

Suggested standardized language for public records exceptions

Summary of suggestions from Standardized Language Report Required by Public Law 2019, c. 667, part B

- ❖ **Over-arching suggestion: If not a public record, designate the record as confidential.**

- ❖ **Specific examples**

- 1. Designating a record as confidential**

Except as provided in this subsection, audit working papers are confidential.

- 2. Authorizing the disclosure of a confidential record to a certain person**

F. Any information obtained or gathered by the commission when performing an evaluation or investigation of an attorney is confidential, except that it may be disclosed to the attorney being evaluated or investigated.

- 3. Authorizing the disclosure of a confidential record with permission**

Information in records of the network manager or collected by InforME relating to the identity of or use by users of electronic services is confidential and may be released only with the express permission of the user.

- 4. Authorizing the disclosure of a confidential record for certain purposes**

17-A MRSA §2108. Confidentiality of victim records

1. General rule of confidentiality. Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined are confidential, subject to disclosure only as authorized in this section.

2. Disclosure to law enforcement or victims' service agency. Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined may be disclosed only to:

- A. A state agency if necessary to carry out the statutory duties of that agency;*
- B. A criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile justice;*
- C. A victims' service agency with a written agreement with a criminal justice agency to provide services as a victim advocate; or*
- D. A person or agency upon request of the victim.*

- 5. Authorizing the disclosure of a confidential record to third parties with conditions**

G. Records maintained by the department pursuant to this chapter that identify applicants for a registry identification card, registered patients, registered caregivers and registered patients' medical providers are confidential and may be disclosed, only as follows:

- (1) To department employees who are responsible for carrying out this chapter;*
- (2) Pursuant to court order or subpoena issued by a court;*
- (3) With written permission of the registered patient or the patient's guardian, if the patient is under guardianship, or a parent, if the patient has not attained 18 years of age;*
- (4) As permitted or required for the disclosure of health care information pursuant to section 1711-C;*

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- (5) *To a law enforcement official for verification purposes. The records may not be disclosed further than necessary to achieve the limited goals of a specific investigation; and*
- (6) *To a registered patient's treating medical provider and to a registered patient's registered caregiver for the purpose of carrying out this chapter.*

6. Authorizing the disclosure of aggregated or summarized data when individual records are confidential

3. Permissible disclosure of information. *The department may provide prescription monitoring information for public research, policy or education purposes as long as all information reasonably likely to reveal the patient or other person who is the subject of the information has been removed.*

OR

Information provided to the organization as required by this subchapter by a manufacturer, wholesale drug distributor or pharmacy benefits manager is confidential, except that the organization may share information:

1. Bureau of Insurance. *With the Department of Professional and Financial Regulation, Bureau of Insurance, to the extent necessary for the bureau to enforce the provisions of Title 24-A, as long as any information shared is kept confidential; and*

2. Aggregate. *In the aggregate, as long as it is not released in a manner that allows the identification of an individual drug or manufacturer, wholesale drug distributor or pharmacy benefits manager.*

7. Making a confidential record public upon the occurrence of certain events

A request for funds for expert or investigative assistance that is submitted by an indigent party or by an attorney on behalf of an indigent client is confidential. The decision of the executive director of the commission hired pursuant to section 1804, subsection 1, or the executive director's designee, to grant or deny such a request is not confidential after a case has been completed. A case is completed when the judgment is affirmed on appeal or the period for appeal has expired.

OR

1. During investigation. *All complaints and investigative records of the commission are confidential during the pendency of an investigation. Those records become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this section, an investigation is concluded when:*

- A. A notice of an adjudicatory hearing under Title 5, chapter 375, subchapter IV has been issued;*
- B. The complaint has been listed on a meeting agenda of the commission;*
- C. A consent agreement has been executed; or*
- D. A letter of dismissal has been issued or the investigation has otherwise been closed.*

OR

3. Records relating to negotiations and appraisals. *The records and correspondence relating to negotiations for and appraisals of property are public records beginning 9 months after the completion date of the project according to the record of the department or Maine Turnpike Authority, except that records of claims that have been appealed to the Superior Court are public records following the award of the court.*

8. Prohibiting the disclosure of a confidential record through compulsion or judicial process

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Information that is confidential under this subsection is not subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity or admissible as evidence in any civil, criminal, judicial or administrative proceeding.

OR

***3-A. Confidentiality.** The proceedings and records of the child death and serious injury review panel created in accordance with section 4004, subsection 1, paragraph E are confidential and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The commissioner shall disclose conclusions of the review panel upon request, but may not disclose data that is otherwise classified as confidential.*

OR

Except as provided in this subsection, all protected valuation information is confidential and is not subject to subpoena or discovery or admissible in evidence in any private civil action. The superintendent may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the superintendent's official duties, including sharing the information on a confidential basis under section 216, subsection 5.

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