

**Freedom of Access Act (FOAA) recommended general exception for
Personally Identifiable Information (PII)**

For consideration by the Right to Know Advisory Committee
Submitted by Eric Stout, RTKAC Member with background in information technology
November 9, 2021

As a general exception for personally identifiable information (PII), I submit this for consideration as an addition to the list of public records exceptions (adding to existing exceptions A–V) at: <https://legislature.maine.gov/statutes/1/title1sec402.html>

W. “Personally identifiable information” (PII) defined as information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked or linkable to a specific individual.

As background for discussion, below are 3 examples from Maine statutes, and 4 from the Federal government.

Existing exceptions in §402 of the FOAA law:
<https://legislature.maine.gov/statutes/1/title1sec402.html>

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

- (1) Is of a personal nature, consisting of:
 - (a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
 - (b) Credit or financial information;
 - (c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family; or
 - (d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or
- (2) Would be confidential if it were in the possession of another public agency or official; [PL 2019, c. 667, Pt. A, §1 (AMD).]

- O. Personal contact information concerning public employees**, except when that information is public pursuant to other law. For the purposes of this paragraph:
- (1) "Personal contact information" means personal address, telephone number, facsimile number, e-mail address, cellular telephone number, pager number and username, password and uniform resource locator for a personal social media account as defined in Title 26, section 615, subsection 4; and
 - (2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials; [PL 2019, c. 667, Pt. B, §3 (AMD).]

Maine Revised Statutes Title 10: Commerce and Trade, Part 3: Regulation of Trade, Chapter 210-B: Notice of Risk to Personal Data, §1347. Definitions:

<https://legislature.maine.gov/statutes/10/title10sec1347.html>

6. Personal information. "Personal information" means an individual's first name, or first initial, and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted:

A. Social security number; [PL 2005, c. 379, §1 (NEW); PL 2005, c. 379, §4 (AFF).]

B. Driver's license number or state identification card number; [PL 2005, c. 379, §1 (NEW); PL 2005, c. 379, §4 (AFF).]

C. Account number, credit card number or debit card number, if circumstances exist wherein such a number could be used without additional identifying information, access codes or passwords; [PL 2005, c. 379, §1 (NEW); PL 2005, c. 379, §4 (AFF).]

D. Account passwords or personal identification numbers or other access codes; or [PL 2005, c. 379, §1 (NEW); PL 2005, c. 379, §4 (AFF).]

E. Any of the data elements contained in paragraphs A to D when not in connection with the individual's first name, or first initial, and last name, if the information if compromised would be sufficient to permit a person to fraudulently assume or attempt to assume the identity of the person whose information was compromised. [PL 2005, c. 379, §1 (NEW); PL 2005, c. 379, §4 (AFF).]

"Personal information" does not include information from 3rd-party claims databases maintained by property and casualty insurers or publicly available information that is lawfully made available to the general public from federal, state or local government records or widely distributed media. [PL 2005, c. 583, §4 (AMD); PL 2005, c. 583, §14 (AFF).]

Federal Government:

OMB Circular A-130, Managing Information as a Strategic Resource:

<https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/OMB/circulars/a130/a130revised.pdf>

10. Definitions:

‘Personally identifiable information’ means information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked or linkable to a specific individual.

OMB Memorandum M-17-12, Preparing for and Responding to a Breach of Personally Identifiable Information:

https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/m-17-12_0.pdf

III. B. Personally Identifiable Information

The term PII refers to information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual. Because there are many different types of information that can be

used to distinguish or trace an individual's identity, the term PII is necessarily broad. To determine whether information is PII, the agency shall perform an assessment of the specific risk that an individual can be identified using the information with other information that is linked or linkable to the individual. In performing this assessment, it is important to recognize that information that is not PII can become PII whenever additional information becomes available - in any medium or from any source - that would make it possible to identify an individual.

National Institute of Standards and Technology (NIST):

<https://nvlpubs.nist.gov/nistpubs/legacy/sp/nistspecialpublication800-122.pdf> and <https://csrc.nist.gov/glossary>

Personally Identifiable Information (PII): “Any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.”

U.S. Department of Labor: <https://www.dol.gov/general/ppii>

Personal Identifiable Information (PII) is defined as:

Any representation of information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means. Further, PII is defined as information: (i) that directly identifies an individual (e.g., name, address, social security number or other identifying number or code, telephone number, email address, etc.) or (ii) by which an agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification. (These data elements may include a combination of gender, race, birth date, geographic indicator, and other descriptors). Additionally, information permitting the physical or online contacting of a specific individual is the same as personally identifiable information. This information can be maintained in either paper, electronic or other media.