

**STATUTE:** [13 §1957](#), subsection 8

**AGENCY:** Maine Agricultural Bargaining Board

**CONTACT PERSON:** Shannon Ayotte

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).  
**We have not received any official FOAA requests regarding this board since 2013 and we do not have records for previous to such.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.  
**DACF supports the continuation of this exception. Agricultural bargaining at its heart deals with confidential, sensitive business information that should be respected. Importantly, the statute allows for the information to eventually be disclosed after final decisions are rendered by the board.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?  
**The language is clear that the records are confidential. Further, the language is sufficiently clear that information on members, the volume of purchased ag products, and the identification of producers are to be confidential.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Don Flannery, Maine Potato Board.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**None**

**STATUTE:** [14 §164-A, subsection 3](#)

**AGENCY:** Judicial Branch

**CONTACT PERSON:** Julie Finn

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

19-A MRS § 164-A(3) makes confidential all proceedings, communications and records, including the identity and treatment of a person seeking or being furnished assistance connected with the Maine Assistance Program for Lawyers. The Maine Assistance for Lawyers Program provides help to lawyers and judges who suffer from the effects of chemical dependency or mental conditions that result from the disease, disorder, trauma or other infirmity that may impair a lawyer's or judge's ability to practice law or serve in a judicial capacity.

These records have rarely been requested. In the instances where the records have been requested and made public, it has been with the authorization of the individual involved.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

The Judicial Branch supports the continuation of this exception given the sensitive medical and mental health records that are rendered confidential. This exception protects the public as much as it protects lawyers and judges.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

The Judicial Branch has not encountered any problems in applying this exception.

4. Does your agency recommend changes to this exception?

Not at this time.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Additional input not necessary.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** [14 §1254-A, subsection 1](#), [14 §1254-A, subsection 7](#), [14 §1254-A, subsection 8](#), [14 §1254-B, subsection 2](#)

**AGENCY:** Judicial Branch

**CONTACT PERSON:** Julie Finn

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Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

All of the subsections cited above make confidential information pertaining to jurors and jurors' identities. Specifically, the following documents are confidential: the list of questionnaire recipients and the names drawn by the jury clerk; the juror qualification form/questionnaire (except to the parties, attorneys or agents); the names of the members of the jury pool (except to the parties, attorneys or agents); and any other records and information used in the selection process.

The Supreme Judicial Court has promulgated [Administrative Order JB-05-20](#), titled Public Information and Confidentiality, which tracks the statute in rendering juror information confidential as follows:

Juror questionnaires, the records and information used in connection with the juror selection process, the names drawn, and juror seating charts are confidential and may not be disclosed to any person, except

by judicial order. During the period of service of jurors and prospective jurors, the names and juror questionnaires of the members of the jury pool are confidential and may not be disclosed, except to the attorneys and their agents and investigators and self-represented parties.

Once the period of juror service has expired, a person may file a written request for disclosure of the names of the jurors and an affidavit stating the basis for the request. Post-service juror contact information disclosure is allowed only with the approval of a judge and only in the very narrow circumstances authorized by 14 M.R.S. § 1254-A.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

The Judicial Branch strongly supports the continuation of this exception and the protection of juror confidentiality. In the past, jurors have expressed concerns about providing sensitive personal information and the possibility that it could be misused in ways that could result in harm to their personal safety. The Judicial Branch has historically reassured jurors that while their information must be available for purposes relating to jury trials, their information will be responsibly maintained.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

The Judicial Branch has not encountered any problems in applying this exception.

4. Does your agency recommend changes to this exception?

No.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

All Maine residents are stakeholders.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** [14 §6321-A, subsection 4](#)

**AGENCY:** Judicial Branch

**CONTACT PERSON:** Julie Finn

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Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**14 MRS § 6321-A(4) makes confidential any financial statement or information provided to the court or to the parties during the course of foreclosure mediation.**

**These documents are contained in court files. As such, they are placed in a separate part of the paper file and marked confidential. If a member of the public asks to view a file, the clerk removes the confidential materials and provides the rest of the file for review.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Because this is a matter of public policy, the Judicial Branch defers to the Legislature to determine the appropriateness of this exception.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the

FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**The Judicial Branch has not encountered any problems in applying this exception.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Stakeholders would be parties to foreclosure matters.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



**STATUTE:** [15 §101-C, subsection 3](#)

**AGENCY:** Judicial Branch

**CONTACT PERSON:** Julie Finn

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Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**15 MRS § 101-C(3) makes confidential records produced in conjunction with an examination or evaluation of mental responsibility for criminal conduct. These records include medical histories, social histories, military histories, government histories, educational histories, drug and alcohol treatment histories, criminal record histories, penal institution histories and documentation pertaining to diagnosis or treatment.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Because this is a matter of public policy, the Judicial Branch defers to the Legislature to determine the appropriateness of this exception.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

The Judicial Branch is not aware of any problems in applying this exception.

4. Does your agency recommend changes to this exception?

No.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

NA

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** [15 §393, subsection 4-A, paragraph G](#)

**AGENCY:** Department of Public Safety

**CONTACT PERSON:** Christopher Parr

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Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**Our agency has not administered/applied the exception because Maine's restoration of rights law does not meet the Federal criteria.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Our agency supports the continuation of the exception because of the sensitivity of the personal/private information that would be collected and documented if Maine's law were amended to meet the Federal criteria and the exception consequently became applicable.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**Please see the response to "1" above.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**None known.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**None to provide.**

**Reference #10**

**Title 15 §3009, sub-§2**

**MSMA supports the law change below referenced in language passed by LD 1676 because it is in the best interest of the students we serve. Bill section is copied below.**

**Sec. 8. 15 MRSA §3009, sub-§2**, as amended by PL 2003, c. 205, §3, is further amended to read:

**2. Release of information.** Upon the request of the superintendent or the superintendent's designee under subsection 1, the Department of Corrections shall release information as authorized under section ~~3308~~ 3308-C, subsection ~~7~~ 4, paragraph ~~B-4~~ C, subparagraph (3) and Title 34-A, section 1216, subsection 1, paragraph F to be used by the reintegration team. Information received pursuant to this subsection is confidential and may not be further disseminated, except as otherwise provided by law.

**STATUTE:** [16 §703, subsection 2](#)

**AGENCY:** Office of the Attorney General

**CONTACT PERSON:** Jonathan Bolton

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Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**This FOA exception protects “confidential criminal history record information,” which consists of 12 categories of information relating to criminal history. The exception largely protects records that, generally speaking, disclose that an individual was the target of a criminal investigation or prosecution that did not result in conviction.**

**Our Office routinely interprets and administers this exception in many different contexts, including FOA requests covering such information, criminal prosecutions, civil litigation, responding to subpoenas, and in licensing and other administrative proceedings. The exception likely arises in dozens of matters handled by our office per year.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Our office supports continuation of this exception. Information revealing that an individual has had contact with the criminal justice system that did not result in conviction is sensitive information that can have significant negative consequences**

**for the individual if publicly disclosed. Further, the exception allows for disclosure of such information in appropriate circumstances, such as when ordered by a court or for research, evaluation, or statistical purposes.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We are not aware of any difficulties in administering this statute. The description of covered records is reasonably clear and the sensitive nature of the covered information makes it a proper subject for protection under FOAA.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**State and local law enforcement agencies, prosecutors, courts, individuals who have been investigated or prosecuted, news organizations.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**None.**

**STATUTE:** [16 §804](#)

**AGENCY:** Office of the Attorney General

**CONTACT PERSON:** Jonathan Bolton

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Thank you.

### QUESTIONS

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**This exception protects “intelligence and investigative record information” if there is a “reasonable possibility” that public release of the information would result in one or more of 12 adverse consequences, such as interfering with criminal proceedings, causing an unwarranted invasion of personal privacy, or endangering law enforcement or the public.**

**Our Office routinely interprets and administers this exception in many different contexts, including FOA requests covering such information, criminal prosecutions, civil litigation, responding to subpoenas, and in licensing and other administrative proceedings. The exception likely arises in dozens of matters handled by our office per year.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**This Office supports continuation of the exception. The statute properly allows disclosure of intelligence and investigative records unless disclosure would result in a specific public harm. The list of 12 public harms are carefully crafted and protect**



**important interests, including personal privacy, the rights of criminal defendants, and the physical safety of law enforcement personnel and members of the public.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOIA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**Generally, the language is clear. The third exception—documents that would “constitute an unwarranted invasion of personal privacy”—is a broadly worded standard that can be difficult to administer consistently. It has been the subject of a number of FOIA appeals over the years, including at least two currently pending appeals. On the other hand, the exception has been present in the law for some time and a number of court decisions provide guidance in its interpretation. It is also modeled after an exemption in the federal Freedom of Information Act, and caselaw interpreting that exemption can provide additional guidance.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**State and local law enforcement agencies, prosecutors, courts, criminal defendants, confidential informants, crime victims, other individuals who are identified in such records, news organizations.**

6. Please provide any further information that you believe is relevant to the Advisory Committee’s review.

**The 130th Legislature enacted three amendments to the Intelligence and Investigative Records Information Act at PL 2021, chapters 153, 252, and 353.**

**Those amendments:**

- **Allow for disclosure in certain circumstances of videos depicting the use of deadly force by law enforcement;**
- **Repeal the current prohibition on disclosing the existence or non-existence of records covered by the exception.**
- **Clarify the circumstances under which records covered by the exception can be shared with other governmental agencies.**

STATUTE: [17-A §2108, subsection 1](#)

AGENCY: Office of the Attorney General

CONTACT PERSON: Jonathan Bolton

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Thank you.

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**This provision typically is administered by prosecutors' offices – either District Attorneys' offices or the Criminal Division of the Attorney General's Office. Prosecutors require access to victim addresses in the course of criminal litigation in order to effectuate the state crime victim rights provisions that pertain to them, primarily 17-A MRSA § 2102, and to engage them as witnesses in criminal proceedings. One of the purposes of this public record exception – primarily-17-A MRSA § 2108(1) – is to protect the safety of a victim of domestic violence. There have been occasions in which victims of domestic violence have concealed their address for their own safety against a perpetrator. There was an instance many years ago in which an offender obtained the address of his former partner and went to her home and murdered her.**

**Victim addresses or current locations most often appear in police reports and charging narratives, mailed correspondence to crime victims from Victim Witness Advocates pursuant to other victim rights provisions within the chapter, applications for Victims' Compensation (otherwise protected under 5 MRSA § 3360-D and federal law), and written requests for release notifications pursuant to 17-A MRSA § 2106. Victim addresses also might incidentally appear in Victim**

**Witness Advocate email correspondence to community-based advocates and other criminal justice agencies, such as law enforcement, per the exception to the general rule of non-disclosure.**

**The provision is most commonly applied in the course of criminal litigation. In plenty of cases, the defendant already knows the victim's address/current location, and therefore the issue of whether to disclose the information to the defendant is moot. No reliable data exists to demonstrate how often this provision is cited in denying requests for victim addresses. Anecdotally, requests for crime victim addresses through defense counsel on behalf of defendants charged with harming the victim, where the prosecutor has withheld that information to protect victim safety, are infrequent. Requests from anyone other than the defendant are extremely rare.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**The Office of Attorney General supports continuation of this exception. Protecting victim addresses and/or current locations from criminal defendants and the general public is essential for protecting the personal safety of Maine crime victims who are engaged in the criminal process through no fault of their own.**

**In most instances in which the current address or location of the victim is unknown to a criminal defendant, the crime victim has fled domestic violence, sexual assault, stalking, and/or crimes against children or crimes against a disabled or older adult. In other instances, including those involving physical or financial harm, hate crimes, or violent property crimes, such as arson, crime victims who fear for their safety due to the nature of the crime or their involvement in the criminal justice process reasonably should be able to expect that the defendant will not have access to their physical location.**

**Additionally, if the general public had access to crime victim addresses, not only would all defendants have access to that information by default, but victims could be subject to harassment or embarrassment that would have a chilling effect on their participation in the criminal justice process. Criminal prosecution depends heavily upon the voluntary participation of crime victim witnesses.**

**Most states have a similar, if not more protective, victim rights provision on the books.**

**Section 2108 and similar provisions are counterbalanced against the prosecutor's discovery obligations to the defendant, pursuant to state and federal constitutional law and the Maine Rules of Professional Conduct. Section 2108 provides appropriate flexibility to allow individual prosecutors to address their obligations to the defendant.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**The language is sufficiently clear.**

**The greatest challenge in applying this provision is ensuring that key decision-makers, including prosecutors, Victim Witness Advocates, defense attorneys, and courts, all know that the provision exists and understand its proper application. Every prosecutor's office has a system in place to ensure that victim confidentiality is protected while balancing the prosecutor's discovery obligations to the defendant and FOA obligations to the general public.**

4. Does your agency recommend changes to this exception?  
**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Maine Prosecutors Association (Maeghan Maloney, President); Office of the Maine Attorney General (DAG Lisa Marchese, Criminal Division Chief, AAG Laura Yustak, and Cara Cookson, Victim Witness Advocate Program Coordinator); Maine Coalition to End Domestic Violence (Andrea Mancuso); Maine Coalition Against Sexual Assault (Elizabeth Ward-Saxl); Wabanki Women's Coalition (Donna Brown); Maine Department of Corrections Victim Services Division (Tessa Mosher)**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**None.**

**STATUTE:** [17-A §2108, subsection 1](#)

**AGENCY:** Judicial Branch

**CONTACT PERSON:** Julie Finn

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Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**17-A MRS § 2108(1) makes confidential records that pertain to a crime victim's current address or location or that contain information from which a victim's current address or location could be determined. There are some exceptions to this provision as set forth in the statute.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Because this is a matter of public policy, the Judicial Branch defers to the Legislature to determine the appropriateness of this exception.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

The Judicial Branch has not encountered any problems in applying this exception.

4. Does your agency recommend changes to this exception?

No.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

NA

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** [17-A §2108, subsection 5](#)

**AGENCY:** Department of Corrections

**CONTACT PERSON:** Commissioner Randall Liberty

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

**QUESTIONS**

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RESPONSE: The records subject to this exception is any request from a victim to be notified when the perpetrator of the crime is released from DOC custody. It is applied by excluding such a request whenever a record pertaining to a victim is released, which is not a common occurrence. This exception is only rarely cited when denying a request for production of records as this protected information is rarely sought.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

RESPONSE: DOC support the continuation of this exception as it protects victims from the perpetrators of the crimes against them.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

RESPONSE: No problems have occurred. The intent for the described records to be confidential is clear, as is the language of the statutory provision.

4. Does your agency recommend changes to this exception?

RESPONSE: No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

RESPONSE: Crime victims.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

RESPONSE: None.



**STATUTE:** [18-C §2-514 Wills for safekeeping](#)

**AGENCY:** Probate Judges

**CONTACT PERSON:** Judge Libby Mitchell

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation). Only interested parties have requested wills held for safekeeping. This section was changed in 1997 and we no longer take new wills for safekeeping.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Support. The few wills we have left will be handled by the current process.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? The only issue we have is if something needs to be probated the named personal representatives and devisees are all deceased. There is a formal probate resolve to that.
4. Does your agency recommend changes to this exception? NO
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** [18-C §5-205, subsection 1](#)

**AGENCY:** Probate Judges

**CONTACT PERSON:** Judge Libby Mitchell

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

**QUESTIONS**

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

The attendance and notice of hearing is to interested persons. Because of the possible confidential nature of DHHS records through DHHS testimony, or other professionals medical or teachers. There has been no FOA requests and issues handled through trial discovery or in other motions.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Support because this is regarding minors and often has a mental health or substance abuse component concerning the adults involved.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? Yes

4. Does your agency recommend changes to this exception? NO

**Reference # 23**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
  
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** 18-C §5-207, subsection 3, paragraph C -Status reports minors

**AGENCY:** Probate Judges

**CONTACT PERSON:** Judge Libby Mitchell

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

**QUESTIONS**

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

There have been no FOA requests on the status reports of minors in light of all persons in the litigation have access to them.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Support continuation of confidentiality due to the sensitive nature of the information regarding the minor.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

4. Does your agency recommend changes to this exception? NO

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



**STATUTE:** 18-C §5-308, subsection 3 – Reports of Visitor or Professional evaluation

**AGENCY:** Probate Judges

**CONTACT PERSON:** Judge Libby Mitchell

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

**QUESTIONS**

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation). All requests for information in visitor report and professional evaluations have been handled within the framework of the litigation. Information is usually mental health or medical related.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Support.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? Yes it is clear
4. Does your agency recommend changes to this exception? No.
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.





**STATUTE:** 18-C §5-409, subsection 3 - Conservatorship confidentiality of records Reports visitors and professional evaluations

**AGENCY:** Probate Judges

**CONTACT PERSON:** Judge Libby Mitchell

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation). Visitor reports and evaluations are handled in discovery are available to interested parties though proper motions in litigation.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Support
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? It is clear.
4. Does your agency recommend changes to this exception? NO.
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



**STATUTE:** [18-C §5-423, subsection 4](#)

**AGENCY:** Probate Judges

**CONTACT PERSON:** Judge Libby Mitchell

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation). These yearly reports go to interested parties only we have not had a request beyond that as of yet.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Support these contain financial reports including account numbers and should be private to avoid financial exploitation.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? Yes, it is clear.
4. Does your agency recommend changes to this exception? NO.
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



**STATUTE:** 18-C §9-304, subsection 1, paragraph B Background checks for prospective adoptive parents within homestudy or GAL report

**AGENCY:** Probate Judges

**CONTACT PERSON:** Judge Libby Mitchell

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

**QUESTIONS**

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Support.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception? No
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** 18-C §9-304, subsection 2, paragraph A

**AGENCY:** Probate Judges

**CONTACT PERSON:** Judge Libby Mitchell

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation). These would be Criminal history reports not included in a report if the report is waived in a biological step parent adoption. In which the step parent would be fingerprinted. Again these records already confidential and cannot be disseminated by us.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Supports to conform with existing Federal law and title 22 confidentiality.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? Yes
4. Does your agency recommend changes to this exception? NO
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** [18-C §9-308, subsection 3](#) -ADOPTION FINDING DECREE

**AGENCY:** Probate Judges

**CONTACT PERSON:** Judge Libby Mitchell

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Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation). Only interested parties' parents and adoptee have asked for copies of the decree and they do need it occasionally in a deceased parent who did leave them the right to inherit cases especially. We have a current petition for information system that works.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Supports
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? Yes
4. Does your agency recommend changes to this exception? No
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.





**STATUTE:** [18-C §9-310 Adoption Records Confidential](#)

**AGENCY:** Probate Judges

**CONTACT PERSON:** Judge Libby Mitchell

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Thank you.

**QUESTIONS**

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation). We have a petition for information process for those records that are confidential from 8/8/53 to present.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Supports .
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? It is clear.
4. Does your agency recommend changes to this exception? No.
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** [19-A §908](#)

**AGENCY:** Judicial Branch

**CONTACT PERSON:** Julie Finn

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**19-A MRS § 908 makes confidential the record of the social security number of any individual who is a party to a divorce action or subject to a divorce decree.**

**To protect individuals from identity theft, it is now common practice to protect social security numbers. It appears that no further discussion is necessary.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

4. Does your agency recommend changes to this exception?

**Reference # 33**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
  
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** [19-A §1653, subsection 6](#)

**AGENCY:** Judicial Branch

**CONTACT PERSON:** Julie Finn

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

19-A MRS § 1653(6) includes a provision making confidential the address of a child and/or a victim in cases involving domestic abuse and the determination of parental rights and responsibilities.

This exception refers to materials contained in court files. In addition to the multiple statutory provisions rendering certain documents confidential, an example of which is cited above, the Supreme Judicial Court has promulgated [Administrative Order JB-05-20](#) titled Public Information and Confidentiality, which governs the release of public information and the protection of confidential file materials.

AO-JB-05-20 describes the court's process for keeping nonpublic file materials confidential. Any document or record that is confidential by statute, rule, court order or any other means is placed in a separate part of the paper file and marked confidential. If a member of the public asks to view a file, the clerk removes the confidential materials and provides the rest of the file for review.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

Because this is a matter of public policy, the Judicial Branch defers to the Legislature to determine the appropriateness of this exception.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

The Judicial Branch has not encountered any problems in applying this exception.

4. Does your agency recommend changes to this exception?

Not at this time.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

NA

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** [19-A §1753, subsection 5](#)

**AGENCY:** Judicial Branch

**CONTACT PERSON:** Julie Finn

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

19-A MRS § 1753(5) provides that, if a party alleges under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed unless the Court orders otherwise after hearing.

This exception refers to materials contained in court files. In addition to the multiple statutory provisions rendering certain documents confidential, an example of which is cited above, the Supreme Judicial Court has promulgated [Administrative Order JB-05-20](#) titled Public Information and Confidentiality, which governs the release of public information and the protection of confidential file materials.

AO-JB-05-20 describes the court's process for keeping nonpublic file materials confidential. Any document or record that is confidential by statute, rule, court order or any other means is placed in a separate part of the paper file and marked confidential. If a member of the public asks to view a file, the clerk removes the confidential materials and provides the rest of the file for review.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

Because this is a matter of public policy, the Judicial Branch defers to the Legislature to determine the appropriateness of this exception.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

The Judicial Branch has not encountered any problems in applying this exception.

4. Does your agency recommend changes to this exception?

Not at this time.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

NA

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



**STATUTE:** 19-A §1834, subsection 5

**AGENCY:** Judicial Branch

**CONTACT PERSON:** Julie Finn

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

19-A MRS § 1834(5) makes confidential the social security numbers of parties to a parentage action and persons subject to a parentage adjudication.

This exception refers to materials contained in court files. In addition to the multiple statutory provisions rendering certain documents confidential, an example of which is cited above, the Supreme Judicial Court has promulgated [Administrative Order JB-05-20](#) titled Public Information and Confidentiality, which governs the release of public information and the protection of confidential file materials.

AO-JB-05-20 describes the court's process for keeping nonpublic file materials confidential. Any document or record that is confidential by statute, rule, court order or any other means is placed in a separate part of the paper file and marked confidential. If a member of the public asks to view a file, the clerk removes the confidential materials and provides the rest of the file for review.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

Because this is a matter of public policy, the Judicial Branch defers to the Legislature to determine the appropriateness of this exception.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

The Judicial Branch has not encountered any problems in applying this exception.

4. Does your agency recommend changes to this exception?

Not at this time.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

NA

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** 19-A §2006, subsection 10

**AGENCY:** Department of Health and Human Services

**CONTACT PERSON:** Kevin Wells

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**The Department is not aware of any requests for disclosure of parties' social security numbers for persons who are subject to child support orders.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Supports. DSER uses a noncustodial parent's social security number for identification and to access location, employment, and other information about the parent from various federal and state data systems. This information is necessary for the establishment of child support obligations administratively by DSER or by order of the court and for the modification of orders. Court rules provide for the confidential disclosure of parties' and children's social security numbers in Family Matter Cases which are segregated in the court file and clearly marked as nonpublic information. Administratively, DSER keeps confidential social security numbers contained in its records. 19-A M.R.S. § 2006(10) is necessary to protect confidential information and to prevent improper use of that information for identity theft, criminal use, or other impermissible purposes.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**DSER has experienced no problems in the application of this exception. It is clear which records are required to be confidential under 19-A M.R.S. § 2006(10) and the section accurately describes the records.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Stakeholders includes persons who are obligated to support their children pursuant to child support orders and custodial parents who receive support under those orders. Other stakeholders include children's and parents' attorneys and advocates, the judiciary, and various State agencies that provide services to children and families.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**None.**

**STATUTE:** 19-A §2006, subsection 10

**AGENCY:** Judicial Branch

**CONTACT PERSON:** Julie Finn

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

19-A MRS § 2006(10) makes confidential the record of the social security number of any individual who is a party to an action to establish or modify a child support order.

To protect individuals from identity theft, it is now common practice to protect social security numbers. It appears that no further discussion is necessary.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

4. Does your agency recommend changes to this exception?

**Reference # 37 (JB)**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
  
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** [19-A §2111, subsection 5](#)

**AGENCY:** Department of Health and Human Services

**CONTACT PERSON:** Kevin Wells

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**No experience to date. The Department, Division of Support Enforcement and Recovery (DSEER) has developed a draft background investigation check policy to implement 19-A M.R.S. § 2111 and expects the policy to be in effect by the end of 2021. Persons subject to background checks may review their own criminal history information and may request that their fingerprints be removed from state records. The Department will deny all requests for production of records from anyone other than the employee, contractor, or sub-contractor.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Supports. This statute was proposed by DSEER in 2019 to meet a federal mandate. The requirement for criminal history record checks for employees, contractors, and sub-contractors whose positions require access to Federal Tax Information (FTI) is imposed on local child support agencies under federal law. The specific law is Internal Revenue Services' Publication 1075 (2016), Section 5.0 Restricting Access – IRC 6103(p)(4)(c). Affected agencies such as DSEER are required to develop written background investigation policies and procedures.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**It is clear under 19-A M.R.S. § 2111(5) that criminal history record information obtained by DSER when performing background checks is confidential and to be used only by the Department for employment screening. All other uses are prohibited and information may not be disclosed pursuant to a FOAA request.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Confidential FTI is used by child support agencies to locate parents, verify employment and income, establish support obligations, and enforce child support orders. The IRS mandates background investigation requirements because FTI, by nature, is actionable data that is highly susceptible to identity theft even under the strictest protection methods. FTI contains data that is desirable information for identity theft, such as a person's name, social security number, birthdate, bank account numbers, and current mailing address. Stakeholders are all persons who are subject to employment background checks and those persons whose confidential information is used by DSER in performing its child support activities.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**None.**



**STATUTE:** [19-A §2152, subsection 11](#)

**AGENCY:** Department of Health and Human Services

**CONTACT PERSON:** Kevin Wells

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**When providing child support enforcement services, the Department, Division of Support Enforcement and Recovery ("DSE"), may request information needed from any person to establish, modify, or enforce a child support order (Section 2152, Title 19-A). DSE may request detailed information about a responsible parent having a duty to support (19-A M.R.S. § 2152(2)) and more limited information regarding putative fathers when establishing paternity (19-A M.R.S. § 2152(5)). Information disclosed to DSE is confidential under 19-A M.R.S. § 2152(11). Information may only be used by DSE personnel and legal counsel (staff attorney and the State Office of the Attorney General) in carrying out their functions.**

**The Department does not have records of any requests from parties, their attorneys, or the public for disclosure of information obtained by DSE pursuant to its authority under 19-A M.R.S. § 2152.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Supports. Section 2152, Title 19-A is an important tool used by DSER to request and obtain information from third parties needed to establish, modify, or enforce child support orders. DSER's authority under this section is particularly useful to determine or confirm a noncustodial parent's employment, earnings, assets, and liabilities. This information is needed to establish support obligations consistent with child support guidelines (Title 19-A, Chapter 63); collect and distribute funds for current support; issue withholding orders; attach assets to secure debt; and reimburse the State for funds expended to support a noncustodial parent's children.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**DSER has experienced no problems in the application of this exception. It is clear which records are required to be confidential under 19-A M.R.S. § 2152(11) and the section accurately describes the records.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Stakeholders includes persons who are obligated to support their children pursuant to child support orders and custodial parents who receive support under those orders. Other stakeholders include children's and parents' attorneys and advocates, the judiciary, and various State agencies that provide services to children and families. Employers, lenders, and holder of assets (such as banks and financial institutions) who provide information to DSER pursuant to 19-A M.R.S. § 2152 are also stakeholders.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**None.**

**STATUTE:** [19-A §2158, subsection 6](#)

**AGENCY:** Department of Health and Human Services

**CONTACT PERSON:** Kevin Wells

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**Title 19-A, Section 2158, allows the Department, Division of Support Enforcement and Recovery, to submit a list of child support obligors to wireless service providers that is used to conduct computerized matches with the wireless service providers' account holders. The wireless service providers furnish, if available, DSER with a list of the matched obligors' names, birth dates, social security numbers, addresses and employers. Account information from wireless carriers is a valuable source for locating obligors and often provides current, timely demographic information.**

**DSER submits the list of obligors' names electronically to all major wireless service providers quarterly. 19-A M.R.S. § 2158(6) requires that the list is confidential and may only be used for authorized purposes. Locate and other information obtained from providers is not covered by Section 2158(6) but may fall within other exceptions to the disclosure of information contained in DSER files. The Department does not have records of any requests for a copy of the obligors' list of names.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Supports. In 2005, DSER proposed legislation to enact 19-A M.R.S. § 2158 because many obligors have mobile phones and information from their wireless carriers may be more current than information available from other sources or locate services.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**DSER has experienced no problems in the application of this exception. It is clear that the list of obligor's names that DSER submits electronically to wireless service providers is confidential under 19-A M.R.S. § 2158(6) and the section accurately describes the records.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Stakeholders includes persons who are obligated to support their children pursuant to child support orders and custodial parents who receive support under those orders. Wireless service providers who provide information to DSER pursuant to 19-A M.R.S. § 2158 are also stakeholders.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**None.**

**STATUTE:** [19-A §3012](#)

**AGENCY:** Department of Health and Human Services

**CONTACT PERSON:** Kevin Wells

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**Title 19-A, Chapter 67, was enacted in 1995 pursuant to a federal requirement that all states with a child support program adopt the Uniform Interstate Family Support Act (UIFSA) as local law. The intent was to create uniformity of procedures for cases involving one or more states or countries. Section 3012, Title 19-A corresponds to UIFSA Section 312. The model act commentary describes the need for this section as follows:**

**UIFSA (1992) recognized that enforcement of child support across state lines might have an unintended consequence of putting a party or child at risk if domestic violence was involved in the past. This section is a substantial revision of the statutory formulation originally developed in UIFSA (1992). It conforms to the comparable provision in the Uniform Child Custody Jurisdiction and Enforcement Act Section 209. Public awareness of and sensitivity to the dangers of domestic violence has significantly increased since interstate enforcement of support originated. This section authorizes confidentiality in instances where there is a risk of domestic violence or child abduction. Section 712, *infra*, incorporates language from the**

**Convention to restrict dissemination of personal jurisdiction to protect victims of domestic violence.**

**Although local law generally governs the conduct of the forum tribunal, state law may not provide for maintaining secrecy about the exact whereabouts of a litigant or other information ordinarily required to be disclosed under state law, i.e., Social Security number of the parties or the child. If so, this section creates a confidentiality provision that is particularly appropriate in light of the intractable problems associated with interstate parental kidnapping, see the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A.**

**The Department, Division of Support Enforcement and Recovery (DSER), is not aware of any requests made directly to the Department for disclosure of information covered in this exception. Section 3012, Title 19-A is enforced through court proceedings where a party asking for nondisclosure alleges in writing that the party or child would be jeopardized by disclosure of specific identifying information. The court, after a hearing, determines whether the information may or may not be disclosed.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Supports. UIFSA sections should be amended as changes are made to the model act consistent with federal child support program requirements and with other State laws.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**None. The language of the statute is clear that specific identifying information may be protected and sets forth the process for keeping the information confidential.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Stakeholders include parties to interstate child support cases, their attorneys and advocates, and the judiciary.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**None.**

**STATUTE:** [19-A §4008](#)

**AGENCY:** Judicial Branch

**CONTACT PERSON:** Julie Finn

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

19-A MRS § 4008 provides that, if a party alleges under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed unless the Court orders otherwise after hearing.

This exception refers to materials contained in court files. In addition to the multiple statutory provisions rendering certain documents confidential, an example of which is cited above, the Supreme Judicial Court has promulgated [Administrative Order JB-05-20](#) titled Public Information and Confidentiality, which governs the release of public information and the protection of confidential file materials.

AO-JB-05-20 describes the court's process for keeping nonpublic file materials confidential. Any document or record that is confidential by statute, rule, court order or any other means is placed in a separate part of the paper file and marked confidential. If a member of the public asks to view a file, the clerk removes the confidential materials and provides the rest of the file for review.



2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

Because this is a matter of public policy, the Judicial Branch defers to the Legislature to determine the appropriateness of this exception.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

The Judicial Branch has not encountered any problems in applying this exception.

4. Does your agency recommend changes to this exception?

No.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

NA

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** [19-A §4013, subsection 4, paragraph E](#)

**AGENCY:** Office of the Attorney General

**CONTACT PERSON:** Jonathan Bolton

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**This exception makes confidential all records and proceedings of the Domestic Abuse Homicide Review Panel. The panel reviews the deaths of person who are killed by family or household members. Records of the panel are confidential under FOA and, in addition, are not subject to subpoena, discovery, or introduction into evidence in any civil or criminal action. Conclusions of the review panel may be disclosed upon request. Biennially, the Panel reports out its recommendations and conclusions in a de-identified manner.**

**As best as we can determine, we have never received a request for records of the panel.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Yes. The matters considered by this panel are highly sensitive and much of the information it reviews would, if publicly disclosed, invade the privacy of victims and their families and violate other statutes.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**This Office has not had any problems applying the statute. The statute is unambiguous and the records are similar to others that FOA protects from disclosure.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Families of victims whose deaths are reviewed by the panel. Records of the DHHS, medical records and mental health records may be reviewed by the Panel as part of their case review and these records are confidential pursuant to other statutes.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**None.**

## Reference #44

### Title 20-A §4008 sub-2

**MSMA agrees with this exception because the school leaders we represent are charged with keeping students safe when they are in our care.**

**The law reads:**

**2. Privileged communication.** A school counselor or school social worker may not be required, except as provided by this section, to divulge or release information gathered during a counseling relation with a client or with the parent, guardian or a person or agency having legal custody of a minor client. A counseling relation and the information resulting from it shall be kept confidential consistent with the professional obligations of the counselor or social worker.

[PL 1989, c. 396, §3 (AMD).]

**3. Exceptions.** This section shall not apply to the extent that disclosure of information is necessary:

A. To comply with [Title 22, chapter 1071](#); and Child Protection Act

B. To report to an appropriate authority or to take appropriate emergency measure when:

(1) The client's condition requires others to assume responsibility for the client; or

(2) There is clear and imminent danger to the client or others. [PL 1983, c. 806, §42 (AMD).]

## Reference #45

### Title 20-A, §5001-A, sub-3

**MSMA strongly supports this exception because the school leaders we represent are charged with keeping students safe and protecting their privacy as minors.**

This section covers alternatives to attendance at public day school. Information required by the school from parents under this section of the law is protected under the federal Rights and Privacy Act, which has limited exceptions for so-called “directory information” but protects the confidentiality of student information. We strongly oppose any dissemination of the information referenced in this section and see it as a clear violation of FERPA and the federal Education for All Handicapped Children Act, also referenced in this section.

## Reference #46

### Title 20-A, §6001-A, sub-3

**MSMA supports this exception because it serves the purpose of creating or maintaining a plan for the juvenile’s rehabilitation i.e. it is in the best interest of the child. It also requires that these records be kept confidential by the receiving agencies.**

**Reference #47**

**Title 20-A, §6101-A, sub-2**

**MSMA supports this statute because it allows school districts to be transparent during an investigation of an allegation that has become public, while still protecting privacy rights of our employees.**

The section allows us to release “directory information” that includes such things as name; date of employment; and, regular and extracurricular activities of the employee. It is factual information and a good counter to hearsay.

**Reference #48**

**Title 20-A, §6103, sub-3**

**MSMA has some concerns with the confidentiality provision referenced here because of other changes that have occurred in law that could affect us.**

With the passage in 2021 of L.D. 1167, An Act Relating to Fair Chance in Employment, we can no longer ask an applicant on an application if they have a criminal history. We can do so when the applicant is being personally interviewed. The problem is we cannot validate that information. Title 20-A, §6103, sub-3, essentially says the commissioner cannot share information on criminal history record checks outside of the DOE. We would like some better guardrails on this process.

**STATUTE:** [20-A MRSA §7451, sub-§2](#)

**AGENCY:** Attorney General (records of former Baxter Compensation Authority)

**CONTACT PERSON:** Jonathan Bolton

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**The records subject to this exception are records of the Baxter Compensation Authority that are in any way related to a claimant or a claimant's family, subject to certain exceptions. The Baxter Compensation Authority was a program that provided compensation to students of the Baxter School for the Deaf or Maine School for the Deaf who were subject to physical and sexual abuse. The statute requires the approval of the Attorney General for any release of records, including records designated as public and limits dissemination of non-public records to certain state officials.**

**Our Office is aware of only one request for the disclosure of information under this provision, and is not aware of any denials of information.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**The Attorney General supports continuation of this exception. These are sensitive records concerning physical and sexual abuse of minors. The protections in the current statute, including the requirement of Attorney General authorization for any release, is appropriate given the nature of the records.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We are not aware of any problems in applying the statute. The language of the statute clearly describes the covered records. The statutory language requiring Attorney General approval of releases is, in our view, unambiguous in requiring approval for all releases of records or information covered by the provision.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Stakeholders may include state agencies that may need information from the records to carry out their work, the Maine State Archives (where the records are currently housed), the individual claimants and their families.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**None.**

**STATUTE:** [20-A MRSA §11418, subsection 1 and 2](#)

**AGENCY:** Finance Authority of Maine

**CONTACT PERSON:** Bill Norbert

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 8 through 12 before 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

**1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).**

Our experience has been largely neutral since taking over this program from the former Maine Educational Loan Authority (MELA) in 2015. Under this program, FAME provides consumer loans for higher education. We recall no uses of this exception or any request for records under this program. The protections afforded by this section are broad, encompassing all records received and maintained by the Authority; however, in truth, the only records we maintain in this program would most likely meet most common concepts of confidentiality. Other than simple demographic information from applicants (name, address, school attending, loan requested, etc.), the other information or records we maintain are all PII (Personally Identifiable Information like social security numbers, account numbers, etc.) or are personal financial information about family finances, including income, expenses, tax returns, and credit report information, including loan payment performance. The exceptions are thus used to protect sensitive borrower personal and financial data from being available to the general public, except pursuant to court process.



**2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.**

We fully support continuation of the exceptions as they provided critical protections for our consumer customers seeking FAME assistance.

**3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?**

No problems have been identified in application of the exceptions.

**4. Does your agency recommend changes to this exception?**

No.

**5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.**

Stakeholders would include FAME's education loan customers (names and contact information available upon request), as well as Maine' media companies whose contact information is widely available.

**6. Please provide any further information that you believe is relevant to the Advisory Committee's review.**

None.

**STATUTE:** [20-A MRSA §11494, subsection 1](#)

**AGENCY:** Finance Authority of Maine

**CONTACT PERSON:** Bill Norbert

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 8 through 12 before 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

**1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).**

Our experience has been largely neutral. The HELPP program has been dormant for many years. Originally designed to allow FAME to purchase federally-insured education loans from Maine lenders (like banks) to provide the lenders liquidity, it was discontinued under the Obama administration when the federal government went to a direct education loan model. We have not sought repeal of the language in case the model reverts to its old form under a new Congress or administration.

Under this program, FAME purchased consumer loans for higher education. We recall no uses of this exception or any request for records under this program, for that matter. The protections afforded by this section are broad, encompassing all records received and maintained by the Authority. However, in truth the only records we have in this program would most likely meet most common concepts of confidentiality. Other than simple demographic information from applicants (name, address, school attending, loan requested, and information on the original lender and amount paid for portfolio, etc.), the other information or records we maintain are all PII (Personally Identifiable Information like social security numbers, account numbers, etc.) or pertain to personal financial information about family finances, including income, expenses, tax returns, and credit

report information, including loan payment performance. The exceptions are thus used to protect sensitive borrower personal and financial data from being available to the general public, except pursuant to court process.

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**2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.**

We support continuation of these exceptions as they provided (and could provide again) critical protection for our consumer customers seeking FAME assistance.

**3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?**

No problems have been identified in application of the exceptions.

**4. Does your agency recommend changes to this exception?**

No.

**5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.**

Stakeholders would include FAME's past education loan customers under the now-dormant program and their original lenders (names and contact information available upon request), as well as Maine's media companies whose contact information is widely available.

**6. Please provide any further information that you believe is relevant to the Advisory Committee's review.**

None.

STATUTE: [21-A MRS §1, subsection 21](#)

AGENCY: Secretary of State

CONTACT PERSON: Joann Bautista

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**21-A MRS §1, sub-§21, sets forth the definition for the incoming voter list that is used at each voting place to check-in voters for the election. This section provides that the portion of the list relating to voters who are participants in the Address Confidentiality Program (ACP) must be kept under seal and excluded from public inspection.**

**There are fewer than 150 participants in the ACP statewide who have been assigned voter codes and thus are eligible to register to vote under the ACP code. The ACP voter information appears on the last page of the incoming voter list by itself, so that it is easy to separate public data from confidential data. Accordingly, the local election administrators can provide a copy of their incoming voter list without the ACP voter page if the municipality has any ACP voters.**

**Incoming voter lists are produced and retained at the municipal level. We are not aware of any requests that the State has received for access to this data, which we would have to deny because we do not have the requested records. Nor have local election officials indicated that they have had to deny this information to requestors.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**We support the continuation of this exception. ACP participants are victims of domestic violence, stalking or sexual assault and protecting their identities and addresses on the incoming voter list allows them to register and vote without putting their lives, or the lives of family members who live with them, in danger.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We are not aware of any problems with application of this exception and believe the language is sufficiently clear in describing the records that are covered.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Unknown.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**We have nothing further to add at this time.**

**STATUTE:** [21-A MRSA §22, subsection 2](#)

**AGENCY:** Secretary of State

**CONTACT PERSON:** Joann Bautista

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**This exception relating to ballots was in effect for the codification of Title 21 (§1577) to Title 21-A (§22) in 1985. We have not researched further to determine how long this exception was in effect prior to 1985.**

**The records subject to the exception are ballots for state elections, which include federal, state and county candidate elections (i.e., Primary and General Elections) and statewide referenda elections. This exception would also apply to ballots for municipal elections conducted under Title 21-A, but not to town meeting elections conducted under Title 30-A (that do not use secret ballots).**

**Unless there is a recount, the state ballots are kept at the municipal level for the statutorily required retention period after the election (2 months for referenda ballots and special state elections; 22 months for ballots containing federal offices, which include Primary and General Election ballots). If there is a recount, the ballots are transmitted to Augusta by a bonded courier service and secured by the Secretary of State until the recounts are concluded; then the ballots are returned to the municipalities for retention.**

**We are not aware of formal FOA requests for access to or copies of ballots.**

2. Please state whether your agency supports or opposes continuation of this exception and explain the reasons for that position.

**We support the continuation of this exception for several reasons. Opening ballots to public inspection outside of the procedures established in the election law would jeopardize, rather than enhance, the integrity of the voting process. The process for counting and securing ballots is public and assures that ballots cannot be tampered with at any time by any individual.**

**After the polls close, the ballots are counted at the voting place in each municipality by election clerks. The public can be present to observe the count and the sealing of the ballots in tamper proof containers with uniquely numbered seals and locks. Election clerks are citizens (and voters) of the municipality or of the county where they live. They are appointed by the municipal officers once every two years, and the list of appointed clerks is posted at the voting place each election. In other words, the counting and securing of ballots is done publicly by members of the public who have been appointed through a public process.**

**Pursuant to federal and state law, the Secretary of State has adopted “Uniform Guidelines for Determining Voter Intent”. Our office provides instruction and training to municipal officials on how to apply these guidelines, which must be used by municipalities in counting ballots and by the Secretary of State when administering the recount process. These guidelines provide a uniform interpretation of when certain ballot markings should be counted as votes and when they should not be counted.**

**Ballots may be inspected during a recount and during the final appeal of any disputed recounts. During the recount, each candidate must bring people to count ballots for them. These counters are members of the public (who may not be state confidential employees or state elected officials or candidates). The recounts are open to the public for observation and follow well-established procedures.**

**The municipal officials must maintain a secure chain of custody of the ballots from the time the ballots are received from the State’s printing contractor, to the time when ballots must be destroyed after the statutory retention period. Removal of the public records exemption would present practical timeline considerations for municipal clerks trying to make information available and could expose ballots to tampering.**

**Once recounts or any disputed election appeals have been concluded, however, there must be finality to the election and the results. If ballots were made public, citizens could request reviews of the ballots after the official results have been declared and without any legal process for challenging those results. The public would be reviewing ballots without the context of election laws and procedures, and without the training provided to municipal election officials or the**

recount participants on how to apply the “Uniform Guidelines” to specific ballot markings.

**All statewide elections are conducted by “secret” ballot. The fact that a person voted at an election is public, as is the method by which a person voted (i.e., in person at the voting place or by absentee ballot). However, the content of each voter’s ballot is confidential, and the voting process (as provided in statute and procedures) is designed to protect the confidentiality of a voter’s vote.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**This section of law was recently amended by PL 2019, c. 371, §1, to provide that official ballots, whether in paper or electronic or image format, are not public records and to define “official ballots”.**

**We are not aware of any problems with application of this exception and believe the language is sufficiently clear in describing the records that are covered.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Municipal clerks – a list of clerks and their contact information is found at: <https://www.maine.gov/sos/cec/elec/munic.html>**

6. Please provide any further information that you believe is relevant to the Advisory Committee’s review.

**We have nothing further to add at this time.**



**STATUTE:** [21-A MRSA §22, subsection 3, paragraph A](#)

**AGENCY:** Secretary of State

**CONTACT PERSON:** Joann Bautista

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**This exception was added to the election law in 2005, to offer confidentiality of the entire voter's record for any participant in Maine's Address Confidentiality Program (ACP) who qualifies and desires to register and vote. Prior to this exception, there were no ACP participants who were registered to vote, because they were concerned about their safety if their names, addresses and other identifying information were listed in the Central Voter Registration system (CVR) and on voting lists.**

**The records subject to the exception are the voter registration records (including electronic information in the CVR and paper copies of voter registration applications) for ACP participants who choose to register to vote. At present, there are fewer than 150 ACP participants who are registered to vote in Maine.**

**There have not been any FOA requests made to the State for access to or copies of voter records for ACP voters since this exception was adopted in 2005.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**We support the continuation of this exception. The people who are served by the ACP program are fearful for their lives and safety, due to issues of domestic violence, sexual assault or stalking. We believe it is vital to continue to offer the confidentiality that allows these people to register and vote without making their identifying information public and compromising their safety.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We are not aware of any problems with application of this exception and believe the language is sufficiently clear in describing the records that are covered.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**All state advocates that offer services to persons who are victims of domestic violence, sexual assault and stalking. Another stakeholder would be the State's ACP Administrator who can be reached at 626-8400.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**We have nothing further to add at this time.**

**STATUTE:** [21-A MRSA §22, subsection 3, paragraph B](#)

**AGENCY:** Secretary of State

**CONTACT PERSON:** Joann Bautista

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**This exception was added to the election law in 1997, to protect the address information for voters who believe their safety would be jeopardized if their addresses were made public. Prior to this exception, certain voters were afraid to register to vote because their address would be publicly available on the voter list.**

**The records subject to the exception are the physical address (and the mailing address if it is the same as, or discloses, the physical address) of the voter who has filed a statement with the municipal registrar of voters indicating that the voter's safety would be jeopardized by making the address public. The rest of the information in the voter's record remains public and will be displayed on the incoming voting list that is used to conduct the election, as well as be included in reports or files of voter information obtained from the Central Voter Registration (CVR) system. The address for these voters is designated as "address is confidential".**

**There have not been any FOA requests made to the State for access to or copies of voter records for voters with confidential addresses since this exception was adopted in 1997, and we are not aware of requests to municipalities for this data.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**We support the continuation of this exception. There are voters who don't meet the requirements to be in the State's Address Confidentiality Program (ACP) or who don't need full confidentiality for their voter registration information and other records. For them, the ability to keep only their address confidential helps them protect their safety or the safety of their family members, while still allowing them to exercise their right to vote. The number of voters with protected addresses is small.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We are not aware of any problems with application of this exception and believe the language is sufficiently clear in describing the records that are covered.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**All state advocates that offer services to persons who are victims of domestic violence, abuse, sexual assault and stalking.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**We have nothing further to add at this time.**

**STATUTE:** [21-A MRSA §22, subsections 5 and 6](#)

**AGENCY:** Secretary of State

**CONTACT PERSON:** Joann Bautista

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**These exceptions were added to the election law in 2003, to protect certain voter information once the state's Central Voter Registration (CVR) system was implemented.**

**The records subject to the exception are the voter's unique identification number in any form (i.e., the Maine driver license number for those who have one, or the last four digits of the social security number (SSN) for those without a Maine driver license) and the voter's signature in electronic form. The signature of the voter is still public on the voter registration applications and associated records in hard-copy format.**

**There have not been any FOA requests made to the State for access to or copies of voter identification numbers or electronic signatures since this exception was adopted in 2003.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**We support the continuation of this exception. If this information were made public, it could be used to perpetrate identity theft or voter fraud. The unique**

**identification number is required to be collected for new voters pursuant to the federal Help America Vote Act of 2002 (HAVA), to provide a means for election officials to distinguish and match voter records with other databases, and to detect and remove duplicate records. However, if a voter's Maine driver license number or partial SSN were made public, along with the voter's name and date of birth, someone could have access to enough information to steal the person's identity.**

**The voter's signature is needed by election officials for certification of candidate and initiative petitions. However, as with the unique identification numbers, making electronic signature images public would facilitate identity fraud. Also, if the electronic signatures of all voters were public (through the CVR) it would be possible for someone to perpetrate petition and voter fraud.**

**Having the electronic records of nearly one million voters statewide in a single, central database (CVR) facilitates access to voter information. While this is generally a positive outcome, it is important to maintain these modest protections of sensitive information. Finally, due to citizen concerns about the threat of identity theft, removing the privacy protections could have the undesirable effect of discouraging citizens from registering to vote and participating in our democracy.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We are not aware of any problems with application of this exception and believe the language is sufficiently clear in describing the records that are covered.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**All registered voters in Maine.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**We have nothing further to add at this time.**

STATUTE: [21-A MRSA §122-A](#) (effective until 1/1/22)

[21-A MRSA §122-A](#) (effective 1/1/22)

AGENCY: Secretary of State

CONTACT PERSON: Joann Bautista

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**This exception covers the same records as the exception in section 22(3)(A), which references the voter records for any participant in Maine's Address Confidentiality Program (ACP) who qualifies and desires to register and vote. This section of law describes generally how ACP voters may use their assigned ACP voter code to register and vote.**

**The records subject to the exception are all voter registration records for ACP participants who choose to register to vote. At present, there are fewer than 150 ACP participants who are registered to vote in Maine.**

**There have not been any FOA requests made to the State for access to or copies of voter records for ACP voters since this exception was adopted in 2005.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**We support the continuation of this exception. The people who are served by the ACP program are fearful for their lives and safety, due to issues of domestic violence, sexual assault or stalking. We believe it is vital to continue to offer the confidentiality that allows these people to register and vote without making their identifying information public and compromising their safety.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We are not aware of any problems with application of this exception and believe the language is sufficiently clear in describing the records that are covered.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**All state advocates that offer services to persons who are victims of domestic violence, sexual assault and stalking. Another stakeholder would be the State's ACP Administrator who can be reached at 626-8400.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**We have nothing further to add at this time.**



STATUTE: [21-A MRSA §172](#)

AGENCY: Secretary of State

CONTACT PERSON: Joann Bautista

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**This exception covers the same records as the exceptions in section 22(3)(A) and 122-A, which reference the voter records for any participant in Maine's Address Confidentiality Program (ACP) who qualifies and desires to register and vote. This section of law describes the voter registration file that contains the paper voter registration documents for each voter in each municipality and provides that information in the voter registration file for ACP voters must be kept under seal and excluded from public inspection.**

**There have not been any FOA requests made to the State for access to or copies of voter records for ACP voters since this exception was adopted in 2005.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**We support the continuation of this exception, for the same reason that we support the exceptions in section 22(3)(A) and 122-A, to continue to provide protection to ACP voters.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the

FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We are not aware of any problems with application of this exception and believe the language is sufficiently clear in describing the records that are covered.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**All state advocates that offer services to persons who are victims of domestic violence, sexual assault and stalking. Another stakeholder would be the State's ACP Administrator who can be reached at 626-8400.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**We have nothing further to add at this time.**

STATUTE: [21-A MRSA §196-A](#)

AGENCY: Secretary of State

CONTACT PERSON: Joann Bautista

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**21-A MRS §196-A, provides that information from the Central Voter Registration system (CVR) is confidential and may be obtained and used only by election officials in the performance of their duties or under exceptions specified in law; namely, use by individuals to review their own records; use by political parties, candidate and issue campaigns and groups conducting "get-out-the-vote" activities in support of campaigns; use by governmental entities for government purposes; and use of non-personally identifying statistical data.**

**Since May of 2007, when the CVR was fully implemented, the Elections Division has issued about 550 original voter lists or files and about half that number of update files for statewide, countywide, or State office districts (i.e., State Senate or State Representative), or governmental use files for a region or group of municipalities. There have been 45 denials of requests to persons or groups who did not meet the requirements for obtaining the data.**

**We do not have a way to track how many files or lists have been produced by the municipalities during this period, but we do get calls from municipal officials for help determining whether the local requestor is qualified to obtain the data under the law.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**The Secretary of State strongly supports the continuation of this exception. Generally, public access to government data is used to enlighten citizens regarding the activities and performance of government. However, the information in the CVR is not government data. It is the individual, personal data of and about Maine's voters. Making this data public does not shed light on the performance of government; it only sheds light on the activities of voters.**

**CVR data doesn't fit within the traditional considerations of the Right to Know law; rather than being data gathered by a government program, it is personal data on individuals that the State requires people to provide to access their right to vote.**

**The harm in making the data fully public and generally available is the possible chilling effect on Democracy if voters decline to participate and remove their names from the voter list rather than have their private data available to any person or data broker for any potential use.**

**Conversely, the public interest is served by protecting this data, by ensuring that the data cannot be obtained and misused for a fraudulent purpose – e.g., voter fraud or identity theft and fraud. Additionally, voters who provide this data will continue to be confident in registering to vote and participating in the electoral process without fear their personal data will be compromised.**

**There are more than 120 active tables in the CVR database which collectively contain approximately 2,000 fields of dynamically updated information (voter information, municipal clerk passwords, audit data, metadata such as date fields, etc.). Therefore, it is simply too confusing and too cumbersome to draft a law that would cover access to all possible combinations of this data; and that could reasonably be administered by election officials and understood by the public. This is the reason that section 196-A takes the approach of protecting CVR data generally, while defining specific uses.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**Over time, and with many elections of CVR use, the Secretary of State's Office has experienced some areas where the law has been tighter and more restrictive than need be and in those areas the Secretary of State has sought to expand access.**

**In other areas, there have been unintended loopholes that clearly undermine the intent of the Legislature as expressed in different sections of the same statute. In those areas, the Secretary of State has sought to tighten the law to close loopholes.**

**We are not aware of any problems with application of this exception and believe the language is sufficiently clear in describing the records that are covered.**

4. Does your agency recommend changes to this exception?

**No. This exception was amended in the First Special Session of the 130<sup>th</sup> Legislature by PL 2021, c. 310, which takes effect on October 18, 2021. This amendment adds access to CVR data for individuals or organizations that are evaluating the State's compliance with its voter list maintenance obligations pursuant to the Nation Voter Registration Act of 1993, 52 United States Code, Section 20507(i), while imposing penalties for using the data to discriminate against voters or otherwise violate other federal laws.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**The municipal clerks and registrars of voters of Maine's 500 voting jurisdictions might be considered stakeholders, as they have the authority to issue lists or files of their municipality's voters to qualified requestors. Maine's three qualified political parties, the Democratic Party, the Green Independent Party and the Republican Party also might be considered as stakeholders as well.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**We have nothing further to add at this time.**

STATUTE: [21-A MRSA §624](#)

AGENCY: Secretary of State

CONTACT PERSON: Joann Bautista

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**This exception was added to the election law in 2007, to ensure that voter information already made confidential under other sections of law (Title 5 §90-B and Title 21-A §22) would be excluded from the voting list that must be posted at the voting place on Election Day pursuant to this section of law (section 624, subsection 1). The records subject to the confidentiality exception are records pertaining to Address Confidentiality Program (ACP) voters that must not be included in the voter list that is posted at the voting place on Election Day.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**We support the continuation of this exception, for the same reason that we support the exception in section 22, subsection 3A regarding ACP voters generally.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We are not aware of any problems with application of this exception and believe the language is sufficiently clear in describing the records that are covered.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Please see the exception for section 22, subsection 3A.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**We have nothing further to add at this time.**

**STATUTE:** [21-A MRSA §737-A, subsection 7](#)

**AGENCY:** Secretary of State

**CONTACT PERSON:** Joann Bautista

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**This exception appears to have been added to the election law in 1993, when the recount section was amended to make other enhancements. The records subject to the confidentiality exception are the copies of disputed ballots that were not resolved at the conclusion of the recount. (The original disputed ballots are covered by the public records exception in section 22, subsection 2.)**

**Since 1995, there have not been any disputed ballots that remained unresolved at the conclusion of the recount or subsequent appeal, so there have been no FOA requests related to these records.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**We support the continuation of this exception. During a recount, certain ballots may be disputed by the parties if they do not agree on how the ballot should be counted. These are segregated until the end of the recount when it is determined whether the disputed ballots would affect the outcome of the election.**



**If the disputed ballots would not affect the outcome, the ballots will be resolved by the parties. If the ballots remaining in dispute would affect the outcome of the election, then the results of the election will be determined by the appeal authority as provided in statute (e.g., the Maine Supreme Judicial Court or the Maine Senate or Maine House of Representatives).**

**The Secretary of State must copy the disputed ballots to facilitate the appeal of a disputed recount - so that a copy is preserved and secured while the original disputed ballots are being reviewed by the appeal authority. We also believe that the reasons cited for protecting the original ballots (see the exception in section 22, subsection 2) apply to copies of the disputed ballots as well.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We are not aware of any problems with application of this exception and believe the language is sufficiently clear in describing the records that are covered.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Unknown.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**We have nothing further to add at this time.**

STATUTE: [21-A MRSA §753-B, subsection 6](#)

AGENCY: Secretary of State

CONTACT PERSON: Joann Bautista

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**This exception covers the same records as the exceptions in sections 22(3)(A), 122-A and 172, which reference the voter records for any participant in Maine's Address Confidentiality Program (ACP) who qualifies and desires to register and vote. This section of law describes the information that must be included in the list of absentee voters produced by each municipality for each election and provides that the absentee voter information for ACP voters must be kept under seal and excluded from public inspection.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**We support the continuation of this exception, for the same reason that we support the exceptions in section 22(3)(A), 122-A and 172 to continue to provide protection to ACP voters.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We are not aware of any problems with application of this exception and believe the language is sufficiently clear in describing the records that are covered.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**All state advocates that offer services to persons who are victims of domestic violence, sexual assault and stalking. Another stakeholder would be the State's ACP Administrator who can be reached at 626-8400.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**We have nothing further to add at this time.**

STATUTE: [21-A MRSA §764](#)

AGENCY: Secretary of State

CONTACT PERSON: Joann Bautista

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**This exception relating to absentee ballot applications and envelopes was in effect for the codification of Title 21 (§1263) to Title 21-A (§764) in 1985 and has been amended since to add a reference to section 759(8) to allow inspection of envelopes and applications prior to processing. Additionally, section 23(7-B) was added to the statute to provide that after the election and any recount or appeal period has passed, the absentee envelopes and applications may be unsealed and are retained as public records for two years after the election.**

**The records subject to the exception are absentee ballot applications and envelopes for state elections, which include federal, state and county candidate elections (Primary and General Elections) and statewide referenda elections, after the ballots have been processed and placed in the ballot box or tabulating device. This exception would also apply to absentee ballot applications and envelopes for municipal elections conducted under Title 21-A, but not to town meeting elections conducted under Title 30-A (that do not use secret ballots). This exception only applies during the period after the ballots have been processed, before or on election day, through any recount or appeal period for a disputed election, after which these materials become public records.**

**We are not aware of FOA requests for access to these materials during the limited period in which these materials are subject to the public records exception.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**We support the continuation of this exception. Applications for absentee ballots and sealed envelopes containing voted absentee ballots may be inspected in the office of the municipal clerk up until the time the municipality has designated for processing of the absentee ballots on the Notice of Early Processing of Absentee Ballots or the Notice of Election. This ability to inspect the materials before processing allows the public to ensure that absentee ballots have been properly obtained and returned, or to challenge the ballot for any voter who is not eligible or who has not properly obtained or completed the application form or envelope affidavit.**

**After the absentee ballots have been processed, the applications and envelopes are no longer associated with a ballot, so there is no longer an ability to challenge the ballot for any discrepancy noted on the application or envelope. If no recount is requested, these materials may be unsealed as early as the sixth business day after the election and become public records again.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We are not aware of any problems with application of this exception and believe the language is sufficiently clear in describing the records that are covered.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Municipal clerks – a list of clerks and their contact information is found at:**  
<https://www.maine.gov/sos/cec/elec/munic.html>

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**We have nothing further to add at this time.**

**STATUTE:** [21-A MRSA §1003, subsection 3-A](#)

**AGENCY:** Maine Commission on Governmental Ethics and Election Practices

**CONTACT PERSON:** Martha Currier

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

*The records subject to this exception are documents, records and other printed or electronic information that are acquired, prepared or maintained by the Commission during the conduct of an investigation, audit or other enforcement matter:*

- *Financial information not normally available to the public (e.g., bank statements, vendor invoices, payroll records);*
- *Information belonging to a party committee, political action committee, ballot question committee, candidate or candidate's authorized committee, that if disclosed, would reveal sensitive political or campaign information (e.g., strategy documents, polling data, internal committee communications);*
- *Information or records subject to a privilege against discovery or use as evidence (see M.R. Evid. 501 – 514); and*
- *Intra-agency or interagency communications related to an audit or investigation (e.g., Commission staff memoranda and e-mail communications, memoranda and other communications with an independent auditor hired by the Commission, memoranda and other communications, memoranda and other communications with the Office of the Attorney General).*

*The Commission sometimes receives FOAA requests related to investigations undertaken by the Commission. It is difficult to provide any reliable estimate of*

*the frequency of use. In 2010, the exception was used nine times; since 2010, we have records of using the exception only once.*

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

*The Commission strongly supports the continuation of this exception. In order for the Commission staff to conduct thorough investigations, it is necessary to maintain the confidentiality of certain records. The premature release of certain records could impair the staff's ability to gather information and evidence and to interview witnesses.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

*There are no issues with the application of the exception and the language is clear.*

4. Does your agency recommend changes to this exception?

*No.*

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

*Any of the following might have input for the committee regarding the exception: candidates for political office, the Governor, the Attorney General, legislative leadership, political party leadership, officers of political action committees and ballot question committees, lobbyists, Maine Citizens for Clean Elections, League of Women Voters, representatives of print, broadcast, and web-based media.*

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

*None.*

**STATUTE:** [21-A MRSA §1125, subsection 2-B](#)

**AGENCY:** Maine Commission on Governmental Ethics and Election Practices

**CONTACT PERSON:** Martha Currier

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

This law was repealed in 2015. The records we are permitted to release are now outlined in [21-A M.R.S. §1125 \(3\)\(I\)](#), which became law in 2019.

**2-B. Seed money required for gubernatorial candidates; documentation.**

[IB 2015, c. 1, §17 (RP).]



**STATUTE:** [21-A MRSA §1125, subsection 3](#)

**AGENCY:** Maine Commission on Governmental Ethics and Election Practices

**CONTACT PERSON:** Martha Currier

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

*The record that is created when an individual makes a qualifying contribution using the Commission's online service (through InforME) contains credit card information and e-mail addresses. The exception protects financial and personal information that is not normally available to the public from being released.*

*The Commission had not had an occasion to use this exception.*

2. Please state whether your agency supports or opposes continuation of this exception and explain the reasons for that position.

*The Commission supports the continuation of this exception. While the Commission has not had to use it, this exception is necessary to safeguard the financial information of users of the Commission's online qualifying contribution system.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

*The language adequately describes the records covered and have not had problems administering the exception.*

4. Does your agency recommend changes to this exception? *No*

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available. *None known*

6. Please provide any further information that you believe is relevant to the Advisory Committee's review. *No further information.*