request is gathering the 12 data points you requested for each employee. Allocating each benefit by employee, for example, is time consuming as MaineHousing pays benefit premiums in aggregate. Salaries and the average percentage of benefits would be more accessible.

Another example is with our operating expenses. Compiling the eight specific data points you requested regarding vendors will take the time previously estimated. However a listing of all the vendors in MaineHousing's system or a list of vendors and payments by year would be a simpler and easier way to accomplish a similar end result.

For program expenditures, gross transfers to direct providers rather than client-level transactions would show expenditures without showing transactions with protected personal information, the crossing out of which is by far the most time-consuming piece of the request.

As we have noted previously, more recent data is easier because of technology. Our initial estimate addresses the broad nature of your request and is a major undertaking for a $1.6B agency that serves over 90,000 households each year through about 70,000 transactions. We estimate that your request for 13 years would involve approximately 800,000 transactions. We believe that with a little effort, your request could be refined to reduce the overall costs. One way to do this is to narrow the data requested and another is to reduce the number of years requested.

We welcome hearing from you. You may contact me or, from August 15th, John Bobrowiecki.

Linda

Linda Uhl
Chief Counsel
Maine State Housing Authority
353 Water Street
Augusta, ME 04330-4633
207-626-4656

The Maine Heritage Policy Center FOAA Request Meeting

September 20, 2011 1:00 p.m.
At MaineHousing

Present

Adam Krea, Deputy Director, MaineHousing (MH)
Peter Merrill, Director of Communications and Planning, MaineHousing
John Bobrowiecki, Counsel, MaineHousing
Lance Dutson, Chief Executive Officer, The Maine Heritage Policy Center (MHPC)
Michael Walker, President, Visible Government Online Inc.
Gerrylynn Ricker, note taker

Payroll Data

- 2005 through 2010 salary data from ADP on excel spreadsheet is good.
- Providing overall benefit costs as a percent of payroll is fine.
- MHPC would like total budgeted payroll for each year 1998-2004 if it is available.
- For 2011 forward, Paylocity report is fine.
  MaineHousing will find out if the job title can be added to the report for each employee. If not, MHPC would like an employee roster in order to link job titles to personnel.
- MHPC will make a request each year for an updated payroll report.

Vendor Information / General Operations

- Two types of report available – Vendor Master File with addresses and Payment Register with every transaction, but without addresses. MHPC would like both.
- Both reports will require some amount of manual redacting to delete protected information. MH will inquire if there is a way to limit redactions by 'category of expense' query or some other filter.

Vendor Information / Programs

- MaineHousing has many programs. The two largest are the Low-Income Home Energy Assistance Program and the Section 8 rental assistance program, which both have independent computer systems.
- For LIHEAP, MHPC will take the aggregate amount paid per year for each fuel vendor. MHPC would like this data from 2005 – 2010.
- For Section 8, the report in Excel for years 2008-2010 works.

Other

- MHPC is only interested in data that is available electronically.
- MHPC and MH will agree on a written summary of the meeting to confirm the new request.
- MH will then revise its estimate of the cost of complying with the request.
- MHPC and MH agreed it was a good meeting. MH appreciated MHPC listening to the hurdles the original request provided. MHPC thanked MH for the preparation that allowed them to see examples of what the actual data would be.

Testimony Regarding LD 1465
The Falmouth Experience

"An Act To Amend the Laws Governing Freedom of Access"
Date of Meeting: October 21, 2011

To: Right to Know Advisory Committee

From: Nathan Poore, Falmouth Town Manager

Date: October 21, 2011

Thank you for requesting input regarding LD 1465 and to offer testimony pertinent to the FOAA experience in the Town of Falmouth. First and foremost, let me be clear - I believe that a transparent and open government is essential and that FOAA play a central role in that objective.

Historically, FOAA requests have been used to acquire copies of agendas, minutes, property record files and voter registration lists. Recently, there has been a higher demand for additional information such as employee salaries, supporting documents, draft reports, e-mails and other electronic communication. Many organizations have started to rely more on websites to provide public information. There are some communities and agencies that receive more request than others. In some cases, there are individuals who have realized how powerful FOAA can be from the perspective of disrupting the efficient management of our towns and cities. We need to make sure that the current FOAA requirements and future amendments do not overburden governmental organizations. Also, we need to consider some form of accountability for the requester. This is necessary so that the business of serving the general public is not compromised by a few individuals. This is a difficult task because ***access to government needs to be open without interference or obstacles.***

Access to all public information this should not be hindered even at additional expense. The current FOAA is a good instrument for access to our government but as we have seen from several sources, there is room for improvement, including concerns raised from state and local government, the Maine Policy Heritage Center, the Maine Civil Liberties Union, journalism and press advocates, and members of the public. I do not have all of the solutions but I hope my observations and first-hand experience is helpful to the policy development discussion and consideration.

FOAA Abuse in Falmouth, Maine

I have been requested by the Right to Know Advisory Committee to describe or provide examples of FOAA abuse in Falmouth. My presentation today is in two parts. The first addresses the behavior of a resident of Falmouth, who has methodically attempted to disrupt the administration of municipal government and our education department through use of the current FOAA law, personal attacks and veiled threats of violence. The second part addresses the proposed legislation.

It is too time consuming to extract all the related data but I have been able to capture some intriguing facts.

1. I have created 63 e-mail subfolders to keep track of FOAA requests from one individual.
2. There are more than 1,488 e-mails in this folder system which does not include all e-mails sent to the resident or e-mails sent and received to other staff and public officials. There are likely just as many e-mail transactions within the School Department.
3. This system covers a time period between spring 2010 and fall 2011.
4. I have estimated that there have been approximately 100 individual FOAA requests from this person (the actual number could be much higher).
5. I estimate that I have spent approximately 300 hours in 20 months which are related to the FOAA requests from one individual. I estimate that that there could be at least another 300 hours from other staff and public officials. This is equivalent to a part time employee working one day each week.

The abuse of FOAA in Falmouth is mostly about the voluminous requests for information. This activity is lawful and should be but at what expense to the other tax payers. If someone decides to use FOAA to create chaos and disrupt operations, they should at least have to pay the actual cost to retrieve and supply the information. The current amount we can charge is $10/hr.

I have worked in local government for 22 years. In that time span, other than the one person who has been abusing the system in Falmouth, I have only had to charge for FOAA requests on about five occasions. In one case, we charged the Maine Policy Heritage Center to download and provide data related to salary and wage information. It took us a significant amount of time the first year but knowing we would likely receive annual requests, we made sure we could execute the task more efficiently in future years. This is important to the requester so they don't have to pay too much for the information and important to the Town because we loose money on every request. The Maine Policy Heritage Center was very professional and understanding and I think they appreciated our approach. In other situations, the amount of time to produce the requests was minimal.

I suspect there are very people in Maine who would consider using FOAA as an abusive tool to create disruption in government. Why should the other million plus Mainers have to subsidize this game? I propose we offer two free hours of FOAA service to each Maine citizen per year (two cumulative hours for all requests in a given year). This is a 100% increase in service with no cost to the citizens. Had this idea been in place for the past 22 years, it would have only impacted up to five residents that I served during that time span. But, I am sure they would have appreciated the $10 savings. I propose this approach in exchange for charging actual cost to produce a response to those few people who would consider using FOAA as a tool for disruption. Its simple – two free hours for each person per year and each additional hour will cost the actual amount to produce the response.

The rest of this story includes a description about concerning behavior beyond abusive use of FOAA but it is important to describe the entire situation to completely understand how one atypical person can disrupt government operations.

Winter/Spring 2010. In late winter 2010, we started to receive a number of FOAA requests from a resident in Falmouth. My office responded to all of these requests in a reasonable time period, most often within one or two days. The requests started to include a number of derogatory remarks about staff and elected officials. We were forced to review each diatribe to extract the FOAA request from the actual e-mail communication. In some cases, the requester included threatening messages about employee job security.

Summer 2010 through Spring 2011. The resident continued his attack on the community under the disguise of being a self proclaimed hero, reporting his allegations of corruption in local government that he believed the local newspapers, elected officials, the District Attorney's Office and Attorney General's Office refused to consider. As a matter of background, this resident is a convicted felon for being a "con-man". He has served time in prison and ordered to pay restitution to his victims as well as perform hundreds of hours of community service. He is very persuasive and sometimes convincing at first but once you get to know him, his behavior and his comments indicate his desire to disrupt town government and spread false rumors about public officials. Some have described his behavior as messianic – an attitude of thinking that if only everyone would step aside and put him in charge, we all could be saved from ourselves.

The resident has claimed that he is deliberately applying stress to demoralize staff, create chaos, and attack individuals and the overall organization. He often refers to his actions as a game with certain strategies.

- He has indicated that he would always be "two moves" ahead of us.

- He has mentioned in one e-mail "there is always a plan and those not watching are surprised when the sea change comes and they are caught unprepared for the next shift in the game."
- In a criminal investigation in which he had important information, he refused to provide the information but taunted the Police Department with statements in an e-mail like "you're much closer than perhaps you realize".
- He was quoted in a newspaper that he felt like he was playing chess against a disabled person.

There have been some occasions where this resident has raised intriguing questions or submitted interesting suggestions. We have taken time to evaluate some of our purchasing practices and contract formatting. While we don't necessarily agree with all the comments raised based on and through FOAA requests, we have reviewed our practices and in some cases made proactive changes.

Summer 2011 through Fall 2011. Most recently, the FOAA requests have been so often that we are managing the system with administration staff from both the School Department and Town Office. I finally rearranged resources and created a new management plan to more efficiently coordinate a reasonable response to his ongoing barrage of requests. In the past, we failed to keep track of the actual time spent to produce responses. We are now keeping better track of the time resulting in higher costs to the applicant but the amount we can charge is not sufficient to cover the actual expense. An administrative assistant earns between $15 and $20 per hour. If you also include the cost of benefits this range could increase to $22 to $27 per hour. In some situations, the costs could be much higher if higher paid employees are required to produce the response.

There have frequently been overtones of threats in the communication received from this resident but the order of magnitude has increased dramatically in recent months and are weaved through stories on his new web site. Some of the stories are threatening, many have elements of physical harm to public officials including references to death, and nearly all the material is untrue. He writes stories under different pen names. In several recent cases, he has killed off public officials in what he thinks are funny fictional stories. At times he names family members of public officials, which makes the stories more intimidating.

His "news" site also includes derogatory and fictional stories about public officials including the Police Chief, Town Manager, School Department Business Manager, a Town Councilor, and a resident who is affiliated with the Lewiston Sun Journal.

He threatened one Councilor in an e-mail that if she did not consider pulling herself from a re-election race, he would be forced to bring his "considerable skill set and intellect to bear down

against her". He indicated that she should consider this decision based on how her family would be impacted by his actions. In other communications, he has indicated that he can't be sure if he will be able to control himself if he is forced to consider self-defense. He also has submitted photographs of x-rays of broken arms (allegedly caused by him in arm wrestling competitions) to the Police Department to demonstrate his strength and ability to cause harm to others if he is forced to defend himself.

This week. Another week of abuse including the following:

- We completed several outstanding FOAA requests for this resident. It took many hours to complete the tasks.
- The resident e-mailed to ask me if we wanted to car pool with each other to attend a meeting. He followed up later in the week with a voice mail asking me if we should ride to this meeting together. Finally, on Thursday, he visited the town office to inform me in person that he would like to car pool with me. This seemingly innocuous request is bizarre coming from an individual who has and currently describes me as incompetent, corrupt, a thief, and other characterizations which are derogatory statements. Combine this with his fictional stories about my death – bizarre turns into disturbing.
- He sent an e-mail to local officials throughout the state that included derogatory statements, lies and a link to his "news" site. These officials include chief law enforcement officers and other town and city managers.

What is the real truth? This resident has developed some elaborate theories that can be convincing to some people who don't have accurate information. The Town decided a long time ago that it was not worth the time and effort to defend ourselves from the inaccurate allegations and fabricated stories developed by this resident. We are confident the town residents have the common sense to ignore the untrue claims made by this person. This person's claims continue to be dismissed by all levels of the local political leadership spectrum. The local media, the District Attorney's Office and Attorney General's Office have opted to not investigate any of the allegations. This obvious decision to not consider an investigation should send a strong message about the truth of these false claims. This should speak volumes for what is the real truth about our town government.

Retaliation. I fully expect that there will be retaliation against me, other staff, and the entire organization for speaking today and confronting a behavior that is intended to disrupt government in Falmouth. The retaliation will be in the form of new FOAA requests, more derogatory and false statements, and possibly more stories with death or physical harm nuances. It is my intention to disregard all attempts at retaliation but to keep you informed as this issue is of tremendous importance to all levels of government in Maine.

Summary (FOAA Abuse)

We are mandated to pay attention to his communications to extract the actual FOAA request from the diatribe. Why should the Right to Know Advisory Committee care about his threats, truth challenged mind set, and harassment of our local government? The answer is this: it is an example of how a person could and can use FOAA to his/her advantage as a tool to create chaos. This distraction is not fair to the average citizen who expects efficient and productive performance of its government. According to recent Bangor Daily News and Lewiston Sun Journal articles, this resident is not alone in abusing the intended use of FOAA. LD 1465 has some valid ideas but as written, it will make us long for the easy years like the one I described above. We should keep working on these ideas and perhaps we should add a provision to consider doubling the free time to 99.99% of our residents. FOAA is a powerful and necessary part of our government and as written, we have a tool that works most of the time. Now is the time to strengthen the policy to ensure continued open, reasonable, accountable and responsible access to government.

LD 1465

There are many reasons why I have concerns about LD 1465 not the least of which it further empowers and encourages the behavior I have described and unreasonably disrupts the operation of municipal government and education in our communities. I offer my testimony in the form of specific questions and comments relevant to specific sections on the proposed amendment.

408.2-A.A This section could force communities to provide information to requesters in a format that is not available with existing software, requiring time and resources to convert the information to a medium mandated by the requester. While there is a provision to reimburse the community, the total cost of providing the service cannot be recovered at $10 per hour. That hourly amount will not cover the cost of the lowest paid town employee. If the intent is to provide electronic information rather than paper copy or electronic information in a format that can be manipulated, the language could be amended to relieve the community from excess burden and cost. Language could be developed to allow information to be provided in standard or typical software applications, such as MS Excel or MS Word. At a minimum, the community should not be forced to provide information in a format that is not customarily used by the community.

The current amendment language will add a great deal of cost to municipalities.

408.4 and 408-A.4 This section only allows three days to provide an estimate if the cost of providing the information exceeds $100. Even well-staffed governmental organizations could have trouble meeting that timeframe for the sweeping document requests, but this standard is being applied to even the small communities who have very few employees. There will be times when employees are not available due to sickness, vacation, holiday, or urgent town business that will not permit them to provide the estimates within three days. There is the possibility that a requester could use this law to file frivolous requests with no intent to pay for or take delivery of the information but the request must be honored with an estimate. Requester accountability must be considered.

408-A.1 This section mandates an immediate response to all FOAA requests as a general rule, but permits an extension for limited reasons (such as the need for redaction or retrieval from storage), provided in writing. The term "immediate" would require communities to provide service without delay for a matter that, by law, defines the task as urgent or pressing that will

need to be dealt with before anything else. Preparation of written certifications would require time, tracking and resources. Imagine a request for a property assessment card by a citizen who makes the request while the assessor is leaving the building for a field visit. Assume no one else works in the assessing department. The assessor may not have the option to be late for the field visit and would have to write a letter to the requester certifying why they could not copy the document upon immediate request.

This section also states that a delay in response is appropriate to find a record that is not in active use or that may be in storage. The terms "active" and "storage" could be difficult to interpret. Could a building permit, issued in 1980, that is kept in archived files be considered "active"? It could be if the building inspector needs it to review a new building permit. Is an e-mail received one day prior to the FOAA request "active"? It may not be if the employee or official never intends to look at the document in the future. The term "storage" may have different meanings for hard paper copies versus electronic archiving.

408-A.3 This section has a provision that mandates partial submission of documents if the entire document cannot be provided within five business days. Imagine a scenario where the public access officer finds two pages or two e-mails four days into the request period but is called away to an emergency or is out sick and fails to meet the requirement to submit the partial response within five business days. This would constitute a failure to comply with the Freedom of Access Act. Finally, there is the possibility that a requester could use this law to file frivolous requests with no intent to take delivery or inspect the documents but the request must be honored in accordance with the proposed amendment. Requester accountability must be considered.

408-B.1, 2, and 3 These sections require the community to act as a personal assistant to the requester, having the responsibility to remind the requester up to three times, in writing, over a 40 day period that their request is available. The 40 day period includes the initial 10 day period, one 20 day extension and one 10 day extension. The community may also find it is warranted to send the written information via expensive certified mail to verify the requester receives the written reminder notice. The proposed amendment does not provide for reimbursement of the time, resources and mailing costs. The management of this section will add an unnecessary burden that will also cost the community money that is not reimbursable.

413.5 This section stipulates that a community must provide "reasonable comfort". I agree that the place of inspection should be an area that is as accommodating as possible and not a location that is selected to purposefully be uncomfortable but the term "reasonable comfort" is

subjective. Subjectivity leaves too much room for interpretation and endless calls to the Attorney General's office, combined with potential frivolous lawsuits.

I offer this testimony in opposition to the proposed amendment. I think there are elements of the proposal that could enhance the existing FOAA requirements and we should rely on the Right to Know Advisory Committee to review the proposal and offer suggestions that will balance the necessity to provide information to the public and government transparency with the costly burden on agencies to follow unnecessary steps to produce the information.

An Act to Amend the Laws Relating to Criminal History Record Information *and Intelligence and Investigative Information*

Proposed to be submitted by the Criminal Law Advisory Commission

Part 2

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
Sec. 3 16 MRSA c. 3, sub-c 11 is enacted to read **SUBCHAPTER 11** **INTELLIGENCE AND INVESTIGATIVE INFORMATION ACT** **§671. Definitions** As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.		
1. Administration of criminal justice. "Administration of criminal justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known or suspected crimes. It includes the collection, storage and dissemination of intelligence and investigative information relating to the administration of criminal justice.	**§611 1. Administration of criminal justice.** "Administration of criminal justice" means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.	
2. Administration of civil justice. "Administration of civil justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known or suspected civil violations, traffic infractions, juvenile crimes and prospective and pending civil actions. It		*New*

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
includes the collection, storage and dissemination of intelligence and investigative information relating to the administration of civil justice.		
3. Criminal justice agency. "Criminal justice agency" means a government agency or any subunit of a government agency that performs the administration of criminal justice or the administration of civil justice pursuant to a statute or executive order. Maine courts and courts in any other jurisdiction are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of the Canadian government and any federally recognized Indian tribe.	**§611 4. Criminal justice agency.** "Criminal justice agency" means a federal, state, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.	
4. Dissemination. "Dissemination" means the transmission of information by any means, including but not limited to, orally, in writing or electronically, by or to anyone outside the agency that maintains the information.	**§611 6. Dissemination.** "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency which maintains the information.	
5. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access.	**§611 7. Executive order.** "Executive order" means an order of the President of the United States or the chief executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.	
6. Intelligence and investigative information. "Intelligence and investigative information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency while performing the administration of criminal justice	**§611 8. Intelligence and investigative information.** "Intelligence and investigative information" means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity,	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
or the administration of civil justice. The term also includes information of record concerning security plans and procedures and investigative techniques and procedures prepared or collected by a criminal justice agency or another agency. "Intelligence and investigative information" does not include criminal history record information as defined in section 652, and does not include information of record collected to anticipate, prevent or monitor possible juvenile crime activity or information compiled in the course of investigation of known or suspected juvenile crimes to the extent addressed in the Maine Juvenile Code.	including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. "Intelligence and investigative information" does not include information that is criminal history record information.	
7. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Island, Guam and America Samoa. It also includes the federal government of Canada and any provincial government of Canada and any federally recognized Indian tribe.	**§611 11. State.** "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.	
8. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.	**§611 12. Statute.** "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.	
§672. Application This subchapter applies to a record that is or contains intelligence and investigative information and that is prepared by, prepared at the direction of or kept in the custody of any Maine criminal justice agency.		

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
§673. Limitation on dissemination of intelligence and investigative information		
Except as provided in section 674, a record that contains intelligence and investigative information is confidential and may not be disseminated to any person or public or private entity if there is a reasonable possibility that public release or inspection of the report or record would:	§614 **1. Limitation on dissemination of intelligence and investigative information.** Reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of a local, county or district criminal justice agency; the Bureau of State Police; the Department of the Attorney General; the Maine Drug Enforcement Agency; the Office of State Fire Marshal; the Department of Corrections; the criminal law enforcement units of the Department of Marine Resources, the Department of Inland Fisheries and Wildlife or the Department of the Secretary of State, Bureau of Motor Vehicles, office of investigations *(added by PL 2011, c. 356, effective September 28, 2011)*; or the Department of Conservation, Division of Forest Protection when the reports or records pertain to arson; or the Department of Agriculture, Food and Rural Resources when the reports or records pertain to animal cruelty *(added by PL 2011, c. 210, effective September 28, 2011)* are confidential and may not be disseminated if there is a reasonable possibility that public release or inspection of the reports or records would:	*The list of agencies is not needed because of new §672*
1. Interfere. Interfere with law enforcement proceedings relating to crimes, civil violations, traffic infractions, juvenile crimes or civil actions**;**	A. Interfere with law enforcement proceedings;	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
2. Result in dissemination of prejudicial information. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;	B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;	
3. Constitute an invasion of privacy. Constitute an unwarranted invasion of personal privacy;	C. Constitute an unwarranted invasion of personal privacy;	
4. Disclose confidential source. Disclose the identity of a confidential source;	D. Disclose the identity of a confidential source;	
5. Disclose confidential information. Disclose confidential information furnished only by the confidential source;	E. Disclose confidential information furnished only by the confidential source;	
6. Disclose trade secrets. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;	F. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;	
7. Disclose investigative techniques, security plans. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;	G. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;	
8. Endanger law enforcement or others. Endanger the life or physical safety of any individual, including law enforcement personnel;	H. Endanger the life or physical safety of any individual, including law enforcement personnel;	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
9. Disclose arbitration or mediation information. Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;	I. Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;	
10. Statutorily confidential information. Disclose information designated confidential by another statute; or	J. Disclose information designated confidential by some other statute; or	
11. Identify sources of consumer or antitrust complaints. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.	K. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.	
§674. Exceptions Nothing in this subchapter precludes dissemination of intelligence and investigative information by a Maine criminal justice agency to:	**§614 3. Exceptions.** Nothing in this section precludes dissemination of intelligence and investigative information to:	*Limited disclosure*
1. Another criminal justice agency. Another criminal justice agency;	A. Another criminal justice agency;	
2. A government agency or subunit statutorily responsible for investigating child or adult abuse, neglect or exploitation. A government agency or subunit of a government agency that pursuant to statute is responsible for investigating abuse, neglect or exploitation of children [under Title 22, chapter 1071] or incapacitated or dependent adults [under Title 22, chapter 958-A] for use in the investigation of suspected abuse, neglect or exploitation, subject to reasonable limitations to protect the interests	B. A state agency responsible for investigating abuse, neglect or exploitation of children under Title 22, chapter 1071 or incapacitated or dependent adults under Title 22, chapter 958-A for use in the investigation of suspected abuse, neglect or exploitation;	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
described in section 673;		
3. An accused person or that person's agent or attorney. A person accused of a crime or that person's agent or attorney for trial purposes if authorized by:	C. An accused person or that person's agent or attorney if authorized by:	
A. The responsible prosecutorial office or prosecutor; or	(1) The district attorney for the district in which that accused person is to be tried;	
B. A court rule or court order.	(2) A rule or ruling of a court of this State or of the United States; or	
	(3) The Attorney General;	
As used in this subsection "agent" means a licensed private investigator, an expert witness, or a parent, foster parent or guardian if the accused person has not attained 18 years of age;		
4. A crime victim or that victim's agent or attorney. A crime victim or that victim's agent or attorney, subject to reasonable limitations to protect the interests described in section 673. As used in this subsection "agent" means a licensed private investigator, or immediate family if due to death, age, physical or mental disease, disorder or defect, the victim cannot realistically act in the victim's own behalf;	D. A victim or victim's agent or attorney, subject to reasonable limitations to protect the interest described in subsection 1; or	
5. A counselor or advocate. A sexual assault counselor, as defined in section 53-A, subsection 1, paragraph B, or an advocate, as	E. An advocate, as defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice agency and subject to reasonable limitations to protect the interests described in section 673. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:	agency and subject to reasonable limitations to protect the interests described in subsection 1. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:	
A. Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;	(1) Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;	
B. Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;	(2) Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;	
C. Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;	(3) Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;	
D. Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;	(4) Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;	
E. Permit the criminal justice agency to	(5) Permit the criminal justice	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this subsection;	agency to perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this paragraph;	
F. Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;	(6) Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;	
G. Permit a criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this subsection; and	(7) Permit the criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this paragraph; and	
H. Provide sanctions for any violations of this subsection.	(8) Provide sanctions for any violations of this paragraph.	
The Commissioner of Public Safety may adopt a model policy to standardize the provisions contemplated in this subsection; or	The Commissioner of Public Safety may adopt a model policy to standardize the provisions contemplated in this paragraph.	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
ALTERNATIVE A		
6. A government agency or subunit statutorily responsible for licensing entities or individuals that provide healthcare or social services. A government agency or subunit of a government agency that pursuant to statute is responsible for licensing entities or individuals that provide healthcare or social services for use in the investigation of potential violations of laws enforced by the government agency or subunit subject to reasonable limitations to protect the interests described in section 673.	B-1. The division of licensing and regulatory services within the Department of Health and Human Services for use in the investigation of suspected abuse, neglect or exploitation in licensed, certified and registered facilities and programs that provide care to children and adults; *(added by PL 2011, c. 52, effective July 1, 2011)*	*Question (not for RTK AC) about whether to write this exception broadly to cover just healthcare and social services providers*
ALTERNATIVE B		
6. A government agency or subunit statutorily responsible for licensing individuals who engage in a particular occupation or social services. A government agency or subunit of a government agency that pursuant to statute is responsible for licensing individuals who engage in a particular occupation or social services for use in the investigation of potential violations of laws enforced by the government agency or subunit subject to reasonable limitations to protect the interests described in section 673.		*or all licensed occupations*
§ ___. Prohibition against release of identifying information of those providing information as to cruelty to animals. The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.	**1-A. Limitation on release of identifying information; cruelty to animals.** The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.	*Move to Title 7 with Animal Welfare/Animal Cruelty statutes*

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
Note: *CLAC voted not to include this proposed section. It would logically go here if the decision was made to add it. CLAC believes this provision, making confidential identifying information under these circumstances, more properly belongs as part of a Department statute expressly addressing persons being encouraged to provide information to the Department pertaining to criminal or civil cruelty to animals.*		
§675. Restriction on use of disseminated intelligence and investigative information Intelligence and investigative information that is disseminated to a person or public or private entity that is not a criminal justice agency under section 671 may be used solely for the purpose for which it was disseminated and may not be disseminated further.		
§ 676. Confirming existence or nonexistence of intelligence and investigative information Except as provided in section 673 and 674, a criminal justice agency to whom this subchapter applies may not confirm the existence or nonexistence of intelligence and investigative information to any person or public or private entity that is not eligible to receive the information itself.		
§677. No right to access or review	**§620. Right to access and review**	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
A person who is the subject of intelligence and investigative information maintained by a criminal justice agency has no right to inspect or review that information for accuracy or completeness.	**1. Inspection.** Any person or his attorney may inspect the criminal history record information concerning him maintained by a criminal justice agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to him on request and payment of a reasonable fee.	
§ 678. Unlawful dissemination of intelligence and investigative information		
1. Offense. A person is guilty of unlawful dissemination of intelligence and investigative information if the person intentionally disseminates intelligence and investigative information knowing it to be in violation of any of the provisions of this subchapter.	**§614 4. Unlawful dissemination of reports or records that contain intelligence and investigative information.** A person that intentionally disseminates a report or record that contains intelligence and investigative information in violation of this section commits a Class E crime.	
2. Classification. Unlawful dissemination of intelligence and investigative information is a Class E crime.		G:\STUDIES 2011\Right to Know Advisory Committee\CHRIA\III sbs 11-7-11.doc (11/7/2011 12:04:00 PM)

HISTORY OF INTELLIGENCE AND INVESTIGATIVE INFORMATION IN MAINE'S CRIMINAL HISTORY RECORD INFORMATION ACT

1. Prior to 1979, Maine's CHRIA did not address intelligence and investigative information [see Maine's first CHRIA (P.L. 1975, ch. 763)]. It was excluded from the definition of "criminal history record information." See 28 C.F.R., Part 20; see also 1977 pamphlet entitled "Privacy and Security of Criminal History Information: A Guide to Dissemination" prepared by the Privacy and Security Staff of the National Criminal Justice Information and Statistics Service, Law Enforcement Assistance Administration at pages 6-7.

2. In 1979 Maine passed the replacement for P.L. 1975, ch. 763 – namely, P.L. 1979, ch. 433, effective September 14, 1979. [See P.L. 1979, ch. 433 attached]. That Act:

   A. defined "intelligence and investigative information" in section 611(8). The definition addressed "intelligence and investigative information" only in the context of criminal activity. It provided:

      8. Intelligence and investigative information. "Intelligence and investigative information" means information collected by criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, or compiled in the course of investigation of known or suspected crimes. It does not include information that is criminal history record information.

   B. added section 614. Note that section 614 was made applicable to "a local, county or district criminal justice agency," limited dissemination, and included exceptions as follows:

      § 614. Limitation on dissemination of intelligence and investigative information

      1. Limitation on dissemination of intelligence and investigative information. Reports or records in custody of a local, county or district criminal justice agency containing intelligence and investigative information shall be confidential and shall not be

disseminated, if public release or inspection of the report or record may:

A. Interfere with law enforcement proceedings;

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

C. Result in public dissemination of information about the private life of an individual in which there is no legitimate public interest and which would be offensive to a reasonable person;

D. Disclose the identity of a confidential source;

E. Disclose confidential information furnished only by the confidential source;

F. Disclose investigative techniques and procedures not generally known by the general public; or

G. Endanger the life or physical safety of law enforcement personnel.

2. Exception to this limitation. Nothing in this section shall preclude dissemination of intelligence and investigative information to another criminal justice agency. Intelligence and investigative information may also be disseminated to an accused person or his attorney, if authorized by:

A. The District Attorney for the district in which that accused person is to be tried;

B. A rule or ruling of a court of this State or of the United States; or

C. the Attorney General.

3. Effective September 18, 1981, P.L. 1981, ch. 64 added "or in the custody of the criminal law enforcement units of the Department of Marine Resources or the Department of Inland Fisheries and Wildlife" to which section 614(1) applied.

4. Effective April 18, 1984, P.L. 1983, ch. 787 added to then section 614(1)(F) "security plans and procedures" and included "operation plans of the collecting agency or another agency" in the definition of "intelligence and investigative information" in section 611(8).

5. Effective March 3, 1986, P.L. 1985, ch. 552 added "in the custody of the Office of the State Fire Marshal" to which section 614(1) applied.

6. Effective March 25, 1992, P.L. 1991, ch. 729 added "in the custody of the Department of Corrections" to which 614(1) applied and changed the standard limiting dissemination as follows: "are confidential and may not be disseminated, if there is a reasonable possibility that public release or inspection of the report or record would:"(emphasis supplied) [paragraphs A-G remained unchanged].

7. Effective April 8, 1992, P.L. 1991, ch. 837, § B-5 added "or in the custody of the Maine Drug Enforcement Agency" to which section 614(1) applied.

8. Effective October 13, 1993, P.L. 1993, ch. 376, § 1 repealed and reenacted section 614(1) because of a conflict between P.L. 1991, chapters 729 and 837. Further, it added "in the custody of the Bureau of State Police" to which section 614(1) applied.

*9. Effective July 14, 1994, P.L. 1993, ch. 719, "An Act to Bring the Department of the Attorney General into Conformity with the Criminal History Record Information Laws," made the following significant changes:

First, it added "the Department of the Attorney General" in its entirety to the definition of a "criminal justice agency" in section 611(4).

Second, it amended the definition of "intelligence and investigative information" in section 611(8) to read:

> 8. **Intelligence and investigative information.** "Intelligence and investigative information" means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, including operation plans of the collecting agency or another agency, or information compiled in the court of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. ~~It~~ "Intelligence and investigative information" does not include information that is criminal history record information.

Third, it repealed and replaced section 614(1). New section 614(1) included "the Department of Attorney General" to which section 614(1)

applied, added paragraphs F, I, J and K, and modified both former paragraphs C and G (now paragraphs C and H) to read:

> C. ~~Result in public dissemination of information about the private life of an individual in which there is no legitimate public interest and which would be offensive to a reasonable person~~ Constitute an unwarranted invasion of personal privacy.
>
> . . .
>
> H. Endanger the life or physical safety of any individual, including law enforcement personnel.

Fourth, it repealed 5 M.R.S.A. § 200-D (enacted by P.L.1975, ch. 715, effective April 1, 1976) that had read:

> § 200-D. Complaints and investigative records confidential
>
> Notwithstanding any other provision of law, all complaints and investigative records of the Department of the Attorney General shall be and are declared to be confidential.

However, it made the repeal of section 200-D applicable only to reports and records that were created after July 1, 1995. Section 11 of chapter 719 provided:

> **Sec. 11. Effect of repeal of Maine Revised Statutes, Title 5, section 200-D.** Reports and records that were created prior to the effective date of this Act that were confidential pursuant to the Maine Revised Statutes, Title 5, section 200-D at the time of their creation continue to be confidential after the effective date of this Act as provided in former Title 5, section 200-D. The confidentiality of intelligence and investigative information contained in reports and records prepared by or at the direction of the Department of the Attorney General after the effective date of this Act is governed by Title 16, section 614.
> [See P.L. 1979, ch. 433 attached]

10. Effective September 29, 1995, P.L. 1995, ch. 135 added "or the Department of Conservation, Forest Fire Central Division when the reports and records pertain to arson" to which section 614(1) applied.

11. Effective September 19, 1997, P.L. 1997, ch. 456(10) added to section 614 current subsection 1-A that reads:

Sec. 10 16 MRSA § 614, sub-§ 1-A is enacted to read:

1-A. Limitation on release of identifying information; cruelty to animals. The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.

12. Effective September 18, 1999, P.L. 1999, ch. 155, § A-5 changed "Forest Fire Central Division" to read "Division of Forest Protection" in section 614(1).

13. Effective September 18, 1999, P.L. 1999, ch. 305, § 1 amended section 614(2) to read:

2. Exception to this limitation. Nothing in this section ~~shall preclude~~ precludes dissemination of intelligence and investigative information to another criminal justice agency or, for use in the investigation of suspected abuse or neglect, to the Department of Human Services, Bureau of Child and Family Services. Intelligence and investigative information may also be disseminated to an accused person or ~~his~~ that person's attorney~~,~~ if authorized by:

A. The District Attorney for the district in which that accused person is to be tried;

B. A rules or ruling of a court of this State or of the United States; or

~~C. The Attorney General.~~

14. Effective July 25, 2002, P.L. 2001, ch. 532, sub-§§ 1, 2 repealed section 614(2) and enacted in its stead section 614(3). Subsection 3 read:

3. Exceptions. Nothing in this section precludes dissemination of intelligence and investigative information to:

A. Another criminal justice agency;

B. A state agency responsible for investigating abuse, neglect or explotation of children under Title 22, chapter 1071 or incapacitated or dependent adults under Title 22, chapter 958-A for use in the investigation of suspected abuse, neglect or exploitation; or

C. An accused person or that person's agent or attorney if authorized by:

(1) The district attorney for the district in which that accused person is to be tried;

(2) a rule or ruling of a court of this State or of the United States; or

(3) The Attorney General.

15. Effective September 13, 2003, P.L. 2003, ch. 402 added current section 614(3)(D). Paragraph D provides:

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

16. Effective September 12, 2009, P.L. 2009, ch. 182 added current 614(3)(E) and section 614(4). Paragraph E and subsection 4 read as follows:

E. An advocate, as defined in section 58-B, subsection 1, paragraph A, with a specific agreement with a criminal justice agency and subject to reasonable limitations to protect the interests described in subsection 1. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:

(1) Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;

(2) Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;

(3) Require the advocate to ensure that reports and records that contain intelligence and investigative information remain secure and confidential;

(4) Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;

(5) Permit the criminal justice agency to perform reasonable and appropriate audits in order to ensure that records containing

intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this paragraph;
(6) Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;
(7) Permit the criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this paragraph; and
(8) Provide sanctions for any violations of this paragraph.

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

. . . .

4. Unlawful dissemination of reports and records that contain intelligence and investigative information. A person that intentionally disseminates a report or record that contains intelligence and investigative information in violation of this section commits a Class E crime.

17. Effective April 25, 2011 (emergency), P.L. 2011, ch. 52 added 614(3)(B-1). Paragraph B-1 reads as follows:

> B-1. The division of licensing and regulatory services within the Department of Health and Human Services for use in the investigation of suspected abuse, neglect or exploitation in licensed, certified and registered facilities and programs that provide care to children and adults;

18. Effective September 28, 2011, P.L. 2011, ch. 210 added "or the Department of Agriculture, Food and Rural Resources when the reports or records pertain to animal cruelty" to which section 614(1) applied.

19. Effective June 15, 2011, (emergency), P.L. 2011, ch. 356 added "or the Department of the Secretary of State, Bureau of Motor Vehicles, Office of Investigations" to which section 614(1) applied.

P.L. 1979, ch. 433, effective September 14, 1979

CHAPTER 433

H. P. 1425 — L. D. 1632

AN ACT to Amend the Laws Relating to Criminal History Record Information.

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

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

Sec. 2. 16 MRSA c. 3, sub-c. VIII is enacted to read:

SUBCHAPTER VIII

CRIMINAL HISTORY RECORD INFORMATION ACT

§ 611. Definitions

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

1. Administration of criminal justice. "Administration of criminal justice" means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. Conviction data. "Conviction data" means criminal history record information other than nonconviction data.

3. Criminal history record information. "Criminal history record information" means notations or other written evidence of an arrest, detention, complaint, indictment, information or other formal criminal charge relating to an identifiable person. It shall include the identification or description of the person charged and any disposition of the charge. The term does not include identification information such as fingerprints, palm prints or photographic records to the extent that the information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations.

4. Criminal justice agency. "Criminal justice agency" means a federal, state, district, county or local government agency or any subunit thereof which performs the administration of criminal justice under a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Courts shall be deemed to be criminal justice agencies.

5. Disposition. "Disposition" means the conclusion of criminal proceedings, and includes acquittal, acquittal by reason of mental disease or defect, filing of case, dismissal of charge, dismissal of charge due to mental incompentency, continuance due to mental incompetence, guilty plea, nolo contendere plea, nolle prosequi; conviction, sentence, death of defendant, mistrial, new trial granted, release from correctional supervision, parole, pardon, amnesty or extradition. If the disposition is that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, it shall include the nature of the termination or conclusion of the proceedings. If the disposition is that the proceedings have been indefinitely postponed, it shall include the reason for that postponement.

6. Dissemination. "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency which maintains the information.

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

8. Intelligence and investigative information. "Intelligence and investigative information" means information collected by criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, or compiled in the course of investigation of known or suspected crimes. It does not include information that is criminal history record information.

9. Nonconviction data. "Nonconviction data" means criminal history record information of the following types:

A. Arrest information without disposition, if an interval of one year has elapsed from the date of the arrest and no active prosecution of the charge is pending. To be an active prosecution the case must be still actively in process, with arraignment completed and the case docketed for court trial;

B. Information disclosing that the police have elected not to refer a matter to a prosecutor;

C. Information disclosing that a prosecutor has elected not to commence criminal proceedings;

D. Information disclosing that criminal proceedings have been indefinitely postponed, e.g. a "filed" case, or a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial;

E. A dismissal;

F. An acquittal, excepting an acquittal by reason of mental disease or defect; and

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

10. Person. "Person" means an individual, government agency or a corporation, partnership or unincorporated association.

11. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.

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

§ 612. Application

1. Criminal justice agencies. This subchapter shall apply only to criminal justice agencies.

2. Exceptions. This subchapter shall not apply to criminal history record information contained in:

A. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

B. Original records of entry, such as police blotters, that are maintained by criminal justice agencies and that are compiled and organized chronologically;

C. Records, retained at and by the District Court and Superior Court, of public judicial proceedings, including, but not limited to, docket entries and original court files;

D. Court or administrative opinions not impounded or otherwise declared confidential;

E. Records of public administrative or legislative proceedings;

F. Records of traffic offenses retained at and by the Secretary of State; and

G. Peitions for and warrants of pardons, commutations, reprieves and amnesties.

3. Permissible disclosure. Nothing in this subchapter shall be construed to prohibit a criminal justice agency from:

A. Disclosing to the public criminal history record information related to an offense for which a person is currently within the criminal justice system;

B. Confirming prior criminal history record information to the public, in

response to a specific inquiry that includes a specific name, date and charge or disposition, provided that the information disclosed is based upon data excluded by subsection 2. The disclosing criminal justice agency shall disclose therewith any and all criminal history record information in its possession which indicates the disposition of the arrest, detention or formal charges; and

C. Disseminating criminal history record information for purposes of international travel such as issuing visas and granting of citizenship.

§ 613. Limitations on dissemination of nonconviction data

Except as provided in section 612, subsections 2 and 3, dissemination of nonconviction data by a criminal justice agency, whether directly or through any intermediary, shall be limited to:

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

2. Under express authorization. Any person for any purpose when expressly authorized by statute, executive order, court rule, court decision or court order. Express authorization shall mean language in the statute, executive order, or court rule, decision or order which specifically speaks of nonconviction data or specifically refers to one or more of the types of nonconviction data;

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

4. Research activities. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the confidentiality and security of the data consistent with this subchapter and provide sanctions for any violations.

§ 614. Limitation on dissemination of intelligence and investigative information

1. Limitation on dissemination of intelligence and investigative information. Reports or records in the custody of a local, county or district criminal justice agency containing intelligence and investigative information shall be confidential and shall not be disseminated, if public release or inspection of the report or record may:

A. Interfere with law enforcement proceedings;

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

C. Result in public dissemination of information about the private life of an individual in which there is no legitimate public interest and which would be offensive to a reasonable person;

D. Disclose the indentity of a confidential source;

E. Disclose confidential information furnished only by the confidential source;

F. Disclose investigative techniques and procedures not generally known by the general public; or

G. Endanger the life or physical safety of law enforcement personnel.

2. Exception to this limitation. Nothing in this section shall preclude dissemination of intelligence and investigative information to another criminal justice agency. Intelligence and investigative information may also be disseminated to an accused person or his attorney, if authorized by:

A. The District Attorney for the district in which that accused person is to be tried;

B. A rule or ruling of a court of this State or of the United States; or

C. The Attorney General.

§ 615. Dissemination of conviction data

Conviction data may be disseminated to any person for any purpose.

§ 616. Inquiries required

A criminal justice agency shall query the State Bureau of Identification prior to dissemination of any criminal history record information for noncriminal justice purposes to assure that the most up-to-date disposition data is being used.

§ 617. Dissemination to noncriminal justice agencies

Criminal history record information disseminated to a noncriminal justice agency under section 613 shall be used solely for the purpose of which it was disseminated and shall not be disseminated further.

§ 618. Confirming existence or nonexistence of criminal history record information

Except as provided in section 612, subsection 3, paragraph B, no criminal justice agency shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.

§ 619. Unlawful dissemination

1. Offense. A person is guilty of unlawful dissemination if he knowingly disseminates criminal history information in violation of any of the provisions of this subchapter.

2. Classification. Unlawful dissemination is a Class E crime.

§ 620. Right to access and review

1. Inspection. Any person or his attorney may inspect the criminal history record information concerning him maintained by a criminal justice agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to him on request and payment of a reasonable fee.

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

On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.

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

business address of that official.

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

Dissemination of the disputed criminal history record information by that agency with which the requesting person has filed a statement of disagreement, occurring after the filing of such statement, shall clearly reflect notice of the dispute. A copy of the statement shall be included, along with, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.

4. Judicial review. If an administrative appeal brought pursuant to subsection 3 is denied by the head of the agency, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the head of the agency, seek relief in the Superior Court.

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

6. Right of release. The provisions of this subchapter shall not limit the right of a person to disseminate to any other person criminal history record information pertaining to himself.

§ 621. Information and records of the Attorney General, State Police and Bureau of Identification

Nothing in this subchapter shall require dissemination of information or records of the Attorney General, State Police or Bureau of Identification that are declared to be confidential under Title 5, section 200-D or Title 25, section 1631.

§ 622. Application

The provisions of this subchapter shall apply to criminal history record information in existence before July 29, 1976, including that which has been

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

Effective September 14, 1979

CHAPTER 434

H. P. 1050 — L. D. 1301

AN ACT to Clarify the Requirements Relating to Campaign Reports and Finances.

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

Sec. 1. 21 MRSA § 1396, sub-§ 2, ¶B, as repealed and replaced by PL 1975, c. 759, § 1, is amended to read:

B. The identification of every person making a contribution in excess of $10, and the date and amount thereof and, if a person's contributions in any ~~election~~ **report filing period** aggregate more than $50, the account shall include occupation and the principal place of business, if any, and, if such person is a member of a candidate's immediate family as defined in section 1395, subsection 1, the account shall state such relationship~~;~~. **For purposes of this paragraph, "filing period" is as provided in section 1397, subsection 4, paragraph A;**

Sec. 2. 21 MRSA § 1397, sub-§ 4, ¶A, **last sentence,** as enacted by PL 1977, c. 575, § 13, is repealed and the following enacted in its place:

Other reports shall be complete for the filing period. A filing period is that period of time from one completion date to the next completion date except as provided heretofore for first reports.

Sec. 3. 21 MRSA § 1397, sub-§ 4, ¶C, as enacted by PL 1977, c. 575, § 13, is repealed and the following enacted in its place:

C. Reports shall be filed not later than 5 p.m. on the 42nd day after the date on which an election is held and shall be complete for the filing period.

Sec. 4. 21 MRSA § 1397, sub-§ 6, as last repealed and replaced by PL 1977, c. 575, § 13, is amended to read:

6. **Content.** A report required under this section shall contain the itemized

P.L. 1993, ch. 719, effective July 14, 1994

(1) The name of any domestic corporation or limited partnership or limited liability company organized under the laws of this State or any foreign corporation or foreign limited partnership or foreign limited liability company authorized to transact business or to carry on activities in this State;

(2) A name the exclusive right to which is, at the time, reserved under section 404 or 604; Title 13-A, section 302; or Title 13-B, section 302;

(3) A name that is registered under section 406 or 606; Title 13-A, section 303; or Title 13-B, section 303;

(4) The assumed name of a corporation or limited partnership or limited liability company as provided in section 405 or 605; Title 13-A, section 307; or Title 13-B, section 308; or

(5) A mark registered under Title 10, chapter 301-A.

Sec. B-10. 36 MRSA §4641-C, sub-§15, ¶C, as enacted by PL 1993, c. 398, §4, is amended to read:

C. From a trustee, nominee or straw party to the beneficial owner; ~~and~~

Sec. B-11. 36 MRSA §4641-C, sub-§16, as enacted by PL 1993, c. 398, §4, is amended to read:

16. Certain corporate, partnership and limited liability company deeds. Deeds between a family corporation, partnership ~~or~~, limited partnership or limited liability company and its stockholders ~~or~~, partners or members for the purpose of transferring real property in the organization, dissolution or liquidation of the corporation, partnership ~~or~~, limited partnership or limited liability company under the laws of this State, ~~provided that~~ if the deeds are given for no actual consideration other than shares, interests or debt securities of the corporation, partnership ~~or~~, limited partnership or limited liability company. For purposes of this subsection a family corporation, partnership ~~or~~, limited partnership or limited liability company is a corporation, partnership ~~or~~, limited partnership or limited liability company in which the majority of the voting stock of the corporation, or of the interests in the partnership ~~or~~, limited partnership or limited liability company is held by and the majority of the stockholders ~~or~~, partners or members are persons related to each other, including by adoption, lineal descendants or as spouses of descendants of a common ancestor who was also a transferor of the real property involved, or persons acting in a fiduciary capacity for persons so related; and

Sec. B-12. 36 MRSA §4641-C, sub-§17 is enacted to read:

17. Limited liability company deeds. Deeds to a limited liability company from a corporation, a general or limited partnership or another limited liability company, when the grantor or grantee owns an interest in the limited liability company in the same proportion as the grantor's or grantee's interest in or ownership of the real estate being conveyed.

Sec. B-13. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1994-95

SECRETARY OF STATE, DEPARTMENT OF THE

Bureau of Administrative Services and Corporations

All Other	$7,500

Provides funds for ongoing printing, postage and one-time software design costs to implement the establishment of limited liability corporations.

See title page for effective date.

CHAPTER 719

S.P. 665 - L.D. 903

An Act to Bring the Department of the Attorney General into Conformity with the Criminal History Record Information Laws

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

Sec. 1. 5 MRSA §200-D, as enacted by PL 1975, c. 715, §1, is repealed.

Sec. 2. 10 MRSA §1109, sub-§4, as enacted by PL 1989, c. 750, is amended to read:

4. Confidentiality. Information received by the Department of the Attorney General as a result of this

porting requirement is a confidential ~~investigative under Title 5, section 200-D~~.

c. 3. **10 MRSA §1675,** as enacted by PL 991, c. 836, §3, is amended to read:

1675. Confidentiality

Information received by the Department of the ttorney General pursuant to sections 1673 and 1674 ~~onstitutes a~~ is confidential ~~investigative record under itle 5, section 200-D~~.

Sec. 4. 10 MRSA §8003-B, sub-§3, as nacted by PL 1989, c. 173, is amended to read:

3. Attorney General records. The provision r disclosure of investigative records of the Depart- ent of the Attorney General to a departmental em- loyee designated by the commissioner or to a omplaint officer of a board or commission does not onstitute a waiver of the confidentiality~~, provided nder Title 5, section 200-D,~~ of those records for any ther purposes. Further disclosure of those investiga- ive records ~~shall be~~ is subject to Title 16, section 614 nd the discretion of the Attorney General.

Sec. 5. 16 MRSA §611, sub-§4, as enacted y PL 1979, c. 433, §2, is amended to read:

4. Criminal justice agency. "Criminal justice gency" means a federal, state, district, county or ~~which~~ government agency or any subunit thereof performs the administration of criminal justice ir a statute or executive order, and ~~which~~ that allo es a substantial part of its annual budget to the dministration of criminal justice. Courts ~~shall be deemed to be~~ and the Department of the Attorney General are considered criminal justice agencies.

Sec. 6. 16 MRSA §611, sub-§8, as amended by PL 1983, c. 787, §1, is further amended to read:

8. Intelligence and investigative information. "Intelligence and investigative information" means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. ~~It~~ "Intelligence and investigative information" does not include information that is criminal history record information.

Sec. 7. 16 MRSA §614, sub-§1, as repealed and replaced by PL 1993, c. 376, §1, is repealed and the following enacted in its place:

1. Limitation on dissemination of intelligence and investigative information. Reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of a local, county or district criminal justice agency; the Bureau of State Police; the Department of the Attorney General; the Maine Drug Enforcement Agency; the Office of State Fire Marshal; the Department of Corrections; or the criminal law enforcement units of the Department of Marine Resources or the Department of Inland Fisheries and Wildlife are confidential and may not be disseminated if there is a reasonable possibility that public release or inspection of the reports or records would:

A. Interfere with law enforcement proceedings;

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

C. Constitute an unwarranted invasion of personal privacy;

D. Disclose the identity of a confidential source;

E. Disclose confidential information furnished only by the confidential source;

F. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;

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

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

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

J. Disclose information designated confidential by some other statute; or

K. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.

Sec. 8. 16 MRSA §621, as amended by PL 1993, c. 376, §2, is repealed.

Sec. 9. 16 MRSA §623 is enacted to read:

§623. Attorney General fees

The Attorney General shall analyze the impact of this conformity provision upon the Department of the Attorney General. The Department of the Attorney General shall submit a report to the joint standing committee of the Legislature having jurisdiction over judiciary matters to the First Regular Session of the 117th Legislature on this analysis and recommend a funding mechanism. The funding mechanism must include a fee for services to cover the costs associated with providing access and copying of records available to the public under this chapter.

Sec. 10. 22 MRSA §1885, sub-§1, as enacted by PL 1991, c. 814, §1, is amended to read:

1. Investigative powers. The Attorney General, at any time after an application is filed under section 1883, subsection 2, may require by subpoena the attendance and testimony of witnesses and the production of documents in Kennebec County or the county in which the applicants are located for the purpose of investigating whether the cooperative agreement satisfies the standards set forth in section 1883, subsection 4. All documents produced and testimony given to the Attorney General are ~~investigative records under Title 5, section 200-D~~ confidential. The Attorney General may seek an order from the Superior Court compelling compliance with a subpoena issued under this section.

Sec. 11. Effect of repeal of Maine Revised Statutes, Title 5, section 200-D. Reports and records that were created prior to the effective date of this Act that were confidential pursuant to the Maine Revised Statutes, Title 5, section 200-D at the time of their creation continue to be confidential after the effective date of this Act as provided in former Title 5, section 200-D. The confidentiality of intelligence and investigative information contained in reports and records prepared by or at the direction of the Department of the Attorney General after the effective date of this Act is governed by Title 16, section 614.

Sec. 12. Effective date. This Act takes effect July 1, 1995, except that that section of this Act that enacts the Maine Revised Statutes, Title 16, section 623 takes effect 90 days after adjournment of the Second Regular Session of the 116th Legislature.

Effective July 1, 1995, unless otherwise indicated.

CHAPTER 720

H.P. 1080 - L.D. 1446

An Act to Establish an Ambient Water Toxics Program

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

Sec. 1. 38 MRSA §420-B is enacted to read:

§420-B. Surface water ambient toxic monitoring program

The discharge of pollutants from certain direct and indirect sources into the State's waters introduces toxic substances, as defined under section 420, into the environment. In order to determine the nature, scope and severity of toxic contamination in the surface waters and fisheries of the State, the commissioner shall conduct a scientifically valid monitoring program.

The program must be designed to comprehensively monitor the lakes, rivers and streams and marine and estuarine waters of the State on an ongoing basis. The program must incorporate testing for suspected toxic contamination in biological tissue and sediment, may include testing of the water column and must include biomonitoring and the monitoring of the health of individual organisms that may serve as indicators of toxic contamination. This program must collect data sufficient to support assessment of the risks to human and ecological health posed by the direct and indirect discharge of toxic contaminants.

1. Development of monitoring plans and work programs. The commissioner shall:

A. Prepare a plan every 5 years that outlines the monitoring objectives for the following 5 years, resources to be allocated to those objectives and a plan for conducting the monitoring, including methods, scheduling and quality assurance; and

B. Prepare a work program each year that defines the work to be conducted that year toward the objectives of the 5-year plan. This work program must identify specific sites, the sampling media and the contaminants that will be tested.

(1) The commissioner shall consider the following factors when selecting monitoring sites for the annual work program:

(a) The importance of the water body to fisheries, wildlife and humans;

RIGHT TO KNOW ADVISORY COMMITTEE
BULK RECORDS SUBCOMMITTEE
LEGISLATIVE SUBCOMMITTEE

DRAFT AGENDA
November 10, 2011
1:00 p.m.
Room 438, State House, Augusta

Convene

1. Welcome and Introductions

2. Criminal History Record Information Act revision: new subchapter on Intelligence and Investigative Information
   Discussion; finalize recommendations to CLAC

3. LD 1465 remaining issues
   Form and Format
   Prospective technology improvements
   Bulk?
   Fee structure
   Public Access Officer
   Public Access Ombudsman
   Timelines for compliance

4. Other responsibilities assigned to Legislative Subcommittee
   - Status of Maine Public Broadcasting Network records under the Freedom of Access laws (Mike Brown)
   - Use of technology for the purpose of remote participation by members of public bodies
   - Drafting templates
   - Storage, management and retrieval of public officials' communications, especially email

5. Other?

6. Scheduling future subcommittee meetings?

Scheduled meetings:
Thursday, November 17, 2011, 9:00 a.m., Public Records Exceptions Subcommittee
Thursday, November 17, 2011, 1:00 p.m., Right to Know Advisory Committee
Thursday, December 8, 2011, 1:00 p.m., Right to Know Advisory Committee

Adjourn

G:\STUDIES 2011\Right to Know Advisory Committee\Agendas\DRAFT AGENDA for Bulk Rec & Legis Subs Nov 10 2011.doc (11/8/2011 10:52:00 AM)

Revised 11-07-2011

PROPOSED INTELLIGENCE AND INVESTIGATIVE INFORMATION ACT

16 M.R.S.A. ch. 3, sub-ch. 11 [§§ 671-678]

Addresses only Intelligence and Investigative Information (§ 672). Criminal History Record Information is addressed in a separate proposed sub-chapter (sub-ch. 10).

Intelligence and Investigative Information:
definition (§ 671(6))
limitations on dissemination and use (§§ 673, 675 & 676)
exceptions (§ 674)
no right to access or review by subject (§ 677)
Class E crime of unlawful dissemination (§ 678)

CHRIA #1

Last revised 8/31/2011

HISTORY OF INTELLIGENCE AND INVESTIGATIVE INFORMATION IN MAINE'S CRIMINAL HISTORY RECORD INFORMATION ACT

1. Prior to 1979, Maine's CHRIA did not address intelligence and investigative information [see Maine's first CHRIA (P.L. 1975, ch. 763)]. It was excluded from the definition of "criminal history record information." See 28 C.F.R., Part 20; see also 1977 pamphlet entitled "Privacy and Security of Criminal History Information: A Guide to Dissemination" prepared by the Privacy and Security Staff of the National Criminal Justice Information and Statistics Service, Law Enforcement Assistance Administration at pages 6-7.

2. In 1979 Maine passed the replacement for P.L. 1975, ch. 763 – namely, P.L. 1979, ch. 433, effective September 14, 1979. [See P.L. 1979, ch. 433 attached]. That Act:

   A. defined "intelligence and investigative information" in section 611(8). The definition addressed "intelligence and investigative information" only in the context of criminal activity. It provided:

      8. Intelligence and investigative information. "Intelligence and investigative information" means information collected by criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, or compiled in the course of investigation of known or suspected crimes. It does not include information that is criminal history record information.

   B. added section 614. Note that section 614 was made applicable to "a local, county or district criminal justice agency," limited dissemination, and included exceptions as follows:

---

§ 614. Limitation on dissemination of intelligence and investigative information

1. Limitation on dissemination of intelligence and investigative information. Reports or records in custody of a local, county or district criminal justice agency containing intelligence and investigative information shall be confidential and shall not be

CHRIA #2

disseminated, if public release or inspection of the report or record may:

A. Interfere with law enforcement proceedings;

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

C. Result in public dissemination of information about the private life of an individual in which there is no legitimate public interest and which would be offensive to a reasonable person;

D. Disclose the identity of a confidential source;

E. Disclose confidential information furnished only by the confidential source;

F. Disclose investigative techniques and procedures not generally known by the general public; or

G. Endanger the life or physical safety of law enforcement personnel.

2. Exception to this limitation. Nothing in this section shall preclude dissemination of intelligence and investigative information to another criminal justice agency. Intelligence and investigative information may also be disseminated to an accused person or his attorney, if authorized by:

A. The District Attorney for the district in which that accused person is to be tried;

B. A rule or ruling of a court of this State or of the United States; or

C. the Attorney General.

3. Effective September 18, 1981, P.L. 1981, ch. 64 added "or in the custody of the criminal law enforcement units of the Department of Marine Resources or the Department of Inland Fisheries and Wildlife" to which section 614(1) applied.

4. Effective April 18, 1984, P.L. 1983, ch. 787 added to then section 614(1)(F) "security plans and procedures" and included "operation plans of the collecting agency or another agency" in the definition of "intelligence and investigative information" in section 611(8).

5. Effective March 3, 1986, P.L. 1985, ch. 552 added "in the custody of the Office of the State Fire Marshal" to which section 614(1) applied.

6. Effective March 25, 1992, P.L. 1991, ch. 729 added "in the custody of the Department of Corrections" to which 614(1) applied and changed the standard limiting dissemination as follows: "are confidential and may not be disseminated, if there is a reasonable possibility that public release or inspection of the report or record would:"(emphasis supplied) [paragraphs A-G remained unchanged].

7. Effective April 8, 1992, P.L. 1991, ch. 837, § B-5 added "or in the custody of the Maine Drug Enforcement Agency" to which section 614(1) applied.

8. Effective October 13, 1993, P.L. 1993, ch. 376, § 1 repealed and reenacted section 614(1) because of a conflict between P.L. 1991, chapters 729 and 837. Further, it added "in the custody of the Bureau of State Police" to which section 614(1) applied.

*9. Effective July 14, 1994, P.L. 1993, ch. 719, "An Act to Bring the Department of the Attorney General into Conformity with the Criminal History Record Information Laws," made the following significant changes:

First, it added "the Department of the Attorney General" in its entirety to the definition of a "criminal justice agency" in section 611(4).

Second, it amended the definition of "intelligence and investigative information" in section 611(8) to read:

> 8. **Intelligence and investigative information.** "Intelligence and investigative information" means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, ~~including operation plans of the collecting agency or another agency,~~ or information compiled in the court of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. ~~It~~ "Intelligence and investigative information" does not include information that is criminal history record information.

Third, it repealed and replaced section 614(1). New section 614(1) included "the Department of Attorney General" to which section 614(1)

applied, added paragraphs F, I, J and K, and modified both former paragraphs C and G (now paragraphs C and H) to read:

> C. ~~Result in public dissemination of information about the private life of an individual in which there is no legitimate public interest and which would be offensive to a reasonable person~~ Constitute an unwarranted invasion of personal privacy.
>
> . . .
>
> H. Endanger the life or physical safety of any individual, including law enforcement personnel.

Fourth, it repealed 5 M.R.S.A. § 200-D (enacted by P.L.1975, ch. 715, effective April 1, 1976) that had read:

> § 200-D. Complaints and investigative records confidential
>
> Notwithstanding any other provision of law, all complaints and investigative records of the Department of the Attorney General shall be and are declared to be confidential.

However, it made the repeal of section 200-D applicable only to reports and records that were created after July 1, 1995. Section 11 of chapter 719 provided:

> **Sec. 11. Effect of repeal of Maine Revised Statutes, Title 5, section 200-D.** Reports and records that were created prior to the effective date of this Act that were confidential pursuant to the Maine Revised Statutes, Title 5, section 200-D at the time of their creation continue to be confidential after the effective date of this Act as provided in former Title 5, section 200-D. The confidentiality of intelligence and investigative information contained in reports and records prepared by or at the direction of the Department of the Attorney General after the effective date of this Act is governed by Title 16, section 614.
> [See P.L. 1979, ch. 433 attached]

10. Effective September 29, 1995, P.L. 1995, ch. 135 added "or the Department of Conservation, Forest Fire Central Division when the reports and records pertain to arson" to which section 614(1) applied.

11. Effective September 19, 1997, P.L. 1997, ch. 456(10) added to section 614 current subsection 1-A that reads:

Sec. 10 16 MRSA § 614, sub-§ 1-A is enacted to read:

1-A. Limitation on release of identifying information; cruelty to animals. The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.

12. Effective September 18, 1999, P.L. 1999, ch. 155, § A-5 changed "Forest Fire Central Division" to read "Division of Forest Protection" in section 614(1).

13. Effective September 18, 1999, P.L. 1999, ch. 305, § 1 amended section 614(2) to read:

2. Exception to this limitation. Nothing in this section ~~shall preclude~~ precludes dissemination of intelligence and investigative information to another criminal justice agency or, for use in the investigation of suspected abuse or neglect, to the Department of Human Services, Bureau of Child and Family Services. Intelligence and investigative information may also be disseminated to an accused person or ~~his~~ that person's attorney~~,~~ if authorized by:

A. The District Attorney for the district in which that accused person is to be tried;

B. A rules or ruling of a court of this State or of the United States; or

~~C. The Attorney General.~~

14. Effective July 25, 2002, P.L. 2001, ch. 532, sub-§§ 1, 2 repealed section 614(2) and enacted in its stead section 614(3). Subsection 3 read:

3. Exceptions. Nothing in this section precludes dissemination of intelligence and investigative information to:

A. Another criminal justice agency;

B. A state agency responsible for investigating abuse, neglect or explotation of children under Title 22, chapter 1071 or incapacitated or dependent adults under Title 22, chapter 958-A for use in the investigation of suspected abuse, neglect or exploitation; or

C. An accused person or that person's agent or attorney if authorized by:

(1) The district attorney for the district in which that accused person is to be tried;

(2) a rule or ruling of a court of this State or of the United States; or

(3) The Attorney General.

15. Effective September 13, 2003, P.L. 2003, ch. 402 added current section 614(3)(D). Paragraph D provides:

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

16. Effective September 12, 2009, P.L. 2009, ch. 182 added current 614(3)(E) and section 614(4). Paragraph E and subsection 4 read as follows:

E. An advocate, as defined in section 58-B, subsection 1, paragraph A, with a specific agreement with a criminal justice agency and subject to reasonable limitations to protect the interests described in subsection 1. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:

(1) Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;

(2) Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;

(3) Require the advocate to ensure that reports and records that contain intelligence and investigative information remain secure and confidential;

(4) Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;

(5) Permit the criminal justice agency to perform reasonable and appropriate audits in order to ensure that records containing

intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this paragraph;
(6) Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;
(7) Permit the criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this paragraph; and
(8) Provide sanctions for any violations of this paragraph.

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

. . . .

4. Unlawful dissemination of reports and records that contain intelligence and investigative information. A person that intentionally disseminates a report or record that contains intelligence and investigative information in violation of this section commits a Class E crime.

17. Effective April 25, 2011 (emergency), P.L. 2011, ch. 52 added 614(3)(B-1). Paragraph B-1 reads as follows:

> B-1. The division of licensing and regulatory services within the Department of Health and Human Services for use in the investigation of suspected abuse, neglect or exploitation in licensed, certified and registered facilities and programs that provide care to children and adults;

18. Effective September 28, 2011, P.L. 2011, ch. 210 added "or the Department of Agriculture, Food and Rural Resources when the reports or records pertain to animal cruelty" to which section 614(1) applied.

19. Effective June 15, 2011, (emergency), P.L. 2011, ch. 356 added "or the Department of the Secretary of State, Bureau of Motor Vehicles, Office of Investigations" to which section 614(1) applied.

P.L. 1979, ch. 433, effective September 14, 1979

CHAPTER 433

H. P. 1425 — L. D. 1632

AN ACT to Amend the Laws Relating to Criminal History Record Information.

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

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

Sec. 2. 16 MRSA c. 3, sub-c. VIII is enacted to read:

SUBCHAPTER VIII

CRIMINAL HISTORY RECORD INFORMATION ACT

§ 611. Definitions

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

1. Administration of criminal justice. "Administration of criminal justice" means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. Conviction data. "Conviction data" means criminal history record information other than nonconviction data.

3. Criminal history record information. "Criminal history record information" means notations or other written evidence of an arrest, detention, complaint, indictment, information or other formal criminal charge relating to an identifiable person. It shall include the identification or description of the person charged and any disposition of the charge. The term does not include identification information such as fingerprints, palm prints or photographic records to the extent that the information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations.

4. Criminal justice agency. "Criminal justice agency" means a federal, state, district, county or local government agency or any subunit thereof which performs the administration of criminal justice under a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Courts shall be deemed to be criminal justice agencies.

5. Disposition. "Disposition" means the conclusion of criminal proceedings, and includes acquittal, acquittal by reason of mental disease or defect, filing of case, dismissal of charge, dismissal of charge due to mental incompentency, continuance due to mental incompetence, guilty plea, nolo contendere plea, nolle prosequi; conviction, sentence, death of defendant, mistrial, new trial granted, release from correctional supervision, parole, pardon, amnesty or extradition. If the disposition is that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, it shall include the nature of the termination or conclusion of the proceedings. If the disposition is that the proceedings have been indefinitely postponed, it shall include the reason for that postponement.

6. Dissemination. "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency which maintains the information.

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

8. Intelligence and investigative information. "Intelligence and investigative information" means information collected by criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, or compiled in the course of investigation of known or suspected crimes. It does not include information that is criminal history record information.

9. Nonconviction data. "Nonconviction data" means criminal history record information of the following types:

A. Arrest information without disposition, if an interval of one year has elapsed from the date of the arrest and no active prosecution of the charge is pending. To be an active prosecution the case must be still actively in process, with arraignment completed and the case docketed for court trial;

B. Information disclosing that the police have elected not to refer a matter to a prosecutor;

C. Information disclosing that a prosecutor has elected not to commence criminal proceedings;

D. Information disclosing that criminal proceedings have been indefinitely postponed, e.g. a "filed" case, or a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial;

E. A dismissal;

F. An acquittal, excepting an acquittal by reason of mental disease or defect; and

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

10. Person. "Person" means an individual, government agency or a corporation, partnership or unincorporated association.

11. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.

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

§ 612. Application

1. Criminal justice agencies. This subchapter shall apply only to criminal justice agencies.

2. Exceptions. This subchapter shall not apply to criminal history record information contained in:

A. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

B. Original records of entry, such as police blotters, that are maintained by criminal justice agencies and that are compiled and organized chronologically;

C. Records, retained at and by the District Court and Superior Court, of public judicial proceedings, including, but not limited to, docket entries and original court files;

D. Court or administrative opinions not impounded or otherwise declared confidential;

E. Records of public administrative or legislative proceedings;

F. Records of traffic offenses retained at and by the Secretary of State; and

G. Petitions for and warrants of pardons, commutations, reprieves and amnesties.

3. Permissible disclosure. Nothing in this subchapter shall be construed to prohibit a criminal justice agency from:

A. Disclosing to the public criminal history record information related to an offense for which a person is currently within the criminal justice system;

B. Confirming prior criminal history record information to the public, in

response to a specific inquiry that includes a specific name, date and charge or disposition, provided that the information disclosed is based upon data excluded by subsection 2. The disclosing criminal justice agency shall disclose therewith any and all criminal history record information in its possession which indicates the disposition of the arrest, detention or formal charges; and

C. Disseminating criminal history record information for purposes of international travel such as issuing visas and granting of citizenship.

§ 613. Limitations on dissemination of nonconviction data

Except as provided in section 612, subsections 2 and 3, dissemination of nonconviction data by a criminal justice agency, whether directly or through any intermediary, shall be limited to:

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

2. Under express authorization. Any person for any purpose when expressly authorized by statute, executive order, court rule, court decision or court order. Express authorization shall mean language in the statute, executive order, or court rule, decision or order which specifically speaks of nonconviction data or specifically refers to one or more of the types of nonconviction data;

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

4. Research activities. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the confidentiality and security of the data consistent with this subchapter and provide sanctions for any violations.

§ 614. Limitation on dissemination of intelligence and investigative information

1. Limitation on dissemination of intelligence and investigative information. Reports or records in the custody of a local, county or district criminal justice agency containing intelligence and investigative information shall be confidential and shall not be disseminated, if public release or inspection of the report or record may:

A. Interfere with law enforcement proceedings;

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

C. Result in public dissemination of information about the private life of an individual in which there is no legitimate public interest and which would be offensive to a reasonable person;

D. Disclose the indentity of a confidential source;

E. Disclose confidential information furnished only by the confidential source;

F. Disclose investigative techniques and procedures not generally known by the general public; or

G. Endanger the life or physical safety of law enforcement personnel.

2. Exception to this limitation. Nothing in this section shall preclude dissemination of intelligence and investigative information to another criminal justice agency. Intelligence and investigative information may also be disseminated to an accused person or his attorney, if authorized by:

A. The District Attorney for the district in which that accused person is to be tried;

B. A rule or ruling of a court of this State or of the United States; or

C. The Attorney General.

§ 615. Dissemination of conviction data

Conviction data may be disseminated to any person for any purpose.

§ 616. Inquiries required

A criminal justice agency shall query the State Bureau of Identification prior to dissemination of any criminal history record information for noncriminal justice purposes to assure that the most up-to-date disposition data is being used.

§ 617. Dissemination to noncriminal justice agencies

Criminal history record information disseminated to a noncriminal justice agency under section 613 shall be used solely for the purpose of which it was disseminated and shall not be disseminated further.

§ 618. Confirming existence or nonexistence of criminal history record information

Except as provided in section 612, subsection 3, paragraph B, no criminal justice agency shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.

§ 619. Unlawful dissemination

1. Offense. A person is guilty of unlawful dissemination if he knowingly disseminates criminal history information in violation of any of the provisions of this subchapter.

2. Classification. Unlawful dissemination is a Class E crime.

§ 620. Right to access and review

1. Inspection. Any person or his attorney may inspect the criminal history record information concerning him maintained by a criminal justice agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to him on request and payment of a reasonable fee.

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

On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.

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

business address of that official.

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

Dissemination of the disputed criminal history record information by that agency with which the requesting person has filed a statement of disagreement, occurring after the filing of such statement, shall clearly reflect notice of the dispute. A copy of the statement shall be included, along with, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.

4. Judicial review. If an administrative appeal brought pursuant to subsection 3 is denied by the head of the agency, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the head of the agency, seek relief in the Superior Court.

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

6. Right of release. The provisions of this subchapter shall not limit the right of a person to disseminate to any other person criminal history record information pertaining to himself.

§ 621. Information and records of the Attorney General, State Police and Bureau of Identification

Nothing in this subchapter shall require dissemination of information or records of the Attorney General, State Police or Bureau of Identification that are declared to be confidential under Title 5, section 200-D or Title 25, section 1631.

§ 622. Application

The provisions of this subchapter shall apply to criminal history record information in existence before July 29, 1976, including that which has been

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

Effective September 14, 1979

CHAPTER 434

H. P. 1050 — L. D. 1301

AN ACT to Clarify the Requirements Relating to Campaign Reports and Finances.

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

Sec. 1. 21 MRSA § 1396, sub-§ 2, ¶B, as repealed and replaced by PL 1975, c. 759, § 1, is amended to read:

B. The identification of every person making a contribution in excess of $10, and the date and amount thereof and, if a person's contributions in any ~~election~~ **report filing period** aggregate more than $50, the account shall include occupation and the principal place of business, if any, and, if such person is a member of a candidate's immediate family as defined in section 1395, subsection 1, the account shall state such relationship~~;~~. **For purposes of this paragraph, "filing period" is as provided in section 1397, subsection 4, paragraph A;**

Sec. 2. 21 MRSA § 1397, sub-§ 4, ¶A, last sentence, as enacted by PL 1977, c. 575, § 13, is repealed and the following enacted in its place:

Other reports shall be complete for the filing period. A filing period is that period of time from one completion date to the next completion date except as provided heretofore for first reports.

Sec. 3. 21 MRSA § 1397, sub-§ 4, ¶C, as enacted by PL 1977, c. 575, § 13, is repealed and the following enacted in its place:

C. Reports shall be filed not later than 5 p.m. on the 42nd day after the date on which an election is held and shall be complete for the filing period.

Sec. 4. 21 MRSA § 1397, sub-§ 6, as last repealed and replaced by PL 1977, c. 575, § 13, is amended to read:

6. Content. A report required under this section shall contain the itemized

P.L. 1993, ch. 719, effective July 14, 1994

(1) The name of any domestic corporation or limited partnership or limited liability company organized under the laws of this State or any foreign corporation or foreign limited partnership or foreign limited liability company authorized to transact business or to carry on activities in this State;

(2) A name the exclusive right to which is, at the time, reserved under section 404 or 604; Title 13-A, section 302; or Title 13-B, section 302;

(3) A name that is registered under section 406 or 606; Title 13-A, section 303; or Title 13-B, section 303;

(4) The assumed name of a corporation or limited partnership or limited liability company as provided in section 405 or 605; Title 13-A, section 307; or Title 13-B, section 308; or

(5) A mark registered under Title 10, chapter 301-A.

Sec. B-10. 36 MRSA §4641-C, sub-§15, ¶C, as enacted by PL 1993, c. 398, §4, is amended to read:

C. From a trustee, nominee or straw party to the beneficial owner; ~~and~~

Sec. B-11. 36 MRSA §4641-C, sub-§16, as enacted by PL 1993, c. 398, §4, is amended to read:

16. Certain corporate, partnership and limited liability company deeds. Deeds between a family corporation, partnership ~~or~~, limited partnership or limited liability company and its stockholders ~~or~~, partners or members for the purpose of transferring real property in the organization, dissolution or liquidation of the corporation, partnership ~~or~~, limited partnership or limited liability company under the laws of this State, ~~provided that~~ if the deeds are given for no actual consideration other than shares, interests or debt securities of the corporation, partnership ~~or~~, limited partnership or limited liability company. For purposes of this subsection a family corporation, partnership ~~or~~, limited partnership or limited liability company is a corporation, partnership ~~or~~, limited partnership or limited liability company in which the majority of the voting stock of the corporation, or of the interests in the partnership ~~or~~, limited partnership or limited liability company is held by and the majority of the stockholders ~~or~~, partners or members are persons related to each other, including by adoption, as descendants or as spouses of descendants of a common ancestor who was also a transferor of the real property involved, or persons acting in a fiduciary capacity for persons so related.; and

Sec. B-12. 36 MRSA §4641-C, sub-§17 is enacted to read:

17. Limited liability company deeds. Deeds to a limited liability company from a corporation, a general or limited partnership or another limited liability company, when the grantor or grantee owns an interest in the limited liability company in the same proportion as the grantor's or grantee's interest in or ownership of the real estate being conveyed.

Sec. B-13. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1994-95
SECRETARY OF STATE, DEPARTMENT OF THE	
Bureau of Administrative Services and Corporations	
All Other	$7,500
Provides funds for ongoing printing, postage and one-time software design costs to implement the establishment of limited liability corporations.	

See title page for effective date.

CHAPTER 719

S.P. 665 - L.D. 903

An Act to Bring the Department of the Attorney General into Conformity with the Criminal History Record Information Laws

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

Sec. 1. 5 MRSA §200-D, as enacted by PL 1975, c. 715, §1, is repealed.

Sec. 2. 10 MRSA §1109, sub-§4, as enacted by PL 1989, c. 750, is amended to read:

4. Confidentiality. Information received by the Department of the Attorney General as a result of this

rting requirement is a confidential ~~investigative under Title 5, section 200-D~~.

c. 3. 10 MRSA §1675, as enacted by PL 1, c. 836, §3, is amended to read:

75. Confidentiality

Information received by the Department of the rney General pursuant to sections 1673 and 1674 ~~stitutes a~~ is confidential ~~investigative record under 5, section 200-D~~.

Sec. 4. 10 MRSA §8003-B, sub-§3, as ted by PL 1989, c. 173, is amended to read:

3. Attorney General records. The provision lisclosure of investigative records of the Depart- it of the Attorney General to a departmental em- ee designated by the commissioner or to a plaint officer of a board or commission does not stitute a waiver of the confidentiality~~, provided er Title 5, section 200-D,~~ of those records for any r purposes. Further disclosure of those investiga- records ~~shall be~~ is subject to Title 16, section 614 the discretion of the Attorney General.

Sec. 5. 16 MRSA §611, sub-§4, as enacted PL 1979, c. 433, §2, is amended to read:

4. Criminal justice agency. "Criminal justice ncy" means a federal, state, district, county or l government agency or any subunit thereof ~~which~~ erforms the administration of criminal justice a statute or executive order, and ~~which~~ that ...es a substantial part of its annual budget to the inistration of criminal justice. Courts ~~shall be med to be~~ and the Department of the Attorney neral are considered criminal justice agencies.

Sec. 6. 16 MRSA §611, sub-§8, as amended PL 1983, c. 787, §1, is further amended to read:

8. Intelligence and investigative information. telligence and investigative information" means ormation collected by criminal justice agencies or the direction of criminal justice agencies in an ort to anticipate, prevent or monitor possible crimi- activity, including operation plans of the collect- agency or another agency, or information mpiled in the course of investigation of known or pected crimes, civil violations and prospective and ding civil actions. ~~It~~ "Intelligence and investiga- e information" does not include information that is minal history record information.

Sec. 7. 16 MRSA §614, sub-§1, as repealed d replaced by PL 1993, c. 376, §1, is repealed and following enacted in its place:

1. Limitation on dissemination of intelligence and investigative information. Reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of a local, county or district criminal justice agency; the Bureau of State Police; the Department of the Attorney General; the Maine Drug Enforcement Agency; the Office of State Fire Marshal; the Department of Corrections; or the criminal law enforcement units of the Department of Marine Resources or the Department of Inland Fisheries and Wildlife are confidential and may not be disseminated if there is a reasonable possibility that public release or inspection of the reports or records would:

A. Interfere with law enforcement proceedings;

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

C. Constitute an unwarranted invasion of personal privacy;

D. Disclose the identity of a confidential source;

E. Disclose confidential information furnished only by the confidential source;

F. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;

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

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

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

J. Disclose information designated confidential by some other statute; or

K. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.

Sec. 8. 16 MRSA §621, as amended by PL 1993, c. 376, §2, is repealed.

Sec. 9. 16 MRSA §623 is enacted to read:

§623. Attorney General fees

The Attorney General shall analyze the impact of this conformity provision upon the Department of the Attorney General. The Department of the Attorney General shall submit a report to the joint standing committee of the Legislature having jurisdiction over judiciary matters to the First Regular Session of the 117th Legislature on this analysis and recommend a funding mechanism. The funding mechanism must include a fee for services to cover the costs associated with providing access and copying of records available to the public under this chapter.

Sec. 10. 22 MRSA §1885, sub-§1, as enacted by PL 1991, c. 814, §1, is amended to read:

1. Investigative powers. The Attorney General, at any time after an application is filed under section 1883, subsection 2, may require by subpoena the attendance and testimony of witnesses and the production of documents in Kennebec County or the county in which the applicants are located for the purpose of investigating whether the cooperative agreement satisfies the standards set forth in section 1883, subsection 4. All documents produced and testimony given to the Attorney General are ~~investigative records under Title 5, section 200-D~~ confidential. The Attorney General may seek an order from the Superior Court compelling compliance with a subpoena issued under this section.

Sec. 11. Effect of repeal of Maine Revised Statutes, Title 5, section 200-D. Reports and records that were created prior to the effective date of this Act that were confidential pursuant to the Maine Revised Statutes, Title 5, section 200-D at the time of their creation continue to be confidential after the effective date of this Act as provided in former Title 5, section 200-D. The confidentiality of intelligence and investigative information contained in reports and records prepared by or at the direction of the Department of the Attorney General after the effective date of this Act is governed by Title 16, section 614.

Sec. 12. Effective date. This Act takes effect July 1, 1995, except that that section of this Act that enacts the Maine Revised Statutes, Title 16, section 623 takes effect 90 days after adjournment of the Second Regular Session of the 116th Legislature.

Effective July 1, 1995, unless otherwise indicated.

CHAPTER 720

H.P. 1080 - L.D. 1446

An Act to Establish an Ambient Water Toxics Program

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

Sec. 1. 38 MRSA §420-B is enacted to read:

§420-B. Surface water ambient toxic monitoring program

The discharge of pollutants from certain direct and indirect sources into the State's waters introduces toxic substances, as defined under section 420, into the environment. In order to determine the nature, scope and severity of toxic contamination in the surface waters and fisheries of the State, the commissioner shall conduct a scientifically valid monitoring program.

The program must be designed to comprehensively monitor the lakes, rivers and streams and marine and estuarine waters of the State on an ongoing basis. The program must incorporate testing for suspected toxic contamination in biological tissue and sediment, may include testing of the water column and must include biomonitoring and the monitoring of the health of individual organisms that may serve as indicators of toxic contamination. This program must collect data sufficient to support assessment of the risks to human and ecological health posed by the direct and indirect discharge of toxic contaminants.

1. Development of monitoring plans and work programs. The commissioner shall:

A. Prepare a plan every 5 years that outlines the monitoring objectives for the following 5 years, resources to be allocated to those objectives and a plan for conducting the monitoring, including methods, scheduling and quality assurance; and

B. Prepare a work program each year that defines the work to be conducted that year toward the objectives of the 5-year plan. This work program must identify specific sites, the sampling media and the contaminants that will be tested.

(1) The commissioner shall consider the following factors when selecting monitoring sites for the annual work program:

(a) The importance of the water body to fisheries, wildlife and humans;

An Act to Amend the Laws Relating to Criminal History Record Information *and Intelligence and Investigative Information*

Proposed to be submitted by the Criminal Law Advisory Commission

Part 2

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
Sec. 3 16 MRSA c. 3, sub-c 11 is enacted to read **SUBCHAPTER 11** **INTELLIGENCE AND INVESTIGATIVE INFORMATION ACT** **§671. Definitions** As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.		
1. Administration of criminal justice. "Administration of criminal justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known or suspected crimes. It includes the collection, storage and dissemination of intelligence and investigative information relating to the administration of criminal justice.	**§611 1. Administration of criminal justice.** "Administration of criminal justice" means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.	
2. Administration of civil justice. "Administration of civil justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known or suspected civil violations, traffic infractions, juvenile crimes and prospective and pending civil actions. It		*New*

CHRIA #3

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
includes the collection, storage and dissemination of intelligence and investigative information relating to the administration of civil justice.		
3. Criminal justice agency. "Criminal justice agency" means a government agency or any subunit of a government agency that performs the administration of criminal justice or the administration of civil justice pursuant to a statute or executive order. Maine courts and courts in any other jurisdiction are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of the Canadian government and any federally recognized Indian tribe.	§611 **4. Criminal justice agency.** "Criminal justice agency" means a federal, state, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.	
4. Dissemination. "Dissemination" means the transmission of information by any means, including but not limited to, orally, in writing or electronically, by or to anyone outside the agency that maintains the information.	§611 **6. Dissemination.** "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency which maintains the information.	
5. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access.	§611 **7. Executive order.** "Executive order" means an order of the President of the United States or the chief executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.	
6. Intelligence and investigative information. "Intelligence and investigative information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency while performing the administration of criminal justice	§611 **8. Intelligence and investigative information.** "Intelligence and investigative information" means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity,	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
or the administration of civil justice. The term also includes information of record concerning security plans and procedures and investigative techniques and procedures prepared or collected by a criminal justice agency or another agency. "Intelligence and investigative information" does not include criminal history record information as defined in section 652, and does not include information of record collected to anticipate, prevent or monitor possible juvenile crime activity or information compiled in the course of investigation of known or suspected juvenile crimes to the extent addressed in the Maine Juvenile Code.	including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. "Intelligence and investigative information" does not include information that is criminal history record information.	
7. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Island, Guam and America Samoa. It also includes the federal government of Canada and any provincial government of Canada and any federally recognized Indian tribe.	§611 **11. State.** "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.	
8. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.	§611 **12. Statute.** "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.	
§672. Application This subchapter applies to a record that is or contains intelligence and investigative information and that is prepared by, prepared at the direction of or kept in the custody of any Maine criminal justice agency.		

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
§673. Limitation on dissemination of intelligence and investigative information Except as provided in section 674, a record that contains intelligence and investigative information is confidential and may not be disseminated to any person or public or private entity if there is a reasonable possibility that public release or inspection of the report or record would:	§614 **1. Limitation on dissemination of intelligence and investigative information.** Reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of a local, county or district criminal justice agency; the Bureau of State Police; the Department of the Attorney General; the Maine Drug Enforcement Agency; the Office of State Fire Marshal; the Department of Corrections; the criminal law enforcement units of the Department of Marine Resources, the Department of Inland Fisheries and Wildlife or the Department of the Secretary of State, Bureau of Motor Vehicles, office of investigations *(added by PL 2011, c. 356, effective September 28, 2011)*; or the Department of Conservation, Division of Forest Protection when the reports or records pertain to arson; or the Department of Agriculture, Food and Rural Resources when the reports or records pertain to animal cruelty *(added by PL 2011, c. 210, effective September 28, 2011)* are confidential and may not be disseminated if there is a reasonable possibility that public release or inspection of the reports or records would:	*The list of agencies is not needed because of new §672*
1. Interfere. Interfere with law enforcement proceedings relating to crimes, civil violations, traffic infractions, juvenile crimes or civil actions;	A. Interfere with law enforcement proceedings;	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
2. Result in dissemination of prejudicial information. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;	B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;	
3. Constitute an invasion of privacy. Constitute an unwarranted invasion of personal privacy;	C. Constitute an unwarranted invasion of personal privacy;	
4. Disclose confidential source. Disclose the identity of a confidential source;	D. Disclose the identity of a confidential source;	
5. Disclose confidential information. Disclose confidential information furnished only by the confidential source;	E. Disclose confidential information furnished only by the confidential source;	
6. Disclose trade secrets. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;	F. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;	
7. Disclose investigative techniques, security plans. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;	G. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;	
8. Endanger law enforcement or others. Endanger the life or physical safety of any individual, including law enforcement personnel;	H. Endanger the life or physical safety of any individual, including law enforcement personnel;	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
9. Disclose arbitration or mediation information. Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;	I. Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;	
10. Statutorily confidential information. Disclose information designated confidential by another statute; or	J. Disclose information designated confidential by some other statute; or	
11. Identify sources of consumer or antitrust complaints. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.	K. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.	
§674. Exceptions Nothing in this subchapter precludes dissemination of intelligence and investigative information by a Maine criminal justice agency to:	**§614 3. Exceptions.** Nothing in this section precludes dissemination of intelligence and investigative information to:	*Limited disclosure*
1. Another criminal justice agency. Another criminal justice agency;	A. Another criminal justice agency;	
2. A government agency or subunit statutorily responsible for investigating child or adult abuse, neglect or exploitation. A government agency or subunit of a government agency that pursuant to statute is responsible for investigating abuse, neglect or exploitation of children [under Title 22, chapter 1071] or incapacitated or dependent adults [under Title 22, chapter 958-A] for use in the investigation of suspected abuse, neglect or exploitation, subject to reasonable limitations to protect the interests	B. A state agency responsible for investigating abuse, neglect or exploitation of children under Title 22, chapter 1071 or incapacitated or dependent adults under Title 22, chapter 958-A for use in the investigation of suspected abuse, neglect or exploitation;	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
described in section 673;		
3. An accused person or that person's agent or attorney. A person accused of a crime or that person's agent or attorney for trial purposes if authorized by:	C. An accused person or that person's agent or attorney if authorized by:	
A. The responsible prosecutorial office or prosecutor; or	(1) The district attorney for the district in which that accused person is to be tried;	
B. A court rule or court order.	(2) A rule or ruling of a court of this State or of the United States; or	
	(3) The Attorney General;	
As used in this subsection "agent" means a licensed private investigator, an expert witness, or a parent, foster parent or guardian if the accused person has not attained 18 years of age;		
4. A crime victim or that victim's agent or attorney. A crime victim or that victim's agent or attorney, subject to reasonable limitations to protect the interests described in section 673. As used in this subsection "agent" means a licensed private investigator, or immediate family if due to death, age, physical or mental disease, disorder or defect, the victim cannot realistically act in the victim's own behalf;	D. A victim or victim's agent or attorney, subject to reasonable limitations to protect the interest described in subsection 1; or	
5. A counselor or advocate. A sexual assault counselor, as defined in section 53-A, subsection 1, paragraph B, or an advocate, as	E. An advocate, as defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice agency and subject to reasonable limitations to protect the interests described in section 673. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:	agency and subject to reasonable limitations to protect the interests described in subsection 1. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:	
A. Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;	(1) Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;	
B. Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;	(2) Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;	
C. Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;	(3) Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;	
D. Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;	(4) Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;	
E. Permit the criminal justice agency to	(5) Permit the criminal justice	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this subsection;	agency to perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this paragraph;	
F. Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;	(6) Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;	
G. Permit a criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this subsection; and	(7) Permit the criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this paragraph; and	
H. Provide sanctions for any violations of this subsection.	(8) Provide sanctions for any violations of this paragraph.	
The Commissioner of Public Safety may adopt a model policy to standardize the provisions contemplated in this subsection; or	The Commissioner of Public Safety may adopt a model policy to standardize the provisions contemplated in this paragraph.	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
ALTERNATIVE A		
6. A government agency or subunit statutorily responsible for licensing entities or individuals that provide healthcare or social services. A government agency or subunit of a government agency that pursuant to statute is responsible for licensing entities or individuals that provide healthcare or social services for use in the investigation of potential violations of laws enforced by the government agency or subunit subject to reasonable limitations to protect the interests described in section 673.	B-1. The division of licensing and regulatory services within the Department of Health and Human Services for use in the investigation of suspected abuse, neglect or exploitation in licensed, certified and registered facilities and programs that provide care to children and adults; *(added by PL 2011, c. 52, effective July 1, 2011)*	*Question (not for RTK AC) about whether to write this exception broadly to cover just healthcare and social services providers*
ALTERNATIVE B		
6. A government agency or subunit statutorily responsible for licensing individuals who engage in a particular occupation or social services. A government agency or subunit of a government agency that pursuant to statute is responsible for licensing individuals who engage in a particular occupation or social services for use in the investigation of potential violations of laws enforced by the government agency or subunit subject to reasonable limitations to protect the interests described in section 673.		*or all licensed occupations*
§ ___. Prohibition against release of identifying information of those providing information as to cruelty to animals. The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.	**1-A. Limitation on release of identifying information; cruelty to animals.** The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.	*Move to Title 7 with Animal Welfare/Animal Cruelty statutes*

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
Note: *CLAC voted not to include this proposed section. It would logically go here if the decision was made to add it. CLAC believes this provision, making confidential identifying information under these circumstances, more properly belongs as part of a Department statute expressly addressing persons being encouraged to provide information to the Department pertaining to criminal or civil cruelty to animals.*		
§675. Restriction on use of disseminated intelligence and investigative information Intelligence and investigative information that is disseminated to a person or public or private entity that is not a criminal justice agency under section 671 may be used solely for the purpose for which it was disseminated and may not be disseminated further.		
§ 676. Confirming existence or nonexistence of intelligence and investigative information Except as provided in section 673 and 674, a criminal justice agency to whom this subchapter applies may not confirm the existence or nonexistence of intelligence and investigative information to any person or public or private entity that is not eligible to receive the information itself.		
§677. No right to access or review	**§620. Right to access and review**	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
A person who is the subject of intelligence and investigative information maintained by a criminal justice agency has no right to inspect or review that information for accuracy or completeness.	**1. Inspection.** Any person or his attorney may inspect the criminal history record information concerning him maintained by a criminal justice agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to him on request and payment of a reasonable fee.	
§ 678. Unlawful dissemination of intelligence and investigative information		
1. Offense. A person is guilty of unlawful dissemination of intelligence and investigative information if the person intentionally disseminates intelligence and investigative information knowing it to be in violation of any of the provisions of this subchapter.	**§614 4. Unlawful dissemination of reports or records that contain intelligence and investigative information.** A person that intentionally disseminates a report or record that contains intelligence and investigative information in violation of this section commits a Class E crime.	
2. Classification. Unlawful dissemination of intelligence and investigative information is a Class E crime.		G:\STUDIES 2011\Right to Know Advisory Committee\CHRIA\III sbs 11-7-11.doc (11/7/2011 11:35:00 AM)

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
§408. Public records available for public inspection and copying	**44-04-18. Access to public records - Electronically stored information.**	**§408. Public records available for public inspection and copying**	**Repeal §408** **Enact new §408-A, Public records available for inspection and copying**
1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall acknowledge receipt of the request within a reasonable period of time.	1. Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. As used in this subsection, "reasonable office hours" includes all regular office hours of a public entity. If a public entity does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the public entity's records must be posted on the door of the office of the public entity, if any. Otherwise, the information regarding the contact person must be filed with the secretary of state for state-level entities, for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city	**1. Right to inspect and copy.** Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within ~~a reasonable period of time after making a request to inspect or copy the public record~~ the time limits established in section 408-A. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall acknowledge receipt of the request within a reasonable period of time. A person may request by telephone that a copy of the public record be mailed or e-mailed to that person.	**1. Right to inspect and copy.** Except as otherwise provided by statute, every person has the right to inspect and copy any public record within a reasonable time of making the request to inspect or copy. **2. Clarification.** An agency or official may request clarification concerning which public record or public records are being requested. **3. Acknowledgment; time estimate.** The agency or official shall acknowledge receipt of the request within a reasonable period of time, and shall provide an estimate of the time within which the agency or official will comply with the request. **4. Refusals; denials.** If any body or agency or official who has

LD 1465 #1

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	auditor or designee of the city for city-level entities, or the county auditor or designee of the county for other entities.		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 or copying by any person. *[Currently part of §409, sub-§1]* **5. Schedule.** Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought. As used in this section, "reasonable office hours" includes all regular office hours of an agency or official. If a the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted on the door of the office of the agency or official, if any.

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
			6. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge for inspection. **7. Copy.** A person may copy a public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. A. A request need not be made in person or in writing. B. The agency or official shall mail the copy upon request.
2. Inspection, translation and copying scheduled. Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public		**2. Inspection, translation and copying scheduled.** Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public	

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
record sought.		record sought, as long as the inspection, translation and copying occur within the time limits established in section 408-A. The agency or official may use a 3rd party to make a copy of an original public record, but a requester may not remove the original of a public record from the agency or official.	
	4. Except as provided in this subsection, nothing in this section requires a public entity to create or compile a record that does not exist. Access to an electronically stored record under this section, or a copy thereof, must be provided at the requester's option in either a printed document or through any other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of any closed or confidential information contained in that file.	**2-A. Form.** If a public record exists in electronic or magnetic form, the requester may request a copy of the public record in a paper, electronic, magnetic or other medium, specify the storage medium and request that the copy be provided by an electronic transfer by the Internet or other means. A. An agency or official shall	**8. Compile or create.** An agency or official is not required to create or compile a record that does not exist. **9. Available medium.** Access to an electronically stored record under this section, or a copy of such a record, must be provided at the requester's option in either a printed document or through any other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of any closed or confidential information contained in that file.

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format, or organization. This section does not require a public entity to provide a requester with access to a computer terminal.	provide a copy of the public record in the requested medium if: (1) The agency or official has the technological ability to produce the public record in that medium or can obtain the assistance necessary to produce the public record at a reasonable cost; and (2) The requester agrees to pay the agency's or official's costs to purchase and install any additional necessary computer software or hardware to accommodate the request and to copy the public record in a requested medium. B. If an agency or official cannot provide a copy of a public record in a requested	A. Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format or organization. B. This section does not require a public entity to provide a requester with access to a computer terminal.

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
		medium, the agency or official shall identify every medium in which the public record can be provided for inspection and copying, which must include a paper copy, and the requester must identify the medium that is acceptable to the requester.	
3. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows.	2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. A request need not be made in person or in writing, and the copy must be mailed upon request.	**3. Payment of costs.** Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows.	**10. Payment of costs.** (Except as otherwise specifically provided by law or court order, - *see ¶G; need both?)*) an agency or official having custody of a public record may charge fees for copies of public records as follows.
A. The agency or official may charge a reasonable fee to cover the cost of copying.	A public entity may charge up to twenty-five cents per impression of a paper copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated copy of a size not more than eight and one-half by fourteen inches	A. The agency or official may charge a reasonable fee to cover the cost of copying.	A. The agency or official may charge a reasonable fee to cover the cost of copying. As used in this section, "reasonable fee" means the actual cost to the agency or

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	[19.05 by 35.56 centimeters]. For any copy of a record that is not a paper copy as defined in this section, the public entity may charge a reasonable fee for making the copy. As used in this section, "reasonable fee" means the actual cost to the public entity of making the copy, including labor, materials, and equipment. The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy.		official of making the copy, including: (1) Labor; (2) Materials; and (3) Equipment.
B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting	An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records, including electronic records, if locating the records requires more than one hour. An entity may impose a fee not exceeding twenty-five dollars per	B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential	B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
confidential information.	hour per request, excluding the initial hour, for excising confidential or closed material under section 44-04-18.10 from the records, including electronic records. If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity.	information.	information.
C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.		C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.	E. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.
D. An agency or official may not charge for inspection.		D. An agency or official may not charge for inspection.	D. An agency or official may not charge for inspection. *(included in subsection 4 – need*

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
			both?)
	The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy.	E. If the requester requests that the public record be mailed, the agency or official may charge a fee not greater than the actual cost of mailing the record.	F. The agency or official may charge for the actual cost of postage to mail a copy of a record.
	This subsection does not apply to copies of public records for which a different fee is specifically provided by law.		G. This subsection does not apply to copies of public records for which a different fee is specifically provided by law. *(need this?)*
4. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than $20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 5 applies.		**4. Estimate.** The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than $20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 5 applies and the estimate must be provided within 3 business	**11. Estimate.** The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than $20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 12 applies.

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
		days of the request.	
5. Payment in advance. The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:	(subsection 1) *An entity may require payment before locating, redacting, making, or mailing the copy.*	**5. Payment in advance.** The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:	**12. Payment in advance.** The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:
A. The estimated total cost exceeds $100; or		A. The estimated total cost exceeds $100; or	A. The estimated total cost exceeds $100; or
B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.		B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.	B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.
6. Waivers. The agency or official may waive part or all of the total fee if:		**6. Waivers.** The agency or official may waive part or all of the total fee if:	**13. Waivers.** The agency or official may waive part or all of the total fee if:
A. The requester is indigent;		A. The requester is indigent; or	A. The requester is indigent; or

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
or			
B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.		B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.	B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.
	3. Automation of public records must not erode the right of access to those records. As each public entity increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law. A public entity may not enter into a contract for the creation or maintenance of a public records		**§408-B. Automation of public records.** **1. Right of access; protection of confidential records.** Automation of public records may not erode the right of access to those records. As each agency or official increases the use of and dependence on electronic recordkeeping, each agency shall provide reasonable public access to records electronically maintained and shall ensure that confidential records are not disclosed except as otherwise

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records online or stored in an electronic recordkeeping system used by the agency. An electronic copy of a record must be provided upon request at no cost, other than costs allowed in subsection 2, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the agency may charge no more than the actual cost incurred for the extensive use of information technology resources incurred by the public entity. "Extensive" is defined as a request for copies of electronic records which take more than one hour of information technology resources to produce.		permitted by law. **2. Contracts.** A public entity may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records online or stored in an electronic recordkeeping system used by the agency. **3. Cost of electronic copy.** An electronic copy of a record must be provided upon request at no cost, other than costs allowed in section 408-A, subsection 10, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the agency may charge no more than the actual cost incurred for the extensive use of information technology resources incurred by the public entity. "Extensive" is defined as a request for copies of electronic

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
			records which take more than one hour of information technology resources to produce.
	5. A state-level public entity as defined in subdivision a of subsection 12 of section 44-04-17.1 or a political subdivision as defined in subsection 10 of section 44-04-17.1, may establish procedures for providing access from an outside location to any computer database or electronically filed or stored information maintained by that entity. The procedures must address the measures that are necessary to maintain the confidentiality of information protected by federal or state law. Except for access provided to another state-level public entity or political subdivision, the state or political subdivision may charge a reasonable fee for providing that outside access. If the original information is keyed, entered, provided, compiled, or submitted		

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	by any political subdivision, the fees must be shared by the state and the political subdivision based on their proportional costs to make the data available.		
	6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action, adjudicative proceeding as defined in subsection 1 of section 28-32-01, or arbitration in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules or orders and be made to the attorney representing that entity in the criminal or civil action, adjudicative proceeding, or arbitration. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules.		

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	7. A denial of a request for records made under this section must describe the legal authority for the denial and must be in writing if requested.		
	8. This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed or when a fee is charged in excess of the amount authorized in subsections 2 and 3.		
	9. It is not an unreasonable delay or a denial of access under this section to withhold from the public a record that is prepared at the express direction of, and for presentation to, a governing body until the record is mailed or otherwise provided to a member of the body or until the next meeting of the body, whichever occurs first. It also is not an unreasonable delay or a denial of		

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	access to withhold from the public a working paper or preliminary draft until a final draft is completed, the record is distributed to a member of a governing body or discussed by the body at an open meeting, or work is discontinued on the draft but no final version has been prepared, whichever occurs first.		
C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the	10. For public entities headed by a single individual, it is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. A working paper or preliminary draft shall be deemed completed if it can reasonably be concluded, upon a good-faith review, that all substantive work on it has been completed.		**§402, sub-§3, ¶C-2** is enacted to read: *(exceptions to "public records")* C-2. Proposed legislation and reports until publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by the Governor or any employee of the Governor to prepare proposed legislation or

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over;			reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the proposed legislation or reports are prepared or considered or to which the proposed legislation or report is carried over;
§409. Appeals			**§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			**1. Records.** ~~If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person.~~ Any person aggrieved by a refusal or denial to inspect or copy a record under section 408-A may

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
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.			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			

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
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			

Bulk Records Subcommittee and Legislative Subcommittee
Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
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. This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.			

G:\STUDIES 2011\Right to Know Advisory Committee\Legislative Subcommittee\Section 408 SBS with ND.doc (10/31/2011 1:04:00 PM)

Public Employees responding to FOA request: hourly/annual wages

Secretarial and clerical (hourly averages or ranges)

	Beginning step, lowest range administrative office support	Administrative office support	Secretary/clerical support	Clerk	Administrative Assistant/Executive Secretary
State of Maine	~$10.00	$12.16 - $16.99 (range 12)			
School districts		$15.88			$19.47
Counties		$10.28 - $19.26		$10.97 - 19.50	$12.01 - $22.55
Municipalities			$9.50 (15 hrs) - $20.80		$9.13 (15 hrs) - $26.68

Administration (hourly or annual ranges)

	Admin Asst to Selectmen	Manager/ Administrator	County Clerk	Appointed clerk	Elected clerk
Counties		$25.75 - $49.57	Annually: $24,383 - $46,850		
Municipalities	$10.30 - $37.06	Annually: $34,320 - $143,000		Min: ? Max: $36.90	Min: ? Max: $26.59

Information provided by State of Maine Bureau of Human Resources, Maine School Management Association, County Commissioners Association survey, Maine Municipal Association survey.

LD 1465 #2

Legislative Subcommittee
LD 1465's Public Access Officer Provision: Proposed draft language changes

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

1-B. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.

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

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

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

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

A. The general legal requirements of this chapter regarding public records and public proceedings;

B. Procedures and requirements regarding complying with a request for a public record under this chapter; and

C. Penalties and other consequences for failure to comply with this chapter.

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

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

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

LD1465 #3

Legislative Subcommittee
LD 1465's Public Access Officer Provision: Proposed draft language changes

A. The Governor;

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

C. Members of the Legislature elected after November 1, 2008;

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

G. Officials of school units and school boards; and

H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

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

Sec. 3. **1 MRSA §413** is enacted to read:

§ 413. Public access officer; responsibilities

1. Designation; responsibility. Each State agency, county and municipality shall designate an existing employee as its public access officer to serve as the contact person for that agency, county or municipality with regard to requests for public records under this chapter. *[add language about making name of contact available to public?? Need to mention that the contact person is not solely responsible for fulfilling request or that request has to be made to POA??]]*

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

ESTIMATED COST FOR A FULL-TIME ASSISTANT ATTORNEY GENERAL POSITION

		Headcount		
Asistant Attorney General		1	1	
		FY12	**FY13**	
Salaries	3110	$ 44,679	$ 46,913	As set by FO for GCB AAG.
Health Insurance	3901	$ 16,233	$ 16,233	Highest Rate
Dental	3905	$ 329	$ 329	
Worker's Comp	3906	$ 480	$ 480	
Empl Retire Health	3908	$ 3,650	$ 3,833	
Retirement	3910	$ 1,506	$ 1,581	
Group Life	3911	$ 286	$ 300	
Medicare	3912	$ 648	$ 680	
Unfunded liability	3960	$ 4,830	$ 5,071	
Personal Services		$ 72,640	$ 75,420	
Travel	4200	$ 500	$ 500	
Insurance	4800	$ 58	$ 58	
General Operating	4900	$ 500	$ 500	
Technology	5300	$ 3,920	$ 1,920	Assumes buying a Laptop in FY12
Supplies	5600	$ 200	$ 200	
All Other		$ 5,178	$ 3,178	
Total		$ 77,818	$ 78,598	

AG/OFPR
10/21/11

LD 1465 #4

Reinsch, Margaret

From: Susan Bulay <sbulay@gwi.net>
Sent: Thursday, November 10, 2011 11:47 AM
To: Cianchette, Michael
Cc: Reinsch, Margaret
Subject: Registry of Deeds FOAA issues

Mr. Cianchette:

We spoke several weeks ago at the last meeting of the Bulk Sales subcommittee and I said I would get back to you with recommendations from the Registers of Deeds regarding the social security numbers appearing in our documents and how that would impact bulk sales of our records under FOAA.

The registers did not meet until this morning and I apologize for being so last minute in getting these suggestions to you.

1. Under public law chapter 320, section E, a FOAA request cannot include documents with social security numbers on them. The registers have never been clear exactly how that provision was supposed to be applied to the registries of deeds. We would like an opinion, perhaps from the AG's office, on this provision.

2. We would like the committee to come up with a definition of bulk sales. Since it is charged as a "Bulk Sales Subcommittee" we feel that that should be the first order of business. Without that definition of bulk sales and how that differs from FOAA we are at a loss on how to proceed. Bulk Sales must be a separate category from a FOAA request.

3. If we are expected to provide mass or bulk data under a FOAA request that does not include social security numbers we would need money to purchase redaction software and a change in current laws.

4. We do not feel that the members of the committee have a sufficient working knowledge of exactly how the registry works and that may be hampering them in their decisions. We would strongly encourage each member or the committee as a whole to visit a registry and get a tour of the behind the scenes action.

5. If the registries are to set our prices by rulemaking like the state agencies do, do the County Commissioners qualify to be the rulemaking body.

6. We would support an ombudsman position at the state level to answer any questions. In fact, perhaps the ombudsman could be charged with determining exceptions rather than defining each exception in statute.

I know these are quick thoughts and perhaps not completely explained. Please let me know if there are any other question I can answer and thank you for your time.

Susan F. Bulay
Penobscot Register of Deeds
97 Hammond St.
P.O. Box 2070
Bangor, ME 04402
(207)942-8797

(1)

RECEIVED
APR 12 2011

APRIL 12, 2011

Margaret Reinsch
Senior Legal Analyst
Judiciary Committee
Right to Know Advisory
Committee

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

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

Resp. #1

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

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

On December 15, 2010, Cove Writers, Inc. filed a FOA request to MPBN President James Dowe for certain financial information. **(See Copy Enclosed)**. A FOA request is mandated by a reply within five working days. No reply came within that period or in subsequent weeks although several attempts to reach President Dowe were futile until February 2011with a phone call from John F. Isacke, Vice President and Chief Financial Officer which was 45 days from the original request and 40 days in violation of the FOA Act. I requested of Mr. Isacke to put his response in writing which he did with letter dated 2/311. **(See Copy Enclosed).** Although certain MPBN financials were forwarded, two items (1) a copy of MPBN's current roster of full-time employees with their job titles and ranges for pay grades, and (2) a current copy listing part-time and/or contract employees who received IRS Form 1099 including the amounts they received were omitted.

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

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

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

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

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

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

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

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

Enclosures:

Allen D. (Mike) Brown, President

Hometown News Service

State House Station 162

Augusta, ME 04333

Phone 287-4899

E-mail brown@midcoast.com

COVE WRITERS, INC.
INDEPENDENT SYNDICATION
78 CLIFF ROAD, SATURDAY COVE
NORTHPORT, MAINE 04849

TELEPHONE (207) 338-3419
FAX (207) 338-4992

December 15, 2010

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

Dear Mr. Dowe:

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

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

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

Sincerely,

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

Maine Public Broadcasting Network

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

February 3, 2011

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

Re: Your request of December 15, 2010

Dear Mr. Brown,

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

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

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

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

referred to above discloses for all employees who are compensated at $100,000 or higher, their name, title and total compensation.

4. The listing of part-time and/or contract employees who received an IRS Form 1099 and the amounts they received is not a document we normally share and is not enclosed.
5. A listing of our Board of Trustees is also made available to the public on our website, www.mpbn.net . A listing, including their terms of office is enclosed for your convenience.

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

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

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

Sincerely,

John F. Isacke
Vice President and Chief Financial Officer

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

Ellsworth American/State of Maine Column/Mike Brown/Issue 2/17/11

MPBN's Violation of the Maine FOA Act

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

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

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

Although VP Isacke provided hard copy duplicates of certain financials–IRS 990 for 2099 and Audited Report, 2010 - he wrote in a cover letter that,"I do not believe that all the items requested are subject to the FOA Act." He further stated,"I am not a lawyer, but my simple reading of Chapter 13 as it pertains to Public Records is that neither is MPBN an agency of the state nor are its employees public officials."

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

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

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

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

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

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

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

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

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

-30-

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.

Resp. #2

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.

G:\STUDIES 2011\Right to Know Advisory Committee\meetings by tech draft FINAL per RTKAC 09-23-10 mtg.doc (7/13/2011 2:08:00 PM)

From LD 1792: RTK AC recommendations for FAME confidentiality statutes
(Deleted from LD 1792 by JUD in Committee Amendment)

Sec. 4. 10 MRSA §975-A, as amended by PL 2003, c. 537, §17 and affected by §53, is repealed.

Sec. 5. 10 MRSA §975-B is enacted to read:

§ 975-B. Freedom of access; confidentiality of records

The records of the authority are public records, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential:

A. Records containing any information acquired by the authority or a member, officer, employee or agent of the authority, from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the authority is confidential for purposes of Title 1, section 402, subsection 3, paragraph A if the applicant or recipient is an **individual**.

B. A record obtained or developed by the authority that:

(1) A person, including the authority, to whom the record belongs or pertains has requested be designated confidential; and

(2) The authority has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains.

C. A financial statement or tax return.

D. A record that contains an assessment by a person who is not employed by the authority of the credit worthiness or financial condition of any person or project.

E. A record obtained or developed by the authority prior to receipt of a written application or proposal if the application or proposal is for financial assistance to be provided by or with the assistance of the authority, or in connection with a transfer of property to or from the authority. After receipt by the authority of the application or proposal, a record pertaining to the application or proposal is not to be considered confidential unless it meets the requirements of the other paragraphs of the subsection.

F. Any financial statement or business and marketing plan in connection with

any project receiving or to receive financial assistance from the authority pursuant only to subchapters III or IV, except section 1053, subsection 5, if a person to whom the statement or plan belongs or pertains has requested that the record be designated confidential; and

G. Any record, including any financial statement, business plan or tax return obtained or developed by the authority in connection with the matching of potential investors with Maine businesses by the authority through its maintenance of a data base or other record keeping system. For purposes of this section, an application by a potential investor shall not be deemed to be an application for financial assistance.

The authority shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

2. Exceptions. Notwithstanding subsection 1, the following are public records and are not confidential:

A. Any otherwise confidential information the confidentiality of which the authority determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

D. Names of recipients of or applicants for financial assistance, including principals, where applicable;

E. Amounts, types and general terms of financial assistance provided to those recipients or requested by those applicants;

F. Descriptions of projects and businesses benefiting or to benefit from the financial assistance;

G. Names of transferors or transferees, including principals, of property to or from the authority, the general terms of transfer and the purposes for which transferred property will be used;

H. The number of jobs and the amount of tax revenues projected or resulting in connection with a project;

I. Upon the authority's satisfaction of its loan insurance liability, the amount of any loan insurance payments with respect to a loan insurance contract; and

J. Names of financial institutions participating in providing financial assistance and the general terms of that financial assistance;

K. Any information necessary to carry out section 1043 or 1063;

L. The annual report of the authority required pursuant to section 974.

3. Disclosure prohibited; further exceptions. A person may not knowingly divulge or disclose records designated confidential by this section, except that the authority, in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. Information requested by a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the authority has or may have an interest;

E. In any litigation or proceeding in which the authority has appeared, introduction for the record of any information obtained from records designated confidential by this section; and

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority.

G. If necessary in connection with acquiring, maintaining, or disposing of property; and

From LD 1792: RTK AC recommendations for FAME confidentiality statutes
(Deleted from LD 1792 by JUD in Committee Amendment)

H. Information to the extent the authority deems the disclosure necessary to the sale or transfer of revenue obligation securities or to the sale or transfer of bonds of the State.

RTK AC General Agency Confidential Individual and Business Records Template

Sec. X. XX MRSA §XXX-X, as amended by PL XXXX, c. XXX, §XX and affected by §XX, is repealed.

Sec. X. XX MRSA §XXX-X is enacted to read:

§ XXX-X. Freedom of access; confidentiality of records

The records of the *[board, agency, authority, etc.]* are public records, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential:

A. Records containing any information acquired by the *[board, agency, authority, etc.]* or a member, officer, employee or agent of the *[board, agency, authority, etc.]* from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the *[board, agency, authority, etc.]* is confidential for purposes of Title 1, section 402, subsection 3, paragraph A if the applicant or recipient is an individual.

B. A record obtained or developed by the *[board, agency, authority, etc.]* that:

(1) A person, including the *[board, agency, authority, etc.]*, to whom the record belongs or pertains has requested be designated confidential; and

(2) The *[board, agency, authority, etc.]* has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains.

C. A financial statement or tax return.

D. A record that contains an assessment by a person who is not employed by the *[board, agency, authority, etc.]* of the credit worthiness or financial condition of any person or project.

E. A record obtained or developed by the *[board, agency, authority, etc.]* prior to receipt of a written application or proposal if the application or proposal is for financial assistance to be provided by or with the assistance of the *[board, agency, authority, etc.]*, or in connection with a transfer of property to or from the *[board, agency, authority, etc.]*. After receipt by the *[board, agency, authority, etc.]* of the application or proposal, a record pertaining to the application or proposal is

not to be considered confidential unless it meets the requirements of the other paragraphs of the subsection.

The *[board, agency, authority, etc.]* shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

2. Exceptions. Notwithstanding subsection 1, the following are public records and are not confidential:

A. Any otherwise confidential information the confidentiality of which the *[board, agency, authority, etc.]* determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

3. Disclosure prohibited; further exceptions. A person may not knowingly divulge or disclose records designated confidential by this section, **except that the *[board, agency, authority, etc.]*, in its discretion and in conformity with legislative freedom of access criteria** in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. Information requested by a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the *[board, agency, authority, etc.]* has or may have an interest;

E. In any litigation or proceeding in which the *[board, agency, authority, etc.]* has appeared, introduction for the record of any information obtained from records designated confidential by this section;

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority; and

G. If necessary in connection with acquiring, maintaining, or disposing of property.

Notes and Policy Determinations for the RTK-AC Template

Subsection 1: Exceptions to Public Records

All records are public records except: Section 1, A through E.

Section 1A – States explicitly that all individual records are confidential, except that they can be given for a confidential and lawful purpose to a legislative committee (last paragraph in Subsection 1), and as provided in Subsection 2: Exceptions.

This transfers over the proposal from the RTK-AC original template the idea that individual records are presumed to be confidential. This distinction between businesses and individuals is not present in the original Fame statute, so there will need to be a policy determination as to whether to include it or not.

If a blanket confidential status is not included for "individuals," then the committee should consider transferring over subsection 2c from the original Fame statute, which allows the authority discretion to determine if the release of a tax return or financial statement would violate "personal privacy." However, if 1A of the template is included to provide that records of individuals are confidential, this section would likely not be necessary.

If 1A is not included, the only files that will be confidential will be the following:

- 1B: the owner of the information requests that it is confidential, AND the agency or authority determines that it would give another person a business advantage
- 1C: A financial statement or tax return.
- 1D: A record prepared by someone outside the agency, which contains a person's credit report, or financial status.

1E, 1F, and 1G contain additional records that are confidential from the Fame statute, that can and are left off the general template for other agencies:

(1E) Any materials received relating to an application for financial assistance PRIOR to receipt of the actual application would be confidential. Note that once the application has been received, this material becomes a public record unless covered by one of the exceptions.

(1F) Fame specific financial statement or business plan records "pursuant only to subchapters III or IV, except section 1053, subsection 5."

(1G) Fame specific records matching potential investors to Maine businesses.

Subsection 2, NOT Confidential

Resp #3 (B)

Subsection 2 contains the exceptions where records that would otherwise be confidential under Subsection 1, are made public, there are 3 common to both the previous RTK-AC templates and the original Fame statute, and cover most of the explicit disclosure requirements from the first section of the original Fame statute (975A), additional Fame specific disclosure requirements are highlighted, are removable, and were not included in the general template as they may not be appropriate for all agencies. They were added in an effort to transfer the clarity of Fame's original statute's "disclosure required" section. Some provisions were not transferred over, as they were conceptually covered by other provisions of the template.

Subsection 3: Agency has Discretion Whether to Release

Subsection 3 contains the specific situations where the agency CAN release information, if it determines it is appropriate under the Maine Right to Know laws.

Subsection 3 is another section that contains provisions from the Fame that might not be appropriate for other agencies: 3G, and 3H. 3G grants the authority the discretion to release information when necessary in connection with acquiring, maintaining, or disposing of property, and 3H grants discretion to release information when deemed necessary to the sale of securities or state bonds.

3G was left on the general template, and might be too broad, and so the committee should make a policy determination on this issue.

Office of Information Technolgy

E-Mail Usage and Management Policy

Effective September 13, 2004

Introduction and Statement of Purpose

Electronic mail (e-mail) refers to the electronic transfer of information typically in the form of electronic messages, memoranda, and attached documents from a sending party to one or more receiving parties via an intermediate telecommunications system. E-mail is a core tool utilized by State agencies to improve the way they conduct business by providing a quick and cost-effective means to create, transmit, and respond to messages and documents electronically. Well-designed and properly managed e-mail systems expedite business communications, reduce paperwork, and automate routine office tasks thereby increasing productivity and reducing costs. These opportunities are, however, at risk if e-mail systems are not used and managed effectively.

The purpose of this policy is to promote the use of e-mail as an efficient communication and data gathering tool, to ensure that State agencies have the information necessary to use e-mail to their best advantage in supporting agency business, to avoid non-work-related distractions of employees, to avoid subjecting the State's e-mail system to computer viruses, and to otherwise avoid interfering with or damaging the effective functioning of the State's e-mail system. By establishing and maintaining compliance with a policy for appropriate use and management of e-mail, risks and costs to agencies can be mitigated while maximizing the potential of this communication tool.

Scope

This policy applies to all State employees, as well as contract staff, who use the State's electronic mail.

General Policy

It is the policy of Maine State Government that e-mail is used for internal and external communications that serve legitimate state government functions and purposes. Any personal use must be of an incidental nature and not interfere with business activities. Personal use must not involve solicitation, must not be associated with any outside business activity or personal gain, must not be libelous or defamatory, must not

Resp #4(A)

violate the State of Maine Policy on Employee Harassment, must not potentially embarrass the State of Maine, its residents, its taxpayers, or its employees or be used for any unlawful purpose. Copyright restrictions and regulations shall be observed. The information communicated over agency e-mail systems is subject to the same laws, regulations, policies, and other requirements as information communicated in other written forms and formats and is not to be utilized for political purposes.

Each State agency is responsible for enforcing this policy and establishing management practices consistent with this policy that, among other goals:

- support agency business;
- reduce legal and other potential risks;
- define managerial authority over e-mail communications;
- describe the appropriate use of e-mail communications;
- train employees in e-mail use and policies; and
- provide for necessary records retention, accessibility, and protection.

Agencies with special requirements for information confidentiality (for example, confidential client records) may be required to establish additional safeguards to protect this data.

Access to E-mail Services

E-Mail services are provided to all appropriate staff and contractors within departments. To request access, contact the Bureau of Information Services or appropriate agency personnel. o -o

Privacy and Access

- **Mail messages are not personal and private. Managers, supervisors, and technical staff may access an employee's e-mail in accordance with the department security policy for reasonable business purposes, including but not limited to:**
  - for a legitimate business purpose (e.g., the need to access information when an employee is absent);
  - to diagnose and resolve technical problems involving system hardware, software, or communications; and/or
  - to investigate possible misuse of e-mail when a reasonable suspicion of abuse exists or in conjunction with an approved investigation.
- An employee, with the exceptions noted above, is prohibited from accessing another user's e-mail without his or her permission.
- *All e-mail messages including personal communications* may be subject to discovery proceedings in legal actions.

- *All* e-mail messages sent or received and which are not otherwise protected by law, are public documents and may be released to the public under the Freedom of Access Law.

Security

E-mail security is a joint responsibility of technical staff and e-mail users. Users must take all reasonable precautions, including safeguarding and changing passwords, to prevent the use of their e-mail account by unauthorized individuals.

Management and Retention of E-mail Communications

A . Applicable to all e-mail messages and attachments

Since e-mail is a communications system, messages should not be retained for extended periods of time.

Users should:

- remove or archive all e-mail communications in a timely fashion.
- delete records of transitory or little value that are not normally retained in record keeping systems as evidence of an agency's activity.

B. Applicable to records communicated via e-mail

E-mail created in the normal course of official business and retained as evidence of official policies, actions, decisions or transactions are records and are subject to the records management requirements documented by the Maine State Archives. (A copy of the Maine State Archives' guide to e-mail retention is attached.) Records communicated using e-mail need to be identified, managed, protected, and retained as long as they are needed to meet operational, legal, audit, research or other requirements.

For agency specific questions surrounding record retention requirements contact Records Management at the Maine State Archives for assistance.

Examples of messages sent by e-mail that typically are records include:

- policies and directives
- correspondence or memoranda related to official business
- work schedules and assignments
- agendas and minutes of meetings
- drafts of documents that are circulated for comment or approval
- any document that initiates, authorizes, or completes a business transaction
- final reports or recommendations

Some examples of messages that *typically do not constitute records* are:

- personal messages and announcements
- copies or extracts of documents distributed for convenience or reference
- phone message notes

Roles and Responsibilities

- Executive management will ensure that the policy is implemented by program unit management and unit supervisors.
- Unit managers and supervisors will develop and/or publicize record keeping practices in their area of responsibility including the routing, formatting, and filing of records communicated via e-mail. They will train staff in appropriate use, including appropriate personal use of e-mail that does not result in performance issues, and be responsible for ensuring the security of physical devices and passwords.
- Network administrators and internal control (and/or internal audit) staff are responsible for e-mail security, backup, and disaster recovery.
- Users are responsible for adherence to this policy.

Proper Usage

All e-mail users will understand and comply with this policy, including but not limited to:

- understand that personal use must be of an incidental nature only
- comply with agency and unit policies, procedures, and standards
- protect confidentiality
- be aware that sending e-mail of a political nature (supporting candidates, soliciting contributions, etc.) is against the law and subject to criminal penalties (5 U.S.C. §1501 et seq., and 5 M.R.S.A. §7056-A 5 M.R.S.A §1976)
- immediately delete any chain letters received through the State's e-mail system
- consider organizational access before sending, filing, or destroying e-mail messages.
- protect their passwords
- receive approval of supervisor and permission from the Commissioner of the Department of Administrative and Financial Services, or her designee, before sending state wide communications http://inet.state.me.us/dafs/policies.htm
- respond to e-mail in a timely fashion
- do not in any way use e-mail access or transmit prohibited content of a sexual nature
- delete any messages that may contain offensive material and report to management

- remove personal messages, transient records, and reference copies in a timely manner.
- not use e-mail for outside business activity or personal gain
- observe all copyright restrictions and regulations
- not use e-mail for any unlawful or illegal purpose
- not use e-mail to promote discrimination on the basis of race, religion, national origin, disability, sexual orientation, age, marital status, gender, or political affiliation
- not create e-mails that may be defamatory or libelous
- consider organizational access and retention requirements before sending, filing, or destroying e-mail messages
- be courteous and follow accepted standards of etiquette
- must not use the e-mail system to solicit for causes unrelated to state business
- must not knowingly send or receive e-mails that contain a virus

Violations of this policy

Any violation of this policy could result in disciplinary action up to and including termination.

Policy Review and Update

The Office of Chief Information Officer will periodically review and update this policy as new technologies and organizational changes are planned and implemented. Questions concerning this policy should be directed to the Chief Information Officer.

Related Policies

Policy for Use of State E-mail System for Widespread Dissemination to State Employees http://inet.state.me.us/dafs/policies.htm

Credits

Maine State Government
Dept. of Administrative & Financial Services
Office of Information Technology

Office of Information Technology Policy on Access to Data and Information on State Owned Computer Devices

I. **Statement**

The responsibility for responding to Freedom of Access Act[1] requests for data or information that is hosted on state-owned computer devices falls to the State department and/or agency responsible for the collection and use of the data or information requested. The Office of Information Technology will provide assistance to the department or agency with searching for, identifying all data stored within OIT, retrieving, and/or compiling such data or information when requested to do so.

II. **Purpose**

This policy sets forth the respective responsibilities of State departments and agencies, and the Office of Information Technology, in responding to Freedom of Access Act requests for data or information that is hosted on state-owned computer devices.

III. **Applicability**

This policy applies to all requests for data or information presented to the Office of Information Technology (OIT).

IV. **Responsibilities**

A. The Chief Information Officer (CIO) will:

1. Immediately forward all requests for a department's or agency's data or information to the head of that department or agency, or their designee, for response. A notice will be sent to the requester confirming this action, and will include the contact information for the individual to whom the request was forwarded.

2. OIT will identify all medium where requested data may be stored and provide this information to the responding agency.

3. As requested, assign OIT staff to provide support to agencies in meeting their requests for information and data.

B. State departments and agencies, as required by the Freedom of Access Act[2], are responsible for fulfilling requests for access to public records including information and data hosted on state-owned computer devices. All responses and decisions regarding the production of such information or data, such as the scope of the search, the redaction or withholding of information, the timing and cost of production, etc., are the sole responsibility of the department or agency.

V. **Guidelines & Procedures**

A. No OIT employee shall provide public access to data and/or information hosted on OIT computer devices without prior consultation with the department or agency that is the custodian of the data or information.

Resp #4 (B)

B. Freedom of Access Act requests received by OIT employees will be forwarded to the CIO who will forward to the appropriate department or agency head.

VI. **Definitions**

1. Computer Device - Computer device means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device[3]. Common examples currently in use include laptops, personal computers, servers, and hand-held devices (including personal digital assistants (PDA), and cell phones).

VII. **References**

1. This policy supersedes the State of Maine Policy on Access to Public Records adopted by the Information Services Policy Board March 9, 1990.

2. M.R.S.A. Title 5, Section 1982[4] Paragraph 9. Protection of Information Files reads in part "*...All data files are the property of the agency or agencies responsible for their collection and use.*"

VIII. **Document Information**

1. Document Reference Number: 4

2. Category: General / Governance

3. Adoption Date: Provisionally adopted on October 6, 2006 pending review by the IT Executive Committee. Reviewed and approved October 30, 2006.

4. Effective Date: October 6, 2006

5. Review Date: February 9, 2011

6. Point of Contact: Kathy Record, Associate Chief Information Officer, Office of Information Technology, Statehouse Station #138, Augusta, Maine 04332-0138 (207) 624-9502

7. Approved By: Richard B. Thompson, Chief Information Officer

8. Position Title(s) or Agency Responsible for Enforcement: Richard B. Thompson, Chief Information Officer, Office of Information Technology

9. Legal Citation: 5 M.R.S.A. SECTION 1982 Paragraph 9 Powers and Duties of the Chief Information Officer; and 1 M.R.S.A. SECTION 408 Freedom of Access

10. Waiver Process: N/A

---

[1] 1 M.R.S.A. § 401 *et seq.*, http://janus.state.me.us/legis/statutes/1/title1sec401.html

[2] 1 M.R.S.A. § 408, http://janus.state.me.us/legis/statutes/1/title1sec408.html

[3] 17-A M.R.S.A. § 431, http://janus.state.me.us/legis/statutes/17-a/title17-asec431.html

[4] http://janus.state.me.us/legis/statutes/5/title5sec1982.html

RIGHT TO KNOW ADVISORY COMMITTEE
BULK RECORDS SUBCOMMITTEE
LEGISLATIVE SUBCOMMITTEE

DRAFT AGENDA
November 17, 2011
11:30 a.m.
Room 438, State House, Augusta

Convene

1. Welcome and Introductions

2. LD 1465 remaining issues

3. Other responsibilities assigned to Legislative Subcommittee
   - Status of Maine Public Broadcasting Network records under the Freedom of Access laws (Mike Brown)
   - Use of technology for the purpose of remote participation by members of public bodies
   - Drafting templates
   - Storage, management and retrieval of public officials' communications, especially email

4. Other?

5. Scheduling future subcommittee meetings?

Scheduled meetings:
Thursday, November 17, 2011, 1:00 p.m., Right to Know Advisory Committee
Thursday, December 8, 2011, 1:00 p.m., Right to Know Advisory Committee

Adjourn

G:\STUDIES 2011\Right to Know Advisory Committee\Agendas\DRAFT AGENDA for Bulk Rec & Legis Subs Nov 17 2011.doc (11/16/2011 8:48:00 AM)

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
§408. Public records available for public inspection and copying	**44-04-18. Access to public records - Electronically stored information.**	**§408. Public records available for public inspection and copying**	**Repeal §408; Enact new §408-A, Public records available for inspection and copying**
1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall acknowledge receipt of the request within a reasonable period of time.	1. Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. As used in this subsection, "reasonable office hours" includes all regular office hours of a public entity. If a public entity does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the public entity's records must be posted on the door of the office of the public entity, if any. Otherwise, the information regarding the contact person must be filed with the secretary of state for state-level entities, for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city	**1. Right to inspect and copy.** Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within ~~a reasonable period of time after making a request to inspect or copy the public record~~ the time limits established in section 408-A. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall acknowledge receipt of the request within a reasonable period of time. A person may request by telephone that a copy of the public record be mailed or e-mailed to that person.	**1. Right to inspect and copy.** Except as otherwise provided by statute, every person has the right to inspect and copy any public record within a reasonable time of making the request to inspect or copy. **2. Clarification.** An agency or official may request clarification concerning which public record or public records are being requested. **3. Acknowledgment; time estimate.** The agency or official shall acknowledge receipt of the request within a reasonable period of time, and shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request. The agency or official shall make a good faith effort to fully respond to the

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	auditor or designee of the city for city-level entities, or the county auditor or designee of the county for other entities.		request within the estimated time.
	7. A denial of a request for records made under this section must describe the legal authority for the denial and must be in writing if requested.		**4. Refusals; denials.** 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 shall provide the denial in writing, stating the reason for the denial, within 5 working days of the request for inspection or copying by any person. *[Currently part of §409, sub-§1]*
	8. This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed or when a fee is charged in excess of the amount authorized in subsections 2 and 3.		A. An agency or official violates this subchapter if the agency or official denies or unreasonably delays a person's right to inspect or receive a copy of a record that is not confidential or if the agency or official charges a fee in excess of the amount

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
			authorized in this section, if applicable.
	9. It is not an unreasonable delay or a denial of access under this section to withhold from the public a record that is prepared at the express direction of, and for presentation to, a governing body until the record is mailed or otherwise provided to a member of the body or until the next meeting of the body, whichever occurs first. It also is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, the record is distributed to a member of a governing body or discussed by the body at an open meeting, or work is discontinued on the draft but no final version has been prepared, whichever occurs first.		B. An agency or official does not unreasonably delay or deny access under this subchapter if the agency or official withholds from the public a record that is prepared at the express direction of, and for presentation to, a governing body until the record is mailed or otherwise provided to a member of the body or until the next meeting of the body, whichever occurs first. An agency or official does not unreasonably delay or deny access if the agency or official withholds from the public a working paper or preliminary draft until a final draft is completed, the record is distributed to a member of a governing body or discussed by the body at an

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
			open meeting, or work is discontinued on the draft but no final version has been prepared, whichever occurs first.
	10. For public entities headed by a single individual, it is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. A working paper or preliminary draft shall be deemed completed if it can reasonably be concluded, upon a good-faith review, that all substantive work on it has been completed.		C. For agencies headed by a single individual, an agency or official does not unreasonably delay or deny access if the agency or official withholds from the public a working paper or preliminary draft until a final draft is completed, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. A working paper or preliminary draft is considered completed if it can reasonably be concluded, upon a good faith review, that all substantive work on it has been ~~completed~~ *finished*.

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
			5. Schedule. Inspection, ~~translation~~ conversion and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought. As used in this section, "reasonable office hours" includes all regular office hours of an agency or official. If a the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at ~~on the door of~~ the office of the agency or official, if an office exists.
			6. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge for inspection.

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
			7. Copy. A person may copy a public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. A. A request need not be made in person or in writing. B. The agency or official shall mail the copy upon request.
2. Inspection, translation and copying scheduled. Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought.		**2. Inspection, translation and copying scheduled.** Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought, as long as the inspection, translation and copying occur within the time limits established in section 408-A. The agency or official may use a 3rd party to make a copy of an original public record, but a requester may not remove the original of a public record	

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
		from the agency or official.	
	4. Except as provided in this subsection, nothing in this section requires a public entity to create or compile a record that does not exist. Access to an electronically stored record under this section, or a copy thereof, must be provided at the requester's option in either a printed document or through any other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of any closed or confidential information contained in that file. Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format, or	**2-A. Form.** If a public record exists in electronic or magnetic form, the requester may request a copy of the public record in a paper, electronic, magnetic or other medium, specify the storage medium and request that the copy be provided by an electronic transfer by the Internet or other means. A. An agency or official shall provide a copy of the public record in the requested medium if: (1) The agency or official has the technological ability to produce the public record in that	**8. Compile or create.** An agency or official is not required to create or compile a record that does not exist. **9. Available medium.** Access to an electronically stored record under this section, or a copy of such a record, must be provided at the requester's option in either a printed document or ~~through any other available~~ in the medium in which it is stored. ~~A computer file is not an available medium if no exist to separate or prevent the disclosure of any closed or confidential information contained in that file.~~ A. ~~Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity~~ An agency or official is not

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
(Current §408, sub-§3, ¶C) C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.	organization. This section does not require a public entity to provide a requester with access to a computer terminal.	medium or can obtain the assistance necessary to produce the public record at a reasonable cost; and (2) The requester agrees to pay the agency's or official's costs to purchase and install any additional necessary computer software or hardware to accommodate the request and to copy the public record in a requested medium. B. If an agency or official cannot provide a copy of a public record in a requested medium, the agency or official shall identify every medium in which the public record can be provided for inspection and copying, which must include a paper copy, and the requester must identify the medium that is acceptable to the requester.	required to provide an electronically stored record in a different medium, structure, format or organization, but may do so at the agency's or official's discretion. B. If ~~translation is necessary~~ the agency or official converts the record into a form susceptible of visual or aural comprehension, the agency or official may charge a fee to cover the actual cost of ~~translation~~ conversion. C. This section does not require ~~a public entity~~ an agency or official to provide a requester with access to a computer terminal.

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
3. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows.	2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. A request need not be made in person or in writing, and the copy must be mailed upon request.	**3. Payment of costs.** Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows.	**10. Payment of costs.** Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for copies of public records as follows.
A. The agency or official may charge a reasonable fee to cover the cost of copying.	A public entity may charge up to twenty-five cents per impression of a paper copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated copy of a size not more than eight and one-half by fourteen inches [19.05 by 35.56 centimeters]. For any copy of a record that is not a paper copy as defined in this section, the public entity may charge a reasonable fee for making the copy. As used in this section, "reasonable fee" means the actual cost to the public entity	A. The agency or official may charge a reasonable fee to cover the cost of copying.	A. The agency or official may charge a reasonable fee to cover the cost of copying. ~~As used in this section, "reasonable fee" means the actual cost to the agency or official of making the copy, including:~~ ~~(1) Labor;~~ ~~(2) Materials; and~~ ~~(3) Equipment.~~

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	of making the copy, including labor, materials, and equipment. The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy.		
B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.	An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records, including electronic records, if locating the records requires more than one hour. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for excising confidential or closed material under section 44-04-18.10 from the records, including electronic records. If the entity is not authorized to use the fees to cover the cost of	B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.	B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than ~~$10~~ $15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity.		
C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.		C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.	~~E. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.~~ *(moved up to sub-§9, ¶B)*
D. An agency or official may not charge for inspection.		D. An agency or official may not charge for inspection.	F. An agency or official may not charge for inspection. *(included in subsection 4 – need both?)*
	The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy.	E. If the requester requests that the public record be mailed, the agency or official may charge a fee not greater than the actual cost of mailing the record.	G. The agency or official may charge for the actual cost of postage to mail a copy of a record.

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	This subsection does not apply to copies of public records for which a different fee is specifically provided by law.		~~G. This subsection does not apply to copies of public records for which a different fee is specifically provided by law. *(need this?)*~~
4. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than $20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 5 applies.		**4. Estimate.** The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than $20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 5 applies and the estimate must be provided within 3 business days of the request.	**11. Estimate.** The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than $20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 12 applies.
5. Payment in advance. The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:	(subsection 1) *An entity may require payment before locating, redacting, making, or mailing the copy.*	**5. Payment in advance.** The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:	**12. Payment in advance.** The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the ~~translation~~ conversion, search, retrieval, compiling and copying of the public

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
			record if:
A. The estimated total cost exceeds $100; or		A. The estimated total cost exceeds $100; or	A. The estimated total cost exceeds $100; or
B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.		B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.	B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.
6. Waivers. The agency or official may waive part or all of the total fee if:		**6. Waivers.** The agency or official may waive part or all of the total fee if:	**13. Waivers.** The agency or official may waive part or all of the total fee if:
A. The requester is indigent; or		A. The requester is indigent; or	A. The requester is indigent; or
B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of		B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily	B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
government and is not primarily in the commercial interest of the requester.		in the commercial interest of the requester.	in the commercial interest of the requester.
	3. Automation of public records must not erode the right of access to those records. As each public entity increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law. A public entity may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records online or stored in an electronic recordkeeping system used by the agency. An electronic copy of a record must be provided upon request at no cost, other than		**New §401-A. Public records; information technology policy** **1. Policy.** The use of information technology to collect, maintain, store and retrieve public records must not erode the right of access to public records. **2. New information technology; considerations.** Each agency or official shall consider the following in the purchase of computer software and other information technology resources: A. Maximizing public access to public records; and B. Maximizing the exportability of public data while protecting confidential information that may be part of otherwise public records.

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	costs allowed in subsection 2, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the agency may charge no more than the actual cost incurred for the extensive use of information technology resources incurred by the public entity. "Extensive" is defined as a request for copies of electronic records which take more than one hour of information technology resources to produce.		~~§408-B. Automation of public records.~~ ~~1. Right of access; protection of confidential records.~~ ~~Automation of public records may not erode the right of access to those records. As each agency or official increases the use of and dependence on electronic recordkeeping, each agency shall provide reasonable public access to records electronically maintained and shall ensure that confidential records are not disclosed except as otherwise permitted by law.~~ ~~2. Contracts.~~ ~~A public entity may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records online or stored in an electronic recordkeeping system used by the agency.~~

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
			~~**3. Cost of electronic copy.** An electronic copy of a record must be provided upon request at no cost, other than costs allowed in section 408-A, subsection 10, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the agency may charge no more than the actual cost incurred for the extensive use of information technology resources incurred by the public entity. "Extensive" is defined as a request for copies of electronic records which take more than one hour of information technology resources to produce.~~
	5. A state-level public entity as defined in subdivision a of subsection 12 of section 44-04-17.1 or a political subdivision as defined in subsection 10 of section 44-04-17.1 may establish procedures for providing access from an outside location to any computer		

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	database or electronically filed or stored information maintained by that entity. The procedures must address the measures that are necessary to maintain the confidentiality of information protected by federal or state law. Except for access provided to another state-level public entity or political subdivision, the state or political subdivision may charge a reasonable fee for providing that outside access. If the original information is keyed, entered, provided, compiled, or submitted by any political subdivision, the fees must be shared by the state and the political subdivision based on their proportional costs to make the data available.		
	6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action, adjudicative proceeding as defined in subsection 1 of section 28-32-01, or arbitration in which		

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	the public entity is a party, or by an agent of the party, must comply with applicable discovery rules or orders and be made to the attorney representing that entity in the criminal or civil action, adjudicative proceeding, or arbitration. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules.		
C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare	10. For public entities headed by a single individual, it is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. A working paper or preliminary draft shall be deemed completed if it can reasonably be concluded, upon a good-faith review, that all		~~**§402, sub §3, ¶C-2** is enacted to read:~~ ~~C-2. Proposed legislation and reports until publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by the Governor or any employee of the Governor to prepare~~

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over;	substantive work on it has been completed.		~~proposed legislation or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the proposed legislation or reports are prepared or considered or to which the proposed legislation or report is carried over;~~ *(See instead sub-§4, ¶C)*
§409. Appeals			**§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			**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~~

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
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.			~~person.~~ Any person aggrieved by a refusal or denial to inspect or copy a record under section 408-A may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals. *(Note that the timing of the appeal is within the jurisdiction of the Commission to Study Priorities and Timing of Judicial proceedings in State Courts)*
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			

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
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			

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft updated 11/15/2011 11:18 AM

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
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. This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.			
PROPOSED CLEAN UP			Enact new §400
			§400. Short title This subchapter may be known and cited as the "Freedom of Access Act." *(Subchapter is currently §401 through §412)*

FOR SUBCOMMITTEES REVIEW 11/17/11
DRAFTED BY MICHAEL CIANCHETTE

5. Working Papers. For purposes of this subsection, "working papers" means documents, records, correspondence, reports, articles, and other materials which are prepared for review, information, or consideration by a governing body or a duly-authorized official related to specific policy proposals, including, but not limited to, financial expenditures, legislation, ordinances, rules, and executive orders.

A. In the case of working papers created by direction of a governing body, an agency or official does not unreasonably delay or deny access under this subchapter if the agency or official withholds working papers from the public until such time as a quorum of the governing body receives the working papers for review.

B. In all other cases , an agency or official does not unreasonably delay or deny access under this subchapter if the agency or official withholds working papers from the public until such time as a duly-authorized official:

1. Makes a final decision to put forward a policy proposal in accordance with State law reasonably related to the content of the working papers; or
2. Makes a final decision to abandon a policy proposal reasonably related to the content of the working papers.

C. An agency or official claiming the protection of documents under this subsection shall specifically cite this subsection in the written response provided in subsection 4 (***refusal/denial***). The person requesting such documents may make a standing request to receive the working papers once they become available for public review.

D. Notwithstanding paragraphs A and B, working papers are available for public review:

(1) If the working papers are provided to persons not in the service of the agency or official; or
(2) In the case of a governmental unit headed by a single elected official, upon the removal or expiration of the tenure of office of the elected official.

RIGHT TO KNOW ADVISORY COMMITTEE
PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE

DRAFT AGENDA
November 17, 2011
9:00 a.m.
Room 438, State House, Augusta

Convene

- Welcome and Introductions

- Existing public records exceptions awaiting recommendations

1. (15) 22 MRSA §1555-D - lists of tobacco sellers + letter (review)
2. (18) 22 MRSA §1696-D - Community Right-to-know (AG and DHHS)
3. (19) 22 MRSA §1696-F - Community Right-to-know (AG and DHHS)
4. (37) 22 MRSA §3034 - Missing persons (CME and AG)
5. (57) 23 MRSA §63 - right-of-way divisions' records (MTA and MaineDOT)
6. (62) 23 MRSA §8115 - Northern New England Passenger Rail Authority (NNEPRA)
7. (66) 24 MRSA §2510 (and §2505) professional competence reports (Medical licensing boards, other interested parties)
8. (67) 24 MRSA §2510-A professional competence review records (Medical licensing boards, other interested parties)
9. (54) 22 MRSA §8754 - sentinel events (AG, DHHS, other interested parties)

- Other?

- Scheduling future subcommittee meetings, if necessary

Adjourn

Scheduled meetings:
Thursday, November 17, 2011, 1:00 p.m., Right to Know Advisory Committee
Thursday, December 8, 2011, 1:00 p.m., Right to Know Advisory Committee

G:\STUDIES 2011\Right to Know Advisory Committee\Agendas\DRAFT AGENDA for Public Records Subcommittee November 17 2011.doc
(11/9/2011 10:13:00 AM)

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

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

Revised 11/15/2011 9:12 AM

* = 11/17 Subcmte agenda

O = approved by Subcmte

	Title	Section	Sub-section	Description	Department/ Agency	Comments	Subcommittee recommendation	Advisory Committee Action on Recommendation
15 *	22	1555-D	1	Title 22, section 1555-D, subsection 1, relating to lists maintained by the Attorney General of known unlicensed tobacco retailers	~~DHHS~~ OAG	• No requests • RECOMMEND: Repeal subsection	11/4/10: tabled 9/12/11: AMEND - wait for AG draft 9/29/11: AMEND and letter to HHS	
18 *	22	1696-D		Title 22, section 1696-D, relating to the identity of chemical substances in use or present at a specific location if the substance is a trade secret	DHHS	• No record of any experience • No changes	11/4/10: tabled 9/12/11: REPEAL 5-1 (LP) 9/29/11: wait for additional information	
19 *	22	1696-F		Title 22, section 1696-F, relating to the identity of a specific toxic or hazardous substance if the substance is a trade secret	DHHS	• No record of any experience • No changes	11/4/10: tabled 9/12/11: REPEAL 5-1 (LP) 9/29/11: wait for additional information	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

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

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
20	22	1711-C	2	Title 22, section 1711-C, subsection 2, relating to hospital records concerning health care information pertaining to an individual	DHHS	• Not a public records exception: info in hands of private entities, allows disclosure to Licensing	11/4/10: tabled 9/12/11: no change	
21	22	1828		Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities	DHHS	• Request generally not denied by identifying information is redacted • No changes • Surveys must be reviewed by federal CMS before can be released	11/4/10: tabled 9/12/11: tabled for more info (AG) 9/29/11: no change	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

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

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
22	22	1848	1	Title 22, 1848, subsection 1, relating to documents and testimony given to Attorney General under Hospital and Health Care Provider Cooperation Act	OAG	• Confidential under 10 §1107 and 16 §614 • No requests in recent years • No change • DHHS, Div of Licensing and Regulatory Services; Maine Hospital Association	11/4/10: tabled 9/12/11: no change 5-1 (SB)	
33	22	2706	4	Title 22, section 2706, relating to prohibition on release of vital records in violation of section; recipient must have "direct and legitimate interest" or meet other criteria Amended in 2011, PL 2011, c. 58	DHHS	• Denial of access occurs daily pursuant to statute • No changes	11/4/10: tabled 9/12/11: no change	
34	22	2706-A	6	Title 22, section 2706-A, subsection 6, relating to adoption contact files	DHHS	• No FOA requests; only requests from adoptees and families • Medical info protected by HIPAA • No changes	11/4/10: tabled 9/12/11: no change	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

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

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
35	22	2769	4	Title 22, section 2769, subsection 4, relating to adoption contact preference form and medical history form	DHHS	• No FOA requests; only requests from adoptees and families • Medical info protected by HIPAA • No changes	11/4/10: tabled 9/12/11: no change	
36	22	3022	8, 12, 13	Title 22, section 3022, subsections 8, 12 and 13, relating to medical examiner information	OAG	• Police reports and medical records: 3-5 requests per year • Suicide notes: requests extremely rare • Other materials: available to attorneys in court proceedings • Communications : almost never requested • No changes	11/4/10: tabled 9/12/11: no change	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

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

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
37	22	3034	2	Title 22, section 3034, subsection 2, relating to the Chief Medical Examiner missing persons files	OAG	• No requests • RECOMMEND: give CME discretion to make identifying info public	11/4/10: tabled 9/12/11: AMEND 9/29/11: wait for review of language	
38	22	3188	4	Title 22, section 3188, subsection 4, relating to the Maine Managed Care Insurance Plan Demonstration for uninsured individuals	DHHS	• Never implement • RECOMMEND repeal section	11/4/10: tabled 9/12/11: letter to HHS about repeal	
39	22	3192	13	Title 22, section 3192, subsection 13, relating to Community Health Access Program medical data	DHHS	• Never implement • RECOMMEND repeal section	11/4/10: tabled 9/12/11: letter to HHS about repeal	
44	22	4008	1	Title 22, section 4008, subsection 1, relating to child protective records	DHHS	• Rarely applied in FOA requests; apply when parties in litigation that does not involve the department request child protective records • No changes (must comply with federal law)	11/4/10: tabled 9/12/11: no change	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

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

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
53	22	8707		Title 22, section 8707, relating to the Maine Health Data Organization	MHDO	• Data release rules • Only two requests, one concerned paying for the data • No changes	10/18: Table - sub-§2 no change; sub-§4 why MHCFC link? 9/12/11: tabled 9/29/11: AMEND	
54	22	8754		Title 22, section 8754, relating to medical sentinel events and reporting	~~MHDO~~ DHHS	• No requests known • Amend: "incidents reports and similar documents"	11/4/10: tabled 9/12/11: tabled - more info and amendment language (AG) 9/29/11: Tabled	
55	22	8824	2	Title 22, section 8824, subsection 2, relating to the newborn hearing program	DHHS	• No requests for personally identifiable info • Protected by HIPAA • No changes • Involve Advisory Committee if changes	11/4/10: tabled 9/12/11: no change	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

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

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
56	22	8943		Title 22, section 8943, relating to the registry for birth defects	DHHS	• No requests for personally identifiable info • Protected by HIPAA • No changes • Involve Advisory Committee if changes	11/4/10: tabled 9/12/11: no change	
57	23	63		Title 23, section 63, relating to records of the right-of-way divisions of the Department of Transportation and the Maine Turnpike Authority	MTA & DOT	• Covers two categories of records • Invoked rarely • Subject of two Law Court cases, one LD (not enacted) • No changes	11/4/10: tabled 9/12/11: tabled - invite to next meeting 9/29/11: AMEND - review draft	
59	23	1980	2-B	Title 23, section 1980, subsection 2-B, relating to recorded images used to enforce tolls on the Maine Turnpike Amended by PL 2011, c. 302, §18	MTA	• Violation Enforcement System; records license plates only • See 23 §1982 • No changes	11/4/10: tabled 9/12/11: no change	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

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

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
60	23	1982		Title 23, section 1982, relating to patrons of the Maine Turnpike	MTA	• Toll violation system, as well as any other records • Comes into play several times a year; never used in litigation in which MTA is a party • No changes	11/4/10: tabled 9/12/11: no change	
61	23	4251	10	Title 23, section 4251, subsection 10, relating to records in connection with public-private transportation project proposals of at least $25,000,000 or imposing new tolls	DOT	• Law became effective July 12, 2010 • No experience • No changes	11/4/10: tabled 9/12/11: tabled - invite to next meeting 9/29/11: no change	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

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

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION

62	23	8115		Title 23, section 8115, relating to the Northern New England Passenger Rail Authority	NNEPRA	• Has not received any requests
						• Four types of records
						  • Trade secrets
						  • Records and correspondence relating to negotiations
						  • Estimates of cost on projects put out to bid
						  • Employment applications
						• No changes
							11/4/10: tabled
							9/12/11: tabled - redraft for consistent language and policy; need review by NNEPRA
							9/29/11: Tabled, need comments on draft	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

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

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
66 	24	2510	1	Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure)	BOI has no role BdLicMed: ‣ cited 2-3 times per year ‣ PROPOSED: clarify confidentiality applies to all patient complaints MeHospAssn: ‣ MHA does not administer ‣ Not aware of requests ‣ No changes BdofDentalEx: ‣ No requests ‣ n/a MeMedAssn: ‣ MMA does not administer ‣ Don't know how frequent ‣ No changes	9/27: table - ask medical licensing boards for input; *Consumers for Affordable Health Care input requested* 11/4/10: Tabled until 2011 9/12/11: tabled for Consumers for Affordable Health Care comments 9/29/11: AMEND (with §2505); needs review	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

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

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

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

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

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
68	24	2604		Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure)	BOI has no role BdLicMed: ‣ 100-200 times per year ‣ No recommendation (other states allow to be released) BdofDentalEx: ‣ No requests ‣ n/a MedicalMutual: ‣ Zero requests ‣ No changes MeMedAssn: ‣ MMA does not administer ‣ No changes	9/27: table - ask medical licensing boards for input 11/4/10: tabled until 2011 9/12/11: tabled - invite Med Lic Bd 9/29/11: no change	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

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

Revised 11/15/2011 9:12 AM

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

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

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

Revised 11/15/2011 9:12 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
70	24	2857	1, 2	Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) (ME Medical Assoc., ME trial Lawyers Assoc., ME State Bar Assoc.)	BOI has no role • Records of Screening Panels (Judicial Branch) BdLicMed: ‣ Not cited or applied; Bd doesn't receive panel information ‣ No recommendation MeHospAssn: ‣ Only partially administer ‣ Not aware about requests ‣ No changes BdofDentalEx: ‣ No requests ‣ n/a MedicalMutual: ‣ No direct role in administration ‣ No changes MeMedAssn: ‣ MMA does not administer ‣ No changes	9/27: table - ask medical licensing boards, Courts, Maine Trial Lawyers for input 11/4/10: tabled until 2011 9/12/11: no change	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

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

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
112	24-A	6807	7	Title 24-A, section 6807, subsection 7, paragraph A, relating to individual identification data of viators	BOI	• To date, the Bureau has not conducted any examinations of life settlement companies. The exception has not been cited as a basis of denial of a FOA request • No changes	10/18: Table - ask TRecord, (subpoena) 11/4/10: divided report - no change 3-1 (SBellows) - but flag that inconsistent with treatment of examination reports 9/12/11: no action 9/29/11: letter to IFS	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

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

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
73	24-A	216	2, 5	Title 24-A, section 216, subsections 2 and 5, relating to records of the Bureau of Insurance	BOI	• Records associated with actual or claimed violations of Insurance Code • 2-4 requests per month • Subpoena, hearing on motion to quash • No changes • MTLA: no changes	9/27: table - ask Maine Trial Lawyers for input 9/12/11: tabled - for MTLA input 9/29/11: no change	
94	24-A	2393	2	Title 24-A, section 2393, subsection 2, relating to workers' compensation pool self-insurance and surcharges	BOI	• No FOA requests • No changes	10/18: Table - obsolete? Rewrite to ensure confidentiality of old records? 9/29/11: AMEND to address when program no longer exists	

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception #15

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

§1555-D. Illegal delivery of tobacco products

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

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

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

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

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

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

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

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

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

Summary

Public Records Exceptions Subcommittee
Proposed draft language changes

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

For Review on November 17, 2011

Public Records Exceptions Subcommittee
Proposed letter to HHS Committee

Exception # 15

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

Dear. Sen. McCormick and Rep. Strang Burgess:

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

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

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

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch or Colleen McCarthy Reid, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.

Public Records Exceptions Subcommittee
Proposed draft language changes

Exceptions # 18 and # 19 Community Right-to-know Act

TITLE 22
CHAPTER 271
HEALTH PROGRAMS

SUBCHAPTER 2
COMMUNITY HEALTH INVESTIGATION AND INFORMATION

22 §1696-A. Findings and intent

The Legislature finds and declares that the proliferation of hazardous substances in the environment poses a growing threat to the public health, safety and welfare; that the constantly increasing number and variety of hazardous substances, and the many routes of exposure to them make it difficult and expensive to adequately monitor and detect any adverse health effects attributable to them; that individuals are often able to detect and thus minimize effects of exposure to hazardous substances if they are aware of the identity of the substances and the early symptoms of unsafe exposure; and that individuals have an inherent right to know the full range of the risks they face so that they can make reasoned decisions and take informed actions concerning their employment and their living conditions.

The Legislature further declares that accidental releases of hazardous materials pose a threat to public health and safety and that there are serious questions concerning the State's ability to respond to these emergencies in a coordinated and effective manner; and that local health, fire, police, safety and other government officials require information about the identity, characteristics and quantities of hazardous substances used and stored in communities within their jurisdictions, in order to adequately plan for, and respond to, emergencies and enforce compliance with applicable laws and rules concerning these substances.

The Legislature further declares that the extent of the toxic contamination of the air, water and land in this State has caused a high degree of concern among its residents; and that much of this concern is needlessly aggravated by the unfamiliarity of these substances to residents.

The Legislature determines that it is in the public interest for the State to examine its emergency response mechanisms and procedures for accidents involving hazardous materials, to establish a comprehensive program for the disclosure of information about hazardous substances in the community and to provide a procedure whereby residents of this State may gain access to this information.

Public Records Exceptions Subcommittee
Proposed draft language changes

22 §1696-B. Short title

This subchapter may be cited as the "Community Right-to-Know Act."

22 §1696-C. Community health information project

The department shall undertake a community health information project under the auspices of the Environmental Health Program in the Bureau of Health. The project shall respond, subject to this subchapter, to requests made by state agencies, municipalities or individuals for information on potential health hazards posed by the use of hazardous chemicals. To meet these requests, the director shall establish a Community Health Information Clearinghouse which shall contain information on the health implications of chemicals in use in the home and the workplace.

22 §1696-D. Response to requests

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

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

Public Records Exceptions Subcommittee
Proposed draft language changes

of the municipality or within a 50-mile radius of a residence of the individual requesting the information.

22 §1696-E. Cooperation with state agencies

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

22 §1696-F. Provision of information; trade secrets

~~A person may withhold the identity of a specific toxic or hazardous substance, if the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it.~~ All ~~other~~ information about a toxic or hazardous substance, including its identity, routes of exposure, effects of exposure, type and degree of hazard and emergency treatment and response procedures, must be provided if requested by the Director of the Bureau of Health ~~and is considered a public record~~. The identity of a toxic or hazardous substance that is a trade secret is confidential; all other information provided is a public record. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it.

SUMMARY

These amendments clarify that all the information provided upon request to the Director of the Bureau of Health about toxic or hazardous substances in use or present at a specific location are public records, with the exception of the identity of substances when the identity is a trade secret. These amendments require the director to release the information that is public upon request.

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception # 37 CME: Missing persons

22 §3034. Missing persons

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

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

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

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

Public Records Exceptions Subcommittee
Proposed draft language changes

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

SUMMARY

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

G:\STUDIES 2011\Right to Know Advisory Committee\Existing Public Records Exceptions Review\Draft of #37 missing persons - CME & AG revised 10-12.doc (11/15/2011 8:53:00 AM)

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception # 57

Option #1: **Sec. 1. 23 MRSA § 63** is amended to read:

§63. Confidential records ~~of right-of-way division confidential~~

The records and correspondence ~~of the right-of-way divisions~~ of the Department of Transportation and the Maine Turnpike Authority relating to negotiations for and appraisals of property, pending the final settlement for all claims on the project to which they relate, and the records and data of the department and the Maine Turnpike Authority relating to engineering estimates of costs on projects to be put out to bid are confidential ~~and may not be open for public inspection~~, except that engineering estimates of total project costs are public after the execution of project contracts. The records and correspondence ~~of the right-of-way divisions~~ relating to negotiations for and appraisals of property ~~must be open for~~ are public ~~inspection~~ after 9 months following the completion date of the project according to the record of the department or authority. Records of claims that have been appealed to the Superior Court ~~must be open for~~ are public ~~inspection~~ following the award of the court.

Option #2: **Sec. 1. 23 MRSA § 63** is repealed and the following enacted in its place:

§63. Confidentiality of records held by Department of Transportation and Maine Turnpike Authority

1. Confidential records. The following records in the possession of the Department of Transportation and the Maine Turnpike Authority are confidential and may not be disclosed except as provided in this section:

A. Records and correspondence relating to negotiations for and appraisals of property; and

B. Records and data relating to engineering estimates of costs on projects to be put out to bid.

2. Engineering estimates. Engineering estimates of total project costs are public after the execution of project contracts.

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

Summary

This amendment clarifies that engineering estimates are public after the execution of project contracts.

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception # 62 NNEPRA

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

§8115. Obligations of authority

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

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

§8115-A. Authority records

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

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

B. Trade secrets;

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

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

Public Records Exceptions Subcommittee
Proposed draft language changes

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

SUMMARY

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

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

Trade secrets remain confidential.

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

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

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

G:\STUDIES 2011\Right to Know Advisory Committee\Existing Public Records Exceptions Review\Draft of #62 NNEPRA revised 10-12.doc (11/15/2011 8:53:00 AM)

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception #66	**Professional competence reports**

Sec. 1. 24 MRSA §2505 is amended to read:

§2505. Committee and other reports

Any professional competence committee within this State and any physician licensed to practice or otherwise lawfully practicing within this State shall, and any other person may, report the relevant facts to the appropriate board relating to the acts of any physician in this State if, in the opinion of the committee, physician or other person, the committee or individual has reasonable knowledge of acts of the physician amounting to gross or repeated medical malpractice, habitual drunkenness, addiction to the use of drugs, professional incompetence, unprofessional conduct or sexual misconduct identified by board rule. The failure of any such professional competence committee or any such physician to report as required is a civil violation for which a fine of not more than $1,000 may be adjudged.

Except for specific protocols developed by a board pursuant to Title 32, section 1073, 2596-A or 3298, a physician, dentist or committee is not responsible for reporting misuse of alcohol or drugs or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol or drugs discovered by the physician, dentist or committee as a result of participation or membership in a professional review committee or with respect to any information acquired concerning misuse of alcohol or drugs or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol or drugs, as long as that information is reported to the professional review committee. Nothing in this section may prohibit an impaired physician or dentist from seeking alternative forms of treatment.

The confidentiality of reports made to a board under this section is governed by this chapter.

Sec. 2. 24 MRSA § 2510, sub-§1 is amended to read:

§2510. Confidentiality of information

1. Confidentiality; exceptions. Any reports, information or records received and maintained by the board pursuant to this chapter, including any material received or developed by the board during an investigation shall be confidential, except for information and data that is developed or maintained by the board from reports or records

Public Records Exceptions Subcommittee
Proposed draft language changes

received and maintained pursuant to this chapter or by the board during an investigation and that does not identify or permit identification of any patient or physician; provided that the board may disclose any confidential information only:

A. In a disciplinary hearing before the board or in any subsequent trial or appeal of a board action or order relating to such disciplinary hearing;

B. To governmental licensing or disciplinary authorities of any jurisdiction or to any health care providers or health care entities located within or outside this State that are concerned with granting, limiting or denying a physician's privileges, but only if the board includes along with the transfer an indication as to whether or not the information has been substantiated by the board;

C. As required by section 2509, subsection 5;

D. Pursuant to an order of a court of competent jurisdiction; ~~or~~

E. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any patient or physician is first deleted~~.~~; or

F. To other state or federal agencies when the information contains evidence of possible violations of laws enforced by those agencies.

2. Confidentiality of orders in disciplinary proceedings. Orders of the board relating to disciplinary action against a physician, including orders or other actions of the board referring or scheduling matters for hearing, shall not be confidential.

2-A. Confidentiality of letters of guidance or concern. Letters of guidance or concern issued by the board pursuant to Title 10, section 8003, subsection 5, paragraph E, are not confidential.

3. Availability of confidential information. In no event may confidential information received, maintained or developed by the board, or disclosed by the board to others pursuant to this chapter, or information, data, incident reports or recommendations gathered or made by or on behalf of a health care provider pursuant to this chapter, be available for discovery, court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision or failure to provide health care services. This confidential information includes reports to and information gathered by a professional review committee.

Public Records Exceptions Subcommittee
Proposed draft language changes

4. Penalty. Any person who unlawfully discloses such confidential information possessed by the board shall be guilty of a Class E crime.

5. Physician-patient privilege; proceedings by board. The physician-patient privilege shall, as a matter of law, be deemed to have been waived by the patient and shall not prevail in any investigation or proceeding by the board acting within the scope of its authority, provided that the disclosure of any information pursuant to this subsection shall not be deemed a waiver of such privilege in any other proceeding.

6. Disciplinary action. Disciplinary action by the Board of Licensure in Medicine shall be in accordance with Title 32, chapter 48; disciplinary action by the Board of Osteopathic Licensure shall be in accordance with Title 32, chapter 36.

SUMMARY

This amendment makes 2 changes with regard to the treatment of confidential information held by a medical licensing board.

Title 24, section 2505 allows professional competence committees, physicians and any other person to report a physician to the appropriate licensing board. This amendment clarifies that the confidentiality provisions of the Maine Health Security Act, of which section 2505 is a part, govern the confidentiality of all such reports.

Title 24, section 2510 is amended to authorize medical licensing boards to share confidential information with state and federal agencies when the information contains evidence of possible violations of laws enforced by those agencies.

G:\STUDIES 2011\Right to Know Advisory Committee\Existing Public Records Exceptions Review\Draft of # 66.doc (10/13/2011 10:17:00 AM)

RIGHT TO KNOW ADVISORY COMMITTEE
BULK RECORDS SUBCOMMITTEE
LEGISLATIVE SUBCOMMITTEE

DRAFT AGENDA
December 8, 2011
10:00 a.m.
Room 438, State House, Augusta

Convene

1. Welcome and Introductions

2. Review of LD 1465: recommendations
   A. Timelines for Compliance with Requests
   B. Notice of Public Proceedings
   C. Form of Request and Response
   D. Remedies for Violations (see FAQ update)
   E. Public Access Officer
   F. Public Access Ombudsman

3. Additional legislation issues
   A. "Freedom of Access Act"
   B. Future use of technology
   C. Working papers public records exception
   D. ?

4. Discussion of remaining bulk records issues

5. Other responsibilities assigned to Legislative Subcommittee
   - Status of Maine Public Broadcasting Network records under the Freedom of Access laws (Mike Brown)
   - Use of technology for the purpose of remote participation by members of public bodies
   - Drafting templates
   - Storage, management and retrieval of public officials' communications, especially email

6. Other?

7. Scheduling future subcommittee meetings?

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

Adjourn

G:\STUDIES 2011\Right to Know Advisory Committee\Agendas\DRAFT AGENDA for Bulk Rec & Legis Subs December 8 2011.doc
(12/7/2011 9:08:00 AM)

Right to Know Advisory Committee: Legislative Subcommittee Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Subcommittee Recommendation
Notice of Public Proceedings	
Sec. 2. 1 MRSA §406, as amended by PL 1987, c. 477, §4, is further amended to read: **§ 406.Public notice** Public notice ~~shall~~must 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~~must be given ~~in ample time to allow public attendance~~not less than 3 days prior to the public proceeding and ~~shall~~must 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~~must 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.	*Opposed; do not include*
Form of Request and Response	
2-A. Form. If a public record exists in electronic or magnetic form, the requester may request a copy of the public record in a paper, electronic, magnetic or other medium, specify the storage medium and request that the copy be provided by an electronic transfer by the Internet or other means. A. An agency or official shall provide a copy of the public record in the requested medium if: (1) The agency or official has the technological ability to produce the public record in that medium or can obtain the assistance necessary to produce the public record at a reasonable cost; and (2) The requester agrees to pay the agency's or official's costs to purchase and install any additional necessary computer software or hardware to accommodate the request and to copy the public record in a requested medium. B. If an agency or official cannot provide a copy of a public record in a requested medium, the agency or official shall identify every medium in which the public record can be provided for inspection and copying, which must include a paper copy, and the requester must identify the medium that is acceptable to the requester.	*Alternative language proposed (with Bulk Records Subcommittee)* *See draft section 6 in new § 408-A, sub-§ 9*

Right to Know Advisory Committee: Legislative Subcommittee Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Subcommittee Recommendation
Remedies for Violations	
Sec. 6. 1 MRSA §410, as repealed and replaced by PL 1987, c. 477, §6, is amended to read: **§ 410.Violations; injunction** For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation ~~shall be~~is liable for a civil violation for which a ~~forfeiture~~fine of not more than $500 may be adjudged. The Superior Court may issue an injunction to enforce the provisions of this chapter against any agency or official. A motion for an injunction is privileged in respect to its assignment for hearing and trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.	*Opposed; do not include*
Public Access Officer	
Sec. 1. 1 MRSA §402, sub-§1-B is enacted to read: **1-B. Public access officer.** "Public access officer" means the person fulfilling the duties as described in section 413.	*Amend to include requirement that governmental units (state agencies, counties, cities, towns) designate a FOA contact person and require FOA training for that person; remove other provisions* *See draft section 3 and sections 8 and 9*
Sec. 7. 1 MRSA §412, as amended by PL 2007, c. 576, §2, is further amended to read: **§ 412.Public records and proceedings training for certain elected officials and public access officers** **1. Training required.** ~~Beginning July 1, 2008, an~~An elected official and a public access officer, subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or officer shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official or the person is designated as a public access officer pursuant to section 413, subsection 1. ~~For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.~~ **2. Training course; minimum requirements.** The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in: A. The general legal requirements of this chapter regarding public records and public proceedings;	*Included in draft; see section 8*

Right to Know Advisory Committee: Legislative Subcommittee Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Subcommittee Recommendation
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 public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information. **3. Certification of completion.** Upon completion of the training course required under subsection 1, the elected official or public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected. A public access officer shall file the record with the agency or official that designated the public access officer. **4. Application.** This section applies to the following elected officials: A. The Governor; B. The Attorney General, Secretary of State, Treasurer of State and State Auditor; C. Members of the Legislature elected after November 1, 2008; E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments; F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments; G. Officials of school units and school boards; and H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created	

Right to Know Advisory Committee: Legislative Subcommittee Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Subcommittee Recommendation
pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2. This section also applies to a public access officer designated pursuant to section 413, subsection 1.	
Sec. 8. 1 MRSA §413 is enacted to read: **§ 413. Public access officer; responsibilities** **1. Designation; responsibility.** Every agency or official shall designate to an existing staff member the responsibility of serving as a public access officer to oversee responses to requests for public records under this chapter. The public access officer shall oversee the prompt response to a request to inspect or copy a public record. **2. Training.** A public access officer shall complete a course of training on the requirements of this chapter relating to public records and proceedings as described in section 412. **3. Purpose; schedule.** A public access officer or other person acting on behalf of an agency or official may not inquire into the purpose of a request. A public access officer may inquire as to the schedule or order of inspection or copying of a public record or a portion of a public record under section 408. **4. Uniform treatment.** A public access officer shall treat all requests for information under this chapter uniformly without regard to the requester's position or occupation, the person on whose behalf the request is made or the status of the requester as a member of the media. **5. Comfort and facility.** The public access officer shall ensure that a person may inspect a public record in the offices of the agency or official in a manner that provides reasonable comfort and facility for the full exercise of the rights of the public under this chapter. **6. Unavailability of public access officer.** The unavailability of a public access officer may not delay a response to a request.	*Amended in draft to reflect subcommittee's decision; see draft section 9*
Public Access Ombudsman	
Sec. 9. Appropriations and allocations. The following appropriations and allocations are made.	*Agreed to recommend funding for full-time position* *See draft section 10*

Right to Know Advisory Committee: Legislative Subcommittee Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Subcommittee Recommendation
ATTORNEY GENERAL, DEPARTMENT OF THE **Administration - Attorney General 0310** Initiative: Provides funds for a part-time Assistant Attorney General position to act as the public access ombudsman and general operating expenses required to carry out the purposes of this Act. **GENERAL FUND** **2011-12** **2012-13** **POSITION-LEGISLATIVE COUNT** 0.500 0.500 Personal Services $62,120 $65,576 All Other $5.000 $5.000 Total $67,120 $70,576	
Timelines	
Sec. 3. 1 MRSA §408, as amended by PL 2009, c. 240, §4, is further amended to read: **§ 408.Public records available for public inspection and copying** **1. Right to inspect and copy.** Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within ~~a reasonable period of time after making a request to inspect or copy the public record~~the time limits established in section 408-A. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall acknowledge receipt of the request within a reasonable period of time. A person may request by telephone that a copy of the public record be mailed or e-mailed to that person.	*Opposed to timelines as drafted; Agreed to language requiring an estimate of when agency or official will respond to request* *See draft section 6 in new § 408-A, sub-§ 3*
2. Inspection, translation and copying scheduled. Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought, as long as the inspection, translation and copying occur within the time limits established in section 408-A. The agency or official may use a 3rd party to make a copy of an original public record, but a requester may not remove the original of a public record from the agency or official.	*Opposed; change not included in draft*
3. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows. A. The agency or official may charge a reasonable fee to cover the cost of copying. B. The agency or official may charge a fee to cover the	*Change included in draft; see draft section 6 in new § 408-A, sub-§ 10, ¶ D*

Right to Know Advisory Committee: Legislative Subcommittee Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Subcommittee Recommendation
actual cost of searching for, retrieving and compiling the requested public record of not more than $10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information. C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation. D. An agency or official may not charge for inspection. E. If the requester requests that the public record be mailed, the agency or official may charge a fee not greater than the actual cost of mailing the record.	
4. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than $20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 5 applies and the estimate must be provided within 3 business days of the request. **5. Payment in advance.** The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if: A. The estimated total cost exceeds $100; or B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner. **6. Waivers.** The agency or official may waive part or all of the total fee if: A. The requester is indigent; or B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.	*Opposed; change not included in draft*
Sec. 4. 1 MRSA §408-A is enacted to read: **§ 408-A. Timelines** **1. Availability; redaction; location; collection.** A public record must be made available immediately upon request unless time is required to redact the record so as to allow inspection and copying of only those portions of the record containing information that is a public record or to locate and collect a record that is not in active use or that is in storage.	*Opposed; not included in draft*

Right to Know Advisory Committee: Legislative Subcommittee Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Subcommittee Recommendation
2. Certification. If a public record is not available immediately, a public access officer shall promptly certify that fact in writing to the requester, provide an explanation for the delay and either provide an opportunity to inspect or copy the public record within 5 business days or mail or e-mail the public record within 5 business days. **3. Large or multiple requests.** If a large public record is requested or multiple public records are requested and the public access officer or a person acting on behalf of the agency or official cannot in the exercise of due diligence produce the entire record or multiple records within 5 business days after the request, the public access officer shall provide the portion of the public record or public records when available. The requester may waive this requirement and request to see the public record or public records requested as a whole when available. **4. Estimate.** If the cost to comply with a request to inspect or copy a public record is greater than $100, an estimate must be provided within 3 business days of the request. **5. Failure to comply.** Failure to comply with this section may be treated as a denial of a request and is subject to the enforcement provisions of this chapter.	
Sec. 5. 1 MRSA §408-B is enacted to read: **§ 408-B. Inspection by requester** **1. Ten business days.** A requester shall complete an inspection of a public record within 10 business days after the record is made available for inspection. If the inspection is not completed within the 10-business-day period, a public access officer or a person acting on behalf of the agency or official shall inform the requester that a written request for additional time may be filed with the agency or official that has custody of the public record. **2. Additional periods.** An agency or official shall allow an additional 20 business days beyond the period in subsection 1 for a requester to review a public record if the requester filed a written request for additional time with the agency or official or its public access officer or a person acting on behalf of the agency or official. If the inspection is not completed upon the expiration of the additional 20 business days, the public access officer or person acting on behalf of the agency or official shall inform the requester that a 2nd written request for an additional 10 days may be filed with the agency or official that has custody of the public record. **3. Interruption of inspection.** The time allowed for inspection of a public record may be interrupted if the agency or	*Opposed; not included in draft*

Right to Know Advisory Committee: Legislative Subcommittee Comparison of Current Law and LD 1465, An Act to Amend the Laws Governing Freedom of Access

LD 1465	Subcommittee Recommendation
official needs to use the public record. If an agency or official invokes this subsection, the public access officer, no later than 5 business days after the agency or official takes the record back, shall inform the requester in writing the dates that the public record will be available for the inspection to resume. The time allowed for an inspection is tolled during the period in which the public record is being used by the agency or official.	

Bulk Records and Legislative Subcommittees
Possible draft language

Sec. 1. 1 MRSA §400 is enacted to read:

§400. Short title

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

(Subchapter is currently §401 through §412)

Sec. 2. 1 MRSA §401-A is enacted to read:

§401-A. Public records; information technology policy

1. Policy. The new use of information technology to collect, maintain, store and retrieve public records may not reduce access to public records.

2. New information technology; considerations. Each agency shall consider the following in the purchase of and contracting for computer software and other information technology resources:

A. Maximizing public access to public records; and

B. Maximizing the exportability of public data while protecting confidential information that may be part of otherwise public records.

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

1-B. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.

Sec. 4. 1 MRSA §402, sub-§3, ¶¶C-2 and C-3 are enacted to read:
Exceptions to "public records":

Current legislative working papers exception:
C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over;

Bulk Records and Legislative Subcommittees
Possible draft language

C-2. Proposed legislation and reports until publicly distributed ~~in accordance with legislative rules~~, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by the Governor or any employee of the Governor's office to prepare proposed legislation or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the proposed legislation or reports are prepared or considered or to which the proposed legislation or report is carried over;

C-3. Proposed legislation, reports, records, working papers, drafts, interoffice and intraoffice memoranda prepared for review, information or consideration by a (governing) body or duly-authorized official until: publicly distributed or otherwise provided to persons not in the service of the (governing) body or duly-authorized official; received by a quorum of the (governing) body; or the duly-authorized official makes a final decision to put forward the policy proposal reasonably related to the records or makes a final decision to abandon a policy proposal reasonably related to the records;

Sec. 5. 1 MRSA §408 is repealed.

Sec. 6. 1 MRSA §408-A is enacted to read:

§408-A, Public records available for inspection and copying

1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record within a reasonable time of making the request to inspect or copy the public record.

2. Clarification. An agency or official may request clarification concerning which public record or public records are being requested.

3. Acknowledgment; time estimate. The agency or official shall acknowledge receipt of the request within a reasonable period of time, and shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request. The agency or official shall make a good faith effort to fully respond to the request within the estimated time.

4. Refusals; denials. If (a body or?) an agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, the (body or?) agency or official shall provide written notice of the denial,

stating the reason for the denial, within 5 working days of the request for inspection or copying ~~by any person~~. *[Currently part of §409, sub-§1, and currently uses the term "body" – what happens if we drop out?]*

5. Schedule. Inspection, ~~translation~~ conversion and copying may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought. As used in this section, "reasonable office hours" includes all regular office hours of an agency or official. If a the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.

6. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge for inspection.

7. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy.

A. A request need not be made in person or in writing.

B. The agency or official shall mail the copy upon request.

8. Compile or create. An agency or official is not required to create or compile a record that does not exist.

9. Electronically stored public records. An agency or official shall provide access to an electronically stored public record in the available medium of the requester's choice. An available medium is a printed document of the public record or the medium in which the record is stored, except that a computer file is not an available medium if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in that file.

A. An agency or official is not required to provide an electronically stored public record in a different medium, structure, format or organization, but may do so at the agency's or official's discretion.

B. If ~~translation is necessary~~ in order to provide for inspection or copying the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format, the agency or official may charge a fee to cover the actual cost of ~~translation~~ conversion.

Bulk Records and Legislative Subcommittees
Possible draft language

C. This subsection does not require an agency or official to provide a requester with access to a computer terminal.

10. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for copies of public records as follows.

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

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than ~~$10~~ $15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.

C. An agency or official may not charge for inspection.

D. The agency or official may charge for the actual mailing costs to mail a copy of a record.

11. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than $20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 12 applies.

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

A. The estimated total cost exceeds $100; or

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

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

A. The requester is indigent; or

B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

Bulk Records and Legislative Subcommittees
Possible draft language

Sec. 7. 1 MRSA §409 is amended to read:

§409. Appeals

1. Records. ~~If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person.~~ Any person aggrieved by a refusal or denial to inspect or copy a record under section 408-A may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

Sec. 8. 1 MRSA §412, as amended by PL 2007, c. 576, §2, is further amended to read:

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

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

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

A. The general legal requirements of this chapter regarding public records and public proceedings;

B. Procedures and requirements regarding complying with a request for a public record under this chapter; and

C. Penalties and other consequences for failure to comply with this chapter.

Bulk Records and Legislative Subcommittees
Possible draft language

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

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

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

A. The Governor;

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

C. Members of the Legislature elected after November 1, 2008;

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

G. Officials of school units and school boards; and

H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

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

Bulk Records and Legislative Subcommittees
Possible draft language

Sec. 9. 1 MRSA §413 is enacted to read:

§413. Public access officer; responsibilities

1. Designation; responsibility. Each State agency, county and municipality shall designate an existing employee as its public access officer to serve as the contact person for that agency, county or municipality with regard to requests for public records under this chapter. *[add language about making name of contact available to public?? Need to mention that the contact person is not solely responsible for fulfilling request or that request has to be made to POA??]*

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

Sec. 10. Appropriations and allocations. The following appropriations and allocations are made. *(Assumes April 1, 2012 effective date.)*

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration – Attorney General 0310

Initiative: Provides funds for one Assistant Attorney General position to serve as a Public Access Ombudsman.

GENERAL FUND	**2011-12**	**2012-13**
Position – Legislative Count	1.000	1.000
Personal Services	$18,160	$75,420
All Other	$5,178	$3,178
GENERAL FUND TOTAL	$23,338	$78,598

FAQ suggested updates
10-21-11

GENERAL QUESTIONS

What is the Freedom of Access Act?

The Freedom of Access Act ("FOAA") is a state statute that is intended to open the government of Maine by guaranteeing access to the "public records" and "public proceedings" of state and local government bodies and agencies.

Are federal agencies covered by the Freedom of Access Act?

No. The Freedom of Access Act does not apply to federal agencies operating in Maine or to federal government records. A similar but different federal statute called the "Freedom of Information Act" applies to the federal government. This federal statute does not apply to state or local government bodies, agencies or officials.

You can find the text of the Freedom of Information Act, 5 U.S.C. § 551 et seq., at: http://www.usdoj.gov/oip/foiastat.htm *or you can find more general information on the Freedom of Information Act* at: http://answers.usa.gov/cgi-bin/gsaict.cfg/php/enduser/stdadp.php?p_faqid=5940.

Who enforces the Freedom of Access Act?

Any aggrieved person may appeal to any Superior Court in the state to seek relief for an alleged violation of the Freedom of Access Act. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

Relief can be in the form of an injunction issued by the court that directs the government body, agency or official to comply with the law, such as by providing access to a public proceeding or by making public records available for inspection or copying.

In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful. 1 M.R.S.A. § 410.

What are the penalties for failure to comply with the Freedom of Access laws?

A state government agency or local government entity whose officer or employee commits a willful violation of the Freedom of Access laws commits a civil violation for which a forfeiture of not more than $500 may be adjudged. 1 M.R.S.A. § 410. Under the current law, there are no criminal penalties for failure to comply with a request for public records. It is a Class D crime to intentionally remove, alter, or destroy documents belonging to a state office. 1 M.R.S.A. § 452.

FAQ suggested updates
10-21-11

Are elected officials required to take training on the Freedom of Access laws?

Yes. Beginning July 1, 2008, elected officials must complete a course of training on the requirements of the Freedom of Access laws.

Which elected officials are required to take Freedom of Access training?

Elected officials required to complete the training include:

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

What does the training include?

At a minimum, the training must be designed to be completed in less than 2 hours and include instruction in:

- the general legal requirements regarding public records and public proceedings
- the procedures and requirements regarding complying with a request for a public record
- the penalties and other consequences for failure to comply with the law

Elected officials can meet the training requirement by conducting a thorough review of the material in this FAQ section of the State's Freedom of Access website or by completing another training course that includes all off this information but may include additional information.

Do training courses need to by certified by the Right to Know Advisory Committee?

No. Training courses do not need the approval of the Right to Know Advisory Committee, or any other State agency.

How do elected officials certify they have completed the training?

After completing the training, elected officials are required to make a written or electronic record attesting that the training has been completed. The record, which will be available to the public, must be kept by the elected official or filed with the public entity to which the official was elected. A sample training completion form is available (This file requires the free Adobe Reader).

PUBLIC RECORDS

What is a public record?

The Freedom of Access Act defines "public record" as "any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business". A number of exceptions are specified. (See the discussion of exemptions below) 1 M.R.S.A. § 402 (3).

Do I have to be a citizen of this state to submit a Freedom of Access Act request for a public record?

No. The Freedom of Access Act provides that "every person" has the right to inspect and copy public records. 1 M.R.S.A. § 408 (1).

How do I make a Freedom of Access Act request for a public record?

See the How to Make a Request page on this site.

Is there a form that must be used to make a Freedom of Access Act request?

No. There are no required forms.

Does my Freedom of Access Act request have to be in writing?

No. The Freedom of Access Act does not require that requests for public records be in writing. However, most bodies and agencies ask individuals to

submit requests in writing in order to maintain a record of when the request was received and what records were specifically requested.

What should I say in my request?

In order for the body, agency or official to promptly respond to your request, you should be as specific as possible when describing the records you are seeking. If a particular document is required, it should be identified precisely—preferably by author, date and title. However, a request does not have to be that specific. If you cannot identify a specific record, you should clearly explain the type of records you are seeking, from what timeframe and what subject the records should contain. For example, assume you want to obtain a list of active landfills near your home. A request to the state Department of Environmental Protection asking for "all records on landfills" is very broad and would likely produce volumes of records. The fees for such a request would be very high; the agency would likely find your request too vague and ask that you make it more specific. On the other hand, a request for "all records identifying landfills within 20 miles of 147 Main Street in Augusta" is very specific and the request might fail to produce the information you desire because the agency has no record containing data organized in that exact fashion. You might instead consider requesting any record that identifies "all active landfills in Augusta" or "all active landfills in Kennebec County." It is more likely that a record exists which contains this information. You might also want to explain to the agency exactly what information you hope to learn from the record. In other words, if you are really trying to determine whether any active landfills near your home in Augusta accept only wood waste, this additional explanation may help the agency narrow its search and find a record that meets the exact request.

Does an agency have to acknowledge receipt of my request?

Yes. An agency or official must acknowledge receipt of a request within a reasonable period of time. 1 MRSA § 408 (1).

Can an agency ask me for clarification concerning my request?

Yes. An agency or official may request clarification concerning which public record or public records are being requested. 1 MRSA §408 (1).

When does the agency or official have to make the records available?

The records must be made available "within a reasonable period of time" after the request was made. 1 M.R.S.A. § 408 (1). The agency or official can schedule the time for your inspection, translation and copying of the records during the regular business hours of the agency or official, and at a time that will not delay or inconvenience the regular activities of the agency of official. 1 M.R.S.A. §§ 408 (1) & (2).

FAQ suggested updates
10-21-11

Does an agency have to produce records within 5 days of my request?

No. The records that are responsive to a request must be made available "within a reasonable period of time" after the request was made. 1 MRSA § 408 (1). Agencies must respond in writing within 5 working days only if your request is denied in whole or in part. 1 MRSA § 409 (1).

Do I have to go to the agency to inspect the records or can I ask the agency or official to mail me the records?

The Freedom of Access Act only requires the agency or official to make the records available to you for inspection and copying, it does not require the agency or official to mail records. However, depending on the volume of records produced in response to your request, some agencies or officials may be willing to mail copies to you. The agency may charge a reasonable fee to cover the cost of making the copies for you. 1 M.R.S.A. § 408 (1) & (3)(A).

When may a governmental body refuse to release the records I request?

The Freedom of Access Act provides that certain categories of documents are not public records. Included among these are records that have been designated confidential by statute, documents subject to a recognized legal privilege such as the attorney-client privilege or the work-product privilege, records describing security plans or procedures designed to prevent acts of terrorism, medical records, juvenile records, and the personal contact information of public employees contained within records. 1 M.R.S.A. § 402 (3)(A)-(O).

For a list of records or categories of records deemed by statute to be confidential or otherwise not a public record, see the Statutory Exceptions List. While this listing may not be totally complete, it contains the vast majority of exceptions to the Freedom of Access Act.

What happens if a public record holds some information that is open to the public and some information that falls within an exception to the Freedom of Access Act?

Some public records contain a mixture of information that is public and information that is confidential or otherwise not subject to public inspection under the Freedom of Access Act. If the record you requested contains any confidential or excepted information, the custodian will decide if the confidential or excepted information can be adequately redacted or blacked out so that public access can be provided or if public access to the document should be denied.

Does an agency have to explain why it denies access to a public record?

Yes. When an agency denies access to a public record, it must provide the reason for its denial in writing within 5 working days of the date of the Freedom of Access Act request. 1 M.R.S.A. § 409 (1).

What can I do if I believe an agency has unlawfully withheld a public record?

If you are unsatisfied with an agency's decision to withhold access to certain records, you are entitled to appeal, within 5 working days of your receipt of the written notice of denial, to any Superior Court within the state. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

May a governmental body ask me why I want a certain record?

The Freedom of Access Act does not specifically prohibit agencies or officials from asking why an individual is requesting a public record. However, if asked, the individual is not required to provide a reason for seeking a record, and the agency cannot deny an individual's request based solely on either the individual's refusal to provide a reason or the reason itself. An agency or official may request clarification concerning which public record or public records are being requested. 1 M.R.S.A. § 408 (1).

Can I ask that public reports or other documents be created, summarized or put in a particular format for me?

No. A public officer or agency is not required to prepare reports, summaries, or compilations not in existence on the date of your request.

Similarly, a public officer or agency is not required to produce a record in an alternate format if the record can be made available for public inspection and copying in the format in which it exists. If the record requires translation in order for it to be made available for public inspection and copying, the agency or official must translate the record but can charge you a fee to cover the actual cost of translation. 1 M.R.S.A. § 408 (3)(C).

I asked a public official a question about a record, but he/she didn't answer. Is he/she required to answer my question?

No. A public officer or agency is not required under the Freedom of Access Act to explain or answer questions about public records. The Act only requires officials and agencies to make public records available for inspection and copying.

What records must a public officer or agency keep, and how long do they have to keep them?

~~The~~ Generally, the Freedom of Access law does not control what records must be retained or for how long they must be retained. Public officers and

agencies are required to keep all records made or received or maintained by that officer or agency in accordance with other law or rule. 5 MRSA § 92-A (5) (This file requires the free Adobe Reader).

However, the Freedom of Access law does require that a public body keep a summary of its public proceedings. The summary must include: the date, time and place of the proceeding; the members of the public body, recorded as either present or absent; and all motions and votes taken, by individual member if the vote is by roll call. The summary can be in any medium, including audio, video and electronic. This requirement applies to public bodies that do more than serve in an advisory capacity. 1 MRSA §403 (2)

How long records must be kept depends on the type of record and the value of the record's content. The Maine State Archives works with state and local governments to establish rules for the retention and disposition of government records, including the length of time that certain records need to be preserved by the agency before they are either destroyed or sent to the Maine State Archives for long-term or permanent retention.

Are an agency's or official's e-mails public records?

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail is "in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business" and is not deemed confidential or excepted from the Freedom of Access Act, it constitutes a "public record". 1 M.R.S.A. § 402 (3).

Can an agency charge for public records?

There is no initial fee for submitting a Freedom of Access Act request and agencies cannot charge an individual to inspect records. 1 M.R.S.A. § 408 (3)(D). However, agencies can and normally do charge for copying records. Although the Freedom of Access Act does not set standard copying rates, it permits agencies to charge "a reasonable fee to cover the cost of copying". 1 M.R.S.A. § 408 (3)(A).

Agencies and officials may also charge fees for the time spent searching for, retrieving, compiling or redacting confidential information from the requested records. The Act authorizes agencies or officials to charge $10 per hour after the first hour of staff time per request. 1 M.R.S.A. § 408 (3)(B). Where translation of a record is necessary, the agency or official may also charge a fee to cover the actual cost of translation. 1 M.R.S.A. § 408 (3)(C).

The agency or official must prepare an estimate of the time and cost required to complete a request and if the estimate is greater than $20, the agency or official must notify the requester before proceeding. The agency may request payment of the costs in advance if the estimated cost exceeds $100 or if the requester has previously failed to pay a fee properly assessed under the Freedom of Access Act. 1 M.R.S.A. § 408 (4) & (5).

I cannot afford to pay the fees charged by the agency or official to research my request or copy the records. Can I get a waiver?

The agency of official may, but is not required to, waive part or all of the total fee if the requester is indigent, or if release of the public record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. 1 M.R.S.A. § 408 (6)

Is a public agency or official required under the Freedom of Access Act to honor a "standing request" for information, such as a request that certain reports be sent to me automatically each month?

No. A public body is required to make available for inspection and copying (subject to any applicable exemptions) only those public records that exist on the date of the request. Persons seeking to inspect or obtain copies of public records on a continuing basis are required to make a new request for any additional records sought after the date of the original request.

PUBLIC PROCEEDINGS

What is a public proceeding?

The term "public proceeding" means "the transactions of any functions affecting any or all citizens of the State" by the Maine Legislature and its committees and subcommittees; any board or commission of a state agency or authority including the University of Maine and the Maine Community College System; any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; the full membership meetings of any association, the membership of which is comprised exclusively of counties, municipalities, school districts, other political or administrative subdivisions, or their boards, commissions, agencies or authorities; and any advisory organization established, authorized or organized by law, resolve or executive order. 1 M.R.S.A. § 402.

What does the law require with regard to public proceedings?

The Freedom of Access Act requires all public proceedings to be open to the public and any person must be permitted to attend. 1 M.R.S.A. § 403.

When does a meeting or gathering of members of a public body or agency require public notice?

Public notice is required of all public proceedings if the proceedings are a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

What kind of notice of public proceedings does the Freedom of Access Act require?

Public notice must be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency. 1 M.R.S.A. § 406.

Can a public body or agency hold an emergency meeting?

Yes. Public notice of an emergency meeting must be provided to local representatives of the media, whenever practicable. The notice must include the time and location of the meeting and be provided by the same (or faster) means used to notify the members of the public body or agency conducting the public proceeding. 1 MRSA § 406. The requirements that the meeting be open to the public, that any person be permitted to attend and that records or minutes of the meeting be made and open for public inspection still apply. 1 MRSA § 403.

Can public bodies or agencies hold a closed meeting?

Yes. Public bodies or agencies are permitted, subject to certain procedural conditions, to hold closed "executive sessions" on specified subjects after a public recorded vote of 3/5 of the members present and voting. 1 M.R.S.A. § 405 (1)-(5).

Can the body or agency conduct all of its business during an executive session?

Generally, no. The content of deliberations during executive sessions is restricted to the matters listed in the Freedom of Access Act, such as: discussions regarding the suspension or expulsion of a student; certain employment actions; the acquisition, use or disposition of public property; consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and discussion of documents that are confidential by statute. In addition, any body or agency subject to the Freedom of Access Act is prohibited from giving final approval to any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session. 1 M.R.S.A. § 405 (2) & (6).

What if I believe a public body or agency conducted improper business during an executive session?

Upon learning of any such action, any person may appeal to any Superior Court in the State. If the court determines the body or agency acted illegally,

the action that was taken by the body or agency will be declared to be null and void and the officials responsible will be subject to the penalties provided in the Act. 1 M.R.S.A. § 409 (2). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

Can members of a body communicate with one another by email outside of a public proceeding?

~~There is no legal prohibition against email communication between members of a public body outside of a public proceeding.~~

The law does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of the Freedom of Access law. 1 MRSA § 401.

~~However, email~~ Email or other communication among a quorum of the members of a body that is used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State..." 1 MRSA § 402. The underlying purpose of the Freedom of Access law is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. 1 MRSA § 401. Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. 1 MRSA § 403. In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

Members of a body should refrain from the use of email as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. Email is permissible to communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Email is a public record (likely even when sent using a member's personal computer) if it contains information relating to the transaction of public or governmental business unless the information is designated as confidential or excepted from the definition of a public record. 1 MRSA § 402, sub-§ 3. As a result, members of a body should be aware that all emails and email attachments relating to the member's participation are likely public records subject to public inspection under the Freedom of Access laws.

Can I record a public proceeding?

Yes. The Freedom of Access Act allows individuals to make written, taped or filmed records of a public proceeding, or to broadcast the proceedings live, provided the action does not interfere with the orderly conduct of the proceedings. The body or agency holding the proceeding can make reasonable rules or regulations to govern these activities so long as the rules or regulations do not defeat the purpose of the Act. 1 M.R.S.A. § 404.

Do members of the public have a right to speak at public meetings under the Freedom of Access Act?

The Freedom of Access Act does not require that an opportunity for public participation be provided at open meetings, although many public bodies or agencies choose to permit public participation. In those instances, the public body or agency can adopt reasonable rules to ensure meetings are conducted in a fair and orderly manner. For example, the body or agency can set a rule that requires the same amount of time be afforded to each person that wants to speak.

Is the public body or agency required to keep running minutes or a record of a public proceeding?

There is no requirement under the Freedom of Access Act that a public body or agency keep running minutes during all public proceedings. The Act does require, however, that public bodies and agencies keep a written record of every decision that involves the conditional approval or denial of an application, license, certificate or permit, and every decision that involves the dismissal or refusal to renew the contract of any public official, employee or appointee. 1 M.R.S.A. § 407 (1) & (2).

If the public proceeding is an "adjudicatory proceeding" as defined in the Maine Administrative Procedure Act, the agency is required to compile a record that complies with statutory specifications, including a recording in a form susceptible of transcription. 5 M.R.S.A. §§ 8002 (1) and 9059.

Is the agency or body required to make the record or minutes of a public proceeding available to the public?

Yes. Any legally required record or minutes of a public proceeding must be made promptly and shall be open to public inspection. In addition, every agency is required to make a written record of any decision that involves conditional approval or denial of any application, license, certificate or other type of permit and to make those decisions publicly available, 1 M.R.S.A. §§ 403, 407; 5 M.R.S.A. § 9059 (3).

An Act Concerning Fees for Users of County Registries of Deeds

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

Whereas, the registry of deeds offices provide a valuable public service in recording and maintaining the land records of the State; and

Whereas, current law allows the county commissioners to set fees for copying at only the cost of providing the copies; and

Whereas, the cost to the counties to maintain the information and to make it accessible cannot be adequately reimbursed by fees defined by copying cost; and

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

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

Sec. 1. 33 MRSA §751, sub-§14, as amended by PL 2009, c. 575, §2, is repealed.

Sec. 2. 33 MRSA §751, sub-§§14-B and 14-C are enacted to read:

14-B. Abstracts and copies. Making abstracts and copies of records at the office of the register of deeds as follows:

A. Five dollars per page for paper abstracts and copies of plans;

B. One dollar per page for other paper abstracts and copies; and

C. Fifty cents per page for digital abstracts and copies, except that the fee is 5¢ per page for copies of 1,000 or more digital abstracts and copies of consecutive records.

This subsection is repealed July 31, 2012;

14-C. Abstracts and copies. Beginning August 1, 2012, 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 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

Sec. 3. Legislative intent; retroactivity. The Legislature finds that the following fees charged by an office of a register of deeds for making abstracts and copies from records, whether in paper or digital form, including for bulk copies or transfers of such copies, between September 1, 2009 and the effective date of this Act are reasonable and in accordance with the legislative intent of Public Law 2009, chapter 575, section 2 and are expressly authorized: a fee of up to $1.50 per page for paper copies and a fee of up to $1.50 per page for digital copies. Nothing in this section may be interpreted as a legislative finding that a higher fee charged by an office of a register of deeds between September 1, 2009 and the effective date of this Act to persons who were not subscribers to the online services of a register of deeds is unreasonable. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this section applies retroactively to September 1, 2009.

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

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

(1)

RECEIVED
APR 12 2011

APRIL 12, 2011

Margaret Reinsch
Senior Legal Analyst
Judiciary Committee
Right to Know Advisory
Committee

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

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

Resp #1

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

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

On December 15, 2010, Cove Writers, Inc. filed a FOA request to MPBN President James Dowe for certain financial information. **(See Copy Enclosed)**. A FOA request is mandated by a reply within five working days. No reply came within that period or in subsequent weeks although several attempts to reach President Dowe were futile until February 2011with a phone call from John F. Isacke, Vice President and Chief Financial Officer which was 45 days from the original request and 40 days in violation of the FOA Act. I requested of Mr. Isacke to put his response in writing which he did with letter dated 2/311. **(See Copy Enclosed).** Although certain MPBN financials were forwarded, two items (1) a copy of MPBN's current roster of full-time employees with their job titles and ranges for pay grades, and (2) a current copy listing part-time and/or contract employees who received IRS Form 1099 including the amounts they received were omitted.

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

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

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

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

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

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

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

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

Enclosures:

Allen D. (Mike) Brown, President

Hometown News Service

State House Station 162

Augusta, ME 04333

Phone 287-4899

E-mail brown@midcoast.com

COVE WRITERS, INC.
INDEPENDENT SYNDICATION
78 CLIFF ROAD, SATURDAY COVE
NORTHPORT, MAINE 04849

TELEPHONE (207) 338-3419
FAX (207) 338-4992

December 15, 2010

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

Dear Mr. Dowe:

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

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

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

Sincerely,

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

Maine Public Broadcasting Network

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

February 3, 2011

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

Re: Your request of December 15, 2010

Dear Mr. Brown,

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

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

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

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

referred to above discloses for all employees who are compensated at $100,000 or higher, their name, title and total compensation.

4. The listing of part-time and/or contract employees who received an IRS Form 1099 and the amounts they received is not a document we normally share and is not enclosed.
5. A listing of our Board of Trustees is also made available to the public on our website, www.mpbn.net . A listing, including their terms of office is enclosed for your convenience.

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

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

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

Sincerely,

John F. Isacke
Vice President and Chief Financial Officer

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

Ellsworth American/State of Maine Column/Mike Brown/Issue 2/17/11

MPBN's Violation of the Maine FOA Act

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

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

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

Although VP Isacke provided hard copy duplicates of certain financials–IRS 990 for 2099 and Audited Report, 2010 - he wrote in a cover letter that,"I do not believe that all the items requested are subject to the FOA Act." He further stated,"I am not a lawyer, but my simple reading of Chapter 13. as it pertains to Public Records is that neither is MPBN an agency of the state nor are its employees public officials."

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

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

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

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

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

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

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

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

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

-30-

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.

Resp #2

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.

G:\STUDIES 2011\Right to Know Advisory Committee\meetings by tech draft FINAL per RTKAC 09-23-10 mtg.doc (11/7/2011 1:30:00 PM)

From LD 1792: RTK AC recommendations for FAME confidentiality statutes
(Deleted from LD 1792 by JUD in Committee Amendment)

Sec. 4. 10 MRSA §975-A, as amended by PL 2003, c. 537, §17 and affected by §53, is repealed.

Sec. 5. 10 MRSA §975-B is enacted to read:

§ 975-B. Freedom of access; confidentiality of records

The records of the authority are public records, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential:

A. Records containing any information acquired by the authority or a member, officer, employee or agent of the authority, from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the authority is confidential for purposes of Title 1, section 402, subsection 3, paragraph A if the applicant or recipient is an **individual**.

B. A record obtained or developed by the authority that:

(1) A person, including the authority, to whom the record belongs or pertains has requested be designated confidential; and

(2) The authority has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains.

C. A financial statement or tax return.

D. A record that contains an assessment by a person who is not employed by the authority of the credit worthiness or financial condition of any person or project.

E. A record obtained or developed by the authority prior to receipt of a written application or proposal if the application or proposal is for financial assistance to be provided by or with the assistance of the authority, or in connection with a transfer of property to or from the authority. After receipt by the authority of the application or proposal, a record pertaining to the application or proposal is not to be considered confidential unless it meets the requirements of the other paragraphs of the subsection.

F. Any financial statement or business and marketing plan in connection with

any project receiving or to receive financial assistance from the authority pursuant only to subchapters III or IV, except section 1053, subsection 5, if a person to whom the statement or plan belongs or pertains has requested that the record be designated confidential; and

G. Any record, including any financial statement, business plan or tax return obtained or developed by the authority in connection with the matching of potential investors with Maine businesses by the authority through its maintenance of a data base or other record keeping system. For purposes of this section, an application by a potential investor shall not be deemed to be an application for financial assistance.

The authority shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

2. Exceptions. Notwithstanding subsection 1, the following are public records and are not confidential:

A. Any otherwise confidential information the confidentiality of which the authority determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

D. Names of recipients of or applicants for financial assistance, including principals, where applicable;

E. Amounts, types and general terms of financial assistance provided to those recipients or requested by those applicants;

F. Descriptions of projects and businesses benefiting or to benefit from the financial assistance;

G. Names of transferors or transferees, including principals, of property to or from the authority, the general terms of transfer and the purposes for which transferred property will be used;

H. The number of jobs and the amount of tax revenues projected or resulting in connection with a project;

I. Upon the authority's satisfaction of its loan insurance liability, the amount of any loan insurance payments with respect to a loan insurance contract; and

J. Names of financial institutions participating in providing financial assistance and the general terms of that financial assistance;

K. Any information necessary to carry out section 1043 or 1063;

L. The annual report of the authority required pursuant to section 974.

3. Disclosure prohibited; further exceptions. A person may not knowingly divulge or disclose records designated confidential by this section, except that the authority, in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. Information requested by a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the authority has or may have an interest;

E. In any litigation or proceeding in which the authority has appeared, introduction for the record of any information obtained from records designated confidential by this section; and

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority.

G. If necessary in connection with acquiring, maintaining, or disposing of property; and

From LD 1792: RTK AC recommendations for FAME confidentiality statutes
(Deleted from LD 1792 by JUD in Committee Amendment)

H. Information to the extent the authority deems the disclosure necessary to the sale or transfer of revenue obligation securities or to the sale or transfer of bonds of the State.

RTK AC General Agency Confidential Individual and Business Records Template

Sec. X. XX MRSA §XXX-X, as amended by PL XXXX, c. XXX, §XX and affected by §XX, is repealed.

Sec. X. XX MRSA §XXX-X is enacted to read:

§ XXX-X. Freedom of access; confidentiality of records

The records of the *[board, agency, authority, etc.]* are public records, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential:

A. Records containing any information acquired by the *[board, agency, authority, etc.]* or a member, officer, employee or agent of the *[board, agency, authority, etc.]* from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the *[board, agency, authority, etc.]* is confidential for purposes of Title 1, section 402, subsection 3, paragraph A if the applicant or recipient is an individual.

B. A record obtained or developed by the *[board, agency, authority, etc.]* that:

(1) A person, including the *[board, agency, authority, etc.]*, to whom the record belongs or pertains has requested be designated confidential; and

(2) The *[board, agency, authority, etc.]* has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains.

C. A financial statement or tax return.

D. A record that contains an assessment by a person who is not employed by the *[board, agency, authority, etc.]* of the credit worthiness or financial condition of any person or project.

E. A record obtained or developed by the *[board, agency, authority, etc.]* prior to receipt of a written application or proposal if the application or proposal is for financial assistance to be provided by or with the assistance of the *[board, agency, authority, etc.]*, or in connection with a transfer of property to or from the *[board, agency, authority, etc.]*. After receipt by the *[board, agency, authority, etc.]* of the application or proposal, a record pertaining to the application or proposal is

not to be considered confidential unless it meets the requirements of the other paragraphs of the subsection.

The *[board, agency, authority, etc.]* shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

2. Exceptions. Notwithstanding subsection 1, the following are public records and are not confidential:

A. Any otherwise confidential information the confidentiality of which the *[board, agency, authority, etc.]* determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

3. Disclosure prohibited; further exceptions. A person may not knowingly divulge or disclose records designated confidential by this section, **except that the** *[board, agency, authority, etc.]*, **in its discretion and in conformity with legislative freedom of access criteria** in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. Information requested by a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the *[board, agency, authority, etc.]* has or may have an interest;

E. In any litigation or proceeding in which the *[board, agency, authority, etc.]* has appeared, introduction for the record of any information obtained from records designated confidential by this section;

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority; and

G. If necessary in connection with acquiring, maintaining, or disposing of property.

Notes and Policy Determinations for the RTK-AC Template

Subsection 1: Exceptions to Public Records

All records are public records except: Section 1, A through E.

Section 1A – States explicitly that all individual records are confidential, except that they can be given for a confidential and lawful purpose to a legislative committee (last paragraph in Subsection 1), and as provided in Subsection 2: Exceptions.

This transfers over the proposal from the RTK-AC original template the idea that individual records are presumed to be confidential. This distinction between businesses and individuals is not present in the original Fame statute, so there will need to be a policy determination as to whether to include it or not.

If a blanket confidential status is not included for "individuals," then the committee should consider transferring over subsection 2c from the original Fame statute, which allows the authority discretion to determine if the release of a tax return or financial statement would violate "personal privacy." However, if 1A of the template is included to provide that records of individuals are confidential, this section would likely not be necessary.

If 1A is not included, the only files that will be confidential will be the following:

- 1B: the owner of the information requests that it is confidential, AND the agency or authority determines that it would give another person a business advantage
- 1C: A financial statement or tax return.
- 1D: A record prepared by someone outside the agency, which contains a person's credit report, or financial status.

1E, 1F, and 1G contain additional records that are confidential from the Fame statute, that can and are left off the general template for other agencies:

(1E) Any materials received relating to an application for financial assistance PRIOR to receipt of the actual application would be confidential. Note that once the application has been received, this material becomes a public record unless covered by one of the exceptions.

(1F) Fame specific financial statement or business plan records "pursuant only to subchapters III or IV, except section 1053, subsection 5."

(1G) Fame specific records matching potential investors to Maine businesses.

Subsection 2, NOT Confidential

Resp #3 (B)

Subsection 2 contains the exceptions where records that would otherwise be confidential under Subsection 1, are made public, there are 3 common to both the previous RTK-AC templates and the original Fame statute, and cover most of the explicit disclosure requirements from the first section of the original Fame statute (975A), additional Fame specific disclosure requirements are highlighted, are removable, and were not included in the general template as they may not be appropriate for all agencies. They were added in an effort to transfer the clarity of Fame's original statute's "disclosure required" section. Some provisions were not transferred over, as they were conceptually covered by other provisions of the template.

Subsection 3: Agency has Discretion Whether to Release

Subsection 3 contains the specific situations where the agency CAN release information, if it determines it is appropriate under the Maine Right to Know laws.

Subsection 3 is another section that contains provisions from the Fame that might not be appropriate for other agencies: 3G, and 3H. 3G grants the authority the discretion to release information when necessary in connection with acquiring, maintaining, or disposing of property, and 3H grants discretion to release information when deemed necessary to the sale of securities or state bonds.

3G was left on the general template, and might be too broad, and so the committee should make a policy determination on this issue.

Office of Information Technolgy

E-Mail Usage and Management Policy

Effective September 13, 2004

Introduction and Statement of Purpose

Electronic mail (e-mail) refers to the electronic transfer of information typically in the form of electronic messages, memoranda, and attached documents from a sending party to one or more receiving parties via an intermediate telecommunications system. E-mail is a core tool utilized by State agencies to improve the way they conduct business by providing a quick and cost-effective means to create, transmit, and respond to messages and documents electronically. Well-designed and properly managed e-mail systems expedite business communications, reduce paperwork, and automate routine office tasks thereby increasing productivity and reducing costs. These opportunities are, however, at risk if e-mail systems are not used and managed effectively.

The purpose of this policy is to promote the use of e-mail as an efficient communication and data gathering tool, to ensure that State agencies have the information necessary to use e-mail to their best advantage in supporting agency business, to avoid non-work-related distractions of employees, to avoid subjecting the State's e-mail system to computer viruses, and to otherwise avoid interfering with or damaging the effective functioning of the State's e-mail system. By establishing and maintaining compliance with a policy for appropriate use and management of e-mail, risks and costs to agencies can be mitigated while maximizing the potential of this communication tool.

Scope

This policy applies to all State employees, as well as contract staff, who use the State's electronic mail.

General Policy

It is the policy of Maine State Government that e-mail is used for internal and external communications that serve legitimate state government functions and purposes. Any personal use must be of an incidental nature and not interfere with business activities. Personal use must not involve solicitation, must not be associated with any outside business activity or personal gain, must not be libelous or defamatory, must not

Resp #4(A)

violate the State of Maine Policy on Employee Harassment, must not potentially embarrass the State of Maine, its residents, its taxpayers, or its employees or be used for any unlawful purpose. Copyright restrictions and regulations shall be observed. The information communicated over agency e-mail systems is subject to the same laws, regulations, policies, and other requirements as information communicated in other written forms and formats and is not to be utilized for political purposes.

Each State agency is responsible for enforcing this policy and establishing management practices consistent with this policy that, among other goals:

- support agency business;
- reduce legal and other potential risks;
- define managerial authority over e-mail communications;
- describe the appropriate use of e-mail communications;
- train employees in e-mail use and policies; and
- provide for necessary records retention, accessibility, and protection.

Agencies with special requirements for information confidentiality (for example, confidential client records) may be required to establish additional safeguards to protect this data.

Access to E-mail Services

E-Mail services are provided to all appropriate staff and contractors within departments. To request access, contact the Bureau of Information Services or appropriate agency personnel. o -o

Privacy and Access

- **Mail messages are not personal and private. Managers, supervisors, and technical staff may access an employee's e-mail in accordance with the department security policy for reasonable business purposes, including but not limited to:**
    - for a legitimate business purpose (e.g., the need to access information when an employee is absent);
    - to diagnose and resolve technical problems involving system hardware, software, or communications; and/or
    - to investigate possible misuse of e-mail when a reasonable suspicion of abuse exists or in conjunction with an approved investigation.
- An employee, with the exceptions noted above, is prohibited from accessing another user's e-mail without his or her permission.
- *All e-mail messages including personal communications* may be subject to discovery proceedings in legal actions.

- *All* e-mail messages sent or received and which are not otherwise protected by law, are public documents and may be released to the public under the Freedom of Access Law.

Security

E-mail security is a joint responsibility of technical staff and e-mail users. Users must take all reasonable precautions, including safeguarding and changing passwords, to prevent the use of their e-mail account by unauthorized individuals.

Management and Retention of E-mail Communications

A . Applicable to all e-mail messages and attachments

Since e-mail is a communications system, messages should not be retained for extended periods of time.

Users should:

- remove or archive all e-mail communications in a timely fashion.
- delete records of transitory or little value that are not normally retained in record keeping systems as evidence of an agency's activity.

B. Applicable to records communicated via e-mail

E-mail created in the normal course of official business and retained as evidence of official policies, actions, decisions or transactions are records and are subject to the records management requirements documented by the Maine State Archives. (A copy of the Maine State Archives' guide to e-mail retention is attached.) Records communicated using e-mail need to be identified, managed, protected, and retained as long as they are needed to meet operational, legal, audit, research or other requirements.

For agency specific questions surrounding record retention requirements contact Records Management at the Maine State Archives for assistance.

Examples of messages sent by e-mail that typically are records include:

- policies and directives
- correspondence or memoranda related to official business
- work schedules and assignments
- agendas and minutes of meetings
- drafts of documents that are circulated for comment or approval
- any document that initiates, authorizes, or completes a business transaction
- final reports or recommendations

Some examples of messages that *typically do not constitute records* are:

- personal messages and announcements
- copies or extracts of documents distributed for convenience or reference
- phone message notes

Roles and Responsibilities

- Executive management will ensure that the policy is implemented by program unit management and unit supervisors.
- Unit managers and supervisors will develop and/or publicize record keeping practices in their area of responsibility including the routing, formatting, and filing of records communicated via e-mail. They will train staff in appropriate use, including appropriate personal use of e-mail that does not result in performance issues, and be responsible for ensuring the security of physical devices and passwords.
- Network administrators and internal control (and/or internal audit) staff are responsible for e-mail security, backup, and disaster recovery.
- Users are responsible for adherence to this policy.

Proper Usage

All e-mail users will understand and comply with this policy, including but not limited to:

- understand that personal use must be of an incidental nature only
- comply with agency and unit policies, procedures, and standards
- protect confidentiality
- be aware that sending e-mail of a political nature (supporting candidates, soliciting contributions, etc.) is against the law and subject to criminal penalties (5 U.S.C. §1501 et seq., and 5 M.R.S.A. §7056-A 5 M.R.S.A §1976)
- immediately delete any chain letters received through the State's e-mail system
- consider organizational access before sending, filing, or destroying e-mail messages.
- protect their passwords
- receive approval of supervisor and permission from the Commissioner of the Department of Administrative and Financial Services, or her designee, before sending state wide communications http://inet.state.me.us/dafs/policies.htm
- respond to e-mail in a timely fashion
- do not in any way use e-mail access or transmit prohibited content of a sexual nature
- delete any messages that may contain offensive material and report to management

- remove personal messages, transient records, and reference copies in a timely manner.
- not use e-mail for outside business activity or personal gain
- observe all copyright restrictions and regulations
- not use e-mail for any unlawful or illegal purpose
- not use e-mail to promote discrimination on the basis of race, religion, national origin, disability, sexual orientation, age, marital status, gender, or political affiliation
- not create e-mails that may be defamatory or libelous
- consider organizational access and retention requirements before sending, filing, or destroying e-mail messages
- be courteous and follow accepted standards of etiquette
- must not use the e-mail system to solicit for causes unrelated to state business
- must not knowingly send or receive e-mails that contain a virus

Violations of this policy

Any violation of this policy could result in disciplinary action up to and including termination.

Policy Review and Update

The Office of Chief Information Officer will periodically review and update this policy as new technologies and organizational changes are planned and implemented. Questions concerning this policy should be directed to the Chief Information Officer.

Related Policies

Policy for Use of State E-mail System for Widespread Dissemination to State Employees http://inet.state.me.us/dafs/policies.htm

Credits

Maine State Government
Dept. of Administrative & Financial Services
Office of Information Technology

Office of Information Technology Policy on Access to Data and Information on State Owned Computer Devices

I. **Statement**

The responsibility for responding to Freedom of Access Act[1] requests for data or information that is hosted on state-owned computer devices falls to the State department and/or agency responsible for the collection and use of the data or information requested. The Office of Information Technology will provide assistance to the department or agency with searching for, identifying all data stored within OIT, retrieving, and/or compiling such data or information when requested to do so.

II. **Purpose**

This policy sets forth the respective responsibilities of State departments and agencies, and the Office of Information Technology, in responding to Freedom of Access Act requests for data or information that is hosted on state-owned computer devices.

III. **Applicability**

This policy applies to all requests for data or information presented to the Office of Information Technology (OIT).

IV. **Responsibilities**

A. The Chief Information Officer (CIO) will:

1. Immediately forward all requests for a department's or agency's data or information to the head of that department or agency, or their designee, for response. A notice will be sent to the requester confirming this action, and will include the contact information for the individual to whom the request was forwarded.

2. OIT will identify all medium where requested data may be stored and provide this information to the responding agency.

3. As requested, assign OIT staff to provide support to agencies in meeting their requests for information and data.

B. State departments and agencies, as required by the Freedom of Access Act[2], are responsible for fulfilling requests for access to public records including information and data hosted on state-owned computer devices. All responses and decisions regarding the production of such information or data, such as the scope of the search, the redaction or withholding of information, the timing and cost of production, etc., are the sole responsibility of the department or agency.

V. **Guidelines & Procedures**

A. No OIT employee shall provide public access to data and/or information hosted on OIT computer devices without prior consultation with the department or agency that is the custodian of the data or information.

Resp #4 (B)

B. Freedom of Access Act requests received by OIT employees will be forwarded to the CIO who will forward to the appropriate department or agency head.

VI. **Definitions**

1. Computer Device - Computer device means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device[3]. Common examples currently in use include laptops, personal computers, servers, and hand-held devices (including personal digital assistants (PDA), and cell phones).

VII. **References**

1. This policy supersedes the State of Maine Policy on Access to Public Records adopted by the Information Services Policy Board March 9, 1990.

2. M.R.S.A. Title 5, Section 1982[4] Paragraph 9. Protection of Information Files reads in part "*...All data files are the property of the agency or agencies responsible for their collection and use.*"

VIII. **Document Information**

1. Document Reference Number: 4

2. Category: General / Governance

3. Adoption Date: Provisionally adopted on October 6, 2006 pending review by the IT Executive Committee. Reviewed and approved October 30, 2006.

4. Effective Date: October 6, 2006

5. Review Date: February 9, 2011

6. Point of Contact: Kathy Record, Associate Chief Information Officer, Office of Information Technology, Statehouse Station #138, Augusta, Maine 04332-0138 (207) 624-9502

7. Approved By: Richard B. Thompson, Chief Information Officer

8. Position Title(s) or Agency Responsible for Enforcement: Richard B. Thompson, Chief Information Officer, Office of Information Technology

9. Legal Citation: 5 M.R.S.A. SECTION 1982 Paragraph 9 Powers and Duties of the Chief Information Officer; and 1 M.R.S.A. SECTION 408 Freedom of Access

10. Waiver Process: N/A

---

[1] 1 M.R.S.A. § 401 *et seq.*, http://janus.state.me.us/legis/statutes/1/title1sec401.html

[2] 1 M.R.S.A. § 408, http://janus.state.me.us/legis/statutes/1/title1sec408.html

[3] 17-A M.R.S.A. § 431, http://janus.state.me.us/legis/statutes/17-a/title17-asec431.html

[4] http://janus.state.me.us/legis/statutes/5/title5sec1982.html

Department of Health and Human Services

Maine People Living Safe, Healthy and Productive Lives

Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

Sentinel EVENTS

CY 2010

Annual Report to the Joint Standing Committee on Health and Human Services

Final Report April 2011

This report was prepared by
The Division of Licensing and Regulatory Services
41 Anthony Avenue
11 State House Station
Augusta, ME 04333-0011

For further information please contact:

Anne Flanagan, M.S., R.N.
Assistant Director, Medical Facilities Unit
(207)287-9334 or anne.flanagan@maine.gov

or

Elizabeth Harwood, R.N.
Health Services Supervisor
(207)287-4462 or elizabeth.harwood@maine.gov

Special thanks to
Choanna Givens, Office Specialist

ACKNOWLEDGEMENT OF CONTRIBUTING AUTHORS

Sincere thanks to our contributing authors who have generously shared their knowledge and expert guidance.

John Allyn MD
Chief, Department of Anesthesiology and Pain Management
Maine Medical Center
Spectrum Medical Group

Ralph Gabarro
Chief Executive Officer
Mayo Regional Hospital

Patty Roy, RN, MSN
Director Quality & Medical Affairs
Central Maine Medical Center

Doug Salvador, MD, MPH
Associate Chief Medical Officer
Patient Safety Officer
Maine Medical Center

W A Schaffer, MD
Chief Medical Officer
The Acadia Hospital

Erik Steele, D.O., FAAFP
Chief Medical Officer and Vice President
Eastern Maine Healthcare Systems
Executive Director, Maine Institute for Human Genetics and Health

David Stuchiner, MD, FACEP
Consultant, Division of Licensing and Regulatory Services
Department of Health and Human Services

Robert Trowbridge, MD
Department of Medicine
Maine Medical Center

TABLE OF CONTENTS

This report may be found on the internet at:
http://www.maine.gov/dhhs/dlrs/medical_facilities/sentinelevents/home.html
The Maine Sentinel Event Reporting Statute may be found on the internet at:
http://www.mainelegislature.org/legis/statutes/22/title22ch1684sec0.html
The Rules Governing the Reporting of Sentinel Events may be found on the internet at:
http://www.maine.gov/sos/cec/rules/10/144/144c114.doc

EXECUTIVE SUMMARY

Since 2004 Maine hospitals, ambulatory surgery centers, dialysis centers and intermediate care facilities for individuals with mental retardation have been required to report whenever a serious, unexpected and preventable event, or medical error, known as a sentinel event, occurs. These events include unanticipated patient deaths, falls with significant injury, serious medication errors, patient suicide, surgery on the wrong body part, or an error resulting in a major loss of function. In 2010, 150 such cases were reported to the Maine Division of Licensing and Regulatory Services. This report provides information about what kind of events occurred, why they happened, and what is being done to reduce the likelihood of a recurrence.

The number of cases reported, in and of itself, is not the most important information to focus on in this report. In addition the increase in reporting does not lead to any conclusions about the quality of care or safety of patients in the facilities involved. It is the lessons that are learned and the changes that are made as a result of these events that result in a safer environment for all of the patients that follow. Facilities where mistakes and errors are shared in a culture that is open and receptive, where there is no fear of reprisal, will have the greatest chance for ensuring high quality services for all patients.

Robert Wachter, MD, Professor and Associate Chairman of the Department of Medicine at the University of California, San Francisco, a national leader in the fields of patient safety and healthcare quality, described an inquiry from a news reporter in Indiana. The state had just released their first reports of hospital-specific sentinel events. That year, in the city of Indianapolis where there are two major medical centers, one had reported ten sentinel events and the other none. When the reporter queried Dr Wachter about this disparity he replied, “I wouldn’t be caught dead in the hospital that had not reported a single sentinel event.”

Each year since the initiation of mandatory reporting, more Maine hospitals and free standing centers have complied with reporting requirements. This year for the first time, all Maine hospitals have reported sentinel events and were actively involved in the program.

In 2009 the statute requiring sentinel event reporting was amended to include new reporting requirements. Highlights of those changes include adoption of the National Quality Forum list of Serious Reportable Events and enhancements to the sentinel event definition to reduce ambiguity. Additionally, facilities are now required to develop standardized processes for the detection and reporting of all sentinel events.

As a result of these changes and due to increased awareness and acceptance of the reporting requirements, there was a dramatic increase in the number of cases reported. Increased comfort with reporting and new requirements for standardized education regarding sentinel events for all staff contributed to this increase.

As in previous years the types of reports have remained fairly constant. In 2010 the most prevalent type of event reported was unanticipated death. The second and third types were pressure ulcers and major loss of function. A significant finding in 2010 was the rise in inpatient suicide. Patient falls resulting in death or significant injury continues to be a high frequency report. This is followed by retained foreign objects and wrong site surgery.

Every facility is required to conduct an in-depth analysis after every sentinel event. The facility gathers a Root Cause Analysis team and launches a review of why the event occurred, and what steps will be undertaken to prevent a recurrence. A joint meeting with the Sentinel Event Team and facility staff is held to share state findings and stimulate discussion in the effort to identify opportunities for system improvements. The final report is sent to the Division within 45 days of discovery. The Sentinel Event Team analyzes all events for statewide trends and features. Results are then shared in the Sentinel Event Annual Report.

The Maine experience has been enriched by our active participation in the National Quality Forum and Agency for Healthcare Research and Quality (AHRQ) sponsored collaboration with the other 28 states with mandatory sentinel event reporting requirements. Current issues and challenges in sentinel event reporting are shared with the goal of achieving standardized reporting, consistent with the recommendation from the Institute of Medicine report in 1999.

For the first time, this year's Annual Report includes submissions from Maine hospital administrators, senior physicians and quality leaders. These patient safety advocates and subject matter experts were invited to contribute papers that address specific topics reflecting major issues and categories of sentinel events reported in 2010. We are grateful for their outstanding contributions.

Mayo Regional Hospital

Ralph Gabarro, Chief Executive Officer, Mayo Regional Hospital
Dover-Foxcroft, Maine

On June 4, 2010 Mayo Regional Hospital experienced every hospital's worst nightmare. I have been asked to share thoughts and observations about this tragedy as part of this year's annual sentinel event report.

On the night of June 4th an emergency room patient was given 0.3 milligrams of epinephrine, an appropriate amount and the patient showed signs of improvement. When earlier symptoms recurred, another dose was administered by the medical providers involved. The second dose was too large – 10 times the appropriate amount. This human error was irreversible and led to the patient's death. What happened subsequently was not guided by past experience but rather from instinct and our values as a small rural community hospital.

Almost immediately after the mistake was identified hospital staff met with the patient's spouse and explained what we thought had occurred, pledging that we would investigate and communicate our findings as soon as possible. An autopsy conducted by the state medical examiner's office confirmed our suspicions – that epinephrine was the primary cause of the patient's death.

A series of communications then took place with Trustees, medical staff, hospital staff, and most importantly, as promised at the initial meeting, our first meeting was with the patient's family. During that meeting we took full responsibility for the error. There was never any thought given to withholding information but rather our efforts centered on full disclosure. Patients turn to hospitals at the most vulnerable times of their lives; they entrust us with their well being and that of their families. Anything short of full disclosure would have violated the trust patients place in Mayo Regional Hospital

We also felt that it was important to explain what occurred to our local media to facilitate an accurate understanding of the sentinel event. This public disclosure in turn, enabled hospitals not only in Maine but on a national basis to examine their policies and practices around epinephrine administration, hopefully minimizing exposure to this ever occurring again.

The hospital immediately assembled a team to perform a root cause analysis from which we examined all aspects of the error and applied what we learned to systems and practice improvements:

- Multi dose vials of epinephrine were removed from emergency rooms and replaced with EpiPens, a single dose way of administering epinephrine. Though we had never considered this in the past, it would have prevented this error.
- Epinephrine was added to a list of high-risk medications that require two nurses to verify the dose prior to administration

- We immediately subscribed to an electronic version of medication practice updates furnished by medical journals rather than waiting for printed versions
- We accelerated existing plans to acquire an emergency room electronic medical record. Among a variety of quality improvement advantages of an electronic system is the ability to electronically red flag potential medication errors
- Follow-up with staff involved education and counseling approached in a manner consistent with a just culture regarding patient safety. Data supports that there is no correlation between a punitive approach to medical errors and error reduction
- We developed a Board Policy that states our commitment to "Stop the Line" Communication at all levels of the organization

Finally, as difficult as it was to revisit the circumstances of this tragic event I want to thank the Department of Health and Human Services for inviting me to share our experience with others. I hope that it fosters a greater commitment to full disclosure and reinforces the critical nature of acting in a manner that retains and builds upon the trust that our patients accord us.

BACKGROUND

This report is submitted in accordance with Maine law (22 M.R.S.A. §§8751-8756) which requires the Division of Licensing and Regulatory Services (the Division) to annually report to the Legislature, health care facilities and the public on the aggregate number and type of sentinel events for the prior calendar year, rates of change, causative factors, and activities to strengthen patient safety in Maine. This report is designed to:

- Identify patterns and make recommendations to improve the quality and safety of patient care;
- Provide aggregate information on the number and nature of sentinel events reported;
- Describe efforts to address under-reporting and enhance the role of sentinel event reporting in improving patient safety; and
- Build awareness of Maine's sentinel event reporting requirements and the follow-up process used by facilities and the State when events occur.

In 2002, Maine enacted Public Law 2001, Chapter 678 establishing a mandatory sentinel event reporting system. As implemented in subsequent regulations, the law requires licensed General and Specialty Hospitals, Ambulatory Surgical Centers, End Stage Renal Disease (ESRD), and ICF/MR to report certain serious events, referred to as sentinel events.

The Institute of Medicine (IOM) report, *To Err is Human: Building a Safer Health System* (Kohn, Corrigan and Donaldson, 1999) heightened awareness of the serious injuries and deaths that occur every year from preventable medical errors. The IOM report proposed a combination of strategies to reverse these trends, among them:

- The establishment of state-based mandatory reporting systems, tied to systems of accountability, for the most serious medical errors that may cause harm and death.
- The encouragement of voluntary reporting systems for the broad spectrum of errors and near misses to better understand why and how events happen and what can be done to prevent their recurrence.
- The promotion of non-punitive systems within hospitals that encourage reporting at all levels and develop system solutions for their prevention.
- The promulgation of national efforts to standardize reporting, study patient safety trends, and disseminate best practices for reducing medical errors.

On January 1, 2009, revised reporting rules became effective. Key objectives in the rule changes were to reduce redundancy, improve reporting, streamline definitions for ease of use, reduce ambiguity and encourage reporting of near misses. Highlights of the changes include:

- Definition of a reportable event was revised to increase clarity
- Definition of Root Cause Analysis (RCA) was included with a requirement that it be 'thorough and credible'

- Adoption of the National Quality Forum list of Serious Reportable Events
- Addition of reports of patients that expire within 48 hours of treatment
- Addition of reports of an unexpected transfer of a patient to another facility
- Standardize the process for discovery of sentinel events and educating staff
- Addition of annual attestation from each facility affirming that all events have been reported
- Consolidation of the previously diverse sentinel event rules into one free standing rule
- Voluntary reporting of near misses

Definition of a Sentinel Event

Sentinel events include outcomes determined to be unrelated to the natural course of the patient's illness or underlying condition, or proper treatment of that illness or underlying condition. The law further characterizes sentinel events as:

- Unanticipated death;
- A major permanent loss of function that is not present when the patient is admitted to the health-care facility;
- Surgery on the wrong patient or wrong body part;
- Hemolytic transfusion reaction;
- Patient suicide, or attempted suicide resulting in serious disability;
- Infant abduction or discharge to the wrong family;
- Rape of a patient;
- Unintended retention of a foreign object;
- Patient death or serious disability associated with a fall; or
- Death or significant injury of a patient or a staff member resulting from a physical assault

In 2010 the entire list of the National Quality Forum Serious Reportable List was formally adopted as part of the statutory changes.

Reporting Requirements

Facilities must notify the Division within one business day of discovering an event. The facility is required to submit a brief description of the incident via a restricted fax. A facility that knowingly violates any provision of the requirements is subject to a civil penalty.

Within 45 days of discovering a reportable event, the facility is required to share the results of the Root Cause Analysis with the Division. The Root Cause Analysis includes the circumstances surrounding its occurrence, the contributing causes, corrective action plans, time frames and responsible parties. These efforts are all designed to prevent the likelihood of a recurrence.

The sentinel event team conducts an independent and comprehensive medical record review following each reported sentinel event. This review includes an assessment of the precipitating factors prior to the incident, events occurring at the time, and any contributing factors that may have gone unnoticed. This process provides an independent assessment that augments the facility's own internal review of the incident. The review also ensures that all relevant factors are considered in the Root Cause Analysis and subsequent action plan. The on-site review occurs shortly after the incident is first reported so that findings can be incorporated into the facility's action plan. The facility's Chief Executive Officer (CEO) is briefed at this time by the sentinel event team to assure his/her active engagement in understanding factors leading to the event and plans for mitigating its recurrence.

Throughout the review of a sentinel event, the sentinel event team studies relevant standards of care and evidence-based research to help inform their review of the facility's response to an event. Depending on the nature of the event, content experts may also be consulted to expand understanding of the possible system failures or other factors that may have contributed to a sentinel event.

Upon receipt of the facility's full written report, the sentinel event team confirms that direct causal factors have been examined by the facility and that corrective actions are appropriate, comprehensive, and implemented. When the report is accepted, a letter attesting to that fact is sent to the facility's CEO. Should more information be required, a letter requesting specific details is sent. When this report is complete, a final approval letter is sent to the facility. Should it be necessary, the sentinel event team may return to the facility to follow-up on the implementation of the action plan. A flow chart diagramming the sentinel event case review process can be found in Appendix B.

Information regarding sentinel events and their reviews are entered into a confidential database. This database is the primary source for identifying and generating aggregate statistics and trends found in the Annual Report.

Confidentiality Provisions

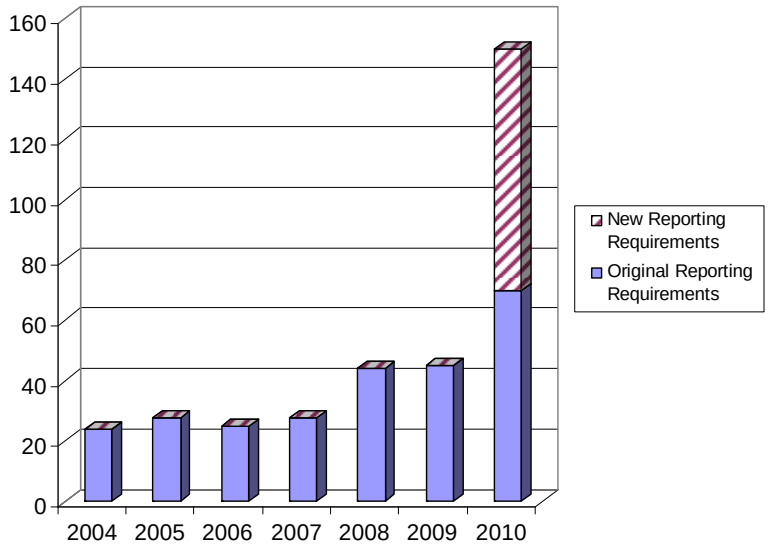
By law, all sentinel event information submitted to the Division is considered privileged and confidential. No information about facilities or providers is discoverable or made public. A firewall is maintained between the sentinel event program and the survey unit that licenses the facilities. The sentinel event team is responsible for reviewing the initial reported event, conducting on-site reviews, ensuring that all contributing factors to an event are identified, and that action plans are appropriate and implemented. In 2010, the Sentinel Event Team was permitted to share information with the licensing team if it determined that a sentinel event represented immediate jeopardy to the public. The information shared is limited to the condition of participation for the Medicare and Medicaid certification program that was impacted by the event. This ensures that the immediate jeopardy can be investigated and separate and public corrections be made to avoid harm to the public.

SENTINEL EVENTS REPORTED 2004-2010

A total of 342 sentinel events has been reported to the Division since the initiation of the program in 2004. Following focused efforts to ensure that all facilities had a heightened awareness and full understanding of the reporting requirements, reporting began to increase in 2008 and 2009.

In 2010, a dramatic increase in sentinel event reporting occurred. This spike in reports reflects a greater appreciation of the requirements and changes in the statutory requirements. There is also a growing awareness of the benefit of increased transparency with an emphasis on establishing a 'blame free' culture and a focus on systems improvements and reduction of the likelihood of a recurrence.

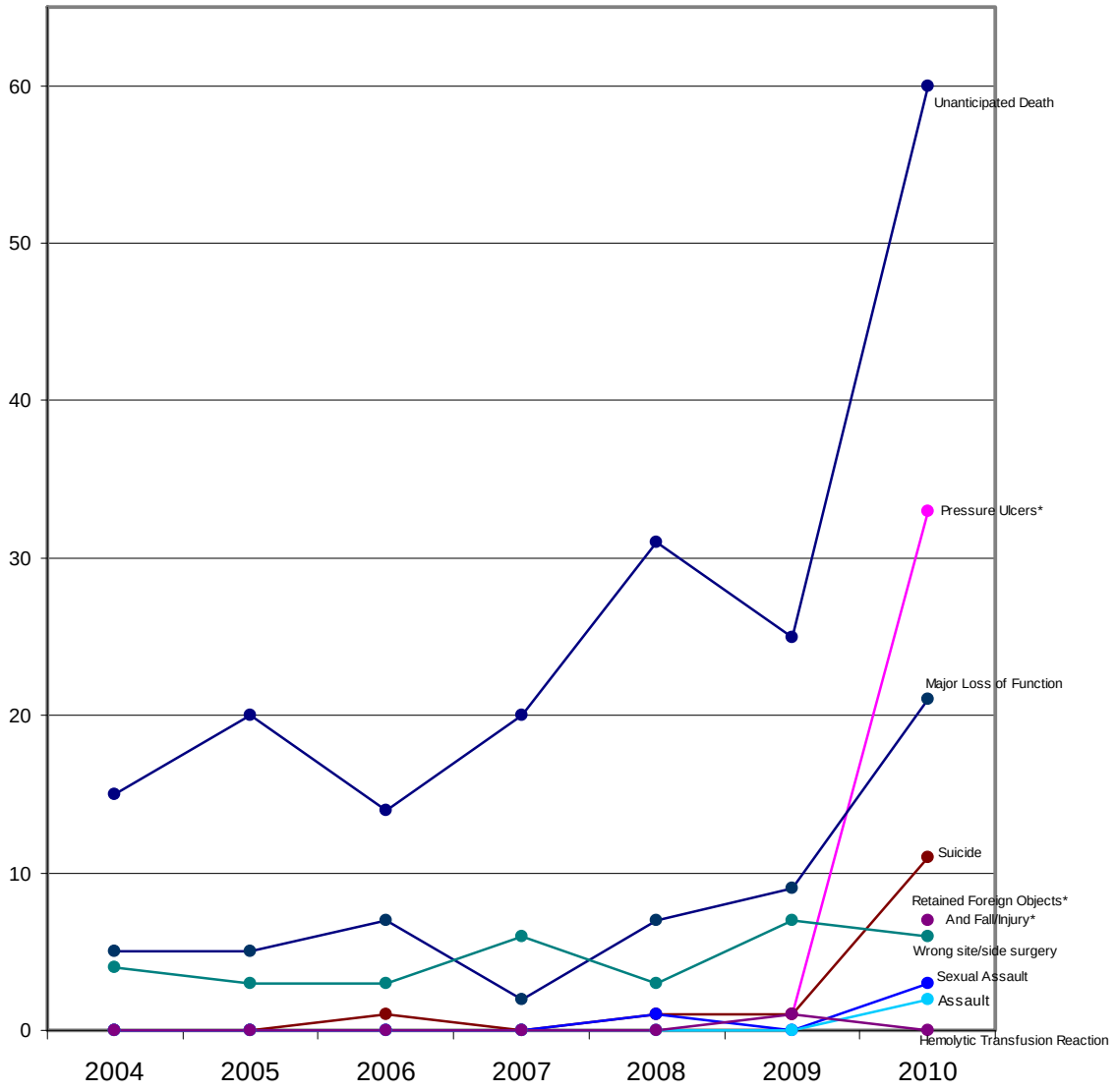
Table 1. Sentinel Events Reported, by Year, 2004-2010



The trends by type of sentinel event have remained fairly constant throughout the history of the sentinel event program. Unanticipated deaths have been the most prevalent type of event reported in every year. This is followed by major loss of function and wrong site surgery. In 2010, new reporting requirements added specific categories which appear for the first time in Table 2. They include stage III pressure ulcers, retained foreign objects following surgery, and staff assault.

A significant finding in 2010 is the rise in inpatient suicide. Four patients completed suicide in 2010. From 2004 to 2009, only 3 inpatients were reported to have completed suicide. A new reporting requirement captured an additional 7 patients who either completed suicide within 48 hours of treatment or attempted suicide with significant injury. More data on this subject can be found later in this report.

Table 2. Sentinel Events Reported, by Category, 2004-2010



	2004	2005	2006	2007	2008	2009	2010
Unanticipated Death	15	20	14	20	31	25	60
Pressure Ulcers*	0	0	0	0	0	1	33
Major Loss of Function	5	5	7	2	7	9	21
Suicide	0	0	1	0	1	1	11
Fall/Injury *	0	0	0	0	0	0	7
Retained Foreign Objects*	0	0	0	0	0	0	7
Wrong site/side surgery	4	3	3	6	3	7	6
Sexual Assault	0	0	0	0	1	0	3
Assault	0	0	0	0	0	0	2
Hemolytic Transfusion Reaction	0	0	0	0	0	1	0

* New Reporting Requirements in 2010

During the 7 years of reporting sentinel events, hospitals have steadily increased participation in the program. By 2006, only 61% of all Maine hospitals had reported a sentinel event. By the end of 2010, 100% of the 41 acute care hospitals in Maine had reported at least one sentinel event.

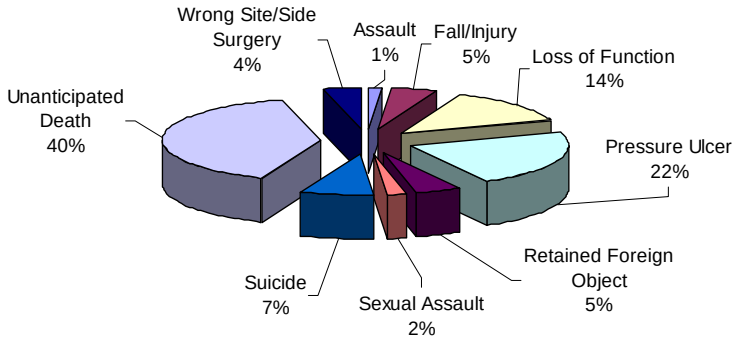
Table 3. Reporting versus Non-Reporting Hospitals, 2006 - 2010

	2006		2007		2008		2009		2010	
	No.	%	No.	%	No.	%	No.	%	No.	%
Reporting hospitals	25	61%	32	78%	33	80%	38	93%	41	100%
Non-reporting hospitals	16	39%	9	22%	8	20%	3	7%	0	0%
Total	41	100%	41	100%	41	100%	41	100%	41	100%

SENTINEL EVENTS REPORTED IN 2010

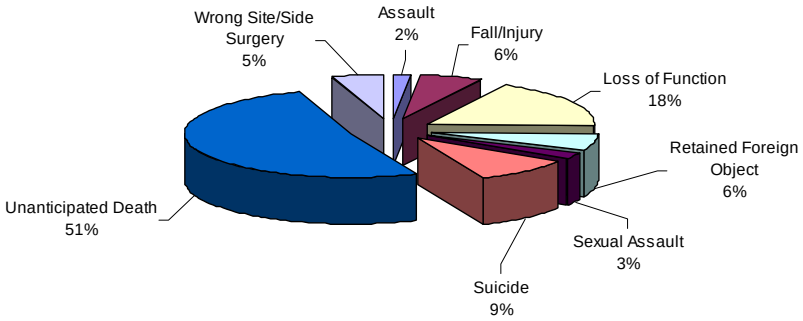
There were 150 sentinel events reported last year, compared to 45 in 2009. This represents more than a 300% increase in reporting. Table 4 indicates sentinel events by type in 2010. Unanticipated death was reported in the majority of cases at 60 (40%). Pressure ulcer reporting is a new requirement and represents 33 (22%) of all reported cases in 2010.

Table 4. Sentinel Events Reported, by Type of Event, 2010



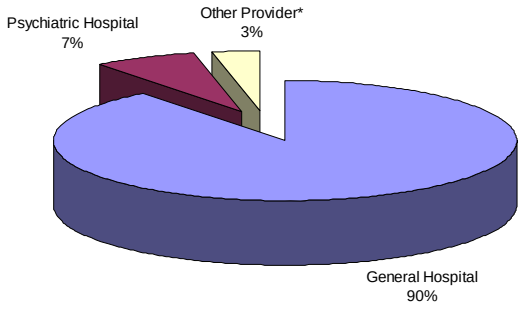
Pressure ulcer reporting is new, and the issues surrounding their detection and treatment are unique. Table 5 reflects all cases reported in 2010 minus pressure ulcer cases. Although unanticipated death remains the largest majority of cases reported, other types of sentinel events reported have increased over time.

Table 5. Sentinel Events Reported, by Type of Event, omitting Pressure Ulcer Cases, 2010



In 2010, general hospitals represented 90% of the facilities that reported to the sentinel event program. Psychiatric hospitals represented 7%. ESRD (dialysis) facilities, Ambulatory Surgical Centers and ICF/MR facilities reported 3% of cases in 2010. This proportion of non-hospital providers reporting sentinel events is slightly less than in previous years.

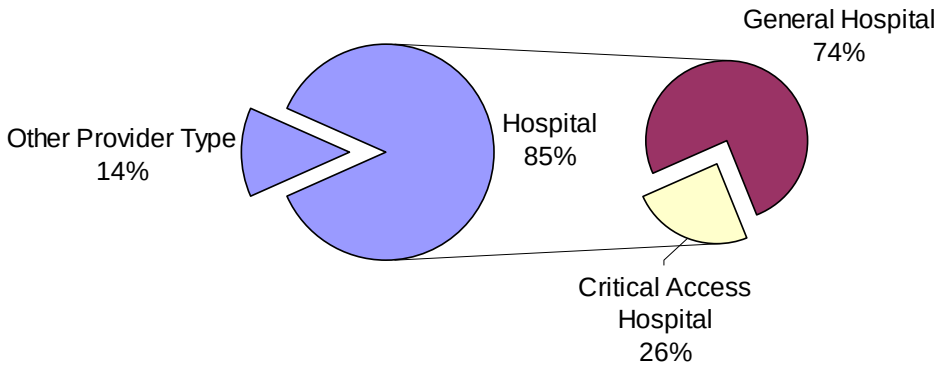
Table 6. Sentinel Events Reported, by Facility Type, 2010



*Other Providers include ESRD, Ambulatory Surgical Centers and ICF/MR Facilities.

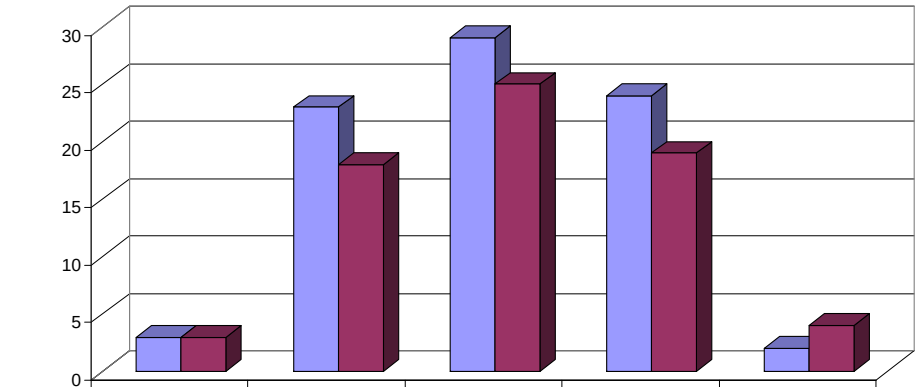
In comparing reporting of sentinel events from critical access hospitals and general and specialty hospitals, the majority of reports continue to originate from the larger facilities. This is not surprising given the size of the patient populations in the larger facilities and the overall acuity of the patients receiving care. Table 7 indicates 39 (26%) of the reported events from a hospital were from critical access hospitals and 111 (74%) were from general hospitals. There are a total of 15 critical access hospitals and 26 general and specialty hospitals in Maine.

Table 7. Sentinel Events Reported by Hospitals, omitting Pressure Ulcer Cases, 2010



A majority, 79 (54%), of the sentinel events reported in 2010 involved males. Males dominated in every age group but the very elderly and the very young.

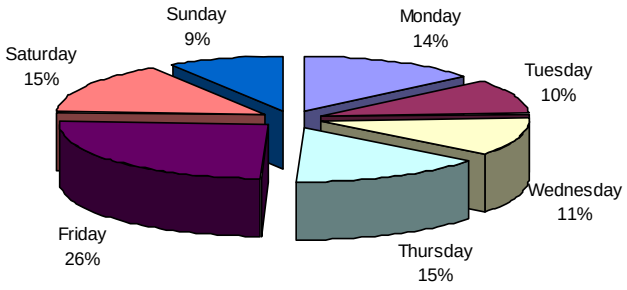
Table 8. Sentinel Events Reported, by Age and Gender, 2010



	0-10	11-45	46-65	66-85	86-100
Male	3	23	29	24	2
Female	3	18	25	19	4

Similar to previous years, sentinel events occur on the weekend, including Friday, approximately 50% of the time. The sentinel events in Table 9 represent cases that are not elective surgery or pressure ulcers. Elective surgery cases are scheduled and many pressure ulcer cases are not easily tracked by a specific day.

Table 9. Sentinel Events Reported, by Day of Week, omitting Pressure Ulcer Cases and Elective Surgery, 2010



STATEWIDE TRENDS AND OBSERVATIONS

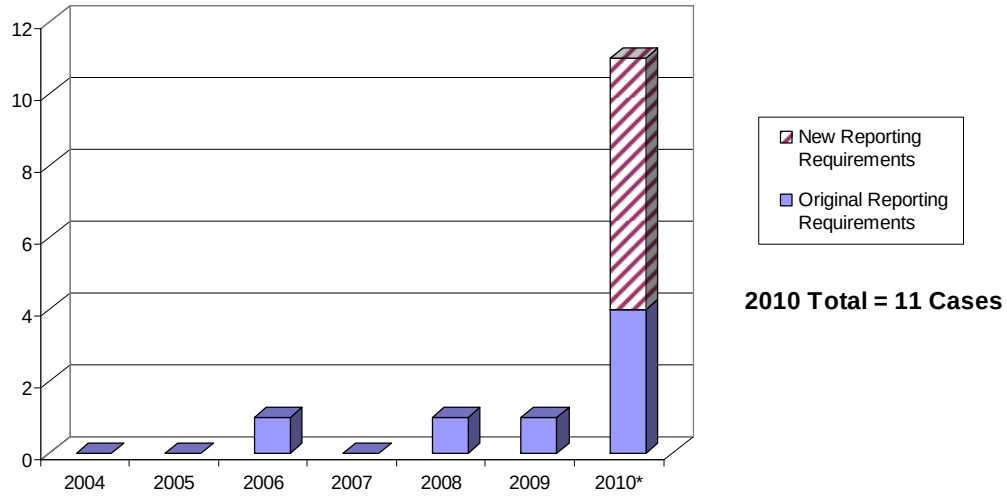
The sentinel event staff reviewed all 2010 cases to identify trends and report observations. These observations are divided into two groups: Clinical and Non-Clinical. The Clinical section includes suicide, falls, difficult airway, stage III pressure ulcers, death within 48 hours of treatment, discharge instructions, and critical thinking. The Non-Clinical section includes affective bias, hand off errors and delays.

Clinical

Cases of Patient Suicide

From 2004 to 2009 there were 3 reports of inpatient suicide. In 2010 there were 4 reports of inpatient suicide in hospitals. Expanded reporting requirements put into effect in 2010 captured an additional 7 cases of either completed suicide within 48 hours following treatment, or attempted suicide with significant injury. Of note there are 3 additional cases of unanticipated death reported in 2010 in general hospitals under unusual and unexplained circumstances.

Table 10. Sentinel Event Reports of Suicide and Attempted Suicide, 2004-2010



*Includes attempted suicides resulting in serious disability and completed suicides within 48 hours of treatment.

Table 11. Sentinel Event Reports of Suicide and Attempted Suicide, by Patient Status, 2010

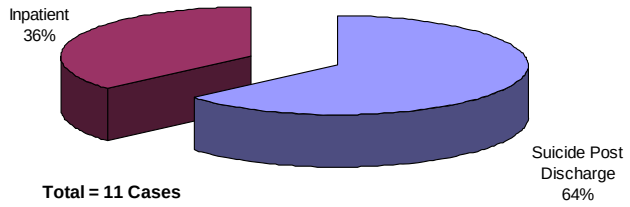
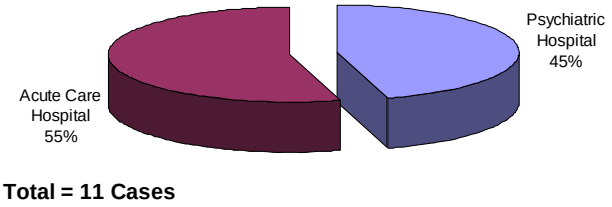
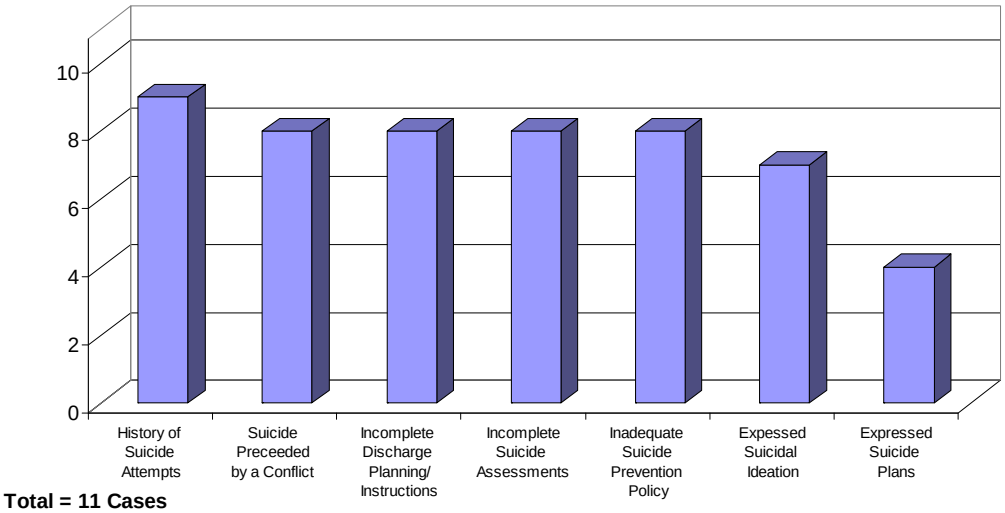


Table 12. Sentinel Event Reports of Suicide, by Facility Type, 2010



In 2010, all 11 cases were studied for similar characteristics. See Table 13 below. Some of these characteristics relate to inpatient hospitalization, history of suicide attempts, suicide preceded by a conflict, expressed suicidal ideation, expressed suicide plans and incomplete suicide assessments. An inadequate suicide prevention policy may indicate lack of supervision, continued monitoring, lack of suicide assessments or environmental safety factors. The characteristic of 'incomplete discharge planning' refers to incomplete discharge instructions and home care resources and follow-up.

Table 13. Sentinel Event Reports of Suicide, by Specific Characteristics, 2010



*Includes attempted suicide resulting in serious disability and completed suicide within 48 hours of treatment.

Suicide in Medical Inpatients

W A Schaffer, MD, Chief Medical Officer, The Acadia Hospital, Bangor Maine

Suicide is elusive, but not unstoppable. It differs in rates, practices and circumstances across cultures and patterns of suicide are continually evolving. The rates of completed suicides have been increasing in the United States since 2000. Major trends emerging include: suicides among youth and adolescents are more common and use more violent means; suicides among middle-aged adults increased by almost 20% in the first five years of this century; the geriatric population remains the group with highest rates of completed suicide. There are other major changes in rates and risk factors for suicide, but this communication will focus upon suicides which are completed by inpatients in medical centers. We will focus upon this issue and refer to the Sentinel Event Annual Report, 2010, prepared by the Division of Licensing and Regulatory Services.

The Report identifies eleven events where a hospital inpatient attempted or completed suicide while hospitalized. In most cases these individuals were not hospitalized for identified psychiatric disorders. The Report further identifies risk factors for suicide associated with each event. It is not clear when they were identified and whether or not safety plans were implemented at levels appropriate to the risk.

The most effective method for the prevention of completed suicide depends upon early identification of suicidal thinking and of risk factors predictive of suicide. The Joint Commission has recognized this and has issued bulletins encouraging hospitals to create screening tools and processes for use in hospital emergency departments; several screening tools are available on their web site (www.jointcommission.org).

A Psychiatric Consultation Liaison Service is available to provide consultative services at most medical hospitals in Maine. The Acadia Hospital provides these services on site at two hospitals in Bangor and provides telephonic consultation to many other inpatient facilities in Maine. We have introduced a comprehensive Risk Assessment instrument to these hospitals and provide it routinely at each consultation. The Acadia Hospital is pleased to make this instrument available to any Maine hospital that would choose to adopt it, and we will provide training to medical staffs who request it. This Risk Assessment is printed here (Appendix C) and is available electronically from rredmond@emh.org.

Assessment of risk for suicide should be done routinely in all patients with depressive symptoms, those with a history of attempts at self-harm, and in all those with a previous or current psychiatric diagnosis. Psychiatric consultation should be sought when a patient expresses thoughts of despair, hopelessness, and of relief achieved through death. Thoughts of suicide can emerge when an acutely ill patient faces a health crisis or when a chronically ill patient faces new loss of function or independence. Identification of risk for suicide is a clinical decision and involves multiple factors. The

Acadia instrument uses the following categories of risk: modifiable risk, non-modifiable risk, and protective factors. Certain risk factors are identified as high risk, but no numerical scoring system is used. There is no evidence that a numerical score predicts risk more effectively than a clinical assessment. Once a hospital inpatient has been identified as being at risk for suicide acutely, protective measures should be instituted. These could include constant observation, relocation to a room closer to nursing station, or removal of any medications or sharp devices to which the patient has access. It is important to inspect packages brought to the patient by visitors to identify medications, firearms, or other dangerous items that might be used to attempt suicide.

Individual prevention begins with identification of at risk individuals by primary care physicians and mobilization of community supports. Once suicidal ideation is identified medications, psychotherapy, and follow up care reduce risk. When suicidal intent is present, restriction to means and imposition of safety measures may be required. Many studies show that the most effective preventative measure is the education and support of primary care physicians who can screen for risk of suicide. Suicide is elusive, increasing, but is not unstoppable.

Cases of Patient Falls

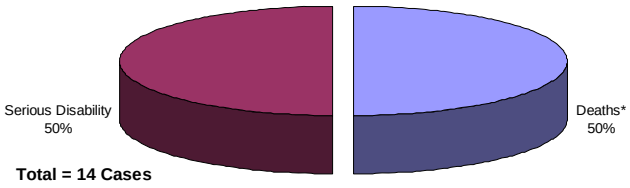
In 2010, there were reports of 14 patient falls, 7 resulting in death and 7 resulting in serious disability. Of the 7 deaths, 5 (36%) resulted in head injuries while the remaining 2 (29%) had other injuries. Of the 14 cases, 9 (64%) cases were female and 5 (36%) were male. Seven of those cases experienced delays in the post fall assessment and diagnosis. Delays include examination by a physician, diagnosis of an injury and radiology testing.

Studies have shown that 79% of patient falls occur in patient rooms. (Tzeng, 2008) All of the falls reported in 2010 occurred in patient rooms. Most cases involved missing fall risk data and/or omission of significant patient history information. With this additional information, a higher risk level would have resulted. Limitations were noted with the use of some fall risk tools that prevented the ability to individualize the risk assessments. Confusion over how to use the assessment tool in a consistent fashion leads to variable scores as well.

Current themes for improvement include modifying risk assessments to add individual risk factors and the development of a post fall algorithm to ensure complete assessment and diagnosis of injury.

"Energies may be more productively directed towards identifying common modifiable risk factors in all patients and ensuring that people who do fall in the hospital receive a proper post fall assessment, regard all patients who have already fallen as high risk." (Haines, Hill, Walsh, and Osborne, 2007)

Table 14. Sentinel Event Reports of Falls Resulting in Death and Serious Disability, 2010



* Includes Unanticipated Deaths that were a result of a fall.

Table 15. Sentinel Event Report of Falls, by Gender, 2010

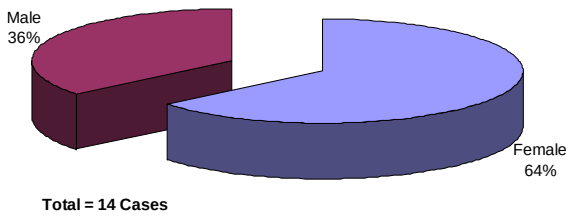
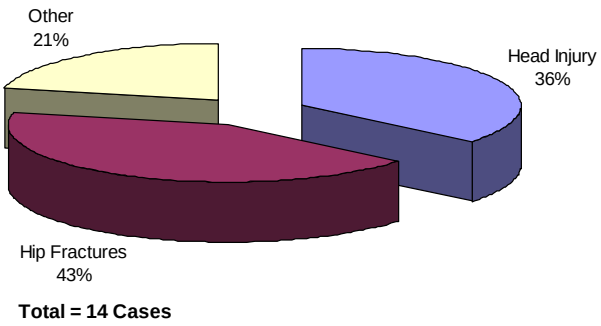


Table 16 represents the type of injury that was reported as a result of a fall. Hip fractures affected 6 (43%) of the patients, head injuries 5 (36%), and other injuries in the remaining 3 (21%) cases. Cases with head injury all resulted in death.

Table 16. Sentinel Event Report of Falls, by Injury Type, 2010



Cases of Patients with Difficult Airway Issues

In 2010, there were reports of 11 cases with difficult airway issues. Of these, 8 (73%) were characterized by failure to recognize respiratory issues. Of the 11 cases, 8 (73%) resulted in death and 3 (27%) resulted in permanent loss of function.

Table 17. Sentinel Event Reports of Difficult Airway Issues, 2010

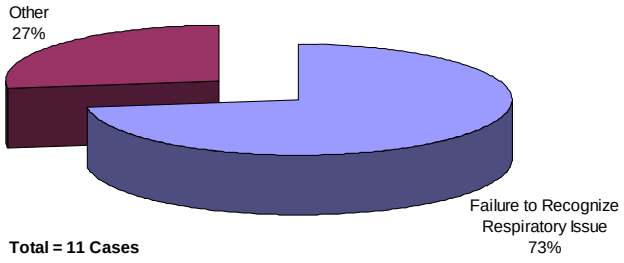
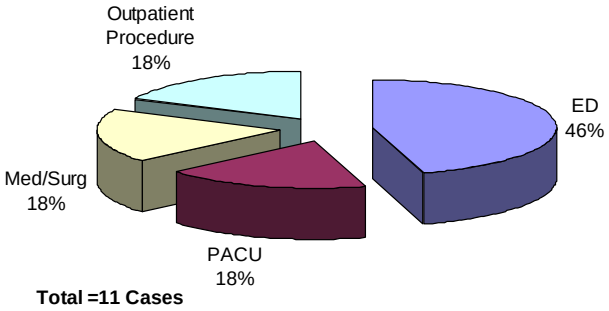
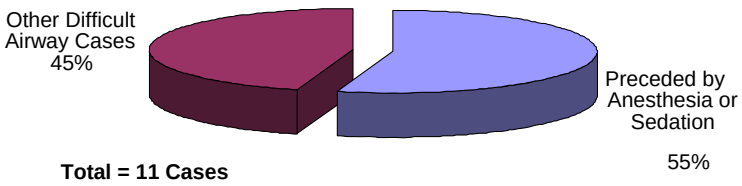


Table 18. Sentinel Event Reports of Difficult Airway Issues, by Location, 2010



The types of sedation used in these cases were outpatient procedure sedation, pain medication and post operative recovery from anesthesia. "Sedation is not without consequence and there are risks. In many cases, complications from sedation are related to pre-existing Comorbidities." (American Society of Anesthesiologists, 2003)

Table 19. Sentinel Event Reports of Difficult Airway Issues, preceded by Anesthesia or Sedation, 2010



Recognition of Respiratory Failure and Airway-related Events

John Allyn MD, Chief, Department of Anesthesiology and Pain Management,
Maine Medical Center, Spectrum Medical Group, Portland, Maine

The problem:

Airway-related events are frequently assumed to result from intubation failures or complications related to intubation or extubation. However, recently patients in Maine have needed an emergent airway intervention only after their respiratory failure has gone unrecognized. Patients have developed respiratory failure while receiving sedation for a procedure and in the recovery room or procedural suite after the procedure. In addition, there has been a delay in recognizing (diagnosing) respiratory failure in the emergency room. Finally, these patients who now require emergent airway management are more likely to be difficult intubations and thus more likely at risk for hypoxia. Eight patients have died in Maine as a result of a failure to recognize respiratory failure or as a result an airway-related event (failure to oxygenate, usually resulting from a failure to intubate).

Goals:

1. Early diagnosis and management of respiratory failure. This includes the appropriate monitoring of patients during a procedure and the recovery period as well as the assessment of patients at risk for developing respiratory failure either because of their physical status or the nature of the planned sedation (anesthetic) and procedure.
2. Education of "local" providers and teams caring for patients with respiratory failure and responding to airway emergencies. This includes the development of algorithms that focus on maintaining oxygenation and ventilation and not simply intubation. Use of a supraglottic airway (e.g. laryngeal mask airway) may be life-saving while the team assembles and plans the best next step. In addition, the use of videolaryngoscopes may improve success with intubations. Finally, facilities should assess the ability of the team to provide a surgical airway when needed. All of these skills and team performance may be enhanced by simulated learning exercises and team training education.

Strategies:

1. Early diagnosis and management of respiratory failure:
   a. Patient assessment prior to sedation or anesthesia for procedures with a focus on factors that may place the patient more at risk for hypoxia when sedated (e.g. morbid obesity, obstructive sleep apnea).
   b. Focused airway assessment prior to administering sedation focusing on predicted ease of mask ventilation and intubation
   c. Pulse oximetry monitoring – continuous monitoring for patients receiving

moderate or deep sedation or general anesthesia during and post-procedure until return to baseline status.

d. Clearly defined algorithms (with back up plans) in place for the management of respiratory failure. The development of a difficult airway response team may be appropriate for some facilities (Johns Hopkins model).

2. Education of "local" providers and teams caring for patients with respiratory failure and responding to airway emergencies:
   a. Team training – e.g. all providers empowered to express concerns about a patient's status or care plan.
   b. Simulation – team members continually participate in scenarios which focus on the diagnosis and management of respiratory failure and airway emergencies. In addition to the review of algorithms during these scenarios, competency of team members with the use of non-invasive ventilation, supraglottic airways, videolaryngoscopes, and securing a surgical airway should be assessed.

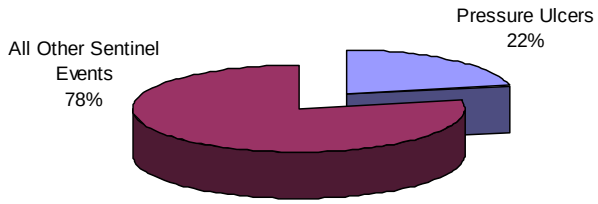
List of references:

1. Martin LD, Mhyre JM, Tremper KK, Kheterpal S: 3,423 emergency tracheal intubations at a university hospital: Airway outcomes and complications. Anesthesiology 2011; 114:42-8
2. Amathieu R et al: An algorithm for difficult airway management, modified for modern optical devices… Anesthesiology 2011; 114:25-33
3. Aziz MF et al: Routine clinical practice effectiveness of the Glidescope in difficult airway management… Anesthesiology 2011; 114:34-41
4. Schmidt U, Eikermann M: Organizational aspects of difficult airway management. Anesthesiology; 114:3-6
5. Isono S, Ishikawa T: Oxygenation, not intubation, does matter. Anesthesiology; 114:7-9
6. American Society of Anesthesiologist Task Force on Management of the Difficult Airway. Anesthesiology 2003; 98:1269-77

Cases of Patients with Stage III Pressure Ulcers

In 2010, 33 (22%) stage III pressure ulcer cases were reported. New reporting requirements state that stage III and stage IV pressure ulcers not present on admission are reportable events.

Table 20. Sentinel Event Reports of Stage III Pressure Ulcers, 2010

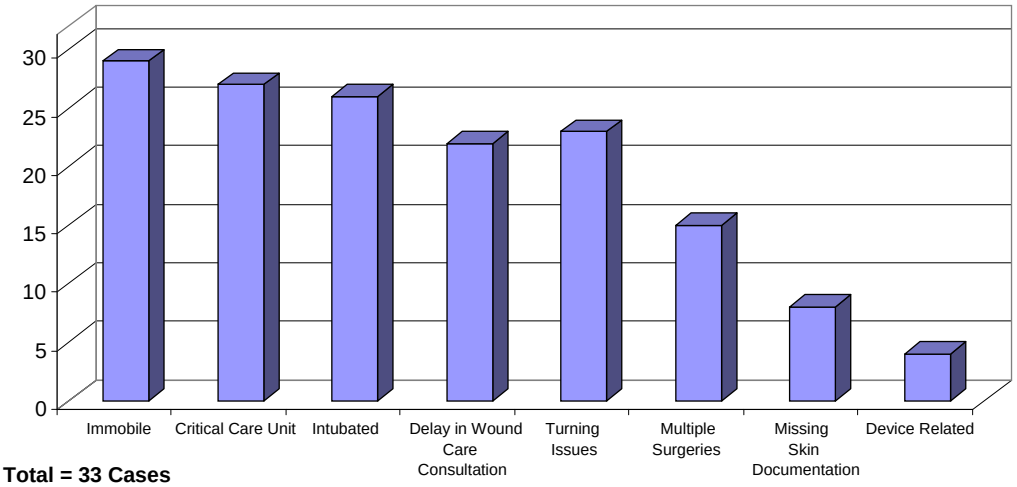


Total = 33 Cases

Of the pressure ulcers reported, 22 (67%) were located in the patient's sacral or coccyx area. The other 11 (33%) cases reported pressure ulcers from devices such as cervical collars, ET tubes, abdominal binders, casts, orthopedic immobilizers and operating room devices.

Pressure ulcer cases reported in 2010 shared multiple similar characteristics. These similarities are listed in Table 21 and include: immobility, critical care patients, intubated, difficulty with turning due to disease process, delays in wound care consults and multiple visits to the operating room.

Table 21. Sentinel Event Reports of Stage III Pressure Ulcers, by Specific Characteristics, 2010



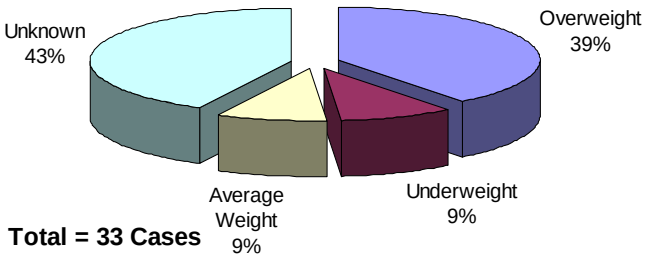
Total = 33 Cases

"Critically ill patients are at higher risk for pressure ulcers than are patients in general care areas. Several factors increase the risk: greater severity of illness; increased length of stay; poor tissue perfusion due to hemodynamic instability; use of vasoactive medications, and anemia, sensory impairment resulting in a reduced sensitivity and /or reaction to pressure due to sedation or underlying abnormality, skin maceration due to moisture; immobility; and poor nutritional status." (Elliot, McKinley, and Fox, 2008)

Hospitals are focusing on prevention with education of nursing staff in specialty areas (ICU, CCU, OR) in regards to pressure ulcer prevention and identifications as well as consultation with wound care nurses. Some hospitals have made improvement in areas such as documentation of appearance of skin issues and early consults with wound care nurses. Increased physician involvement is an area that all of the reporting hospitals are interested in working on.

In addition to the characteristics listed in Table 21, weight was reviewed and found that 13 (39%) of the patient's were overweight. Weight is a factor that affects skin integrity whether the individual is overweight or underweight.

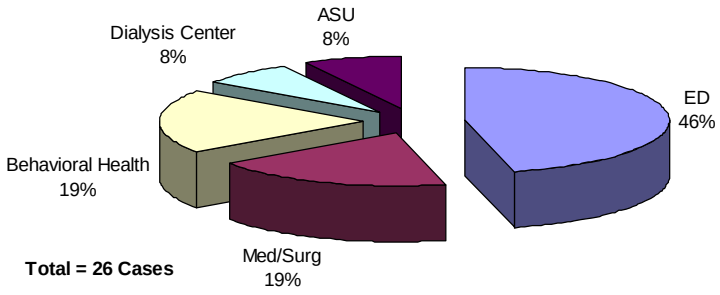
Table 22. Sentinel Event Reports of Stage III Pressure Ulcers, by Patient Weight, 2010



Patient Deaths within 48 hours of Treatment

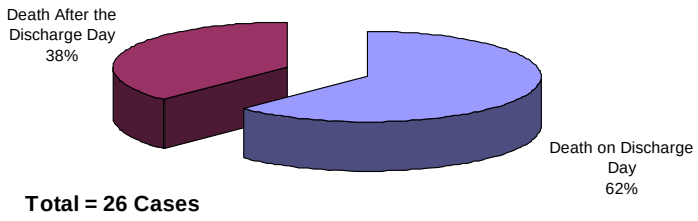
In 2010, there were reports of 26 cases of patients whose deaths were within 48 hours of treatment. Of the 26 events, a majority of the cases, 12 (46%), were patients discharged from the Emergency Department.

Table 23. Sentinel Event Reports of Deaths within 48 hours of Treatment, by Department, 2010



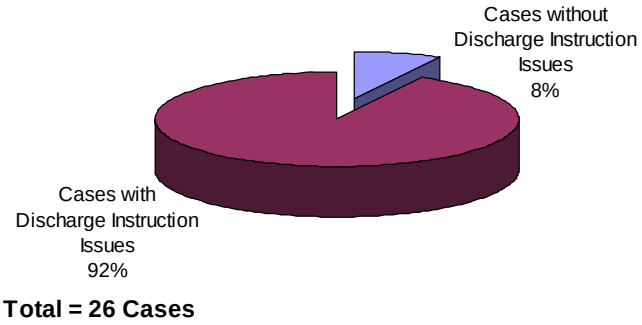
Of the 26 deaths within 48 hours of treatment, 15 (62%) of the deaths were on the day following treatment and 9 (38%) of the deaths were after the day of treatment.

Table 24. Sentinel Event Reports of Deaths within 48 hours after Treatment, by Timeframe, 2010



Of the 26 deaths within 48 hours of treatment, 24 (92%) of the cases had discharge instruction issues. A further review of discharge instructions follows.

Table 25. Sentinel Event Deaths within 48 Hours of Treatment, with Discharge Instruction Issues, 2010



Total = 26 Cases

Inadequate Patient Discharge Instructions

The discharge process is a critical component of a patient's hospital experience. The planning that leads up to a safe patient discharge is an essential process to ensure complete and thorough discharge instructions.

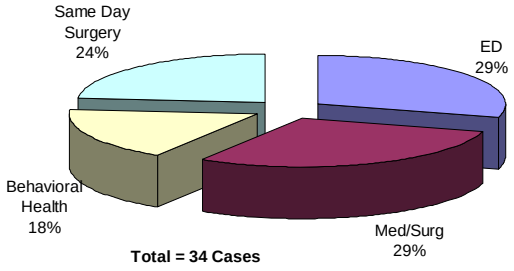
"The discharge process is intended to provide patients with adequate information and necessary resources to improve or maintain their health during the post hospital period and to prevent adverse events and unnecessary re-hospitalization … High rates of unnecessary re-hospitalization have been shown to be related to poorly managed discharge processes. In a study conducted at an 800 bed urban teaching hospital, it was found that approximately 20% of 300 patients interviewed at 3 weeks post discharge had experienced an adverse event." (Pennsylvania Patient Safety Advisory, 2008)

Discharge planning may include implementing systems such as:

- Prior to discharge from any department a quick time out to determine the readiness for discharge factoring current health status, mental status, available resources at home, family participation, and the patient's understanding of their condition.
- Educate patients and family or caregivers.
- Provide material in easy to read format, disease specific, verbal instructions, and illustrations if possible, making sure that reading level is determined.
- Reconcile medications, overview of new medications, discuss side effects.
- Follow-up appointments (dates, times, directions if needed, phone numbers).
- How and when to seek medical treatment along with signs and symptoms of complications.
- How and when to reach someone in case of an emergency.

Thirty four cases were identified in which discharge issues were a factor. Of the 26 deaths, 12 (46%) were patients discharged from Emergency Departments, 5 (19%) from medical surgical floors, 5 (19%) from psychiatric institutions and 4 (15%) from other areas. Emergency Departments are challenged with this process as their time is limited, the variable acuity of the patient and the limited amount of health history that is available. It is critical for all facilities to customize the discharge process for each patient area.

Table 26. Sentinel Event Reports of Inadequate Discharge Instructions, by Location, 2010



Of the 34 cases, it was found that incomplete instructions constituted the majority of cases. This is followed by insufficient planning processes and missing documentation. Incomplete instructions are defined as lacking the following: emergency information, medication instructions, signature, disease specific guidelines, etc. The planning process should include follow-up appointments, information on and referrals to community resources, etc.

Table 27. Sentinel Event Reports of Inadequate Discharge Instruction, by Type, 2010

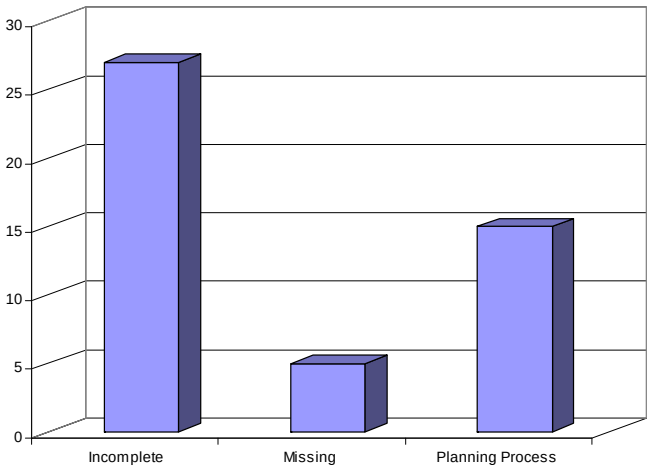
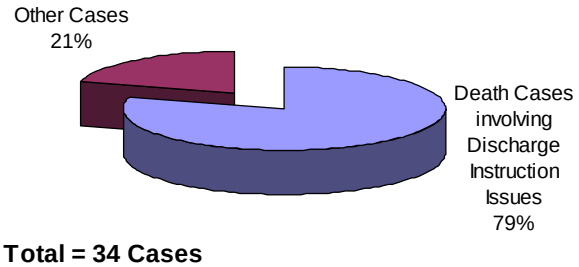


Table 28. Sentinel Event Reports with Inadequate Discharge Instructions, followed by Death within 48 hours, 2010

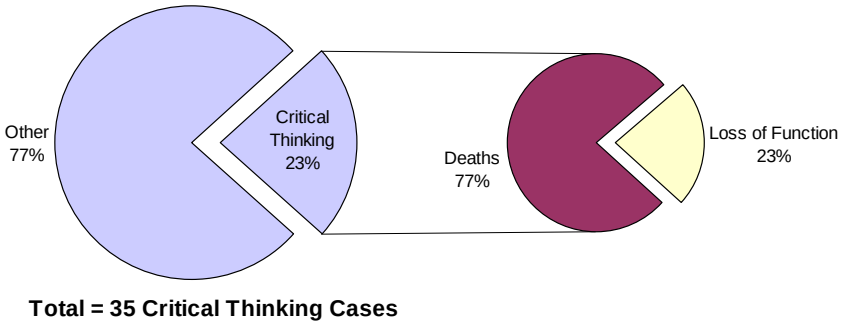


Critical Thinking

Critical thinking errors can lead to diagnostic mistakes. Biases, anchoring, diagnosis momentum, overconfidence and premature closure are examples of cognitive dispositions that lead to diagnostic mistakes. “Diagnostic errors are associated with a proportionally higher morbidity than is the case with other types of medical errors.” (Croskerry, 2003).

Of the 150 reported sentinel event cases, 35 (23%) had evidence of critical thinking errors. Critical thinking or the decision making process errors resulted in death in 27 (77%) of the events and loss of function in 8 (23%) of the cases.

Table 29. Sentinel Events with Critical Thinking Issues, 2010



Diagnostic Errors

Doug Salvador, MD, MPH, Associate Chief Medical Officer, Patient Safety Officer,
Maine Medical Center, Portland, Maine

Robert Trowbridge, MD, Department of Medicine,
Maine Medical Center, Portland, Maine

The Problem

Diagnostic errors are defined as "a diagnosis that was unintentionally delayed (sufficient information was available earlier), wrong (another diagnosis was made before the correct one), or missed (no diagnosis was ever made), as judged from the eventual appreciation of more definitive information." Up to 8.4% of hospitalized patients is subject to a major diagnostic error. Diagnostic error is a poorly recognized and underreported problem in patient safety.

Potential Strategies to Improve Diagnostic Reliability

- Perform root cause analysis on diagnostic errors: *many diagnostic errors are thought to result from human error and enter a peer review process. In fact, most diagnostic errors are systems-related and can be analyzed as such.*
- Gather data on diagnostic errors and feedback to physicians: *set up systems to find discrepancies between autopsy results, surgical pathologic diagnoses, etc. and radiology findings and coded clinical diagnoses.*
- Institute a diagnostic pause or diagnostic 'time out': *Some experts suggest training providers to pause in the care process to self reflectively answer questions like:*
    - *Was I comprehensive?*
    - *Do I need to make the diagnosis now, or can I wait?*
    - *What is the worst-case scenario?*
    - *Does the way I feel about this patient affect my clinical reasoning?*
    - *Have I prematurely closed the differential diagnosis?*
- Deliver regular education to providers related to commonly missed diagnoses: *Yearly written case scenarios, standardized patients in a simulation setting, or secret shopper patients to drill providers on specific patient presentations (i.e. aortic dissection, endocarditis, stroke, epidural abscess)*

References:

1. Graber ML, Franklin N, Gordon R. Diagnostic error in internal medicine. *Arch Intern Med.* 2005;165(13):1493-1499.
2. Berner ES, Miller RA, Graber ML. Missed and delayed diagnoses in the ambulatory

setting. *Ann Intern Med.* 2007;146(6):470; author reply 470-471.

3. Bhasale A. The wrong diagnosis: identifying causes of potentially adverse events in general practice using incident monitoring. *Fam Pract.* 1998;15(4):308-318.
4. Shojania KG, Burton EC, McDonald KM, Goldman L. Changes in rates of autopsy-detected diagnostic errors over time: a systematic review. *JAMA.* 2003;289(21):2849-2856.
5. Shojania KG, Burton EC, McDonald KM, Goldman L. Overestimation of clinical diagnostic performance caused by low necropsy rates. *Qual Saf Health Care.* 2005;14(6):408-413.
6. Berner ES, Graber ML. Overconfidence as a cause of diagnostic error in medicine. *Am J Med.* 2008;121(5 Suppl):S2-23.
7. Schiff GD, Hasan O, Kim S, et al. Diagnostic error in medicine: analysis of 583 physician-reported errors. *Arch Intern Med.* 2009;169(20):1881-1887.
8. McNutt R, Abrams R, Hasler S. Diagnosing Diagnostic Mistakes: Case and Commentary. 2009; http://www.webmm.ahrq.gov/case.aspx?caseID=95. Accessed July 20, 2010.
9. Newman-Toker DE, Pronovost PJ. Diagnostic errors--the next frontier for patient safety. *JAMA.* 2009;301(10):1060-1062.
10. Ely JW, Graber ML, and Croskerry P. Checklists to Reduce Diagnostic Errors. *Acad Med*. 2011;86:307-313.

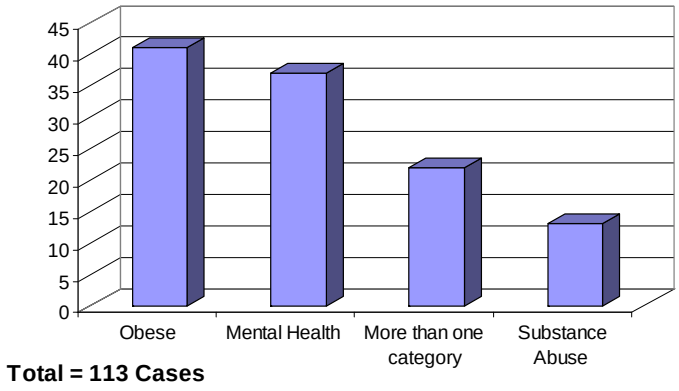
Non-Clinical

Cases of Affective Bias

The sentinel event program reviewed all cases reported, omitting pressure ulcer cases, for affective bias characteristics. The features studied were mental health diagnosis, obesity and history of substance abuse. Of the 117 cases (150 minus 33 pressure ulcer cases), 113 demonstrated these comorbidities. Of the 113 cases, 37 (33%) had a mental health diagnosis, 41 (36%) were obese, 13 (12%) had a substance abuse history and 22 (19%) had more than one of these features.

Affective biases can undermine the objectivity of diagnostic reasoning when providers are making healthcare decisions. Obesity, mental health diagnosis and substance abuse history are examples of specific biases that can affect objectivity. "There are several affective biases and factors that influence decision making. Some originate from general human dispositions, others are more specific and are determined by an individual patient, or by the characteristics of groups of patients as occur in stereotyping." (Henriksen, 2005)

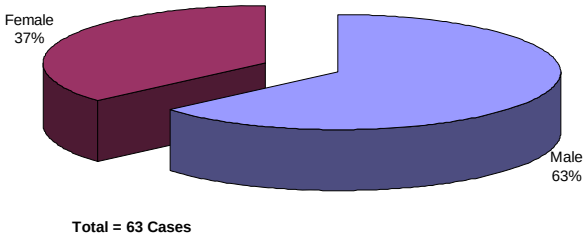
Table 30. Sentinel Event Reports of Mental Health, Obesity and Substance Abuse Comorbidities, 2010



Total = 113 Cases

Table 31. Sentinel Event Reports of Affected Bias Cases, Followed by Death within 48 hours, 2010

Table 32. Sentinel Event Reports of Affected Bias Cases, Followed by Death within 48 hours, by Gender, 2010



"DRUG SEEKER IN ROOM 4" - THE CLINICAL BLINDERS OF CAREGIVER BIAS

Erik N. Steele, D.O., FAAFP, Chief Medical Officer and Vice President,
Eastern Maine Healthcare Systems, Bangor, Maine
Executive Director, Maine Institute for Human Genetics and Health

At any given moment a million things can distract me from care of my patients. The worst of those things are the personal biases I bring to the bedside. Some of the biases are cultural, most are personal, and all are dangerous, for they are the invisible blinders and filters that may stop me from seeing the right thing to do for that patient.

You know what I mean. Most of us carry some degrees of racism and sexism, however subtle and unintended, or just a predisposition to treat people "like us" a little differently than those who are not "like us." We often have limited tolerance to one disease or another that reflects an underlying bias, most commonly diseases of obesity, mental illness, and HIV-AIDS. We have names for patient types that reflect biases so common in healthcare they almost represent a consensus among caregivers that such patients are less deserving of care: "Drug seeker," "demanding," "gomer," "frequent flyer," and "Medicaid mom" are but a few.

Common to every one of these biases is that they have the ability to affect what we see of the patient and therefore how we think. Unfortunately, that also means the bias can affect the care we give. If we are all 'lucky', the caregiver might 'just' be less generous with pain medication for patients against whom he or she has a bias that causes a discounting of the severity of the patient's pain complaints. (Several studies have suggested, for example, that male physicians treat pain less aggressively in women.)

I say "lucky" because those same biases that may blind us to the severity of a patient's pain might also blind us to the possibility of a deadly cause of that pain. Almost everyone I know who has taken care of patients for very long can recall a drunk patient, for example, whose critical illness or injury was missed - or just barely caught - after most of the caregivers wrote the complaints off, failed to do a fastidious exam, or discharged the patient from the ER before the more serious nature of the problem became clear through the fog of bias and booze.

My oldest daughter, an ER resident for only 9 months, has already had her first: a drunk trauma patient complaining of neck pain almost everyone in the ER wanted the younger Dr. Steele to discharge without a CT scan. She ordered it anyway; he turned out to have a potentially catastrophic neck fracture.

Few studies have quantified how often such biases may be among the root causes of sentinel and other adverse events in health care. The State of Maine has started examining this issue through its sentinel event reporting process, and while no scientifically clear picture has yet emerged, the shape of a problem we need to address

is starting to become apparent.

Of the 150 sentinel events reported to the state in 2010, 54 (36%) involved patients who were obese, mentally ill, or had a history of substance abuse. Patients who are poor, socially disconnected, homeless, and less educated are disproportionately represented among sentinel event patients, according to state officials.

To some extent, that is not surprising; these same patients suffer from more disease and need may get more healthcare, so they may suffer more sentinel events in their care. They are also more complicated patients on the whole, requiring more complicated care. But the preponderance of patients with these problems in the sentinel event data base raises real questions about how much of the problem was the patient and how much of the root cause was a caregiver's problem with that kind of patient?

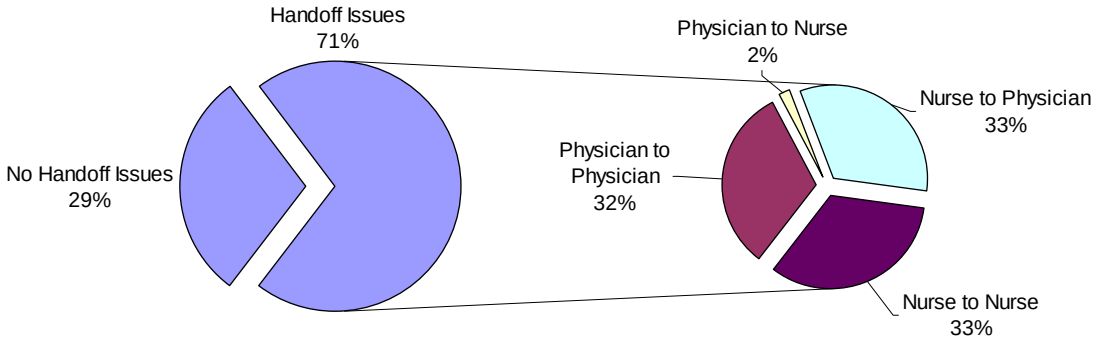
What's needed on the issue are two things: first, constant awareness that when we are impatient, ticked off, or frustrated with our patients, it may in part be our biases at work and our clinical vigilance at that moment may be diminished.

Second, we need a clear-eyed review of this issue, perhaps in a Maine-wide conference aimed at a better understanding affective bias in patient care, and how best to mitigate its potential impact on patient care and safety. We need a better look at more data, then an expert-led discussion of how we can recognize the biases we all bring to the bedside and avoid having them come subtly or disastrously between us and our patients. We should not need more data to prove that's a discussion worth having.

Cases with Hand off Errors

In 2010, of the 150 cases reported, 106 (71%) were found to have hand off errors. These errors were reviewed for type of provider: nurse to nurse 35 (33%), nurse to physician 35 (33%), physician to physician 34 (32%), and physician to nurse 2 (2%). A hand off is defined as "the transfer of information (along with authority and responsibility) during transitions in care across the continuum; to include an opportunity to ask questions, clarify, and confirm." (King, Hohenhaus, and Salisbury, 2007)

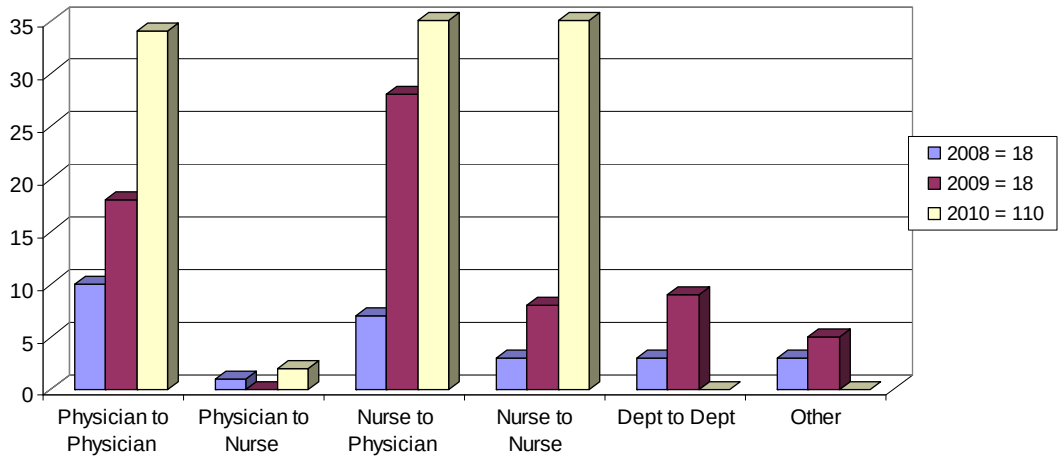
Table 33. Sentinel Event Reports with Hand off Error, by Type, 2010



Total = 106 Cases

Table 34 compares hand off errors that were tracked in 2008-2010. In 2010 hand off errors were identified more often with individuals accounting for the lack of representation in the 'department to department' and 'other' category. The Joint Commission requires all health care providers to "implement a standardized approach to hand off communications including an opportunity to ask and respond to questions." (August 2006)

Table 34. Sentinel Event Reports of Hand off Error, by Type, 2008 - 2010



Communication

Patty Roy, RN, MSN , Director Quality & Medical Affairs,
Central Maine Medical Center, Lewiston, Maine

Clear, effective communication is critical between two people trying to share information about a patient. Basic communication principles include a person or team who is the "sender" of the information and a person or team who is the "receiver." When communication is not effective medical errors can occur. An estimated 80% of serious medical errors are related to a breakdown in communication. Consequences of ineffective communication can lead to adverse events, omission of needed care, delays in treatment and inappropriate treatment being provided.

There are two key points of communication that are involved in many of these adverse events:

1. Transition of care- when patient care is transferred or handed over from one caregiver or team to another. This occurs multiple times a day in a hospital, whether it be shift change for clinicians, sign out of patients between providers, or transfer of patient from one department to another.
2. Communicating new information: When one caregiver is trying to communicate new information or a change in a patient's condition to another caregiver.

Critical patient information is transferred between caregivers so that the receiver can care safely for the patient and make timely decisions on needed treatment and care. This requires the "sender" to pull together and synthesize patient information before they can effectively share it with the receiver. In a busy healthcare setting with competing priorities this can sometimes be challenging. There are a variety of strategies an organization can use to enhance this process and thus minimize the risk to patient's safety.

1. Make effective handover communication an organizational priority.
2. Educate staff and providers on the risks in communication and what makes a successful handover of information.
3. Set clear expectations and accountability for effective handovers between all staff and providers.
4. Standardize the content and format of the information to be shared; use of tools such as checklists and SBAR forms are helpful. At a minimum it should include: patient identifiers, patient history, new clinical information, test results pending, key treatments occurring, any important tasks to be completed, key patient clinical indicators to watch for and contingency plans for changes in patients condition.
5. Use technology such as E.H.R. and hand held devices for access to up to date data and information about the patient's condition. Summary documents and quick access to key points makes synthesis of the whole picture easier.
6. Establish environment or setting that is conducive; quiet with limited

interruptions allowed.

7. Establish systems for verification of information and understanding. This can include ability to ask questions or stating back what was heard.
8. Review and establish systems and workflow of clinical teams that include successful handovers; planning for how face to face communication will occur in a quiet environment is critical.
9. Measure how it is working and provide feedback to clinical teams; some measurements could be the use of tools and if standard content was followed.
10. When adverse events occur evaluate the root causes to see what role communication and handover played. Share this learning widely in the organization.

References

Patient handover from surgery to intensive care; using Formula 1 pit stop and aviation models to improve safety and quality. Catchpole KR, de Leval MR, McEawn A, et al. Paediatr Anaesth. 2007; 17:470-478

Enhancing Patient safety during Hand offs; Standardized communication and teamwork using the SBAR method. Hohenhaus S, Powell S, Hohenhaus JT. Am J Nurs. 2006; 106:72A-72B

The Joint Commission Sentinel Event Data; www.jointcommission.org

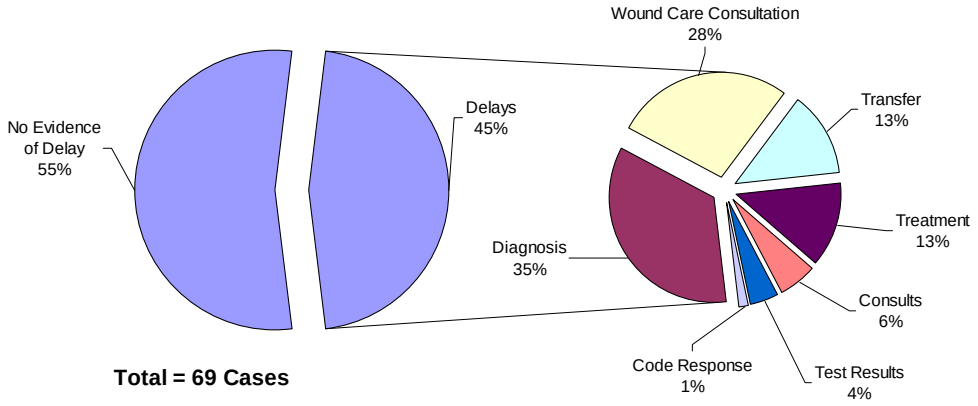
The Joint Commission Center for Transforming Healthcare hand off communication solutions, JC Online October 2010

AHRQ Patient Safety Primer: Hand offs and Signouts; accessed at HTTP://psnet.ahrq.gov March 2011

Cases with Evidence of Delays

In 2010, the sentinel event team found evidence of delays in 69 (45%) of the cases. Of these cases, delays in diagnosis and wound care consultations were the highest type of delay noted while code response and test results were the least. According to Pennsylvania Patient Safety Authority, "Errors related to missed or delayed diagnoses are a frequent cause of patient injury and, as such, are an underlying cause of patient safety related events." (September 2010)

Table 35. Sentinel Event Reports Containing Evidence of Delay, by Type, 2010



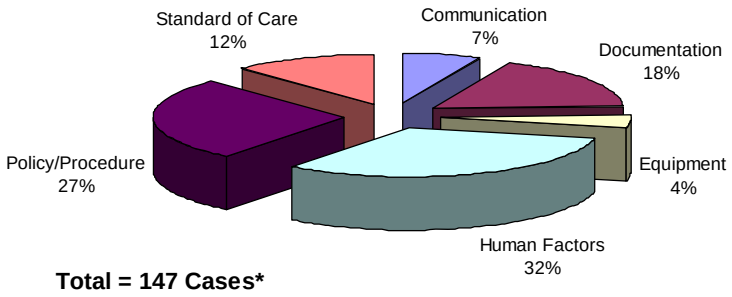
The Joint Commission Sentinel Event Alert #26, released in 2002, discussed delays in treatment. "Of the 55 reported cases of delays in treatment, 29 were ED-related, while 26 cases originated in hospital intensive care units, medical-surgical units, inpatient psychiatric hospitals, freestanding and hospital-based ambulatory care services, the operating room and in the home care setting. Of the 55 cases of delays in treatment, 52 resulted in patient death. The reported reasons for the delays in treatment are many and varied with the most common factor being misdiagnosis (42 percent). Other delaying factors include: delayed test results (15 percent); physician availability (13 percent); delayed administration of ordered care (13 percent); incomplete treatment (11 percent); delayed initial assessment (7 percent); patient left unattended (4 percent); paging system malfunction (2 percent); and unable to locate ER entrance (2 percent)." Joint Commission Sentinel Event Alert #26.

FACILITY REPORTED ROOT CAUSE ANALYSIS AND ACTION PLANS

Cited Root Causes 2011*

Facilities submitted Root Cause/Action Plans for the sentinel event team to review and make recommendations. In 2010, 150 Root Cause analyses were submitted and reviewed. The Root Causes are grouped into the categories as shown on Table 36. Human factors represented the majority of the categories with 47 (32%), while Equipment represented 6 (4%). These represent the primary root causes as identified by reporting facilities.

Table 36. Sentinel Event Reports of Facility Cited Root Cause, by Category, 2010



Total = 147 Cases*

* Three cases did not have a root cause identified.

The primary root causes as identified by the facilities are listed below by category.

Communication 10
Hand off communication with specialist
Communication between providers
Communication with family
Hand off error between nurse practitioner and physician
Communication between nurse and provider
Communication between nurse/nurse
Communication between community and staff
Communication between facility and patient after discharge

Policy Procedures 40
Operating room count policy
Conscious sedation policy
Video monitoring policy
Fall prevention policy
VTE risk assessment
Level of observation policy not followed
Pressure ulcer prevention policy
Skin assessment policy

Suicide prevention policy
Discharge planning policy
Syringe disposal policy
Preoperative clearance policy
Robotic equipment policy
AMA policy
Positioning in the OR policy
Marking policy
Timeout policy
Telemetry protocol
DNR policy
Patient belongings policy
Paracentesis protocol
Restraint protocol
Chemotherapy protocol
Central line protocol
DVT policy
Myocardial infarction protocol
Sexual assault policy
Temperature protocol
Blood glucose protocol
PCA policy
Radiology intervention policy
Rapid response policy
Anaphylaxis protocol
Pain management protocol
Self administration of medications policy
Specimen handling policy
Pediatric fever protocol
Workplace safety policy
Patient burn/accident policy
PICC line policy

Documentation 26
Nursing documentation missing or incomplete
Suicide risk assessment incomplete or missing
Fall risk assessment incomplete or missing
Braden score incomplete/misunderstood
Preop checklist incomplete
Discharge instructions incomplete or missing
Consult documentation missing
Allergy documentation missing or incomplete

Documentation missing from other providers
Obtaining accurate history
Illegible handwriting

Human Factors 47
Delay in diagnosis of a disease process
Delay in treatment
Delay in transfer
Failure to recognize respiratory distress
Nurse failed to follow order
Surgeon technique error
Wrong dose of medication ordered
Wrong medication ordered
Wrong medication administered
New staff/float staff
Hospitalist coverage issues
Physician assistant supervision issues
Busy environment/hurry staff
Decision of placement of a patient
Respiratory therapy coverage
Misinterpretation of test results
Intubation technique difficulty
Incomplete medical exam
Resident supervision
New surgical procedure
Surgical marked area covered
Wound care nurse availability
Physician consult delay
Noisy environment

Standard of Care 18
Failed to monitor patient (fetal heart rate, temperatures, post op pt, PCA, level of violence, level of observation)
Availability of Information
Delay in obtaining history
Missing historical information from previous providers
Failure to follow standard of care
Failure to follow care plan
Post fall assessment missing
Monitoring in radiology
Urine collection management
Assessment not completed/incomplete

Discharge plan not followed

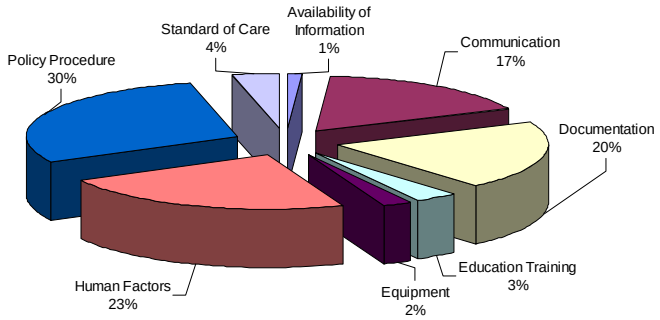
Equipment 6
Cautery device not checked
PICC line equipment
Intubation equipment
Robotic surgical equipment
Mislabeled equipment
Bed alarms off
Cervical collar application
Tab alarms not used
Air mattress unavailable

* there are some root causes that are cited in more than one case.

Contributing Factors

Contributing factors are in addition to the primary root causes addressed in Root Cause Action Plans submitted by facilities. Most facilities cited more than one contributing factor with their plans leading to a large number of contributing factors. The numbers represent the number of times each category was cited in all 150 cases.

Table 37. Sentinel Event Reports of Contributing Factors, by Category, 2010



Total = 640 Contributing Factors

Communication 110
Hand off communication with specialist
Communication between providers
Communication with family
Hand off error between nurse practitioner and physician
Communication between nurse and provider
Communication between nurse/nurse
Communication between community and staff
Communication between facility and patient after discharge

Education Training 22
Equipment training needed/unfamiliar with equipment
Morse scale education
Braden score education
EMR/paper record education
Newborn monitoring education
Pediatric assessment
Violent behavior assessment training
Pressure ulcer staging education
Orientation to unit
Detoxification education

Policy Procedures 185
Operating room count policy
Conscious sedation policy
Video monitoring policy
Fall prevention policy
VTE risk assessment
Level of observation policy not followed
Pressure ulcer prevention policy
Skin assessment policy
Suicide prevention policy
Discharge planning policy
Syringe disposal policy
Preoperative clearance policy
Robotic equipment policy
AMA policy
Competency policy
Positioning in the OR policy
Marking policy
Timeout policy
Telemetry protocol
DNR policy
Patient belongings policy
Paracentesis protocol
Gerry chair protocol
Restraint protocol
Chemotherapy protocol
Central line protocol
Visitor policy
DVT policy
Myocardial infarction protocol
Sexual assault policy
Temperature protocol
Blood glucose protocol
PCA policy
Radiology intervention policy
Rapid response policy
Poison control policy
Anaphylaxis protocol
Pain management protocol
Self administration of medications policy
Specimen handling policy

Pediatric fever protocol
Workplace safety policy
Elopement policy
Disclosure policy
Guardian policy
Next of kin policy
Burn policy
PICC line policy
Stroke protocol

Documentation 130
Nursing documentation missing or incomplete
Suicide risk assessment incomplete or missing
Fall risk assessment incomplete or missing
Braden score incomplete/misunderstood
Morse scale incomplete/misunderstood
Preop checklist incomplete
Discharge instructions incomplete or missing
Consult documentation missing
Allergy documentation missing or incomplete
Documentation missing from other providers
Inaccurate history obtained
Illegible handwriting

Human Factors 148
Delay in diagnosis of a disease process
Delay in treatment
Delay in transfer
Failure to recognize respiratory distress
Nurse failed to follow order
Surgeon technique error
Wrong dose of medication ordered
Wrong medication ordered
Wrong medication administered
New staff/float staff
Hospitalist coverage issues
PA supervision issues
Busy environment/hurry staff
Decision of placement of a patient
Respiratory therapy coverage
Misinterpretation of test results (misread x-ray , EKG)
Surgeon error (WSS or tear, laceration)

Intubation technique difficulty
Incomplete medical exam
Resident supervision
Code cart not updated
New procedure
Marked area covered
Wound care nurse availability
Consult delay
Noisy environment

Standard of Care 24
Failed to monitor patient (fetal heart rate, temperatures, post op pt, PCA, level of violence, level of observation)
Failure to follow standard of care (not turning patient)
Failure to follow care plan
Post fall assessment missing
Monitoring in radiology
Urine collection management
Assessment not completed/incomplete
Discharge plan not followed

Availability of Information 7
Delay in obtaining history
Missing historical information from previous providers

Equipment 14
Cautery device not checked
PICC line equipment
Intubation equipment
Robotic surgical equipment
Mislabeled equipment
Bed alarms off
Cervical collar issue
Tab alarms not used
Air mattress unavailable
Code cart missing equipment

Action Plans listed by Type of Sentinel Event

In 2010 there were 150 sentinel events reported. In an effort to distribute meaningful information to be utilized by facilities, the following action plans have been grouped by type of event. Action Plans are submitted by facilities with specific target dates and individuals responsible for ensuring the action item has been completed. The action plans are reviewed by the sentinel event program.

Best Practice Action Plans*:	
Blue Hill Memorial Hospital	Stroke protocol and algorithm
Central Maine Medical Center	Gel Pads to be used on all surgical cases
Mayo Regional Hospital	Time out prior to administration of high alert medications
Mercy Hospital	Fall response team

* Submitted with permission

1. **Assault**
1. Review policy regarding placement of patient sitters
2. Video monitoring policy revision
3. Visitor policy revision
4. Development of standard of care for the violent patient
5. Encourage charge nurses to collaborate with nurse managers or supervisors before releasing staff from floors
6. Ensure than an outline of client specific behavioral interventions are readily available in a quick read format

2. **Retained Foreign Object**
1. Educate staff about specific device used in the OR
2. Post removal x-ray to be performed intraoperatively when there is a suspicion of Retained Foreign Object
3. Process change needed to call for another count if anymore sponges are used after the final count
4. Revision of time out policy
5. Revision of count policy
6. Develop a checklist /procedure according to manufacturer recommendations equipment specific

3. **Unanticipated Death**
1. Conscious sedation policy for radiology revised to include vital signs every 5 minutes
2. Team STEPPS Training for communication issues

3. Revision of VTE policy
4. Implementation of an audit committee unit specific
5. Education specific to unit and situation
6. Record audit for completeness of documentation
7. Call back policy revision
8. Review all transfers of patients to tertiary centers for timeliness in the decision to transfer
9. Diagnosis specific education
10. Team will establish a work group to evaluate and develop protocols to improve services to clients
11. Nursing department will address the issue of completion of documentation
12. Minimal requirements for records of past assessment and develop policies
13. Develop process for effective communication with hospitalists
14. Standardize pre-procedure nursing assessment form and documentation
15. Clarification expectations of nursing hand off communication
16. Quarterly audits/monitor periodically for compliance
17. Monitor 3 files a week to determine if a tool is used according to new guidelines
18. Standard of care for hypothermia revision
19. Develop evidenced based assessment tool to identify patients at risk for OSA
20. Review conscious sedation policy
21. Review and revise timeout policy in interventional radiology
22. Stroke protocol and education
23. Communication between physician and results via computer, added to physician area of EMR
24. Place sleep apnea assessment questionnaire on the admission database form used on adult paths
25. Educate staff on need to assess vital signs and report abnormal findings to physician when indicated
26. Add feature to initial assessment inquiring about medications brought from home
27. Syringe disposal policy
28. Update discharge instructions to include anesthesia concerns
29. Monitor follow up call procedure compliance
30. Guideline for adult and pediatric dosing of epinephrine
31. Review regulations for ordering medications
32. Review process for EKG result distribution to cardiologists
33. NSTEMI guideline revision
34. Review preop guidelines
35. Auditing of student documentation
36. Review of code sheets at staff meetings
37. Review transcripts of physician's orders that include notations or additional instructions to assure consistency and carry over

38. Review policy for patient self directed care
39. In-service staff regarding preop screening
40. Develop a pain management protocol to identify patients preop and develop a pain management plan for post op period
41. Attempt to obtain physical address on all patients
42. Ensure all entries in medical record are legible
43. Revise DNR policy
44. Policy revision to include that vital signs should be taken no more than one hour preop, including temperature
45. Education about the importance of documenting time spent with patient
46. Develop a list of preprinted order sets in EMR
47. Anesthesia department will meet and discuss factors associated with risk of aspiration
48. Clarification of two different orders by two different physicians
49. Surgical discharge instructions will be reviewed and enhanced as needed to include clear directions for follow up
50. Education of ED staff around appropriate documentation
51. Develop a consistent discharge process
52. Reeducate staff on use of rapid response team codes
53. Recommend a centralized method of contacting on call that provides for one accurate complete up to date on call coverage schedule
54. Education on need to document patient refusal of treatment
55. Hypoglycemia policy revision
56. Develop a protocol to ensure patient is seen in PAT with adequate time prior to surgery to satisfy protocol
57. Develop recommendation to establish consult protocol and etiquette
58. Review Rapid response team protocol
59. Staff education on the chain of command policy
60. Implement CPO in ED
61. Education regarding training in glucose protocol
62. Education of anesthesiologists of assessment of appropriate ASA classifications
63. DNR status assessment has been added to the nurse preop checklist
64. Transfer time out for ED staff prior to transport of all patients
65. Mandatory EMTALA updates and annual education for all medical clinical employees
66. Create a stroke algorithm
67. Revise PA supervision policy
68. Create a system wide plan for CT scan readings
69. Case management will develop a discharge checklist for acute rehabilitation and inpatients patients with los greater than 10 days
70. AMA policy changes
71. Training staff and providers how to access weekend/night radiology coverage

72. Procedure for cardiac monitoring
73. Peak flow education
74. Education of staff re documentation of history

4. **Falls**
1. Purchase additional Stryker Beds with built in alarm systems
2. Patient admission orientation to the room includes how to call for assistance
3. Use of TAB alarms on patients less than 100 lbs
4. Heparin and anticoagulation protocols revision
5. Fall prevention protocol revision
6. Educate staff in proper way to complete fall risk assessment to assure proper documentation
7. Retraining nurses and CNAs regarding fall risk
8. Institute use of table top caution wet floor sign for use in patient rooms
9. Fall reporting checklist
10. Revise hand off communication policy
11. Post fall protocol for patients on anticoagulation
12. Review fall risk policy/procedure
13. Implementation of new equipment which would act to notify nursing staff of pt movements
14. Review all falls through a post fall analysis
15. Develop sitter program policy
16. Purchase chair alarms

5. Wrong Side/Site Surgery
1. Time out policy revision to include a final timeout
2. Change timeout to prior to intubation so anesthesiology can participate
3. Site identification should specify surface location
4. Update universal /timeout protocol to include more detail documentation tools to include all outpatient areas

6. **Pressure Ulcers**
1. Develop patient care policy regarding skin assessment of patient with orthotic devices
2. Explore alternatives for securing nasal tubes
3. Evaluate and have available patient lifts that can accommodate 1,000 lbs
4. Use of sacral dressing
5. Use of airflow pads
6. Training on staging and devices
7. Investigate alternative solutions for off loading heels
8. Product for ET securing
9. Include skin assessment into daily rounds

10. Enhance team communication in reporting between team members
11. Review triggers for use of special pressure relief gel pads
12. Braden assessment used to evaluate skin for pressure ulcer risk and modify for pediatrics
13. WOCN to evaluate OR use of pressure distribution surfaces
14. Review of stretchers mattresses use in ED
15. WOCN to attend ICU rounds
16. WOCN to daily use pressure redistribution algorithm
17. Critical care areas will develop a multidisciplinary standard skin breakdown prevention protocol
18. WOCN dedicated to ICU/CCU certain hours a week
19. Preop skin assessment by RN
20. Research evidence based guidelines for proper positioning of patients with BMI > 35 in the OR
21. Revision of risk assessment tool
22. Educate medical staff on staging PU
23. Develop multidisciplinary huddle for patients who are at high risk of developing pressure ulcers
24. Review RRT protocol
25. Reeducate staff as necessary about policy and standard of practice
26. Physician education to be offered by skin/wound care specialist
27. Orientation program for new nurse hires and updates for current nurses on pressure ulcer prevention education
28. Gel pads for all OR tables
29. Hand off communication improvement regarding skin integrity

7. Suicide
1. Develop and implement a standardized process for reassessing communicating and documenting talk of suicidal ideation
2. New procedure for notifying social worker of missing critical information
3. Policy and procedure for patient discharge will be modified to require an internal review of patients admitted on an involuntary basis
4. Revise suicide risk assessment
5. Develop staff training on diagnosed and undiagnosed behavioral issues and management on a medical/surgical floor
6. Revise level of supervision policy and educate staff
7. Attempt to insure completeness of history from patient , family and other facilities
8. Revise family communication policy
9. Environment evaluation for mechanisms of self harm

8. Permanent Loss Of Function
1. All nursing staff will review hand off communication policy
2. Physician training of EMR to review nursing assessments
3. Revision of foley catheter policy
4. Train and assess staff on use of bladder scanner
5. Review the institutional ED guidelines for diversion plan to be followed when ED capacity is exceeded by volume, acuity in patient boarding
6. Diagnostic error and affective bias education for all residents house wide

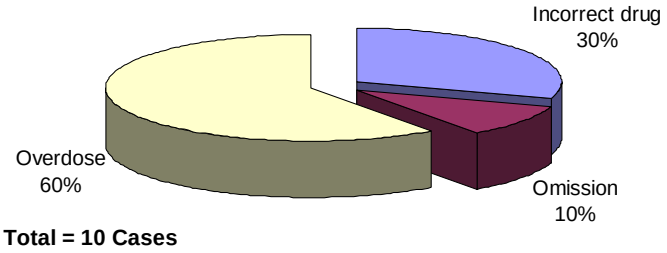
CONCLUSIONS AND NEXT STEPS

A dramatic increase in reporting sentinel events occurred in Maine in 2010. This more than 300% increase resulted from statutory changes defining events that must be reported as well as an increasing and widespread acceptance of the process. It is crucial that when reviewing these data that the reader draw no conclusions about the rate or relative frequency of events.

The new reporting requirements in 2009 include a provision for voluntary reporting of 'near miss' events. The AHRQ defines a near miss as follows: 'An event or situation that did not produce patient injury, but only because of chance. This good fortune might reflect robustness of the patient (e.g., a patient with penicillin allergy receives penicillin, but has no reaction) or a fortuitous, timely intervention (e.g., a nurse happens to realize that a physician wrote an order in the wrong chart).The study of near miss cases provides a unique opportunity to learn from events where things almost go wrong. Near miss events occur at a rate many times that of the rate of sentinel events. Therefore there are many more occasions to review when a disaster was averted and pinpoint where adverse events are most likely to occur. Near miss events allow for individuals who witness an almost-accident to be recognized as heroes, a stark contrast to sentinel events where staff may be devastated and suffering from second guessing their own actions. In 'near miss' situations the resulting opportunity is one where there is no tragedy, no victim, and no injured parties. In addition it gives the Root Cause Analysis teams a chance to hone their skills in a positive and productive environment. The hope is that through these studies health care leaders can learn enough from near-miss reports that they can head off a tragedy before it occurs. Although there was an increase in sentinel event reporting in 2010 when compared with national and peer reviewed studies on rates of medical error, Maine continues to underreport sentinel events. (NQF, 2002) Certain types of cases continue to be unevenly reported. For example, wrong site surgery may be reported in one facility with regularity, often without harm to the patient, where another larger facility will report no such instances. It is difficult to discern whether the first facility is hyper-vigilant in its efforts to identify these cases and transparent in their reporting processes, or if they, in fact, have a higher rate of occurrence. National data would support the fact that wrong site surgery incidents continue to be a challenge despite widespread attention to the topic and the adoption of timeout procedures in operating suites.

In 2010, there were 10 (7%) out of the 150 cases reported in which a medication was the event or a factor in the event. The number of sentinel events involving medication errors in Maine is low when compared to national data. "Nationally, serious preventable medication errors occur in 3.8 million inpatient admissions each year." (MTC and NEHI, 2008) "37 percent of preventable medication errors result from dosing errors." (Bobb, Gleason, Husch, Feinglass, Yarnold, and Noskin, 2004) "22 percent of preventable medication reconciliation errors occur during admissions, 66 percent during transitions in care and 12 percent during discharge." (Santell, 2006) Medication errors may occur by unintentional overdosing, incorrect drug administered and omission of an ordered drug.

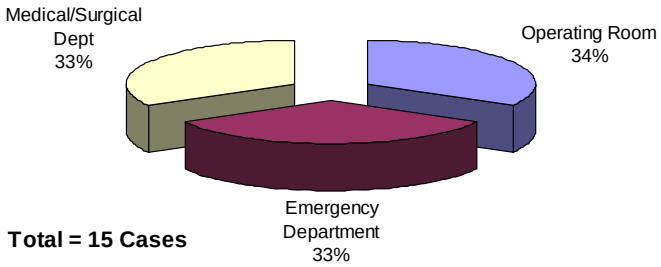
Table 38. Sentinel Events Reported with Medication Errors, by Type, 2010



The Sentinel Event Team gathers data and examines trends continuously throughout the year. The process is a dynamic one. Specific characteristics and features of cases are added to new case reviews and are included in future discussions and reports. Currently we are studying cases for aspects of 'hurrying' or 'rushing' that may help identify causative factors and subsequent remedies and best practices.

Hurrying was a factor that the sentinel event team tracked in a portion of the sentinel events reported in 2010. Of the 15 cases where hurrying was reported as a factor, 33% were on a Medical Surgical Floor, 34% in the Operating Room and 33% in the Emergency Department. Hurrying can be a result of a busy environment with noise issues and/or interruptions or a simpler situation in which the provider feels rushed to complete a specific task. It is important to evaluate events from a "hurrying" perspective to assist staff in requesting help when needed and reduce the need to rush through patient care. "Rushing and hurrying combined with noise/interruptions were prevalent concerns regarding the increase of errors for employees," according to study conducted by a research team submitted to frontline care workers at 3 hospitals. (Rathert, Fleig-Palmer, and Palmer, 2006)

Table 39. Sentinel Events Reported with Evidence Involving Hurried Providers and/or Staff, by Department, 2010



Concerns over staff supervision, lapses in training, and on-call issues have been increasingly associated with sentinel events in Maine. We continue to study these issues and will present specific findings in future reports. These are complex issues often involving critical decision making and communication failures. In anticipation of that data the final following section

begins to address these issues. Recent research also confirms previous findings that communication is a major barrier to improving patient safety and reducing the likelihood of serious adverse events. Despite work over the past decade across all segments of the health care delivery system to improve communication and prevent errors, these types of errors persist. According to the national study, “The Silent Treatment: Why Safety Tools and Checklists Aren’t Enough to Save Lives,” 85% of health care workers reported a safety tool warned them of a problem that otherwise might have been missed and could have harmed a patient. And yet, more than half, 58%, of the participants said that while they got the warning, they failed to speak up and solve the problem.

In the 2011 Sentinel Event Annual Report we will address this issue and include data on these subjects. In particular the reluctance of staff to speak up or share concerns prior to the event occurring. This may be one of our best tools to prevent a serious adverse event.

Factors to Consider

David J. Stuchiner, MD, FACEP
Consultant, Division of Licensing and Regulatory Services,
Department of Health and Human Services, Augusta, Maine

On rounds one morning, the entire team including the Chief of Surgery, the Chief Resident, Senior Residents, interns and several competitive medical students were seeing patients. Striding into a patient room, the Chief of Surgery announced, "Today we need to get an ABG." Turning to the medical students, "Who's going to draw the ABG?" "I will!" an eager medical student exclaimed. "Great, we'll discuss the result on afternoon rounds."
For those not clinically trained, arterial blood gas, (ABG) directly measures the amount of oxygen dissolved in the blood. Oxygenated blood from the heart is typically obtained from an artery in the wrist or upper thigh.

That afternoon, the team returned to the bedside. "What was the ABG?" asked the Chief of Surgery. The student reported the results. "OK, start oxygen and repeat the ABG." The patient, who had been silent throughout the entire interchange suddenly exclaims, "NO, NO, NO!!!" "Why not" asked the surgeon, "what is so terrible about an ABG?" "Well," answered the patient, "When he stuck that needle through my heart, I thought it was going to KILL me!"

While humorous and (hopefully) apocryphal, many of the issues that account for errors in medicine are embodied in this tale. Deficiencies in training, inadequate supervision, a culture of swagger and bravado, overconfidence and one sided and authoritative communication are all present.

Level of training, quality and nature of supervision, the situational culture, communication style, and clinical overconfidence are all important factors contributing to error. A complete discussion of each is beyond the scope of this article, but the bibliography contains many interesting and informative references.

There are many causes of medical error but having an inadequate understanding of one's limitations, the reluctance to ask for help, or overconfidence merits special consideration. Reluctant supervisors, lack of mentors, inadequate training, or absence of collegiality create dangerous conditions, especially for newer physicians and mid-level practitioners.

Training

Adequate training is crucial for appropriate procedural or cognitive performance. Medical staffs must ensure that physicians and allied health practitioners have appropriate training. Equally important is skills maintenance, particularly for complex, high-risk, and rarely performed procedures. For example, emergency practitioners must be adequately prepared

for endotracheal intubation. In high volume, trauma settings, where intubations are done frequently, proficiency may be maintained and assessed during routine practice, but this may not be possible in settings where this skill is performed occasionally. In these situations, consideration should be given to use of a high definition simulator such as those available at Maine Medical Center or from Lifeflight of Maine.

Supervision

In Maine, Physician Assistants practice under delegation from a physician supervisor. The relationship and the nature of the supervision must be described in a Plan of Supervision. The plan defines the limits of the PA's practice, which cannot exceed those of the supervisor. All physicians working with PAs should be familiar with the extent of the PA's practice. PAs should be encouraged to solicit assistance whenever necessary. See Chapter 2 of the Rules of the Board of Licensure in Medicine for complete details.

Delegated practice is no longer available for Nurse Practitioners in Maine. In July 2010 the regulations enabling physicians to delegate to nurse practitioners was repealed. Thereafter, a Scope of Practice defines each NP's practice. Every NP must demonstrate appropriate training and competence to perform skills within this defined scope of practice. For more information regarding NPs, see the Board of Nursing Rules.

Communication

Much has been written about the importance of adequate and appropriate communication among and between all members of the healthcare team. In investigating errors and sentinel events, problems with communication occur in almost every circumstance. Of interest here though is the importance of encouraging open, respectful, and non-demeaning dialogue amongst all parties involved in patient care. Particularly when working with PAs and Nurse Practitioners, but also with physician colleagues, the approachability and willingness of other physicians or staff to assist when asked is crucially important to maintaining a culture of safety. A consultant who demeans, or discourages questions, creates an environment that discourages future requests for help.

Overconfidence

Medical culture encourages the expression of confidence, even when it is unwarranted. The physician who frequently expresses uncertainty to his patients is seen as less qualified while those colleagues who express firm convictions are often feted. While the confident clinician may be frequently correct, overconfidence has been shown to make one less likely to question a diagnosis or re-evaluate a clinical situation when the situation starts to go awry.

Situational awareness - being fully engaged in what is happening around you, is a routine part of team training. Situational awareness can also refer to a realistic appraisal of skill and knowledge. Studies consistently demonstrate that less skilled or knowledgeable practitioners routinely overestimate their expertise or ability. While disappointing, studies demonstrate that lack of situational awareness regarding knowledge and skill occur in

physicians, too.

Recommendations

While knowledge and experience, supervision, culture, communication and overconfidence are all potential causes of error, each require different mitigation strategies.
Adequate initial training is crucial, but medical leaders should consider their responsibility to ensure that practitioners use CME to maintain, enhance, add, and refine their skills and knowledge.

Organizational culture starts with leadership. What are your organization's expectations regarding communication? Has there been formal widespread team training involving all caregivers? When help is needed, will practitioners in your organization ask, and how responsively will the request be fulfilled? Do mid-level practitioners have supportive and adequate supervision? Are consults encouraged? Are there response expectations when a consultation is requested or the Emergency Department calls?

Overconfidence can be reduced with awareness and training, but like many problems, recognition is the first step toward solution.

These factors frequently contribute to adverse outcomes. Reducing or eliminating preventable errors requires organizational commitment to use "root cause" techniques, to investigate every error or adverse outcome, understand their causes, anticipate future problems, and establish systems to recognize and prevent future occurrences.

Bibliography

Watts, B. P. (2010). Use of the Safety Attitudes Questionnaire as a Measure in Patient Safety Improvement. *Journal of Patient Safety , 6* (4), 206-209.

Woods, D., Holl, J., Angst, D., Echiverri, S., & Johnson, D. e. (2008., Aug). Improving Clinical Communication and Patient Safety: Clinician-Recommended Solutions. (B. J. Henriksen K, Ed.) *Advances in Patient Safety: New Directions and Alternative Approaches (Vol. 3: Performance and Tools , 3:*.

Berner, E. a. (2008). Overconfidence as a Cause of Diagnostic Error in Medicine. *American Journal of Medicine , 121* ((SA)), S1-S45.

Bognár, A., Barach, P., & al, e. (2008). Errors and the Burden of Errors: Attitudes, Perceptions, and the Culture of Safety in Pediatric Cardiac Surgical Teams. *The Annals of Thoracic Surgery , 85*, 1374-1381.

California Hospital Patient Safety Organization (CHPSO). (2010). Learned Behavior Contributes to Low Hand Hygiene Rates. *Patient Safety News , , 2* (7).

Croskerry, P., & Norman, G. (2008). Overconfidence in Clinical Decision Making. *American*

Journal of Medicine , 121 ((5A)).

Gawande, A. (2007). *Better: A Surgeon's Notes on Performance .* New York, NY: Metropolitan Books.

Gladwell, O. T. (2008). *Outliers: The Story of Success.* New York, NY: Little, Brown and Company.

Groopman, J. (2007). *How Doctors Think .* New York: Houghton Mifflin.

Hill KN, D. A. (n.d.). *Clinical Communication – Organisational Leadership in Communication for Safety and Quality.* Retrieved from www.isqua.org/Uploads/Conference/Abstracts/512.pdf 2.

Maine Board of Licensure in Medicine. (n.d.). *Rules*. Retrieved from Board of Licensure in Medicine: http://www.docboard.org/me/administrative/dw_rules.htm

Maine Board of Nursing. (n.d.). *Laws and Rules*. Retrieved from Maine Board of Nursing: http://www.maine.gov/boardofnursing/rules_files/rules.html

Safe Practices Consensus Committee. *Safe Practices for Better Healthcare– 2010 Update.* National Quality Forum. National Quality Forum.

Scalise, D. (n.d.). *Clinical Communication and Patient Safety Research.* Retrieved from Hospitals & Health Networks: http://www.hhnmag.com/hhnmag_app/jsp/articledisplay.jsp?dcrpath=HHNMAG/PubsNewsArticle/data/2006August/0608HHN_gatefold&domain=HHNMAG

Sexton, J., Helmreich, R., & al, e. (2006). The Safety Attitudes Questionnaire: psychometric properties, benchmarking data, and emerging research. *BMC Health Services Research , 6* (44).

Spyridon S. Marinopoulos M.D., M. e. *Effectiveness of Continuing Medical Education.* Agency for Healthcare Research and Quality. Rockville: Agency for Healthcare Research and Quality.

Terry, K. (n.d.). *Do You Hold Staff Accountable for Safety?* Retrieved from Hospital & Health Networks: http://www.hhnmag.com/hhnmag_app/jsp/articledisplay.jsp?dcrpath=HHNMAG/Article/data/02FEB2010/1002HHN_FEA_patientsafety&domain=HHNMAG

Thomas EJ, S. J. (2005). The effect of executive walk rounds on nurse safety climate attitudes: a randomized trial of clinical units[. *BMC Health Serv Res. , 5* (28).

LIST OF TABLES

REFERENCES

American Society of Anesthesiologists. (May 2003). Practice Guidelines for the Management of the Difficult Airway. Anesthesiology V 98. Retrieved on February 13, 2011 from www.anesthesiology.org.

Ballard, E., Pao, M., Horowitz, L., Lee, L., Henderson, D., and Rosenstien, D. (2008). Aftermath of Suicide in the Hospital: Institutional Response. Psychosomatics. 49:6 461-469 http://psy.psychiatryonline.org

Bernard, E. (2004). Adverse Patient Safety Events: Costs of Readmissions and Patient Outcomes Following Discharge. *Academy Health,* 21, Retrieved March 7, 2011 from http://gateway.nlm.nih.gov/MeetingAbstracts/ma?f=103624942.html

Black, J., Baharestani, M., Cuddigan, J., Dorner, B., Edsberg, L., Langemo, D. et al. (2007). National Pressure Ulcer Advisory Panel's Updated Pressure Ulcer Staging System. Dermatology Nursing, 19. Retrieved April 29, 2010 from http://www.medscape.com/view article/563159

Bobb, A., Gleason, K., Husch, M., Feinglass, J., Yarnold, P., and Noskin, G. (2004). The Epidemiology of Prescribing Errors. *Internal Medicine.* 164 (7):785-792.

Boughton, B. (April 30, 2010). Children of Parents who die by Suicide also at Risk for Psychiatric Disorders Suicide. Medscape Medical News. Retrieved 2011 from www.medscape.com

Bumgamer, S. and Haygood,V. (2009). Suicide Prevention Outside the Psychiatric Department: A Bundled Approach. Patient Safety & Quality Healthcare. 34-40.

Chicano, S., and Drolshagen, C. (2009). Reducing Hospital Acquired Pressure Ulcers. *Journal of Wound Care Nursing*. 36 (1) 45-50. Retrieved February 5, 2011 from http://journals.lww.com?jwocnonline/pages/default.aspx

Chugh, A., Williams, M.V., Grigsby, J., and Coleman, E.A. (2009). Better Transitions: Improving Comprehension of Discharge Instructions. *Frontiers of Health Services Management* 25:3 11-32.

Clancy, C. (December 2008). Better Information Helps Patients When They Leave the Hospital. Agency for Healthcare Research and Quality. Retrieved 2011, from www.ahrq.gov/consumer/cc/cc121608.htm

Coobs, H., Romm, S. (2007). Psychiatric Inpatient Suicide: A Literature Review. Primary Psychiatry. 14 120 67-74.

Coussement, J., Paepe, L., Schwendimann, R., Denhaerynck, K., Dejaeger, E., and Millisen, K. (January 30, 2008). Interventions for Preventing Falls in Acute- and Chronic-Care Hospitals: A Systematic Review and Meta-Analysis. *Journal of American Geriatric Society*, 56(1):29-36, Retrieved April 15, 2010 from http://medscape.com/view article/568495

Croskerry, P. (2005). Diagnostic Failure: A Cognitive and Affective Approach. Retrieved March 3, 2011 from http://www.ncbi.nlm.nih.gov/books/NBK20487/

de Laat, E.H., Pickkers, P., Schoonhoven, L., Verbeek, A.L., Feuth, T., and van Achterberg, T. (2007). Guideline implementation results in a decrease of pressure ulcer incidence in critically ill patients. Critical Care Medicine 35(3):815-820.

Dubovsky, S. (January 4, 2010). Suicide – New Data on Causes and Cures. *Journal Watch Psychiatry.* Retrieved 2011 from http://psychiatry.jwatch.org/cgi/content/full/2010/104/7#

Elliot, R., McKinley, S., and Fox, V. (July 1, 2008). Quality Improvement Program to Reduce the Prevalence of Pressure Ulcers in an Intensive Care Unit. *American Journal of Critical Care*, 17. Retrieved January 23, 2011 from www.ajcconline.org

Furlong, B. (n.d). Read This Before You Go: Hospital Discharge Instructions Often Not Followed. Retrieved March 7, 2011 from http://georgetownuniversityhospital.org/blank.cfm?print=yes&id=556262

Gilboy, N., and Howard, P. (2009). Research to Practice: Comprehension of Discharge Instructions. *Advanced Emergency Room Nursing Journal,* 31, Retrieved March 7, 2011 from http://www.nursingcenter.com/library/static.asp?pageid=860356

Haines, TP., Hill, K., Walsh, W., and Osborne, R. (June 2007). Design-related bias in hospital fall risk screening tool predictive accuracy evaluations: systematic review and meta-analysis. *Journal of Gerontology,* 62(6):664-72, Retrieved February 28, 2011 from http://www.ncbi.nlm.nih.gov/sites/entrez?Db=pubmed&CmdShowDetailView&Term.

Henriksen, K. (2005). Diagnostic Failure: A Cognitive and Affective Approach. Advances in Patient Safety. 2 Retrieved March 3, 2011 from www.ncbi.nlm.nih.gov/bookes/NBK20487/

Institute for Healthcare Improvement. (2008). 5 Million Lives Campaign. Getting Started Kit; Prevent Pressure Ulcers How-to-Guide. Retrieved from www.ihi.org/IHI/Programs/Campaign

Institute for Healthcare Improvement. (n.d.). Mentor Hospital Registry: Pressure Ulcer Prevention. Retrieved August 25, 2010, from http://www.ihi.org/IHI/Programs/Campaign/mentor_register_pu.htm

Jacobs, D., and Brewer, M. (2004). APA Practice Guideline Provides Recommendations for Assessing and Treating Patients With Suicidal Behaviors. Psychiatric Annals 34:5

Janofsky, J. (2009). Reducing Inpatient Suicide Risk: Using Human Factor Analysis to Improve Observation Practices. American Academy of Psychiatry Law. 37 15-24.

Joint Commissioner. (August 2006).Improving Handoff Communications: Meeting National Patient Safety Goal 2E. Joint Commission Perspectives on Patient Safety. 6(8) pp 9-15(7).

Jolly, B.T., Scott, J.L., and Sanford, S.M. (1995). Simplification of Emergency Department Discharge Instructions Improves Patient Comprehension. *Annals of Emergency Medicine*, 26, Retrieved March 3, 2011 from http://www.sicencedirect.com/science?_ob=ArticleURL&_udi=B6WBO

King, H., Hohenhaus, Sl, & Salisbury, M. (May 2007). Team-STEPPS strategies and tools to enhance performance and patient safety (Slide number 26). Retrieved March 22, 2011 from http://www.health.state.ny.us/professionals/patients/patient_safety/conference/2007

Kline, J. (2004). Crash Course in Decision Making. Academy of Emergency Medicine. Vol. II No. 2. Retrieved November 15, 2010 from www.aemj.org

Kohn, L., Corrigan, J., and Donaldson, M. (1999). To Err Is Human: Building a Safer Health System. Institute of Medicine.

Kovacs, G., and Croskerry, P. (1999). Clinical Decision Making: An Emergency Medicine Perspective. Academic Emergency Medicine 6:947-952.

Massachusetts Technology Collaborative (MTC) and New England Healthcare Institute (NEHI). (2008). Saving Lives, Saving Money: The Imperative for Computerized Physician Order Entry in Massachusetts Hospitals. Retrieved March 3, 2010 from www.nehi.net/publications/8/saving_lives_saving_money.

Maxfield, D., Grenny, J., Lavandero, R., Groah, L., "The Silent Treatment, Why Safety Tools and Checklists Aren't Enough to Save Lives", Vital Smarts, AORN, and AACN, 2011

Michigan Health Council. (2007). Sparrow's Inpatient Fall Prevention Initiative. Retrieved February 28, 2011 from www.michigancenterfornursing.org?mimages/alexander.pdf

Mills, P., Watts, V., Miller, S., Kemp, J., Knox, K., DeRosier, J., and Bagian, J. (2010). A Checklist to Identify Inpatient Suicide Hazards in Veterans Affairs Hospitals National Patient Safety Goals, Joint Commission on Accreditation of Healthcare Organizations. 36(2)

Modest, A., and Finnerty, N. (n.d.). BOOSTing Care Transitions: Society of Hospital Medicine. Retrieved December 03, 2010 from http://www.hospitalmedicine.org/ResourceRoomRedesign/RR_CareTransitions/html

National Center for Patient Safety 2004 Falls Toolkit. (2004). Retrieved December 3, 2010, from http://www.patientsafety.gov/SafetyTopics/fallstoolkit/index.html

National Quality Forum (NQF). (2002). Serious reportable events in healthcare: A consensus report. Washington, DC: The National Quality Forum.

Oliver, D., Daly, F., Martin, F.C., and McMurdo, M.E.T. (2004). Risk factors and risk assessment tools for falls in hospital in-patients; a systematic review. *Age and Ageing*, 33:122-130. Retrieved September 13, 2010 from http://ageing.oxfordjournals.org

Pennsylvania Patient Safety Advisory. (June 2008). Care at Discharge – A Critical Juncture for Transition to Post Hospital Care. Retrieved on January 12, 2011, from www.psa.state.pa.us

Pennsylvania Patient Safety Authority. (2010). A Physician Checklist for Diagnosis. Retrieved February 23, 2011 from http://www.patientsafetyauthority.org/ADVISORIES/AdvisoryLibrary/2010/Sep7

Powell, J., Geddes, J., and Hawton, K. (2000). Suicide in psychiatric hospital in-patients. *The British Journal of Psychiatry.* Retrieved 2011 from http://bjp.rcpsych.org/cgi/content/abstract/176/3/266

Rathert, C., Fleig-Palmer, M., and Palmer, D. K. (2006). Minimizing Medical Errors: A Qualitative Analysis of Health Care Providers' View on Improving Patient Safety. Journal of Applied Management and Entrepreneurship. Retrieved on March 21, 2011 from www.allbusiness.com/company-activities-management/operations-quality-control

Reddy, M., Gill, S., Rochon, P. (2006). Preventing Pressure Ulcers: A Systematic Review. *JAMA,* 296, Retrieved February 3, 2011 from www.jama.com

Santell, JP. (2006). Reconciliation failures lead to medication errors. Joint Commission Journal of Quality in Patient Safety. 32 (4):225-229.

Shapiro, S. (2010). Decision Making Under Pressure. The Futurist. Retrieved on January 14, 2011 from www.wfs.org

The Joint Commission (1998). Sentinel Event Alert. *Inpatient Suicides: Recommendations for Prevention.* Retrieved May 3, 2010 from http://www.jointcommission.org/SentinelEvents/SentinelEventAlert/sea_7/htm

The Truax Group. (2010). Patient Safety Tip of the Week Diagnostic Error. Retrieved March 3, 2011 from http://www.patientsafetysolutions.com/docs/Septemeber_28_2010_Diagnostic_Error.htm

The Truax Group. (February 2011). What's New in the Patient Safety World Updated Fall Prevention Guidelines. Retrieved March 3, 2011 from http://www.patientsafetysolutions.com/docs/February_2011_Whats_New_in_the_Patient_Safety_World

Thomas, E., and Petersen, L. (2003). Measuring Errors and Adverse Events in Health Care. Journal of General Internal Medicine, 18:61-67.

Tishler, C., and Riess, N., (2009). Inpatient Suicide: preventing a common sentinel event. General Hospital Psychiatry. 31 103-109.

Tzeng, H., and Yin, C. (2008). Nurses' Solutions to Prevent Inpatient Falls in Hospital Patient Rooms. *Nursing Economics,* 26(3):179-187., Retrieved April 15, 2010 from http://www.medscape.com/viewarticle/57694_print

Veterans Health Administration. (2009). Attempted Hanging from a door in a locked mental health unit. Patient Safety Alert. Retrieved May 3, 2010 from www.va.gov/ncps/alerts/AL10-03WWW.pdf

Walraven, C. (2004). Continuity of Care and Patient Outcomes After Hospital Discharge. *Journal of General Internal Medicine*, 19(6), Retrieved March 3, 2011 from http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1492386/

Zavala, S. Shaffer, C. (2009). Do Patients Understand Discharge Instructions? Journal of Emergency Nursing. Retrieved December 3, 2010 from http://sciencedirect.com/science?_obArticleURL&_udi=B6WJ5-4XWMGP3-2&

Zeng-Treitler, Q., Kim, H., and Hunter, M. (2008). Improving Patient Comprehension and Recall of Discharge Instructions by Supplementing Free Texts with Pictographs. Retrieved January 23, 2011 from AMIA 2008 Symposium Proceedings.

Zhani, E. (July 28, 2010). Joint Commission Urges Americans to 'Speak Up' to Prevent Falls. Retrieved March 7, 2011 from http://www.jointcommission.org/joint_commission_urges_americans_to_'speak_up'_to_prevent_falls

APPENDIX A

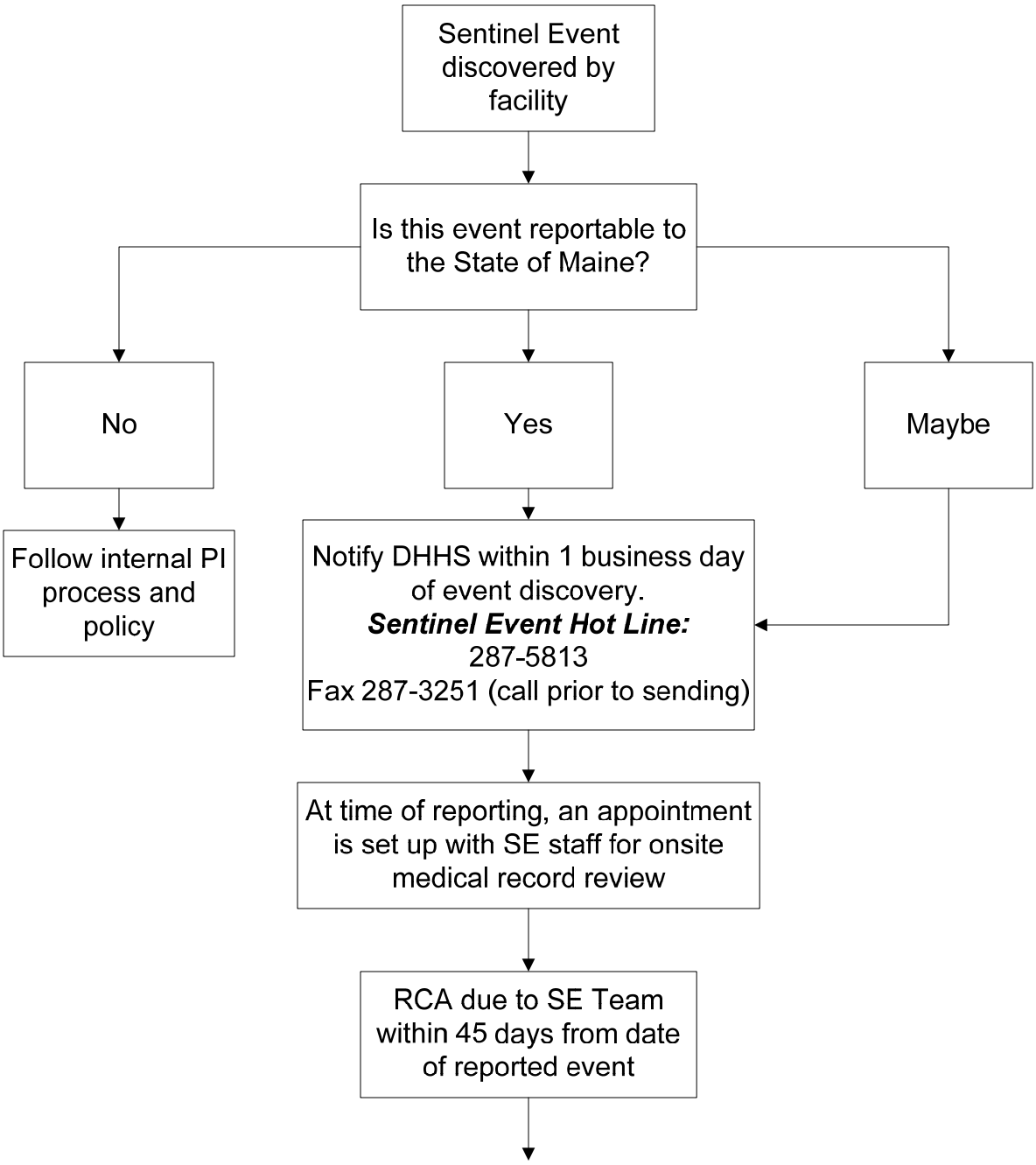
Additional Website Resources

www.anesthesiology.org
http://psy.psychiatryonline.org
http://www.medscape.com
www.ahrq.gov
http://www.ncbi.nlm.hih.gov
www.nursingcenter.com
www.ihi.org
http://hospitalmedicine.org
http://www.patientsafety.gov
www.psa.state.pa.us
http://www.patientsafetyauthority.org
http://www.jointcommission.org
http://www.patientsafetysolutions.com
www.va.gov/ncps/alerts
www.who.int/patientsafety
www.npsf.org
www.acog.org
www.patientsafety.gov/patients
www.oig.hhs.gov/oei/reports/oie

APPENDIX B

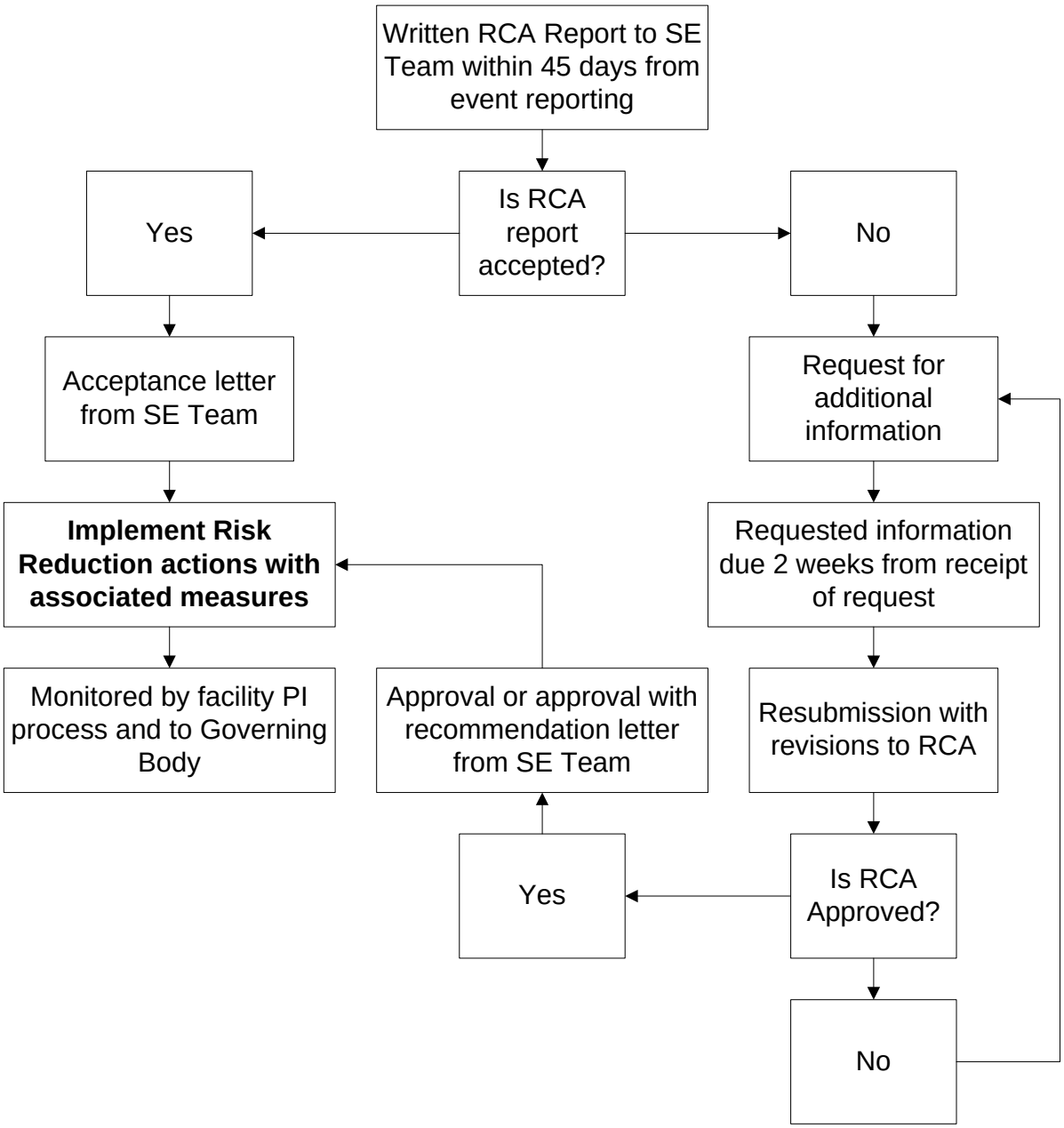
State of Maine
Department of Health and Human Services
Division of Licensing and Regulatory Services
Sentinel Event Process Flow

Part 1



State of Maine
Department of Health and Human Services
Division of Licensing and Regulatory Services
Sentinel Even Process Flow

Part 2



APPENDIX C

Acadia Hospital Corp.
268 Stillwater Avenue
PO Box 422
Bangor, Maine 04402-0422

Suicide Risk Assessment

Patient ID

☐ Admission ☐ Mid-Treatment ☐ Discharge

MODIFIABLE RISK FACTORS (Check all that apply)

Factors that Indicate High Risk Level
**Any checked risk factor in this section indicates a high risk rating*

- ☐ Intent for self harm or suicide
- ☐ Current plan for suicide
- ☐ Current suicidal ideation
- ☐ Means available
- ☐ Potential lethality of means
- ☐ Intoxication
- ☐ Acute delirium

Additional Modifiable Risk Factors

- ☐ Capacity to take action (increased organization or increased energy)
- ☐ Recent losses or disruption of care
- ☐ Recent loss of family or significant relationship
- ☐ Substance abuse / dependence
- ☐ Physical pain
- ☐ Panic attacks
- ☐ Impulsivity
- ☐ Aggressivity
- ☐ Agitation
- ☐ Psychic distress / anxiety / pain
- ☐ Vulnerability to painful affective states
- ☐ Hopelessness
- ☐ Helplessness
- ☐ Despair
- ☐ Decreased self esteem
- ☐ Loss of pleasure / interest
- ☐ Decreased concentration
- ☐ Perfectionism
- ☐ Insomnia
- ☐ Current abuse
- ☐ New psychotropic medication
- ☐ Impoverished thought content
- ☐ Polarized thinking
- ☐ Psychotic state
- ☐ Command hallucinations
- ☐ Sudden improvement in symptoms
- ☐ Evasive or superficial engagement with staff
- ☐ New patient / not known to treatment team

NON-MODIFIABLE RISK FACTORS (Check all that apply)

Factors that Indicate High Risk Level
**Any checked risk factor in this section indicates a high risk rating*

- ☐ Recent suicide attempt
- ☐ History of rehearsal behaviors for suicide
- ☐ Chronic or terminal illness

Additional Modifiable Risk Factors

- ☐ Prior suicide attempt
- ☐ Discharge from psychiatric hospital in last 3 months
- ☐ Recognition of global functional deterioration due to psychiatric illness
- ☐ Mood disorder
- ☐ Male
- ☐ Widowed, divorced, single
- ☐ Older than 55 y/o
- ☐ 19 years old or younger
- ☐ Caucasian
- ☐ Poor social support
- ☐ Unemployment
- ☐ Loss of freedom
- ☐ Economic crisis
- ☐ Schizophrenia
- ☐ Panic disorder
- ☐ Cluster B personality disorder
- ☐ Dementia
- ☐ Presence of comorbidity (more than one psychiatric disorder)
- ☐ Family history of attempted or completed suicide
- ☐ Childhood abuse / neglect
- ☐ Family history of psychiatric illness

PROTECTIVE FACTORS (Check all that apply)

- ☐ Children in home
- ☐ Religious prohibition
- ☐ Satisfaction with life
- ☐ Sense of responsibility to family and social supports / connections
- ☐ Pets in the home
- ☐ Capacity for self-observation
- ☐ Positive coping skills / potential
- ☐ Positive problem solving
- ☐ Capacity to self-regulate
- ☐ Capacity to realistically appraise one's self and one's life circumstances
- ☐ Capacity to establish therapeutic alliance
- ☐ Willingness to comply with treatment plan
- ☐ Motivated to participate in outpatient services
- ☐ History of participation in outpatient treatment
- ☐ Future oriented in thinking
- ☐ Other: _____

OVERALL RISK RATING: (Check all that apply)

Acute	Chronic	
☐ Low	☐ Low	*(high rating should occur with presence of any highest risk factor)*
☐ Moderate	☐ Moderate	
☐ High	☐ High	

COMMENTS ON ASSESSMENT OF RISK

100001126

Signature of Person Completing Form: _____ Date: _____ Time: _____

Signature of LIP (Physician, PMH-NP): _____ Date: _____ Time: _____

MR219 (8/19/10)

RIGHT TO KNOW ADVISORY COMMITTEE
PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE

DRAFT AGENDA
December 8, 2011
9:00 a.m.
Room 438, State House, Augusta

Convene

- Welcome and Introductions
- Existing public records exceptions awaiting recommendations

1. (54) 22 MRSA §8754 - sentinel events (AG, DHHS, other interested parties): *discussion*
2. (66) 24 MRSA §2510 (and §2505) professional competence reports (Medical licensing boards, other interested parties): *finalize draft?*
3. (67) 24 MRSA §2510-A professional competence review records (Medical licensing boards, other interested parties): *discussion? review draft?*
4. (57) 23 MRSA §63 - right-of-way divisions' records (MTA and MaineDOT): *review draft*
5. (18) & (19) 22 MRSA §§1696-D and 1696-F - Community Right-to-know: *review letter*
6. (62) 23 MRSA §8115 - Northern New England Passenger Rail Authority (NNEPRA): *review new draft, discussion*

- Other?
- Scheduling future subcommittee meetings, if necessary

Adjourn

Scheduled meetings:
Thursday, December 8, 2011, 10:00 a.m. Bulk Records and Legislative Subcommittees
Thursday, December 8, 2011, 1:00 p.m., Right to Know Advisory Committee

G:\STUDIES 2011\Right to Know Advisory Committee\Agendas\DRAFT AGENDA for Public Records Subcommittee December 8 2011.doc
(11/29/2011 11:28:00 AM)

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
15	22	1555-D	1	Title 22, section 1555-D, subsection 1, relating to lists maintained by the Attorney General of known unlicensed tobacco retailers	~~DHHS~~ OAG	• No requests • RECOMMEND: Repeal subsection	11/4/10: tabled 9/12/11: AMEND - wait for AG draft 9/29/11: AMEND and letter to HHS	11/17: Amend with letter to HHS
18	22	1696-D		Title 22, section 1696-D, relating to the identity of chemical substances in use or present at a specific location if the substance is a trade secret	DHHS	• No record of any experience • No changes	11/4/10: tabled 9/12/11: REPEAL 5-1 (LP) 9/29/11: wait for additional information 11/17/11: No change with letter to ENR and HHS – review letter	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
19	22	1696-F		Title 22, section 1696-F, relating to the identity of a specific toxic or hazardous substance if the substance is a trade secret	DHHS	• No record of any experience • No changes	11/4/10: tabled 9/12/11: REPEAL 5-1 (LP) 9/29/11: wait for additional information11/17/11: No change with letter to ENR and HHS – review letter	
20	22	1711-C	2	Title 22, section 1711-C, subsection 2, relating to hospital records concerning health care information pertaining to an individual	DHHS	• Not a public records exception: info in hands of private entities, allows disclosure to Licensing	11/4/10: tabled 9/12/11: no change	11/17: No change

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
21	22	1828		Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities	DHHS	• Request generally not denied by identifying information is redacted • No changes • Surveys must be reviewed by federal CMS before can be released	11/4/10: tabled 9/12/11: tabled for more info (AG) 9/29/11: no change	11/17: No change
22	22	1848	1	Title 22, 1848, subsection 1, relating to documents and testimony given to Attorney General under Hospital and Health Care Provider Cooperation Act	OAG	• Confidential under 10 §1107 and 16 §614 • No requests in recent years • No change • DHHS, Div of Licensing and Regulatory Services; Maine Hospital Association	11/4/10: tabled 9/12/11: no change 5-1 (SB)	11/17: No change (11-1 (SBellows))

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
33	22	2706	4	Title 22, section 2706, relating to prohibition on release of vital records in violation of section; recipient must have "direct and legitimate interest" or meet other criteria Amended in 2011, PL 2011, c. 58	DHHS	• Denial of access occurs daily pursuant to statute • No changes	11/4/10: tabled 9/12/11: no change	11/17: No change
34	22	2706-A	6	Title 22, section 2706-A, subsection 6, relating to adoption contact files	DHHS	• No FOA requests; only requests from adoptees and families • Medical info protected by HIPAA • No changes	11/4/10: tabled 9/12/11: no change	11/17: No change
35	22	2769	4	Title 22, section 2769, subsection 4, relating to adoption contact preference form and medical history form	DHHS	• No FOA requests; only requests from adoptees and families • Medical info protected by HIPAA • No changes	11/4/10: tabled 9/12/11: no change	11/17: No change

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
36	22	3022	8, 12, 13	Title 22, section 3022, subsections 8, 12 and 13, relating to medical examiner information	OAG	• Police reports and medical records: 3-5 requests per year • Suicide notes: requests extremely rare • Other materials: available to attorneys in court proceedings • Communications : almost never requested • No changes	11/4/10: tabled 9/12/11: no change	11/17: No change
37	22	3034	2	Title 22, section 3034, subsection 2, relating to the Chief Medical Examiner missing persons files	OAG	• No requests • RECOMMEND: give CME discretion to make identifying info public	11/4/10: tabled 9/12/11: AMEND 9/29/11: wait for review of language 11/17/11: draft approved	11/17: Amend
38	22	3188	4	Title 22, section 3188, subsection 4, relating to the Maine Managed Care Insurance Plan Demonstration for uninsured individuals	DHHS	• Never implement • RECOMMEND repeal section	11/4/10: tabled 9/12/11: letter to HHS about repeal	11/17: No change with letter to HHS

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
39	22	3192	13	Title 22, section 3192, subsection 13, relating to Community Health Access Program medical data	DHHS	• Never implement • RECOMMEND repeal section	11/4/10: tabled 9/12/11: letter to HHS about repeal	11/17: No change with letter to HHS
44	22	4008	1	Title 22, section 4008, subsection 1, relating to child protective records	DHHS	• Rarely applied in FOA requests; apply when parties in litigation that does not involve the department request child protective records • No changes (must comply with federal law)	11/4/10: tabled 9/12/11: no change	11/17: No change
53	22	8707		Title 22, section 8707, relating to the Maine Health Data Organization	MHDO	• Data release rules • Only two requests, one concerned paying for the data • No changes	10/18: Table - sub-§2 no change; sub-§4 why MHCFC link? 9/12/11: tabled 9/29/11: AMEND	11/17: Amend

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
54	22	8754		Title 22, section 8754, relating to medical sentinel events and reporting	~~MHDO~~ DHHS	• No requests known • Amend: "incidents reports and similar documents"	11/4/10: tabled 9/12/11: tabled - more info and amendment language (AG) 9/29/11: Tabled 11/17/11: Tabled	
55	22	8824	2	Title 22, section 8824, subsection 2, relating to the newborn hearing program	DHHS	• No requests for personally identifiable info • Protected by HIPAA • No changes • Involve Advisory Committee if changes	11/4/10: tabled 9/12/11: no change	11/17: No change
56	22	8943		Title 22, section 8943, relating to the registry for birth defects	DHHS	• No requests for personally identifiable info • Protected by HIPAA • No changes • Involve Advisory Committee if changes	11/4/10: tabled 9/12/11: no change	11/17: No change

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
57	23	63		Title 23, section 63, relating to records of the right-of-way divisions of the Department of Transportation and the Maine Turnpike Authority	MTA & DOT	• Covers two categories of records • Invoked rarely • Subject of two Law Court cases, one LD (not enacted) • No changes	11/4/10: tabled 9/12/11: tabled - invite to next meeting 9/29/11: AMEND - review draft 11/17/11: tabled for clarification	
59	23	1980	2-B	Title 23, section 1980, subsection 2-B, relating to recorded images used to enforce tolls on the Maine Turnpike Amended by PL 2011, c. 302, §18	MTA	• Violation Enforcement System; records license plates only • See 23 §1982 • No changes	11/4/10: tabled 9/12/11: no change	11/17: No change
60	23	1982		Title 23, section 1982, relating to patrons of the Maine Turnpike	MTA	• Toll violation system, as well as any other records • Comes into play several times a year; never used in litigation in which MTA is a party • No changes	11/4/10: tabled 9/12/11: no change	11/17: No change

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
61	23	4251	10	Title 23, section 4251, subsection 10, relating to records in connection with public-private transportation project proposals of at least $25,000,000 or imposing new tolls	DOT	• Law became effective July 12, 2010 • No experience • No changes	11/4/10: tabled 9/12/11: tabled - invite to next meeting 9/29/11: no change	11/17: No change

62	23	8115		Title 23, section 8115, relating to the Northern New England Passenger Rail Authority	NNEPRA	• Has not received any requests
						• Four types of records
						  • Trade secrets
						  • Records and correspondence relating to negotiations
						  • Estimates of cost on projects put out to bid
						  • Employment applications
						• No changes
							11/4/10: tabled
							9/12/11: tabled - redraft for consistent language and policy; need review by NNEPRA
							9/29/11: Tabled, need comments on draft
							11/17/11: amend, divided about language
								11/17: Tabled

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
66	24	2510	1	Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure)	BOI has no role BdLicMed: ‣ cited 2-3 times per year ‣ PROPOSED: clarify confidentiality applies to all patient complaints MeHospAssn: ‣ MHA does not administer ‣ Not aware of requests ‣ No changes BdofDentalEx: ‣ No requests ‣ n/a MeMedAssn: ‣ MMA does not administer ‣ Don't know how frequent ‣ No changes	9/27: table - ask medical licensing boards for input; *Consumers for Affordable Health Care input requested* 11/4/10: Tabled until 2011 9/12/11: tabled for Consumers for Affordable Health Care comments 9/29/11: AMEND (with §2505); needs review 11/17/121: tabled, waiting for Medical Licensing Boards	

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

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

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
68	24	2604		Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure)	BOI has no role BdLicMed: ‣ 100-200 times per year ‣ No recommendation (other states allow to be released) BdofDentalEx: ‣ No requests ‣ n/a MedicalMutual: ‣ Zero requests ‣ No changes MeMedAssn: ‣ MMA does not administer ‣ No changes	9/27: table - ask medical licensing boards for input 11/4/10: tabled until 2011 9/12/11: tabled - invite Med Lic Bd 9/29/11: no change	11/17: No change

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
69	24	2853	1-A	Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) (ME Medical Assoc., ME trial Lawyers Assoc., ME State Bar Assoc.)	BOI has no role • Records filed with the Superior Court BdLicMed: › Cited 100-200 times per year, but doesn't usually receive court documents › No changes MeHospAssn: › Not aware if requests are made to courts › No changes BdofDentalEx: › No requests MedicalMutual: › No direct role in administration › No changes MeMedAssn: › MMA does not administer › No changes	9/27: table - ask medical licensing boards, Maine Trial Lawyers for input 11/4/10: tabled until 2011 9/12/11: no change 9/29/11: no change	11/17: No change

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
70	24	2857	1, 2	Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) (ME Medical Assoc., ME trial Lawyers Assoc., ME State Bar Assoc.)	BOI has no role • Records of Screening Panels (Judicial Branch) BdLicMed: ‣ Not cited or applied; Bd doesn't receive panel information ‣ No recommendation MeHospAssn: ‣ Only partially administer ‣ Not aware about requests ‣ No changes BdofDentalEx: ‣ No requests ‣ n/a MedicalMutual: ‣ No direct role in administration ‣ No changes MeMedAssn: ‣ MMA does not administer ‣ No changes	9/27: table - ask medical licensing boards, Courts, Maine Trial Lawyers for input 11/4/10: tabled until 2011 9/12/11: no change	11/17: No change

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
73	24-A	216	2, 5	Title 24-A, section 216, subsections 2 and 5, relating to records of the Bureau of Insurance	BOI	• Records associated with actual or claimed violations of Insurance Code • 2-4 requests per month • Subpoena, hearing on motion to quash • No changes • MTLA: no changes	9/27: table - ask Maine Trial Lawyers for input 9/12/11: tabled - for MTLA input 9/29/11: no change	11/17: No change
94	24-A	2393	2	Title 24-A, section 2393, subsection 2, relating to workers' compensation pool self-insurance and surcharges	BOI	• No FOA requests • No changes	10/18: Table - obsolete? Rewrite to ensure confidentiality of old records? 9/29/11: AMEND to address when program no longer exists	11/17: Amend

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
112	24-A	6807	7	Title 24-A, section 6807, subsection 7, paragraph A, relating to individual identification data of viators	BOI	• To date, the Bureau has not conducted any examinations of life settlement companies. The exception has not been cited as a basis of denial of a FOA request • No changes	10/18: Table - ask TRecord, (subpoena) 11/4/10: divided report - no change 3-1 (SBellows) - but flag that inconsistent with treatment of examination reports 9/12/11: no action 9/29/11: letter to IFS	11/17: No change with letter to IFS

Reinsch, Margaret

From: McCarthyReid, Colleen
Sent: Wednesday, December 07, 2011 10:15 AM
To: ajhiggins@mpbn.net; Diana DeJesus; Nass, RepJoan; Percy L. Brown & Son, Inc. ; Perry Antone; Pistner, Linda; plbrownplumbing@myfairpoint.net; Sen. Hastings; Shenna Bellows
Cc: Reinsch, Margaret
Subject: RTKAC Public Records Subcommittee--Sentinel Events Exception

All,

In anticipation of your discussion of the sentinel events provision in Title 22, section 8754, we have reviewed the laws of 27 states, including Maine, that require hospitals and other health care facilities to report sentinel events. Of those states laws, 15 states have a specific confidentiality provision in their sentinel event reporting law similar to Maine's provision. These 15 state laws designate any reports of sentinel events confidential and also include language stating that the report and information are not subject to subpoena or discovery or admissible in any civil or criminal proceeding. The states are: Connecticut, Florida, Illinois, Kansas, New Hampshire, New Jersey, New York, Nevada, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont and Wyoming. Like Maine, all of the state laws do require the state agency receiving the reports to compile an annual report (which is a public record) with aggregate information about sentinel events occurring in that state.

The 11 other state laws make no mention of confidentiality in their sentinel events laws, but the records may be designated as confidential in another section of the law or rule, e.g., general public records provisions. These states are: California, Colorado, Indiana, Kansas, Maryland, Massachusetts, Minnesota, Ohio, South Carolina, South Dakota and Washington.

For a sense of what type of information is made public regarding sentinel events in Maine, a reminder that we have posted a link on the RTKAC website to the most recent annual report on sentinel events prepared by the Department of Health and Human Services.

The link is found at http://www.maine.gov/legis/opla/sentinel_events_report.pdf

Please let us know if you have any questions or would like additional information. See you on Thursday.

Colleen and Peggy

Colleen McCarthy Reid, Esq.
Legislative Analyst
Joint Standing Committee on Insurance and Financial Services
Office of Policy and Legal Analysis
13 State House Station
Augusta, Maine 04333-0013
(207) 287-1670
Colleen.mccarthyreid@legislature.maine.gov

Public Records Exceptions Subcommittee

Exception #54	**Sentinel events**

Sec. 1. 24 MRSA §8754 is amended to read:

§8754. Division duties

The division has the following duties under this chapter.

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

A. The division may conduct on-site visits to health care facilities to determine compliance with this chapter.

B. Division personnel responsible for sentinel event oversight shall report to the division's licensing section only incidences of immediate jeopardy and each condition of participation in the federal Medicare program related to the immediate jeopardy for which the provider is out of compliance.

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

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

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

(1) Subject to public access under Title 1, chapter 13, except for data developed from the reports that do not identify or permit identification of the health care facility;

(2) Subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity; or

(3) Admissible as evidence in any civil, criminal, judicial or administrative proceeding.

B. The transfer of any information to which this chapter applies by a health care facility to the division or to a national organization that accredits health care facilities may not be treated as a waiver of any privilege or protection established under this chapter or other laws of this State.

C. The division shall take appropriate measures to protect the security of any information to which this chapter applies.

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

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

(1) Any final administrative action;

(2) Information independently received pursuant to a 3rd-party complaint investigation conducted pursuant to department rules; or

(3) Information designated as confidential under rules and laws of this State.

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

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

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception #66	**Professional competence reports**

Sec. 1. 24 MRSA §2505 is amended to read:

§2505. Committee and other reports

Any professional competence committee within this State and any physician licensed to practice or otherwise lawfully practicing within this State shall, and any other person may, report the relevant facts to the appropriate board relating to the acts of any physician in this State if, in the opinion of the committee, physician or other person, the committee or individual has reasonable knowledge of acts of the physician amounting to gross or repeated medical malpractice, habitual drunkenness, addiction to the use of drugs, professional incompetence, unprofessional conduct or sexual misconduct identified by board rule. The failure of any such professional competence committee or any such physician to report as required is a civil violation for which a fine of not more than $1,000 may be adjudged.

Except for specific protocols developed by a board pursuant to Title 32, section 1073, 2596-A or 3298, a physician, dentist or committee is not responsible for reporting misuse of alcohol or drugs or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol or drugs discovered by the physician, dentist or committee as a result of participation or membership in a professional review committee or with respect to any information acquired concerning misuse of alcohol or drugs or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol or drugs, as long as that information is reported to the professional review committee. Nothing in this section may prohibit an impaired physician or dentist from seeking alternative forms of treatment.

The confidentiality of reports made to a board under this section is governed by this chapter.

Sec. 2. 24 MRSA § 2510, sub-§1 is amended to read:

§2510. Confidentiality of information

1. Confidentiality; exceptions. Any reports, information or records received and maintained by the board pursuant to this chapter, including any material received or developed by the board during an investigation shall be confidential, except for information and data that is developed or maintained by the board from reports or records

received and maintained pursuant to this chapter or by the board during an investigation and that does not identify or permit identification of any patient or physician; provided that the board may disclose any confidential information only:

A. In a disciplinary hearing before the board or in any subsequent trial or appeal of a board action or order relating to such disciplinary hearing;

B. To governmental licensing or disciplinary authorities of any jurisdiction or to any health care providers or health care entities located within or outside this State that are concerned with granting, limiting or denying a physician's privileges, but only if the board includes along with the transfer an indication as to whether or not the information has been substantiated by the board;

C. As required by section 2509, subsection 5;

D. Pursuant to an order of a court of competent jurisdiction; ~~or~~

E. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any patient or physician is first deleted~~.~~; or

F. To other state or federal agencies when the information contains evidence of possible violations of laws enforced by those agencies.

2. Confidentiality of orders in disciplinary proceedings. Orders of the board relating to disciplinary action against a physician, including orders or other actions of the board referring or scheduling matters for hearing, shall not be confidential.

2-A. Confidentiality of letters of guidance or concern. Letters of guidance or concern issued by the board pursuant to Title 10, section 8003, subsection 5, paragraph E, are not confidential.

3. Availability of confidential information. In no event may confidential information received, maintained or developed by the board, or disclosed by the board to others, pursuant to this chapter, or information, data, incident reports or recommendations gathered or made by or on behalf of a health care provider pursuant to this chapter, be available for discovery, court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision or failure to provide health care services. This confidential information includes reports to and information gathered by a professional review committee.

Public Records Exceptions Subcommittee
Proposed draft language changes

4. Penalty. Any person who unlawfully discloses such confidential information possessed by the board shall be guilty of a Class E crime.

5. Physician-patient privilege; proceedings by board. The physician-patient privilege shall, as a matter of law, be deemed to have been waived by the patient and shall not prevail in any investigation or proceeding by the board acting within the scope of its authority, provided that the disclosure of any information pursuant to this subsection shall not be deemed a waiver of such privilege in any other proceeding.

6. Disciplinary action. Disciplinary action by the Board of Licensure in Medicine shall be in accordance with Title 32, chapter 48; disciplinary action by the Board of Osteopathic Licensure shall be in accordance with Title 32, chapter 36.

SUMMARY

This amendment makes 2 changes with regard to the treatment of confidential information held by a medical licensing board.

Title 24, section 2505 allows professional competence committees, physicians and any other person to report a physician to the appropriate licensing board. This amendment clarifies that the confidentiality provisions of the Maine Health Security Act, of which section 2505 is a part, govern the confidentiality of all such reports.

Title 24, section 2510 is amended to authorize medical licensing boards to share confidential information with state and federal agencies when the information contains evidence of possible violations of laws enforced by those agencies.

G:\STUDIES 2011\Right to Know Advisory Committee\Existing Public Records Exceptions Review\Draft of # 66.doc (12/7/2011 10:04:00 AM)

Public Records Exceptions Subcommittee

Exception #67 Confidentiality of professional competence reports

Sec. 1. 24 MRSA §2506 is amended to read:

§2506. Provider, entity and carrier reports

A health care provider or health care entity shall, within 60 days, report in writing to the disciplined practitioner's board or authority the name of any licensed, certified or registered employee or person privileged by the provider or entity whose employment or privileges have been revoked, suspended, limited or terminated or who resigned while under investigation or to avoid investigation for reasons related to clinical competence or unprofessional conduct, together with pertinent information relating to that action. Pertinent information includes: a description of the adverse action; the name of the practitioner involved; the date, the location and a description of the event or events giving rise to the adverse action; and identification of the complainant giving rise to the adverse action. Upon written request, the following information must be released to the board or authority within 20 days of receipt of the request: the names of the patients whose care by the disciplined practitioner gave rise to the adverse action; medical records relating to the event or events giving rise to the adverse action; written statements signed or prepared by any witness or complainant to the event; and related correspondence between the practitioner and the provider or entity. The report must include situations in which employment or privileges have been revoked, suspended, limited or otherwise adversely affected by action of the health care practitioner while the health care practitioner was the subject of disciplinary proceedings, and it also must include situations where employment or privileges have been revoked, suspended, limited or otherwise adversely affected by act of the health care practitioner in return for the health care provider's or health care entity's terminating such proceeding. Any reversal, modification or change of action reported pursuant to this section must be reported immediately to the practitioner's board or authority, together with a brief statement of the reasons for that reversal, modification or change. If the adverse action requiring a report as a result of a reversal, modification or change of action consists of the revocation, suspension or limitation of clinical privileges of a physician, physician assistant or advanced practice registered nurse by a health care provider or health care entity for reasons relating to clinical competence or unprofessional conduct and is taken pursuant to medical staff bylaws or other credentialing and privileging policies, whether or not the practitioner is employed by that health care provider or entity, then the provider or entity shall include in its initial report to the disciplined practitioner's licensing board or authority the names of all patients whose care by the disciplined practitioner gave rise to the adverse action. The failure of any health care provider or health care entity to report as required is a civil violation for which a fine of not more than $5,000 may be adjudged.

Carriers providing managed care plans are subject to the reporting requirements of this section when they take adverse actions against a practitioner's credentials or employment

for reasons related to clinical competence or unprofessional conduct that may adversely affect the health or welfare of the patient.

Sec. 2. 24 MRSA §2510-A is amended to read:

§2510-A. Confidentiality of professional competence review records

Except as otherwise provided by this chapter, all professional competence review records are privileged and confidential and are not subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and are not admissible as evidence in any civil, judicial or administrative proceeding. Information contained in professional competence review records is not admissible at trial or deposition in the form of testimony by an individual who participated in the written professional competence review process. Nothing in this section may be read to abrogate the obligations to report and provide information under section 2506, nor the application of Title 32, sections 2599 and 3296.

1. Protection; waiver. This chapter's protection may be invoked by a professional competence committee or by the subject of professional competence review activity in any civil, judicial or administrative proceeding. This section's protection may be waived only by a written waiver executed by an authorized representative of the professional competence committee.

2. Adverse professional competence review action. Subsection 1 does not apply in a proceeding in which a physician contests an adverse professional competence review action against that physician, but the discovery, use and introduction of professional competence review records in such a proceeding does not constitute a waiver of subsection 1 in any other or subsequent proceedings seeking damages for alleged professional negligence against the physician who is the subject of such professional competence review records.

3. Defense of professional competence committee. Subsection 1 does not apply in a proceeding in which a professional competence committee uses professional competence review records in its own defense, but the discovery, use and introduction of professional competence review records in such a proceeding does not constitute a waiver of subsection 1 in the same or other proceeding seeking damages for alleged professional negligence against the physician who is the subject of such professional competence review records.

4. Waiver regarding individual. Waiver of subsection 1 in a proceeding regarding one physician does not constitute a waiver of subsection 1 as to other physicians.

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception # 57

Sec. 1. 23 MRSA § 63 is repealed and the following enacted in its place:

§63. Confidentiality of records held by Department of Transportation and Maine Turnpike Authority

1. Confidential records. The following records in the possession of the Department of Transportation and the Maine Turnpike Authority are confidential and may not be disclosed except as provided in this section:

A. Records and correspondence relating to negotiations for and appraisals of property; and

B. Records and data relating to engineering estimates of costs on projects to be put out to bid.

2. Engineering estimates. Engineering estimates of total project costs are public after the execution of project contracts. *{Are records and data relating to engineering estimates intended to be included in what records become public upon execution of project contracts or just the engineering estimates themselves??}*

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

Summary

This amendment clarifies that engineering estimates are public after the execution of project contracts.

Public Records Exceptions Subcommittee
Proposed letter to ENR and HHS Committees

Exceptions 18 and 19

Sen. Thomas B. Saviello, Senate Chair
Rep. James M. Hamper, House Chair
Joint Standing Committee on Environment and Natural Resources
100 State House Station
Augusta, Maine 04333

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

Dear Sen. Saviello, Sen. McCormick, Rep. Hamper and Rep. Strang Burgess:

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

As part of its review, the Subcommittee considered two exceptions in Title 22 within the "Community Right-to-Know Act" to address public concerns about hazardous substances. We understand that the program within the Department of Health and Human Services has never been implemented.

The Subcommittee worked on draft language to revise the confidentiality provisions to bring the language into conformity with the standard confidentiality wording and to make clear what information collected by the Department under the program would be considered public. Ultimately, however, we are reluctant to make recommendations concerning a program that has not been implemented.

We believe that the Department of Environmental Protection may have programs that parallel or overlap the purposes of the Community-Right-to-Know Act, and we know that the Maine Emergency Management Agency and county emergency management authorities also collect information and develop emergency plans concerning hazardous substances. We hope that your committees will find the time to review the existing programs and determine whether life should be breathed into the Community Right-to-Know Act and amended appropriately, or deleted completely.

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch or Colleen McCarthy Reid, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception # 62 NNEPRA

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

§8115. Obligations of authority

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

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

§8115-A. Authority records

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

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

B. Trade secrets;

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

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

Public Records Exceptions Subcommittee
Proposed draft language changes

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

SUMMARY

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

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

Trade secrets remain confidential.

This amendment clarifies that estimates of costs of goods or services to be procured by or at the expense of the authority are confidential *if the estimates are prepared by the authority or at the direction of the authority*. The estimates do not become public over time.

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

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

G:\STUDIES 2011\Right to Know Advisory Committee\Existing Public Records Exceptions Review\Draft of #62 NNEPRA revised 11-28.doc (11/28/2011 2:28:00 PM)

RIGHT TO KNOW ADVISORY COMMITTEE

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

Bulk Records Subcommittee: Key Policy Issues and Questions

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

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

1. What is bulk data and how should it be defined?

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

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

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

Dear Members of the Right to Know Advisory Committee, Bulk Records Subcommittee:

This e-mail responds to the recent request of the Bulk Records Subcommittee for "input from State and municipal government agencies and other interested parties regarding the application of the freedom of access laws to requests for bulk data."

Since the terms remain undefined, for the purpose of the following comment:

> (1) The term "bulk data" refers to information originating from two or more records that is manually or electronically aggregated and contained in a single electronic record (typically, but not exclusively, a database); and
> (2) The term "bulk record" refers to a single electronic record containing a given set of bulk data.

COMMENT

> During the most recent Legislative Session, at least seven bills were introduced that related in some way to personal information of individuals that – depending on the bill -- presently is (or likely is), or -- had the given bill been enacted -- would have been (or would have likely been) contained in a bulk record maintained by a public agency:
>
> - LD 212, *An Act To Clarify and Amend Laws Pertaining to Licenses Issued by the Department of Inland Fisheries and Wildlife* (@ http://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280039317);
> - LD 634, *An Act To Allow a Person To Designate Information Submitted for a Hunting or Fishing License as Confidential* (@ http://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280039822);
> - LD 917, *An Act To Protect Licensing Information Provided to the Department of Inland Fisheries and Wildlife and To Require a Review of Public Access to Other Personal Information* (@ http://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280040305)
> - LD 1068, *An Act To Protect the Privacy of Maine Residents under the Driver's License Laws* (@ http://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280040558);
> - LD 1143, *An Act To Require That Law Enforcement Officials Collect DNA Samples from Persons Arrested for Certain Crimes* (@ http://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280040657);
> - LD 1167, *An Act To Protect the Privacy of Persons Involved in Reportable Motor Vehicle Accidents* (@ http://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280040706);

- LD 1317, *An Act Concerning Sex Offender Registry Information* (@ http://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280040919)

That the seven bills cited above were considered by the Legislature this past Session evidences that the subcommittee ought to perhaps consider the issue of how (if at all) personal information of individuals that is contained in public agencies' bulk records should be safeguarded, so as to try to ensure that the personal privacy, creditworthiness, reputations, and/or safety of such individuals are not compromised as a result of the public dissemination of such records.

Thank you very much for considering this comment.

Respectfully, C

CHRISTOPHER PARR
COUNSEL | MAINE STATE POLICE
MAINE DEPARTMENT OF PUBLIC SAFETY

M.C.C.A.

MAINE COUNTY COMMISSIONERS ASSOCIATION

Amy Fowler, President
Waldo County

Jonathan Labonte, Vice President
Androscoggin County

Stephen E. Joy, Secretary-Treasurer
Hancock County

Robert S. Howe, MPA, Executive Director

11 Columbia Street
Augusta, ME 04330
Tel. 623-4697
Fax: 622.4437
www.mainecounties.org

ANSWERS TO QUESTIONS
POSED BY BULK RECORDS SUBCOMMITTEE
by Robert S. Howe, MPA
Oct. 12, 2011

Preface

For more than 200 years, counties have been the largest and most accessible repositories of records maintained for a public purpose. Anyone at all is entitled to walk into the county registry and examine as many documents as they wish at no cost, and to obtain copies of them at minimal cost.

This service has in recent years been expanded to provide access in digital forms, including the ability to access records from the comfort of one's home or office. Relatively few governmental entities provide this service, although the universe of those which do is rapidly expanding.

The responses to the questions posed by the subcommittee are intended to be helpful with respect to the subcommittees analysis of all manner of records, not solely land records. However, where the issues involving land records differ from those of other records, we specifically refer to them.

1. What is bulk data and how should it be defined?

Bulk data comprise multiple reports or documents delivered to the requestor in electronic form.

The courts in Pennsylvania define a bulk data request as follows:

> *A request for bulk distribution of electronic case records is defined as a request for all, or a subset, of electronic case records.*

And the courts in Summit County, Ohio, use the following definition:

> *"Bulk distribution" means the distribution of a compilation of information from more than one court record.*

Some jurisdictions include paper copies within their definition, but for purposes of this paper, only electronic data requests are considered.

Bulk data requests may be made for a host of reasons, including but not limited to reporting the news, academic research, personal or genealogical research, criminal investigations, insurance underwriting and commercial resale of data.

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

Providing the ability to respond to requests for bulk data involves a number of costs, including but not necessarily limited to the costs of:

- collecting and maintaining the data,
- making data available in a format other than a paper copy,
- downloading requested data to the requester,
- conversion to a format chosen by the requester, and
- the staff time, vendor time and equipment required to conduct these activities.

Among the options for distributing the above costs of compliance are:

1. costs are borne by those who caused the records to be generated, at the 'front end,' e.g. motor vehicle licensees, parties to court actions, parties to land transactions;
2. costs are borne by the requester, at the 'back end;'
3. costs are borne by the taxpayers, also at the 'front end,' or
4. some combination of the above.

Most administrative agencies appear to follow a combination of options 1 and 2, while elected governmental bodies generally use a combination of 2 and 3.

A single method of distributing costs may not be appropriate. For example, the minutes of meetings of governmental entities may be seen differently than the records of, say, motor vehicle accidents or real estate transactions. The “users” of an elected governmental entity (town council, county commission, state legislature) are its constituents who pay taxes to it in some form; therefore, covering the cost of collecting and maintaining the minutes and related documents of elected bodies should be borne in substantial part by those taxpayers.

With respect to the minutes and other records of appointed governmental bodies, how the cost of data requests is paid for may depend upon whether the entity collects licensing or recording fees at the 'front end', as in the case of a municipal code enforcement office, or whether it performs a function not involving such 'front end' fees, as in the case of a county emergency management office.

Whether the 'front end' costs are paid by service users or taxpayers, it appears to be commonplace throughout state and local government that "users" participate in paying some of the costs at the 'front end' and other "users" incur some costs at the 'back end.'

Land records maintained by counties are a good example of this method of assessing costs. These records are nearly all records of private activity maintained and accessible to the public for a public purpose; they are not (which very few exceptions) records of governmental activity. For this reason, it is appropriate that the costs of operating the registries of deeds not fall on property taxpayers, but one those who use the service.

Some county officials believe that all costs associated with collecting, maintaining and making land records accessible should fall on those who cause records to be generated, that is, at the 'front end'. Under this scenario, recording fees would be increased so that all costs of operating the registries of deeds are covered, and copying fees would be eliminated. This could be accomplished in a revenue-neutral fashion.

This approach may or may not be politically feasible. If not, maintaining a system whereby some costs are incurred at the 'front end' and some at the 'back end' is probably appropriate, if not inevitable.

3A. Should a requester of bulk data be entitled to the records in the format and type of access requested?

Requests for reformatting or "translating" bulk data are most likely to come from requesters with a commercial interest in the records, and as such should be viewed as a cost of doing business. Governmental entities should make a reasonable effort to provide records in a requested format, and any costs associated with doing so should be borne by the requester as a cost of doing business. Governmental entities should *not* be mandated to provide "translations" to a requester's preferred format. There are any number of IT firms which provide this service for a fee, making it unnecessary for the government to do so.

3B. Should a distinction be made between a requester seeking access to records and a requester seeking ownership of records?

Yes. Public records, including official images thereof, should be owned by the public, not by an individual requester, and should be maintained by the governmental entity on behalf of the public. A requester is entitled only to a facsimile of a record. Only by ensuring that the responsible governmental entity is the only repository of official records can the integrity of those records be maintained. Governmental entities may provide this service through vendors over which they maintain complete control.

In some cases, such as land or court records, it would be appropriate and advisable to enable the public to distinguish between a record on file at and maintained by the governmental entity, and a facsimile of a record obtained by a requester and made available to others. This could be accomplished by requiring requesters to mark records as unofficial copies when they are making them available to others, especially if done for re-sale.

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

Yes. While governmental entities should not be discouraging the commercial use of data, neither should they be assisting commercial interests avoid the normal costs of doing business, e.g. purchasing and maintaining inventory. The collecting and maintaining of public records comes with significant costs, and those seeking to benefit financially from this service should not expect others--whether noncommercial users or taxpayers--to subsidize their business model.

Non-commercial users, e.g. journalists, academicians, genealogists or homebuyers, should be asked to incur some nominal cost in providing them with records, e.g. staff time in responding to their individual request (unless all such costs are borne by the 'front end' users). Commercial users should *in addition* help pay the costs of creating and maintaining the databases in the first place, e.g. digitization and infrastructure costs, as a cost of doing business.

Governmental entities need not request the specific purpose for which a requester wants records, but it would be appropriate to ask requesters to certify they are not acquiring records for a commercial purpose or for resale, as a means of determining the appropriate share of costs for them to bear.

It should be noted that we make no distinction between individuals and corporations, as either may have a commercial or a non-commercial interest in records.

THE MAINE HERITAGE POLICY CENTER
SAM ADOLPHSEN, DIRECTOR - CENTER FOR OPEN GOVERNMENT
PUBLIC TESTIMONY
BULK RECORDS SUBCOMMITTEE OF RIGHT TO KNOW ADVISORY COMMITTEE
OCTOBER 14, 2011

Good Morning, Mr. Cianchette, Representative Nass, members of the bulk record subcommittee. My name is Sam Adolphsen and I direct the Center for Open Government at the Maine Heritage Policy Center. I appreciate the opportunity to testify on this issue. Inviting the public to be a part of this process is fitting, since we are talking about open records.

Following up on that sentiment, I would say that with the many questions posed in this committee about definitions, costs, timelines, etc...must all be considered with the understanding that this data being discussed—whether it is electronic or paper, bulk database or a one-page document—is the public's data. It is owned by the people, not the government. The government's role is as a keeper and a steward of the information, not as the owner.

I want to try today to help provide some additional perspective as you attempt to answer some of the questions that have been raised by members of this committee regarding bulk public records.

One of the first questions raised is whether bulk records and electronic records are the same thing. The answer is a simple No. "Electronic" is a form of a record. I have seen records requested, and provided, in electronic format that contained only a few rows of data, and would in no way qualify as "bulk." It's almost always easier and more cost effective to provide records in this way, simply e-mailing the data, versus printing, stuffing, stamping, sealing and mailing an envelope. Just because data is provided by electronic transfer in no way means it is the same thing as a bulk record.

Another key point that has been raised is the issue of having a different set of rules for commercial users of public data versus non-commercial users. I'm not going to try and tell you the right or wrong way to handle this, because I' m not sure what it is. But I will say this – when I drive down Route 3 to Augusta every morning, I'm not stopped by a government official who asks me if I'm driving the public road for commercial uses or my own private use. Those roads are funded with tax dollars, and they are open to the public – for whatever purpose. Public records are public property, no different than a road. If government creates a litmus test for public records requests, government transparency is severely undermined. From a fiscal perspective, let's remember that someone profiting from the commercial distribution of public information will pay their fair share back to the state in taxes.

Lastly, there can be no question that the answer to most, if not all the issues related to bulk public records lies with harnessing the power of technology. In my research of state Freedom of

Access Laws across the country, I have found several states with specific provisions stating that government entities, when purchasing or upgrading data management software, are required to have a process in place to make sure the entity can easily run reports to provide the data to the public when requested, and ensure they can easily parse out public versus confidential components of the data. Connecticut, for instance, says in statute "Agencies shall consider rights of the public when acquiring new computer system/software at the least cost possible to the agency and requester." Minnesota's law says "The responsible authority in every government entity shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use."

What I have heard from government agencies, including, recently, the Maine State Housing Authority, is that the real roadblock for providing "bulk" public records to the public is that they have to vet the data to make sure they aren't releasing confidential information. This time-consuming challenge is easily overcome with software—like Microsoft Excel or Apple's Numbers—that can parse out pieces identified an organized as confidential before the requested report is run. Going forward; ease of public access must be a mandated component of any software purchasing decision.

Technology is also the way for government to become proactively transparent. If government agencies would simply take the public records they have, redact any confidential information and post the records online, then any time a request was made for that data, the agency could simply direct folks to that information. This is the ultimate answer to streamlining records request – use the power of technology and the internet to put everything where the public can access it. It would make for a more transparent government, and far less staff time in the long-term dealing with requests.

Finally, I'd like to say that in sitting in several of these open records committee meetings, I have heard the phrase "burden on government" repeated several times. This phrase is disappointing. Government exists for one reason; to serve the public. Providing the public with the records they own is part of the job. I am all for creating efficiencies in government, including in their role as stewards of public records, but we can never sacrifice openness and transparency in an effort to relieve "the burden on government."

Thank you for your time, and I appreciate you all working on this important issue.

Maine Registers of Deeds Association

Right to Know Advisory Committee – Bulk Data Subcommittee October 14, 2011

1. What is bulk data, and how should it be defined: Bulk data is defined as copies of consecutive records that are retrieved collectively from the department's database as a result of a single request, without modification or compilation. Bulk records do not include a specific sort of the database or retrieving one record at a time from a single request and are not paper copies. A government agency may require a request for bulk copies to comprise a minimum of one month's records.

2. What is the appropriate method of determining the cost that a requester must pay for bulk data? Bulk data copies should be less per copy than single copies, but they should take into consideration the same factors, cost of the data base, staff time, and media costs, for example. Some state agencies have already gone through the rulemaking process and determined what their bulk data fees should be. See Attachment. As an average of the agencies the cost for bulk data should be 5 cents per image and/or record. The requestor shall pay for redaction of confidential information within the database if present.

3. A) Should a requester of bulk data be entitled to the records in the format and type of access requested? Bulk data should be copied or transferred digitally by FTP, removable hard drive, DVD, or CD, depending on the capability of the existing system in the format in which it is stored.

3.B)Should a distinction be made between a requester seeking access to records and a requester seeking ownership of records? Absolutely. A distinction must be made between OPEN access to public records and FREE access to public records.

4. Should the law distinguish between bulk data requests of public records for commercial purposes versus requests for noncommercial purposes? Bulk data requests should not apply to an individual, a corporation, a partnership, a limited liability company, or an unincorporated association whose primary purpose is to resell public records. Some purchasers of public records use

the data to be informed, or inform other members of the public. They sort the data to produce statistics, or repackage it into commercially available items, such as maps. They are adding value to the data and producing their own product. This is totally different than getting access to public records for the sole purpose of reselling those records.

For example: The Maine Archives opened an internet store a few years ago. I want all its digital images in bulk at cost. I don't care how much they have invested in storage, preservation, equipment, and employee time to do this. I only want to pay for the time it takes an employee to copy the digital records. I'll provide a portable hard drive. After I have these images I am going to open my own store and sell them. Since my investment is so little I can undercut the archives prices and create quite a little business for myself. This scenario needs to be avoided as it is all too real. Government should be allowed to provide transparency thru access (Open Access) without giving away ownership of data and government departments like Maine Archives, Registries of Deeds, Public libraries, Ucc and Corporations, and Historical Societies… Already DO!

In addition we offer the following points for consideration:

a. Questions regarding filing or answering bulk data requests should be referred to the ombudsman.
b. Develop an official request and reply form. All requests and replies must use the official form and be sent by mail, fax, or email. No phone calls
c. Initial time for a response: 5 days from receipt of request
d. Initial reply to include an estimate of time of compliance and cost. Any cost over $100 must be paid in advance.
e. Time for compliance with request: As soon as practically possible. Factors would include staff availability, format requested and amount of data requested.
f. Request cannot be made for future data not yet received or entered in database.

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

Fri 10/14/2011 12:49 PM

The following comments have been provided by John Simpson, owner and General Manager of MacImage of Maine LLC, an information technology business located in Cumberland, Maine.

MacImage of Maine has challenged the fees several Maine registries of deeds charge for copies of public records in court. The Maine Supreme Judicial Court will hear oral arguments in the case on Dec. 12-13, 2011. Court records related to the case can be found online at:

http://www.macimage.com/foaa/case.html

John Simpson can be reached by phone at (207) 838-5823 or email at jsimpson@me.com

1. What is bulk data and how should it be defined?

Bulk data can not and should not be distinguished from other types of public. Why?

First, the term "bulk" will have different meanings depending on the type of public records at issue or the content of those records. For example, consider the following public records:

(a) a single 200-page report printed on paper
(b) 200 one-page paper documents
(c) one electronic file containing a list of 200 addresses
(d) one electronic file containing 200 scanned pages
(e) 200 electronic files which each contains a single scanned page

There could be considerable debate about whether a request for any of the above records would be "bulk" requests.

Second, even if there were a way to define "bulk" records, quantity is often not a good measure of either the cost of producing records or the value of those records.

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

People concerned about the cost issue generally have one of the following goals:

(1) to allow government to recover costs associated with responding to requests for public records
(2) to allow a government agency to recover unrelated operating costs (costs that would be incurred even if no copies of bulk records were requested)

(3) to allow government to profit by selling public records ... and use those profits instead of taxes and other sources of revenue to fund unrelated operations
(4) to prevent or limit access to certain public records
(5) to prevent anyone from reselling products or services derived from public records for a profit.

Goal 1 (recovering copy costs) is permitted under current law and enables the public to obtain copies of public records at no cost to taxpayers. A person must only pay for costs incurred because of her request. Copy costs are fairly easy to calculate. Thus, it is fairly easy to ensure that persons requesting copies pay all costs associated with their request.

In this case, the agency should charge a requestor for incremental expenses incurred solely to make the requested copies. In addition to incremental expenses, an agency could allocate overhead costs incurred solely to provide copies proportionally to all persons requesting copies. For example; a portion of the cost of a photocopier or fax machine used only to make copies for the public could be recovered through copy fees. However, an agency should not recover overhead costs more than once by over-allocating overhead costs to multiple requestors.

The basic rule must be that operating costs that would be incurred even if no copies were made may not be recovered through copy fees. An agency may only recover costs only when the agency makes or assists in making copies by providing equipment, materials or labor. For example; an agency could not charge a copying fee to persons who use their own cameras to copy public records. The FOAA gives every person the right to inspect public records at no cost. Thus, all costs related to photographing records would be required to allow inspection, and would be incurred even if no copies/photographs were made.

Goal 2 and Goal 3 (recovering agency operating costs) shifts the burden of funding some or all costs of operating a government agency from all taxpayers to persons requesting copies of public records.

The question of who should pay agency operating costs is a policy question. There is no inherent benefit to funding an agency through fees instead of taxes. A tax is a fee to the person paying the fee, and in most cases copy fees are paid by taxpayers either directly or indirectly (when they purchase products or services from a business that bought the copy).

However, there can be a hidden cost to funding agencies with profits obtained by selling copies of public records. Whenever fees exceed the cost of producing copies, there is a risk that the fees will block access to public records. Persons who could afford to pay fees based on the incremental cost of producing a copy may not be able to afford higher copy fees. Thus, the public may be denied access to the value of public records with no offsetting public benefit.

Goal 4 (blocking access to certain records) is more effectively addressed by creating an exemption in the FOAA for specific types of records.

Goal 5 (blocking some or all commercial uses of public records) is contrary to the policy behind the FOAA. Allowing public resources to be used for commercial purposes allows companies to provide products and services that government can not or does not provide. Public records are no different than other public resources such as water and roads. Public benefits are maximized when more people have access to a public resource. In short, profit is a good thing.

3(a). Should a requestor of bulk data be entitled to the records in the format and type of access requested?

The public will benefit if access is provided in different formats upon request, especially when the records already exist in multiple formats. People request a specific formats because they will benefit from that format. There is simply no reason to deny a request for a specific format if the requestor is willing to all costs of producing copies in that format.

3(b). Should a distinction be made between a requester seeking access to records and a requester seeking ownership of records?

Clearly the government has an interest in preserving the integrity of its records. Thus, the government must maintain possession of original records and an official electronic copy if one exists. However, the distinction between access and ownership serves no purpose (other than to restrict access) with regards to copies of public records. People need to have copies of public records in their possession for many reasons. In theory, the government could retain "ownership" of all copies of public records and attempt to force people to pay a copy fee whenever they made a copy of a copy of a public record in their possession. Practically, however, a law forcing people to pay such copy fees could not be enforced. And, in any case, such a law would restrict access to public records with little or no offsetting benefit. Taxpayers do not benefit by paying copy fees instead of taxes because virtually all copy fees are paid by or passed on to taxpayers.

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

The public benefits when commercial entities use public records to provide services that government does not provide or services that are better or less expensive than services provided by government. The public incurs no costs when businesses pay copy fees equal to the cost of producing copies of public records. However, charging higher copy fees to businesses could be counter-productive The businesses will either stop offering a valuable service or pass on the higher fees to their customers (the public).

The notion that the public would benefit if government use profits from selling copies of public records instead of taxes to pay its bills is false. Businesses must pass on their

costs to their customers (the public) or go out of business. Its a zero-sum game. Every dollar of government operating expenses that is funded by higher fees will be passed on to the public.

If out-of-state businesses purchased large numbers of copies of Maine public records, and these copy costs were not passed on to Mainers, then charging higher copy fees to businesses could reduce our tax burden. But, there is no evidence this happens. Out-of-state businesses buy Maine public records because they can resell products or services based on these records to Mainers. There is no out-of-state market for copies of Maine public records.

ACLU MAINE
AMERICAN CIVIL LIBERTIES UNION OF MAINE

121 Middle Street, Suite 301
Portland, Maine 04101
T/ (207) 774-5444
F/ (207) 774-1103
www.aclumaine.org

TESTIMONY OF SHENNA BELLOWS

Regarding: Appling Maine's Freedom of Access Laws to Requests for Bulk Data

Submitted to the

BULK RECORDS SUBCOMMITTEE OF THE RIGHT TO KNOW ADVISORY COMMITTEE

October 14, 2011

The American Civil Liberties Union of Maine (the "ACLU of Maine") is a nonprofit, nonpartisan organization dedicated to protecting the basic civil liberties and civil rights of the people of Maine.[1] The ACLU of Maine has a long history of involvement through policy making, political efforts, and litigation in support of the public's right to open government proceedings and records.

Fortunately, Maine policy makers have taken clear steps to ensure public access to public records. In passing the Freedom of Access Act (the "FOAA"), the Legislature explicitly intended to open public records to the public and for the definition and scope of protected information to be interpreted expansively. 1 M.R.S.A. § 401; *Medical Mut. Ins. Co. of Maine v. Bureau of Ins.*, 866 A.2d 117, 120 (Me. 2005).[2] Under the FOAA, "[p]ublic records are subject to the right of the public to inspect and copy." *Medical Mut. Ins. Co. of Maine v. Bureau of Ins.*, 866 A.2d 117, 120 (Me. 2005).

The law "declares as a matter of public policy that records of public action shall be open to public inspection. It leaves little room for qualification or restriction." *Bangor Pub. Co. v. City of Bangor*, 544 A.2d 733 (Me. 1988) .

[1] The ACLU of Maine was organized in 1968 as the Maine Civil Liberties Union. It changed its name in 2011 in order to better reflect its status as the Maine affiliate of the American Civil Liberties Union.

[2] The FOAA is to be "liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent." *Id.* In fact, Maine 's Supreme Court has declared, in interpreting the FOAA, that "to a maximum extent the public's business must be done in public." *Moffett v. City of Portland*, 400 A.2d 340, 347-348 (Me. 1979). In its application and interpretation, "[t]he most effective right-to-know law should assist the public in gaining access to information that is open to the public." Anne C. Lucey, Comment, *A Section-By-Section Analysis of Maine's Freedom of Access Act*, 43 Me. L. Rev. 169, 224 (1991) (arguing that "[t]he benefits to both the agency and public outweigh the expense an open government brings").

ACLU MAINE
AMERICAN CIVIL LIBERTIES UNION OF MAINE

121 Middle Street, Suite 301
Portland, Maine 04101
T/ (207) 774-5444
F/ (207) 774-1103
www.aclumaine.org

Therefore, any analysis of policies surrounding requests to copy public records should begin with the premise that access to public records must be maximized. It is from this vantage point and perspective that we offer the following.

Question 1.

What is the definition of bulk record?

Bulk records could reasonably be defined in multiple ways. Bulk data includes information and records that have been compiled into a single, most likely electronic, file or database. This is fast becoming the most common way for government to store new and old data. The definition should not lead to a disparate treatment of the information under Maine's FOAA laws.

Question 2.

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

The fee for copying public records should be reasonably related to the actual cost of copying. Prior to 2003, Maine's FOAA provided that "the cost of copying any public record . . . shall be paid by the person requesting the copy." 1 M.R.S.A. § 408 (2002). However, in response to the recommendations of the Committee to Study Compliance with Maine's Freedom of Access Laws, the Maine legislature completely rewrote the section on fees and explicitly required that any fees charged for the cost of copying must be "reasonable." P.L. 2003, ch. 709, § 2.

Therefore, for example if a government agency has an electronic database containing hundreds or thousands of compiled records, a person requesting a copy of that database should be charged only for the related cost of copying the database in its current electronic form – not for what it would cost to duplicate the records individually with paper photocopies or another format.

This only makes sense: copying an electronic file from one device to another is a task most people in today's world are familiar with. It involves initiating the copy process and walking away from the device (such as an external hard drive costing less than $1,000) while it runs. Again, the bottom line is that regardless of whether the data is bulk or not, there should be a rational connection to the actual cost of copying the data to the fees charged.

ACLU MAINE
AMERICAN CIVIL LIBERTIES UNION OF MAINE

121 Middle Street, Suite 301
Portland, Maine 04101
T/ (207) 774-5444
F/ (207) 774-1103
www.aclumaine.org

Question 3.

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

A requestor of bulk data should be entitled to access records in manner they wish and in the formats requested if it already exists or is reasonably available. They may be charged only reasonably related fees. Anything else would be considered a constructive denial of the request and a violation of the Act. This is a crucial point. Public agencies cannot be permitted to provide public data in an intentionally inconvenient format in order to burden or limit public access.

Further, if already converted, the public has a right to share in the benefits of this conversion. When substantial amounts of taxpayer funds are used to convert paper files into electronic streams of data, among the resulting conveniences are dramatically lowered copying costs. This is precisely the type of benefit that the public has already paid for and which the public should receive in return. *See Margolius v. City of Cleveland*, 584 N.E.2d 665, 669 (1992) ("[A] set of public records stored in an organized fashion on a magnetic medium also contains an added value that inherently is a part of the public record. Here, the added value is not only the organization of the data, but also the compression of the data into a form that allows greater ease of public access").

Finally, there should be no distinction made between a requestor seeking access to records and a requestor seeking ownership of records. An individual or entity seeking public records for whatever reason should be treated without prejudice or differentiation. It should not be the legislature's job to create a hierarchy of more or less access depending on what the requestor intends to do with the records.

Question 4.

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

As with the second part of question 3 – the answer is no – the law should not distinguish between those seeking data for commercial and those seeking it for noncommercial purposes. The legislature should not be

ACLU MAINE
AMERICAN CIVIL LIBERTIES UNION OF MAINE

121 Middle Street, Suite 301
Portland, Maine 04101
T/ (207) 774-5444
F/ (207) 774-1103
www.aclumaine.org

in the business of determining more or less worthy motives for accessing public information and burdening some more than others.

Again – because the requestor is a member of the public, fundamentally we are talking about information that *belongs to her already.* If the FOAA is to be effective, all segments of the population must have access to public records.

Conclusion.

There are few public policies more vital than an open government. Maine's Freedom of Access Act is designed to support transparency by providing access to governmental activities and records for all – not just for those with money or those who promise to use the information for non-commercial purposes. Any decisions governing the public's access to bulk information should be made with the intended result of ensuring access to the widest swath of information by the broadest spectrum of the public.

Re: Answers to Questions Posed by the Right to Know Advisory Committee/Bulk Records Subcommittee

Introduction

InforME, as the State's official electronic portal, offers bulk data access as one of its information access services. These services are created from data assembled through value-added processes, from agency repositories for access to authorized InforME customers on behalf of state agencies. The InforME Board is mindful that there are many complex issues related to this discussion and that the services it provides and the terminology it uses varies significantly from others supplying information to the subcommittee. It hopes that this submission will provide information helpful in the committee's deliberations and is committed to supporting the committee's efforts on improving public information access and related issues going forward.

1. What is bulk data and how should it be defined?

Bulk data defined:

Bulk data is an electronic collection of data composed of information from multiple records, whose primary relationship to each other is their shared origin from a single or multiple databases. The data is generally extracted from a database and provided in a common electronic file type. Bulk data does not include paper copies of records. A request for bulk data is also different from a request for multiple records, if we consider a record to be a "document" such as an individual deed, copy of a license, birth certificate, or even the data collected and stored related to a single event, person or other data element (for example). Requesting multiple records (paper or electronic images) is different from requesting a data file with information from multiple records - the latter is bulk data. Each individual agency determines which bulk data sets are eligible for public request and is responsible for ensuring the state laws, regulations, and privacy requirements are adhered to whenever bulk data is made available for access.

Databases themselves may be proprietary, or complex and unusable to a requester without special software or instructions. A request for data is not the same as a request for a database.

InforME bulk data services defined:

InforME, as the State's official electronic portal, offers bulk data assembled through value-added processes, from agency repositories (electronic databases) to provide access to authorized InforME customers on behalf of state agencies. InforME may modify the data from its original form in various ways, including removal of sensitive information, selection, sorting or combining records for a particular use or to customer specifications, and reformatting or restructuring of data, as well as a variety of delivery mechanisms including self-service online services and FTP delivery. InforME offers data for one-time access or on recurring schedules such as monthly or quarterly, and manages customer requests, customer service, payments and invoicing.

Information Resource of Maine
45 Commerce Drive, Suite #10 | Augusta, ME 04330
207-621-2600 | Fax 207-621-9950 | Toll free 877-4ME-EGOV

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

Fees for InforME bulk data access are determined by statute, agency rulemaking, or through board oversight as defined in Title 1 §534 5. G. which specifies that fees for InforME services must be:

- Sufficient to maintain, develop, operate and expand InforME on a continuing basis.
- Reasonable but sufficient to support the maximum amount of information and services provided at no charge.
- Sufficient to ensure that, to the extent possible, data custodians do not suffer loss of revenues from sources that are approved or authorized by law due to the operations of InforME.
- Sufficient to ensure that data custodians are reimbursed for the actual costs of providing data to InforME.
- Sufficient to meet the expenses of the statutory InforME board.

InforME's service and data delivery model is designed to enhance electronic access to public information and transactions for citizens and businesses, by pooling fees from all services that have commercial value, to provide those services plus other services which have no commercial value but are needed or desired by Maine citizens and businesses. Recapturing some of the commercial value of the taxpayer-assembled data in order to provide services to Maine citizens and businesses allows InforME to increase the availability of all state electronic information and online services. Revenue from bulk data services supports not only bulk data distributions but also the provisioning of many other electronic services to the public, and also to state agencies. Those other services are then provided to the public and agencies at no cost to them. The elimination of its bulk data services or reductions to pricing would likely reduce InforME's ability to provide access to public information via existing and future portal services, with resulting effect on the ability of state agencies to provide efficient, cost-effective online services for the public.

Examples of InforME public access services supported in part by bulk data services:

- Maine.gov - the State of Maine's official web site
- Hosting of nearly all Maine state agency websites
- Agency webmaster support, tools, and training
- Online Absentee Ballot Request system
- Maine.gov DataShare public data catalog
- HireME online state job application system
- Online Sex Offender Registry Search
- Online State Parks Search
- Unclaimed Property Search/Claim service
- Voter Information service
- Qualifying Contributions for Clean Elections Candidates system
- Maine Organ Donor Registry

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

Data distributed via InforME's bulk data services is delivered in an electronic file format that is developed based upon a balance of considerations between minimizing assembly costs and providing the greatest utility to the largest number of customers possible. It is not practical for a requester to have the right to receive data in any format they desire, as that may be impossible in some cases, and very expensive in others. If multiple formats are already available, then it is reasonable for the requester to choose which format they prefer.

Access vs. Ownership
In the digital age, it is very difficult to distinguish sometimes between access and ownership. The information being accessed as bulk data is assembled at taxpayer expense for the purpose of allowing the agency to do its statutorily required work. While agreements can limit rights to use records, it is often difficult to determine, without an after-the-fact audit, whether the records were actually used in accordance with the contract restrictions, once out of sight of InforME or the agency. Similarly, while an agreement can withhold ownership and only grant a license to use, because bulk data is by definition an extract of information from a record, it may also be impossible to tell whether someone's address came from a state record or from other sources. Certainly any information that can *only* come from a state record would be easier to track for compliance purposes. For requestors of information, the issue will be whether they are entitled under "access" to use the data however they wish.

An example may be helpful. Certain requestors use vehicle registration information to send safety recalls on behalf of vehicle manufacturers. Such information is subject to the Driver Privacy Protection Act ("DPPA"), which restricts its use to certain purposes, including safety recalls. If the bulk requester was to assert ownership to the information which it *obtained* from the bulk data -- for example, vehicle owner address information -- and used it for a purpose outside the limits of the DPPA, then this could be a violation of the law. But it might be difficult to establish that the address information came from a state database. However, a vehicle identification number, which is not generally available from other sources, might be more easily proven to have come from a state database.

In the case of vehicle registrations, *access* might be the appropriate level of permission—access to use for a specific purpose, or any purpose permitted by the DPPA. Ownership is not similarly restricted, so ownership might be inappropriate for such data.

However, in the digital age, again, once a "copy" of the extracted data is delivered to a requestor, it may become very difficult to prevent the requestor from asserting that it purchased non-exclusive "ownership" rather than only a license to access for a specific purpose, and even more difficult to restrict what the owner does with the data in its possession.

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

Yes. The great majority of InforME bulk data requests are for commercial use, since most individuals have little use for bulk data. Pricing for InforME's services, including bulk data access, to commercial entities is designed to conform with InforME's statutory constraints

(above) and is additionally limited by the data's market value. The provision of bulk data services requires resources for customer service, invoicing, compiling and delivering data, and creating and maintaining electronic systems specifically for the purpose of meeting bulk data requests. By leveraging InforME to provide these services on behalf of all state agencies, state agencies offer an economical value-added service to customers, save significant staff time and expense, and contribute to the support of other InforME services for the public's benefit.

Freedom of access requires provision of access to government records, which obligation is met by making individual records available for viewing. This prevents government processes and decisions from being made secretly or without accountability. Commercial entities have many legitimate reasons for purchasing bulk government data and there is no reason they should not be allowed to do so with the intention of making a profit, so long as those efforts are balanced against the public's privacy interest and do not undermine the government's service delivery missions including public access efforts. Commercial requests for bulk data services are not about "access to government records" as the records are already available in individual formats; rather, they are about the commercial desire for a value-added compilation and delivery of data with commercial value. The market value of bulk data is a cost of business that commercial entities can absorb. Commercial entities should not obtain valuable bulk data for their commercial use at a nominal cost.

On the other side, there are a small number of requests for bulk data for non-commercial purposes such as academic research or news reporting. It makes sense to offer a simpler (less resource intensive) data service for these requestors at lower cost, with use restricted to those limited purposes.

How does privacy fit into the discussion?

InforME is mindful of the threat to privacy for individuals posed by bulk data ac that goes beyond personally identifiable information contained in individual records. Wide distribution of large volumes of public information can be subjected to modern computer processing treatments involving multiple databases which can yield a depth of information about individuals that goes beyond the anticipated disclosure. This is generally known as data mining. InforME does not perform data mining and distributes no data, public or not, without authorization by agency data custodians and the InforME Board, and then only in accordance with the requirements of the law.

The difficulty is in permitting bulk record access for worthwhile uses (selective service registration compliance, vehicle safety recalls, voter roll verification, jury duty rolls, and even mortgage marketing) while preventing abuses of bulk data availability.

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

Comments of the Maine Municipal Association
Application of the Freedom of Access Laws to Requests for Bulk Data
Right to Know Advisory Committee
Bulk Records Subcommittee
October 14, 2011

My name is Greg Connors and I am testifying with respect to the four questions posed by the Bulk Records Subcommittee (BRS) of the Right to Know Advisory Committee (RTKAC) on behalf of the Maine Municipal Association (MMA).

MMA understands that there has been some discussion related to bulk data requests and whether "bulk data" requests should be narrowly defined as just databases of a county's registry of deeds or if it should be more broadly applied to include other data located at counties and/or at other governmental entities. MMA appreciates the opportunity to provide its version of the definition of "bulk data" as well as to answer the remaining three questions. Depending on what the BRS recommends and the RTKAC approves for a definition, MMA wanted to weigh in on the other questions as well due to our concern that large public records requests identified under LD 1465, *An Act to Amend the Laws Governing Freedom of Access*, could potentially be considered "bulk data" requests.

Below are MMA's responses to the BRS's questions.

1. What is bulk data and how should it be defined?

   MMA believes there is a fundamental difference between the category of "bulk data" requests and the category of "large or multiple" requests. Both categories should be defined in law and special treatment should be provided for each category. Here are our definitions of the terms.

   Bulk data are records or databases that have been compiled as a result of a transaction or transactions between two or more parties that are then recorded by a governmental entity, typically a county. The data is not static and constantly grows over a period of time due to the transactional nature of the information. These records typically contain measurements, statistics or otherwise quantified information or analyses that as a general practice would be recorded and retained by the governmental entity as a purely public record subject to very limited or no redaction. These records would reasonably be of interest by a non-governmental entity for the purpose of owning them in order to further assemble, package, organize or re-present the data for commercial purposes or utilizing the data for the purposes of surveying or distributing advertising, for example, to identified licensees and

permittees. A request for bulk data typically involves a request or a series of requests by the same or coordinated requestors for ownership of significant amounts of data.

Large or multiple public record requests would be defined similarly to the definition of "public records" (see Title 1, §402, 3) with the following language added "Large or multiple public record requests typically represent a request or a series of requests by the same or coordinated requestors for access to a significant number of records collected over a prolonged period of time, that in many cases would require redaction efforts. These large or multiple requests typically require appropriate and often supervisory governmental employees to dedicate multiple hours and often advisory resources in order to comply with the request."

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

   For bulk data requests, MMA feels that the methodology referenced in 33 MRSA §751 sub-§14-C would be appropriate. This methodology would allow a governmental entity to recover some of the other costs associated with the information that is being requested for commercial purposes.

   Regarding large or multiple public record requests, the cost should be based on the amount of time that is necessary to fulfill the large or multiple public record request. Determining the hourly rate of the individual or individuals ultimately responsible for both releasing public records and not releasing non-public records, and then applying that to the time necessary to provide that information to the requestor is the appropriate method. The current standard of $10/hr. grossly underestimates the cost of actually responding to a large FOAA request. With the current standard of $10/hr. after the 1st hour, governmental entities are losing money every time a request is made. That cost is paid for by the municipality's property taxpayer.

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

   A requestor should be entitled to bulk data or large public records in the format they request ONLY if the information is already in that format or the information can be easily imported into a format that is already available on the governmental entity's computer system. In addition, the format requested and provided must not allow for the information to be manipulated. If the information is able to be manipulated, advertently or inadvertently, it could result in inaccurate information being disseminated by the requestor as though it was an official public record.

   Yes, a distinction should be made between access and ownership. The distinction has been incorporated in the definitions of "bulk data" and "large/multiple public record" requests that appear in the response to Question #1.

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

   Yes, a distinction should be made between requests of public records for commercial purposes and noncommercial purposes. The distinction has been incorporated in the definitions of "bulk data" and "large/multiple public record" requests that appear in the response to Question #1.

I hope these answers are beneficial to the subcommittee. Thank you for your attention to this testimony.