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Seventeenth Annual Report of the Right to Know Advisory Committee

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Seventeenth Annual Report
of the
Right to Know Advisory Committee

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Table of Contents

Page

Appendices

EXECUTIVE SUMMARY

This is the seventeenth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The members are appointed by the Governor, the Chief Justice of the Supreme Judicial Court, the Attorney General, the President of the Senate and the Speaker of the House of Representatives.

As in previous annual reports, this report includes a brief summary of the legislative actions taken in response to the Advisory Committee's January 2022 recommendations and a summary of relevant Maine court decisions from 2022 on the freedom of access laws. This report also summarizes several topics discussed by the Advisory Committee that did not result in a recommendation or further action.

For its seventeenth annual report, the Advisory Committee makes the following recommendations:

- ❒ **Enact legislation to clarify responsibility of responders to requests for public records related to time estimates (1 member opposed)**

- ❒ **Amend certain provisions of law in Titles 23, 24 and 24-A relating to previously-enacted public records exceptions**

- ❒ **Enact legislation to revise the membership of the Archives Advisory Board to include a member representing journalists, newspapers, broadcasters and other news media interests**

- ❒ **For FOAA training purposes, recommend that the Public Access Ombudsman review the Freedom of Access website and FOAA training materials to include guidance on best practices for conducting remote meetings to optimize public participation**

- ❒ **Encourage the Maine Municipal Association, the Maine County Commissioners Association and the Maine School Management Association to develop guidance documents related to remote meetings**

- ❒ **Enact legislation to amend the law related to remote participation**

- ❒ **Recommend that the Legislature direct funding to provide grants and technical assistance to all public bodies authorized to adopt remote participation policies, including counties, municipalities, school boards and regional or other political subdivisions**

- ❒ **Recommend a statutory change and the revision of the record retention schedules applicable to state, county, and municipal employee personnel records (1 member opposed; 1 member abstained)**

- ❒ **Enact legislation to amend state and county employee personnel records statutes to align with the municipal employee personnel record statute**

- ❒ **Enact legislation to ensure that responses to FOAA requests for "personnel records" include records that have been removed from the personnel file and are otherwise retained**

- ❒ **Recommend that the State Archivist, the Maine Archives Advisory Board and legislative proposals use standardized language related to record retention in schedules developed for public bodies and consider the inclusion of definitions of terms such as "remove," "purge" and "destroy" when they are used in record retention schedules**

- ❒ **Request information from municipal, county and state law enforcement agencies regarding the prevalence and frequency of use of encrypted radio channels**

- ❒ **Recommend that the Judiciary Committee, in consultation with the Criminal Justice and Public Safety Committee, continue to discuss providing expanded access to participation in the legislative process by residents of correctional facilities, including the barriers that must be resolved to allow participation**

In 2023, the Right to Know Advisory Committee will continue to discuss the ongoing issues identified in this report and complete the review of the existing public records exceptions in Title 22. The Advisory Committee will also continue to provide assistance to the Joint Standing Committee on Judiciary relating to proposed legislation affecting public access. The Advisory Committee looks forward to another year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations included in this report.

I. INTRODUCTION

This is the seventeenth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The Advisory Committee's authorizing legislation, located at Title 1, section 411, is included in Appendix A.

More information on the Advisory Committee, including meeting agendas, meeting materials and summaries of meetings and its previous annual reports can be found on the Advisory Committee's webpage at http://legislature.maine.gov/right-to-know-advisory-committee. The Office of Policy and Legal Analysis provides staffing to the Advisory Committee when the Legislature is not in regular or special session.

The Right to Know Advisory Committee has 18 members. The chair of the Advisory Committee is elected by the members. The complete membership list of the Advisory Committee is included in Appendix B.

By law, the Advisory Committee must meet at least four times per year. During 2022, the Advisory Committee met five times: on September 15, October 13, October 27, November 17 and December 1. Meetings were conducted in a hybrid format in accordance with the Advisory Committee's remote participation policy; the public could attend meetings in person, through remote methods or through the Legislature's livestream channel, depending on the meeting format.

II. COMMITTEE DUTIES

The Right to Know Advisory Committee was created to serve as a resource and advisor about Maine's freedom of access laws. The Advisory Committee's specific duties include:

- Providing guidance in ensuring access to public records and public proceedings;
- Serving as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know;
- Supporting the provision of information about public access to records and proceedings via the Internet;
- Serving as a resource to support training and education about Maine's freedom of access laws;
- Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the state of Maine's freedom of access laws and the public's access to public proceedings and records;

- Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;

- Examining inconsistencies in statutory language and proposing clarifying standard language; and

- Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

In carrying out these duties, the Advisory Committee may conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss and consider solutions to problems concerning access to public proceedings and records.

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws. The Advisory Committee is pleased to work with the Public Access Ombudsman, Brenda Kielty. Ms. Kielty is a valuable resource to the public and public officials and agencies. The Advisory Committee also wants to acknowledge the valuable input and assistance provided by the State Archivist, Kate McBrien, with understanding the intersection of the Freedom of Access laws and the laws related to retention of public records.

III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES

By law, the Advisory Committee serves as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know. In carrying out this duty, the Advisory Committee believes it is useful to include in its annual reports a digest of recent developments in case law relating to Maine's freedom of access laws. In 2022, the Maine Supreme Judicial Court did not decide a case specifically related to freedom of access issues; however, the Advisory Committee wants to highlight a few other cases addressing freedom of access issues before the Maine Superior Court.

Thurlow v. City of South Portland

In *Thurlow v. City of South Portland*, the plaintiff, a patrol officer with the City of South Portland, sought to prevent the release, pursuant to the Freedom of Access Act (FOAA), of two written reprimands she had received. The collective bargaining agreement (CBA) between the City and the plaintiff's patrol association provided that written reprimands were to be removed from an employee's personnel folder after one year upon request of the employee; however, the City's practice was to also maintain copies of written disciplinary actions in the department's internal affairs file. Subsequent to the removal of these records from the plaintiff's personnel folder, the City received two requests for public records under FOAA for disciplinary records

that included the plaintiff's reprimands. After learning of the City's intent to produce the disciplinary records from the internal affairs file, the plaintiff sought to prevent the release of the records. In granting summary judgment for the City, the Superior Court explained that written reprimands are public records subject to disclosure under FOAA unless there is an applicable statutory exception. Maine law requires the retention of municipal employee disciplinary records in accordance with applicable record retention schedules for a period of 60 years. Although the record retention schedule applicable to disciplinary records stated that a CBA may provide for the *destruction* of disciplinary records prior to the otherwise applicable record retention period, the court interpreted the language in the CBA at issue as only requiring the *removal* of the reprimand from the personnel file. The court noted that a CBA could be drafted to include terms preventing the retention of disciplinary actions in an internal affairs file, but the CBA in this case did not.

Hawes v. Cumberland County Sheriff's Office

In this case, *Hawes v. Cumberland County Sheriff's Office*, the plaintiff, Ms. Hawes requested records related to payroll and other records related to forced overtime at the county jail. The county produced payroll records with information related to sick pay redacted and a "locked" spreadsheet. Ms. Hawes appealed. The Superior Court ordered that the Sheriff's Office produce the payroll records without redaction and rejected the County's argument that the information related to whether an employee was paid sick pay was confidential as protected medical information. The court determined that the fact that an employee was paid sick pay was not medical information entitled to confidentiality. The court also ordered the County to produce the spreadsheets requested in an unlocked format so that Ms. Hawes would have the information in a functional format. The court stated that non-disclosure of electronically stored records cannot be justified on the basis that the data may be misused by an individual requester.

Human Rights Defense Center v. Maine County Commissioners Association Self-Funded Risk Management Pool

In this case, *Human Rights Defense Center v. Maine County Commissioners Association Self-Funded Risk Management Pool,* HRDC appealed the refusal to release documents related to the settlement of a case against Kennebec County. HRDC sought any records showing payments disbursed related to a settlement. In response to the request, the risk pool stated that counsel for Kennebec County had already provided a release document and that the settlement amount was $30,000, but failed to produce any documentation supporting payment for that amount. When an additional request was made, the risk pool provided a link to a newspaper article quoting a representative of the risk pool about the settlement. No documentation showing an actual payment was produced. The Superior Court found that the risk pool used the clarification process to avoid disclosing responsive documents and failed to adequately respond to the request. Further, the court found that the risk pool acted in bad faith because it used the clarification process to invent a pretext to justify the refusal to disclose responsive documents. While the court was not able to find any other case of attorney's fees being granted in the FOAA context, the court granted the HRDC's request for reasonable attorney's fees pursuant to 1 MRSA section 409, subsection 4.

Archer v. Androscoggin County

In this case, *Archer v. Androscoggin County*, an attorney representing an indigent criminal defendant requested recordings of phone calls of an incarcerated person at the Androscoggin County jail. Attorney Archer did not represent the person whose phone calls he requested. The Superior Court agreed with the County's position that private telephone calls made by incarcerated persons while held in county jails are not public records under the Freedom of Access because private calls, on their own, are unrelated to the transaction of any public business.

IV. ACTIONS RELATED TO COMMITTEE RECOMMENDATIONS CONTAINED IN SIXTEENTH ANNUAL REPORT

The Right to Know Advisory Committee made the following recommendations in its Sixteenth Annual Report. The legislative actions taken in 2022 as a result of those recommendations are summarized below.

Recommendation: Request that the Public Access Ombudsman and the Maine Municipal Association gather data to assess the changes made by Public Law 2021, chapter 375 and report back to the Advisory Committee no later than November 1, 2022	Action: The Public Access Ombudsman and the Maine Municipal Association provided reports to the Advisory Committee at the November 17, 2022 meeting. After consideration of the reports, the Advisory Committee determined that no further action was needed.
Recommendation: Request that a revised matrix be adopted for use by legislative committees, the Joint Standing Committee on Judiciary and the Right To Know Advisory Committee when considering and reviewing proposed or existing public records exceptions to increase awareness of the Archives law which removes confidentiality protection for records after 75 years	Action: The revised matrix was adopted by legislative staff for use by the Judiciary Committee and other legislative committees in the 130th Legislature, Second Regular Session; use of the revised matrix will continue in the 131st Legislature.

Recommendation:	Action:
Enact legislation to amend the public records exception in Title 12, section 6072, subsection 10	The recommendation of the Advisory Committee was accepted by the Judiciary Committee and included in LD 1972, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions Related to Research and Aquaculture Leases. LD 1972 was enacted as Public Law 2021, chapter 581.
Recommendation: Recommend the use of standardized language in drafting legislation for confidential records by using the term "confidential" to designate records that would not be subject to disclosure under the Freedom of Access Act	Action: Advisory Committee staff recommended updates to the Revisor of Statutes Drafting Manual to incorporate the Advisory Committee's suggested standardized language to use the term "confidential" to designate records that would not be subject to disclosure under the Freedom of Access Act. The suggested standardized language will also be used by legislative staff when drafting bills and amendments for the 131st Legislature.
Recommendation: Enact legislation to amend the remote participation law to address situations when a public body has not adopted a remote participation policy but the public body needs to meet	Action: The recommendation of the Advisory Committee was accepted by the Judiciary Committee and included in LD 1971, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Remote Participation. LD 1971 was enacted as Public Law 2021, chapter 611.
Recommendation: Recommend that the Judiciary Committee convene an informal working group to study participation in the legislative process by residents of correctional facilities and the issues that must be resolved to allow participation	Action: The Judiciary Committee took no action on the Advisory Committee's recommendation during the 130th Legislature, Second Regular Session. The Advisory Committee has recommended in this report that the Judiciary Committee again consider this issue.
Recommendation: Encourage the Maine Municipal Association and the Maine County Commissioners Association to consider sending out annual reminders to their members about record retention schedules and available training resources	Action: Advisory Committee staff communicated with these associations in January 2022.

Recommendation: Encourage legislative committees to add to committee orientation additional freedom of access training, conducted by the Public Access Ombudsman or the State Archivist, that is specific to records management and includes a focus on digital record retention, including social media platforms	Action: No specific action was taken by the Legislature during the 130th Legislature, Second Regular Session; Advisory Committee staff will communicate with the Executive Director's Office and the Office of Policy and Legal Analysis about committee orientation planning for the 131st Legislature.

V. COMMITTEE PROCESS

The Advisory Committee formed 4 subcommittees to assist in its work: Public Records Exceptions Subcommittee, Subcommittee on Remote Participation, Subcommittee on Encryption of Law Enforcement Communications and Subcommittee on Access to Disciplinary Records of Public Employees Subcommittee. Each subcommittee discussed their assigned topics and issues thoroughly and determined whether to make recommendations for consideration by the full Advisory Committee. The deliberations of each subcommittee are summarized below. Part VI of this report contains the specific recommendations from the subcommittees that were adopted by the full Advisory Committee.

Public Records Exceptions Subcommittee

The Public Records Exception Subcommittee is chaired by Kim Monaghan. Subcommittee members are Jonathan Bolton, Lynda Clancy, Julia Finn, Mal Leary and Cheryl Saniuk-Heinig. The Subcommittee met 3 times: October 13, October 26 and November 16. On December 1, the Subcommittee made its report and recommendations to the Advisory Committee.
The focus of the Public Records Exceptions Subcommittee is to review and evaluate public records exceptions as required of the Advisory Committee pursuant to 1 MRSA section 433, subsection 2-A. The guidelines in the law require the Advisory Committee to review all public records exceptions in Titles 22, 23, 24 and 24-A by 2025. Given the timeline for review, the Subcommittee has deferred review of the exceptions in Title 22 until 2023. The Subcommittee completed its review of the exceptions in Titles 23, 24 and 24-A.

As a first step to the review of existing public records exceptions, the Subcommittee reached out to state agencies for information, comments and suggestions with respect to the relevant public records exceptions administered by that body. Subcommittee members reviewed the agency responses to the questionnaires and also had available a chart that included the following information: the statutory citation for each exception and links to the statutory language; the agency that is responsible for administering each exception; and each agency's recommendation whether to continue, amend or repeal the exception.

The Subcommittee reviewed 68 exceptions in Titles 23, 24 and 24-A. While the members agreed that most of the exceptions under review were appropriate and did not need to be discussed further, the members did cull out certain exceptions for discussion before making their recommendation as to whether the exception should continue without change, should be amended or should be repealed. Of the 68 exceptions originally identified for review, 3 exceptions were subsequently repealed so subcommittee review was not necessary. The Subcommittee recommended that there be no changes to 60 exceptions and that 5 exceptions be amended.

The Advisory Committee unanimously approved these recommendations, which are discussed in Part VI of this report. *See also the list of existing exceptions recommended to continue without change provided in Appendix H and the proposed amendments to existing exceptions in Appendix G*.

Subcommittee on Remote Participation

The Subcommittee on Remote Participation is chaired by Justin Chenette. Subcommittee members are Amy Beveridge, Betsy Fitzgerald, Eric Stout and Victoria Wallack. The Subcommittee met three times: October 19, November 10 and November 28. On December 1, the Subcommittee made its report and recommendations to the Advisory Committee.

The Subcommittee was formed to review the current law authorizing a public body to adopt a remote participation policy for public proceedings and to consider recommendations that might improve public access. Recently, changes were made to remove limitations on the authority of a public body to determine the circumstances in which a member of a public body and the public may participate in a public proceeding using remote methods. The current law, 1 MRSA, section 403-B, allows a public body to adopt a written policy governing the conditions upon which members of the body and the public may participate in the public proceeding of that body by remote methods. The law stipulates that the policy must provide members of the public a meaningful opportunity to attend by remote methods when members of the body participate by remote methods and that if the body allows or is required to provide an opportunity for public input during the proceeding, an effective means of communication between members of the body and the public must be provided.

The Subcommittee contacted the Attorney General's Office regarding how the current statute might be interpreted. Staff shared information from Assistant Attorney General Jonathan Bolton received in response to questions from the Subcommittee. Staff explained that although there is no definition of "public body," the statute repeatedly uses the term "public proceedings" and Mr. Bolton agreed with staff that the current law would apply to all of the public bodies listed under the definition of entities that have or conduct public proceedings under the Freedom of Access Act (FOAA), unless the entity has its own specific statutory provision regarding remote participation or it is specifically excluded under section 403-B. He also explained that the current section of law is a permissive policy, meaning it gives public bodies the permission to allow members of the body to participate using remote methods and to establish the conditions that must be met if the public body chooses to do so. A public body may choose not to adopt a

remote participation policy at all, in which case it would hold all meetings in-person and none of the requirements of section 403-B, subsection 2 would apply. It also allows for a public body to adopt a written policy that provides for remote public participation at all proceedings. Mr. Bolton added that in the case of a public body that has specific statutory provisions for remote participation, this section does not apply in those specific situations. But, if the statutory provision is something less than a comprehensive statutory framework for remote meetings, section 403-B allows these agencies to adopt remote participation policies as long as the policies are consistent with their pre-existing agency statutes. Finally, he added that it is possible that an agency with a comprehensive remote participation statute might not need to comply with section 403-B at all, but he was not aware of any agency in this position at this time.

The Subcommittee agreed that remote access has improved the participation of the public in public proceedings. It was noted by several Subcommittee members that the language of the current statute does not explicitly allow for the attendance or participation of the public by remote methods unless a member of the public body is also participating by remote methods. Subcommittee members expressed an interest in considering changes to the statute to more clearly indicate that the written policy for remote participation, if adopted, could apply to the public even when all members of the public body are participating in person. There was also discussion around requiring public bodies to provide remote methods of participation for members of the public for all proceedings, regardless of how members of the body participated. This brought up questions regarding access to appropriate technology, including broadband internet access and personal devices, as well as software and hardware requirements for the public bodies and members of the public. It also brought up questions related to training and staff requirements. The Subcommittee discussed the benefits and challenges of having proceedings open to the public through remote methods at all times.

Subcommittee members suggested considering recommendations related to technology grants for these public bodies in order to develop the technology and skills necessary for effective and meaningful remote participation in public proceedings and the development of a best practices resource for providing public access and utilizing remote capabilities.

The Subcommittee considered proposing amendments to the law to require a public body who adopts a remote participation policy to allow the public to participate by remote methods regardless of how members participate. Chair Chenette expressed concern that the intent was still not as clear as he would like it to be in terms of the public's ability to access meetings remotely. As the Subcommittee debated the various ways the language could be amended, concerns arose around requiring public bodies to offer meaningful remote participation methods for the public at every meeting, especially when considering past legislative history around the issue, questions related to local control, technical considerations and knowledge of remote platforms for meetings and general resources. Some members expressed concern that requiring remote participation capability for the public for all meetings if the public body has a remote participation policy, regardless of how members participate might cause public bodies to shy away from adopting a remote participation policy at all. On the other hand, members questioned why the opportunity should be available to members of the public body at all times, but not to members of the public at all times. The discussion centered on resources, capabilities and the realities of remote participation in practice currently. Subcommittee Chair, Justin Chenette, suggested

recommending legislative action to create technical grants to provide funding to support or expand remote/hybrid participation capabilities for public bodies within the state.

The Subcommittee also discussed an issue brought up by the Maine Municipal Association (MMA) related to uncertainty around the meaning of "within the jurisdiction of the public body" from the final paragraph of 1 MRSA, section 403-B, subsection 2. The MMA asked the Advisory Committee to consider clarifying the language so that there would be no ambiguity about the authority of a municipality's elected officers to adopt a "blanket" remote participation policy that would apply to all boards and commissions within that municipality. The Subcommittee agreed that clarifying language would be helpful, but decided to broaden the language suggested by MMA to include school boards as well as municipalities and counties. The Subcommittee also discussed and ultimately decided not to move forward with any changes to the current exceptions related to town meetings and school board budget meetings.

The Subcommittee agreed that the best approach would be to focus its other recommendations on how to encourage remote access and how to assist public bodies to facilitate proceedings using remote methods. The conversations and proposed changes to the draft recommendations centered on how to achieve these ideas using existing resources or within existing frameworks, to promote awareness of the remote participation law within statute and to encourage expanded capability for remote access by the public to public proceedings.

The Subcommittee agreed to make four recommendations to the full Advisory Committee, including: recommending revisions and updates to the Freedom of Access website to increase awareness and knowledge around remote participation; encouraging associations such as the Maine Municipal Association, the Maine County Commissioners Association and the Maine School Management Association to develop guidance documents related to remote meetings; clarifying language in 1 MRSA, section 403-B related to the authority of a public body to adopt a remote participation policy that allows the public to participate in public proceedings using remote methods and language related to authority for a municipality, county or regional or other subdivision to adopt a "blanket remote participation policy" applicable to all public bodies within a municipality, county or regional or other political subdivision; and recommending that the Legislature direct funds to provide grants and technical assistance to all public bodies to enable them to adopt remote participation polices and offer effective remote participation and access methods. The Advisory Committee unanimously approved these recommendations, which are discussed in Part VI of this report.

Subcommittee on Encryption of Law Enforcement Communications

The Encryption of Law Enforcement Communications Subcommittee is chaired by Judy Meyer. Subcommittee members are Amy Beveridge, Jim Campbell, Julia Finn, Chief Michael Gahagan, Mal Leary, Kim Monaghan, Cheryl Saniuk-Heinig and Eric Stout. The Subcommittee met two times: November 14 and December 1. On December 1, the Subcommittee made its report and recommendations to the Advisory Committee.

The Subcommittee focused on discussion of the encryption of law enforcement communications, including the prevalence and frequency of encrypted radio channels and the technological

aspects of radio operations. Subcommittee Chair Meyer explained that the Advisory Committee last examined the topic of encryption of law enforcement communications in 2012 when the Maine Freedom of Information Coalition sent a letter to the Advisory Committee regarding the possible increase in the encryption of radio transmissions by public safety agencies after switching from an analogue radio system to a digital radio system. Following examination by a subcommittee, the Advisory Committee recommended no changes to the law regarding the encryption of radio transmissions from police and first responders, but agreed that if current practices changed significantly it would be appropriate to revisit the topic. Subcommittee Chair Meyer further explained that she recently learned that the Lewiston and Auburn police departments have moved to the use of encrypted radio channels for all routine communications, prompting her request to establish a subcommittee to examine the topic and decide if the Advisory Committee should take this up as a policy issue.

The Subcommittee requested information from the Maine Chiefs of Police Association and the Maine Department of Public Safety regarding their access to and use of encrypted radio channels. Based on the information provided to the Subcommittee, it does not appear that any other agencies, other than Lewiston and Auburn, are moving towards total encryption and that in most cases the use of an encrypted channel is situational, such as during tactical operations, and that total encryption would be cost prohibitive for most departments. The Department of Public Safety reported to the Subcommittee that the Maine Office of Information Technology maintains most of the radio equipment for state agencies and that ten state agencies are using encrypted channels in some capacity, but no agency is using it for all radio communications and there do not appear to be any state policies governing the use of encrypted channels.

In order to gain a better understanding of the technology related to radio communications and the requirements detailed in the FBI Criminal Justice Information Services Policy, the Subcommittee reached out to the Office of Information Technology, Radio Operations division for more clarity on the technology involved. Subcommittee Chair Meyer questioned Lewiston and Auburn police departments' interpretation of the FBI CJIS Policy – if their interpretation is accurate, it would mean that all Maine law enforcement agencies would need to encrypt all radio transmissions, which is not currently happening. Subcommittee members also discussed how oral radio communications fit into the purview of the Right to Know Advisory Committee and determined that radio communications, which have been traditionally publicly broadcast, have a standard of public access, which is a topic the Subcommittee agrees is within their scope.

A representative from the Office of Information Technology, Radio Operations division declined to participate in the Subcommittee's discussions at a formal meeting. Chair Meyer reported that, based on her individual conversation with a representative of that office, there is no statewide encryption mandate. She also confirmed that encryption is not used as a continuous stream, but is only used in certain situations by those state agencies with encryption access. Given that the Subcommittee was unable within their limited timeframe to gather the necessary information to review this topic, the Subcommittee decided to formally proceed with information gathering regarding the prevalence and frequency of use of encrypted radio channels by municipal, county and state law enforcement agencies with the intent to reconvene the Subcommittee next year in order to review the data.

The Subcommittee recommended that letters be sent to municipal, county and state law enforcement agencies to request information regarding the prevalence and frequency of use of encrypted radio channels. The Subcommittee also recommended that additional information be requested from the Office of Information Technology, Radio Operations division. The Advisory Committee unanimously approved these recommendations, which are discussed in Part VI of this report.

Subcommittee on Access to Disciplinary Records of Public Employees

The Access to Disciplinary Records of Public Employees Subcommittee is chaired by Senator Anne Carney. Subcommittee members are Amy Beveridge, Lynda Clancy, Julia Finn, Chief Michael Gahagan, Representative Thom Harnett, Judy Meyer, Cheryl Saniuk-Heinig and Eric Stout. The Subcommittee met three times: October 20, November 15 and November 17. On December 1, the Subcommittee made its report and recommendations to the Advisory Committee.

The Advisory Committee learned of instances in which police disciplinary records were removed from personnel files pursuant to collective bargaining agreements, so the subcommittee was formed to consider the retention of public employee disciplinary records under FOAA. The Subcommittee reviewed the treatment of public employee disciplinary records under the Freedom of Access Act and applicable record retention schedules, and it looked at the impact of collective bargaining agreements on the disposition of these records.

The Subcommittee considered the statutes governing the confidentiality of state, county and municipal employee disciplinary records. Under current law, personnel records of an employee relating to complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action is confidential, except that, if disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The Subcommittee noted that the language of each provision was almost identical, but the municipal employee personnel records statute included language requiring the final written decision relating to discipline to include a statement of the conduct or other facts for which the discipline is being imposed. The Subcommittee members agreed that the reason for the discipline should be disclosed in the final written decision imposing disciplinary action on all public employees and recommended that the statutes be amended to be consistent among all 3 sections applying to state, county and municipal employee personnel records.

The Subcommittee met with the State Archivist, representatives from the Attorney General's Office and representatives of municipal and county interests to hear their perspectives on personnel records, collective bargaining agreements addressing the retention of records related to discipline in employee files and the development of the retention schedules for those records. The Subcommittee reviewed the general record retention schedules for state agencies, specific agency schedules applicable to investigative or personnel records and the local government schedules. The Subcommittee also reviewed examples of county and municipal collective bargaining agreement language related to disciplinary records as well as the corresponding record retention schedule being used by the employing county or municipality. They noted some

variations in the agreements and schedules and that the source of the variation may relate to the different unions that negotiate collective bargaining agreements. Members also recognized that many agreements do not specify whether removed disciplinary records are retained elsewhere. Finally, the Subcommittee observed that there should be more consistency among state and local retention schedules.

During its discussions, the Subcommittee learned that the determination of how long a record should be maintained is a policy decision on the part of the agency based upon the needs of the agency and applicable law; however, the Office of the Attorney General provides guidance and may point out relevant law for the agency's consideration. Collective bargaining agreements may provide for the removal of records from personnel files upon request, as previous matters could be used in cases involving progressive discipline, and those agreements in place with the state are generally consistent in specifying removal as opposed to destruction. Although a record may be otherwise retained, the wording of a FOAA request may matter in practice: a FOAA request that specifies "personnel file" might only yield responsive documents from that specific file. Representatives from the Attorney General's Office explained that it is the public records officer's responsibility to determine who within the agency has records the requestor is seeking. The Subcommittee also learned that the removal of disciplinary records from a personnel file is often based on negotiated language and the removal of a document for the purposes of future discipline does not necessarily mean that the document is destroyed; it would be removed and retained in a separate file. In response to a FOAA request, a final written record of discipline that is outside of the personnel file should be produced. After the presentations, the Subcommittee expressed concern regarding the lack of consistency in how disciplinary records are handled and that there seem to be no best practices to address the removal and possible destruction of disciplinary records from a personnel file in accordance with collective bargaining agreements. The Subcommittee wanted to ensure that public access to disciplinary records be preserved along with the records themselves. It was noted, however, that FOAA does require any specific record retention period but other laws may require records to be maintained. However, these laws authorize state agencies to propose the retention schedule and the length of time that certain records must be retained.

In addition, the Subcommittee heard from Attorney Marcus Wraight who shared his experience with trying to obtain law enforcement disciplinary records through FOAA. Attorney Wraight noted that he has had difficulty obtaining Giglio/Brady materials and recommended that the subcommittee seek to establish reasonable retention periods for these records. Because there is no statute of limitations on impeachment material, this raises a constitutional issue if records are not retained for an appropriate length of time.

The Subcommittee agreed to recommend that the statutes related to personnel records of state, county and municipal employees be aligned to ensure that a final written decision related to discipline (which is a public record) include a statement of the conduct or facts on which the discipline is based. The Subcommittee recommended that the record retention schedules related to personnel records be revised to ensure that collective bargaining agreements cannot override FOAA and to establish a retention period for disciplinary actions of 20 years. Consideration should be given, however, to the level of discipline and the retention period may be shorter for less serious conduct. The retention period may be longer for law enforcement disciplinary

actions that could reflect on the credibility of the law enforcement officer (so-called "Giglio material"). The Subcommittee also agreed that the language used in retention schedules related to removal, purging or destruction of personnel records related to disciplinary action must be consistent and terms like "remove", "purge" or "destroy" must be defined.

The Advisory Committee unanimously approved these recommendations, which are discussed in Part VI of this report. *See also the proposed legislation related to the recommendations in Appendix F*.

Although not referred to a particular subcommittee, the Advisory Committee also discussed some issues as a full Advisory Committee. The Advisory Committee made recommendations related to a number of these issues, which are discussed in Part VI of this report. The Advisory Committee discussed one issue described below that did not result in any recommendation.

Frequency and Scope of FOAA Requests to Schools and School Boards

The Advisory Committee discussed issues related to requests for public records sent to schools and school boards. Advisory Committee member Vicky Wallack shared information from school superintendents in Hampden and Gorham related to the time and resources needed for school administrative staff to respond to requests for public records. During the general public comment period at its meetings on October 13 and October 27, concerns about these requests were raised to the Advisory Committee from parents and others who have made requests for public records and from schools and school boards responding to those records requests. The concerns included the frequency and scope of the requests, the timeliness of responses and the increasing use of FOAA requests for political purposes. Given the number of comments received, the Advisory Committee included the topic as a specific agenda item at the November 17th meeting in order to ensure a transparent process with public input.

After careful consideration of the input provided by all parties, the Advisory Committee determined that it would not make any recommendation for changes to FOAA at this time. One of the duties of the Advisory Committee is to make recommendations for improvements to the FOAA process. The Advisory Committee's role is not to decide who is right and who is wrong when there is a dispute or disagreement between requesters of public records and responders to those requests. The comments brought to the Advisory Committee highlighted difficulties experienced with the FOAA process by parties on both sides of a request for public records. The Advisory Committee members felt that more communication among requesters and responders to clarify the scope of FOAA requests and the timeline for response would be helpful, but that current law already provides for this communication. The Advisory Committee also noted that current law has specific remedies available to both parties to bring disputes to the Judicial Branch.

VI. RECOMMENDATIONS

The Advisory Committee makes the following recommendations. Unless otherwise noted, the following recommendations are unanimous.

❒ Enact legislation to clarify responsibility of responders to requests for public records related to time estimates (1 member opposed)

Based on the suggestion of the Public Access Ombudsman, Brenda Kielty, a majority of the Advisory Committee recommends proposed changes to the language in 1 MRSA Section 408-A, subsections 3, 8 and 9.

In Ms. Kielty's recent experience, a growing number of responses to requests for public records provided by state agencies do not include estimates of the time when the records will be produced as required by the statute. While agency responses are including a cost estimate that implicitly includes a time component based on estimated hours of staff time needed to comply with a request, an estimate of the time or date when the records will be produced is frequently not explicitly stated. During its discussion, Advisory Committee members expressed their belief that additional training for responders to public records request would be helpful, but agreed with Ms. Kielty's assessment that clarification to the statute in subsections 3 and 8 is warranted. A requester should be provided an estimate of when a request will be completed. The intent of the recommended changes is to create consistency and make it clear that the timing element in the current law is not related to the number of hours of labor expended to comply with a request, but instead relates to when the requested records will be produced.

The Advisory Committee also recommends that 1 MRSA section 408-A be amended in subsection 9 to increase the cost threshold for when an agency or official must inform a requester of the estimate of the total cost before proceeding with a request for public records. Under current law, an agency or official is required to provide notice to the requester if the fee to produce public records is expected to be over $30. The Advisory Committee agreed with Ms. Kielty that this amount may be based on the hourly rate of $15 per hour that was previously in law. Because recent statutory changes made in Public Law 2021, chapter 375 increased the hourly rate to $25 per hour and authorized that a requester could not be charged an hourly rate for the first 2 hours of staff time spent searching for, compiling and retrieving a public record, the Advisory Committee recommends that that the threshold monetary amount in subsection 9 be changed from $30 to $50 to be consistent with those changes.

The Advisory Committee's majority recommendation makes the following proposed changes to 1 MRSA section 408-A:

1. It clarifies that an agency or official must specify the estimated date upon which an agency or official will respond to a request for public records; and

2. It increases the cost threshold for when an agency or official must inform a requester of the estimate of the total cost before proceeding with a request for public records.

Fourteen Advisory Committee members voted in favor of this recommendation; one member voted in opposition (Mal Leary) because he believes the proposal needs more consideration and thought before moving forward. *See recommended legislation in Appendix C.*

- ❑ **Amend certain provisions of law in Titles 23, 24 and 24-A relating to previously-enacted public records exceptions**

The Advisory Committee recommends that the following public records exceptions reviewed in 2022 be amended:

- Title 24, section 2302-A, subsection 3, relating to utilization review data provided by nonprofit hospital or medical service organization (clarify to require that patient names contained in utilization review data reports filed by nonprofit hospitals and medical service organizations with the Superintendent of Insurance be kept confidential);

- Title 24, section 2510, subsection 1 and 2, relating to professional competence reports under the Maine Health Security Act (amend to make grammatical corrections);

- Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act (amend to remove unnecessary language and conform to Advisory Committee's recommended standard language);

- Title 24-A, section 6907, subsection 1, relating to personal financial information obtained by Dirigo Health (amend to remove unnecessary language and conform to Advisory Committee's recommended standard language); and

- Title 24-A, section 6907, subsection 2, relating to personal health information obtained by Dirigo Health (amend to remove unnecessary language and conform to Advisory Committee's recommended standard language).

See recommended legislation in Appendix G, and a list of public records exceptions for which no amendments are recommended in Appendix H.

- ❒ **Enact legislation to revise the membership of the Archives Advisory Board to include a member representing journalists, newspapers, broadcasters and other news media interest**s

At the suggestion of the State Archivist, the Advisory Committee recommends adding a member representing journalists, newspapers, broadcasters and other news media interests to the Archives Advisory Board. As one of its duties, the Archives Advisory Board provides guidance to the State Archivist for retention schedules for public records maintained by state and local government. While the Archives Advisory Board currently has 2 appointed members representing the interests of public access to government records, the Advisory Committee agrees with the State Archivist's suggestion that a member representing news and media interests specifically would be beneficial.

See recommended legislation in Appendix D.

❒ **For FOAA training purposes, recommend that the Public Access Ombudsman review the Freedom of Access website and FOAA training materials to include guidance on best practices for conducting remote meetings to optimize public participation**

The Advisory Committee recommends that the Public Access Ombudsman review the Freedom of Access website and FOAA training materials to include guidance on best practices for conducting remote meetings to optimize public participation. The Advisory Committee believes it would be beneficial to include information in the Frequently Asked Questions and as part of a training module.

❒ **Encourage the Maine Municipal Association, the Maine County Commissioners Association and the Maine School Management Association to develop guidance documents related to remote meetings**

The Advisory Committee will reach out by letter to the Maine Municipal Association, the Maine County Commissioners Association and the Maine School Management Association to encourage that they develop guidance documents related to remote meetings to assist municipalities, counties and school boards. The Advisory Committee recommends the development of guidance on the following topics:

1. Outreach to members about the authority in current law for public bodies to adopt remote participation policies that provide remote access to the public in all public proceedings and consideration of broadening already adopted remote participation policies to include requirements for remote access to the public in all public proceedings;

2. Development of guidance documents that provide recommended technology and technical assistance for hardware, software and other technology platforms used to conduct remote meetings in a manner that optimizes public participation and facilitates effective communication with people of all abilities;

3. Development of guidance documents for best practices for conducting remote meetings that optimizes public participation and facilitates effective communication with people of all abilities; and

4. Request for data and other feedback from counties, municipalities and school districts on whether additional funding is needed to support technology to expand the capability for the public to participate in public proceedings using remote methods, what level of funding is needed and what specific technology resources are desired.

❒ **Enact legislation to amend the law related to remote participation**

The Advisory Committee recommends that the law related to remote participation be amended to:

1. Clarify language related to the authority of a public body to adopt a remote participation policy that allows the public to participate in public proceedings using remote methods; and

2. Clarify language related to authority for a municipality, county or regional or other subdivision to adopt a "blanket remote participation policy" applicable to all public bodies within a municipality, county or regional or other political subdivision.

See recommended legislation in Appendix E.

❒ **Recommend that the Legislature direct funding to provide grants and technical assistance to all public bodies authorized to adopt remote participation policies, including counties, municipalities, school boards and regional or other political subdivisions**

The Advisory Committee recommends that the State dedicate the necessary funding to accelerate broadband access statewide and to provide investments in technology for governments to facilitate public access to public proceedings conducted remotely. This funding would be used to enable all public bodies to adopt remote participation policies that provide the public remote access to all public proceedings in an optimal manner to facilitate effective public participation. To the extent possible, the Advisory Committee recommends that the Legislature leverage existing funding sources available for broadband access.

❒ **Recommend a statutory change and the revision of the record retention schedules applicable to state, county, and municipal employee personnel records (1 member opposed; 1 member abstained)**

The Advisory Committee recommends that statutory changes are made to ensure that collective bargaining agreements cannot override the Freedom of Access Act and to establish a requirement that records related to disciplinary actions be retained for a period of 20 years. The Advisory Committee recommends that the State Archivist make corresponding changes to the records retention schedules for state agencies and local governments, although consideration should be given to a longer retention period for law enforcement disciplinary actions that could reflect on the credibility of the law enforcement officer (so-called "Giglio material") and to a shorter retention period for less serious conduct.

Fifteen Advisory Committee members voted in favor of this recommendation. Advisory Committee member Kevin Martin voted against this recommendation and member Jonathan Bolton abstained from voting on this recommendation.

See recommended legislation in Appendix F.

❒ **Enact legislation to amend state and county employee personnel records statutes to align with the municipal employee personnel record statute**

The Advisory Committee recommends that the statutes governing state and county employee personnel records in Title 5, section 7070, subsection 2, paragraph E and Title 30-A, section 503, subsection 1, paragraph B, sub-paragraph 5, be amended to align with the municipal employee personnel record statute in Title 30-A, section 2702, subsection 1, paragraph B, sub-paragraph 5. Under current law, if disciplinary action is taken related to a state, county or municipal employee, a final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. In its review, the Advisory Committee noted that these statutes are almost identical but for the inclusion of additional language in the municipal employee personnel record statute stating: "The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action." The Advisory Committee believes that it is important for the public to have access to the reason for disciplinary action when taken toward state and county employees as well as municipal employees.

See recommended legislation in Appendix F.

❒ **Enact legislation to ensure that responses to FOAA requests for "personnel records" include records that have been removed from the personnel file and are otherwise retained**

The Advisory Committee recommends that the law be amended to ensure that responses to FOAA requests for "personnel records" include records that have been removed from the personnel file and are otherwise retained.

See recommended legislation in Appendix F.

❒ **Recommend that the State Archivist, the Maine Archives Advisory Board and legislative proposals use standardized language related to record retention in schedules developed for public bodies and consider the inclusion of definitions of terms such as "remove," "purge" and "destroy" when they are used in record retention schedules**

The Advisory Committee recommends that the State Archivist, the Maine Archives Advisory Board and legislative proposals use standardized language related to record retention in schedules developed for public bodies and consider the inclusion of definitions of terms such as "remove," "purge" and "destroy" when they are used in record retention schedules.

❒ **Request information from municipal, county and state law enforcement agencies regarding the prevalence and frequency of use of encrypted radio channels**

The Advisory Committee recommends requesting information from municipal, county and state law enforcement agencies regarding the prevalence and frequency of use of encrypted radio channels. In order to make sure that the Advisory Committee will have the data available to them in time to review the issue again next year, the Advisory Committee will request that data

be collected from January 1, 2023 through July 1, 2023 and reported back to the Advisory Committee by August 1, 2023.

See correspondence in Appendix I.

- ❒ **Recommend that the Judiciary Committee, in consultation with the Criminal Justice and Public Safety Committee, continue to discuss providing expanded access to participation in the legislative process by residents of correctional facilities, including the barriers that must be resolved to allow participation**

In the most recent annual report, the Advisory Committee recommended that the Judiciary Committee convene an informal working group, made up of a broad range of interested parties, to study participation in the legislative process by residents of correctional facilities and the issues that must be resolved to allow participation. While the Judiciary Committee did not take any action on this recommendation, the Advisory Committee continues to believe that the Legislature should consider ways to expand access to participation in the legislative process by residents of correctional facilities. During 2022, the Advisory Committee continued discussion of the issue and invited input from Dr. Ryan Thornell, Associate Commissioner of the Maine Department of Corrections and Joseph Jackson of the Maine Prisoner Advocacy Coalition. The Advisory Committee recognizes that further discussion of the issue is needed with a focus on navigating barriers to providing expanded access such as the availability of technology and the resources to fund that technology, logistics and the impact on existing operations and staff of correctional facilities and the impact on victims. The Advisory Committee again recommends that the Judiciary Committee, in consultation with the Criminal Justice and Public Safety Committee, continue to discuss providing expanded access to participation in the legislative process by residents of correctional facilities, including the barriers that must be resolved to allow participation. The legislative committees should include important stakeholders such as the Maine Department of Corrections, Sheriffs, prisoner advocacy organizations, and victim and family organizations in these discussions.

VII. FUTURE PLANS

In 2023, the Right to Know Advisory Committee will continue to discuss the ongoing issues identified in this report and complete the review of the existing public records exceptions in Title 22. The Advisory Committee will also continue to provide assistance to the Joint Standing Committee on Judiciary relating to proposed legislation affecting public access. The Advisory Committee looks forward to another year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations included in this report.

APPENDIX A

Authorizing Legislation: 1 MRSA §411

AUTHORIZING LEGISLATION

TITLE 1
GENERAL PROVISIONS

CHAPTER 13
PUBLIC RECORDS AND PROCEEDINGS

SUBCHAPTER 1
FREEDOM OF ACCESS

§411. Right To Know Advisory Committee

1. Advisory committee established. The Right To Know Advisory Committee, referred to in this chapter as "the advisory committee," is established to serve as a resource for ensuring compliance with this chapter and upholding the integrity of the purposes underlying this chapter as it applies to all public entities in the conduct of the public's business.

2. Membership. The advisory committee consists of the following members:

A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate;

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

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

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

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

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

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

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

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

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

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

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

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

N. One member with broad experience in and understanding of issues and costs in multiple areas of information technology, including practical applications concerning creation, storage, retrieval and accessibility of electronic records; use of communication technologies to support meetings, including teleconferencing and Internet-based conferencing; databases for records management and reporting; and information technology system development and support, appointed by the Governor; and

O. One representative having legal or professional expertise in the field of data and personal privacy, appointed by the Governor.

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

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

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

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

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

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

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

6. Duties and powers. The advisory committee:

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

B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for agencies and public officials. The advisory committee shall also provide general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries;

C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the

law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as whom to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws;

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX B

Membership List: Right to Know Advisory Committee

Right to Know Advisory Committee

1 MRSA §411

Membership List

Name	Representation
Rep. Thom Harnett, Chair	House member of Judiciary Committee, appointed by the Speaker of the House
Sen. Anne Carney	Senate member of Judiciary Committee, appointed by the President of the Senate
Amy Beveridge	Representing broadcasting interests, appointed by the President of the Senate
Jonathan Bolton	Attorney General's designee
James Campbell	Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House
Hon. Justin Chenette	Representing the public, appointed by the President of the Senate
Lynda Clancy	Representing newspaper and other press interests, appointed by the President of the Senate
Linda Cohen	Representing municipal interests, appointed by the Governor
Julia Finn	Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court
Betsy Fitzgerald	Representing county or regional interests, appointed by the President of the Senate
Chief Michael Gahagan	Representing law enforcement interests, appointed by the President of the Senate
Mal Leary	Representing broadcasting interests, appointed by the Speaker of the House
Kevin Martin	Representing state government interests, appointed by the Governor
Judith Meyer	Representing newspaper publishers, appointed by the Speaker of the House
Hon. Kimberly Monaghan	Representing the public, appointed by the Speaker of the House
Eric Stout	A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor
Cheryl Saniuk-Heinig	A member with legal or professional expertise in the field of data and personal privacy, appointed by the Governor
Victoria Wallack	Representing school interests, appointed by the Governor

APPENDIX C

Recommended legislation to amend the Freedom of Access Act related to time estimates for a request for records

RECOMMENDED LEGISLATION TO AMEND THE FREEDOM OF ACCESS ACT RELATED TO TIME ESTIMATES TO RESPOND TO A REQUEST FOR RECORDS

Sec. 1. **1 MRSA §408-A, sub-§3** is amended to read:

3. Acknowledgment; clarification; time estimate; cost estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within 5 working days of receiving the request and may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, the agency or official shall provide a good faith, nonbinding estimate of the time frame within which the agency or official will comply with the request~~, as well as~~ and a cost estimate as provided in subsection 9. The agency or official shall make a good faith effort to fully respond to the request within the estimated time frame. For purposes of this subsection, the date a request is received is the date a sufficient description of the public record is received by the agency or official at the office responsible for maintaining the public record. An agency or official that receives a request for a public record that is maintained by that agency but is not maintained by the office that received the request shall forward the request to the office of the agency or official that maintains the record, without willful delay, and shall notify the requester that the request has been forwarded and that the office to which the request has been forwarded will acknowledge receipt within 5 working days of receiving the request.

Sec. 2. **1 MRSA §408-A, sub-§8** is amended to read:

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

A. The agency or official may charge a reasonable fee to cover the cost of copying. A reasonable fee to cover the cost of copying is no more than 10¢ per page for a standard 8 1/2 inches by 11 inches black and white copy of a record. A per-page copy fee may not be charged for records provided electronically.

B. The agency or official may charge a fee to cover the ~~actual cost of~~ time spent searching for, retrieving and compiling the requested public record in accordance with this paragraph. Compiling the public record includes reviewing and redacting confidential information.

(1) The agency or official may not charge a fee for the first 2 hours of staff time per request.

(2) After the first 2 hours of staff time, the agency or official may charge a fee of not more than $25 per hour.

C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format

D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies

F. An agency or official may require payment of all costs before the public record is provided to the requester.

Sec. 3. 1 MRSA §408-A, sub-§9 is amended to read:

9. Estimate. The agency or official having custody or control of a public record subject to a request under this section shall provide to the requester an estimate of the ~~time necessary to complete the request~~ the time frame within which the agency or official will comply with the request and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than ~~$30~~ $50, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 10 applies.

Summary

This draft implements the recommendations of the Right to Know Advisory Committee to amend provisions in the Freedom of Access Act.

The draft makes the following changes related to the process for requesting a public record:

1. It clarifies that an agency or official must specify the estimated time frame within which an agency or official will comply with a request for public records; and

2. It clarifies language to better describe the scope of the fee charged by an agency or official for searching for, retrieving and compiling a requested public record.

It increases the cost threshold for when an agency or official must inform a requester of the estimate of the total cost before proceeding with a request for public records. The increase reflects the changes made by Public Law 2021, chapter 375 that changes the "free" staff time per request from 1 hours to 2 hours and increases the hourly fee for staff time that may be charged by an agency or official from $15 to $25.

APPENDIX D

Recommended legislation to add a member to the Archives Advisory Board

RECOMMENDED LEGISLATION TO ADD A MEMBER REPRESENTING NEWS AND MEDIA INTERESTS TO THE ARCHIVES ADVISORY BOARD

Sec. 1. 5 MRSA §96, sub-§ 2 is amended to read:

2. Members. The Archives Advisory Board consists of ~~9~~ 10 voting members with expertise in the administrative, fiscal, legal and historical value of records. Voting members of the board must represent the spectrum of records in the State and are appointed by the Secretary of State as follows:

A. Two public members representing the interests of public access to government records, recommended by a public interest group;

B. Two members from municipal or county government with expertise in local government records, recommended by local or county government entities;

C. One member representing a state or local historical society, recommended by a state or local historical society;

D. One member with expertise in the legal requirements of records retention and public records law, recommended by the Attorney General;

E. One member with expertise in the State's fiscal requirements of records retention, recommended by the Governor;

F. One member from the executive branch with expertise in executive branch records, recommended by the Governor; ~~and~~

G. One member from the Department of Administrative and Financial Services, Office of Information Technology with expertise in electronic records, electronic records management systems and emerging technology related to electronic records, recommended by the Governor~~.~~ and

H. One member representing news and media interests, recommended by the Governor.

The State Archivist serves as a nonvoting member.

SUMMARY

This draft implements the recommendation of the Right to Know Advisory Committee to add a member representing news and media interests to the Archives Advisory Board.

APPENDIX E

Recommended legislation to amend the remote participation law

RECOMMENDED LEGISLATION TO AMEND THE REMOTE PARTICIPATION LAW

Sec. 1. **1 MRSA §403-B, sub-§2** is amended to read:

2. Requirements. A public body subject to this subchapter may allow members of the body and the public to participate in a public proceeding using remote methods only under the following conditions:

A. After notice and hearing the body has adopted a written policy governing the conditions upon which members of the body and the public may participate in a public proceeding of that body by remote methods.

(1) If a public body has not adopted a policy authorizing remote methods of participation under this section and if the chair of the body determines that an emergency or urgent issue exists that prevents the public body from meeting in person to adopt a policy, the chair may call a meeting of the body in which the members may participate by remote methods. Notice of the meeting must include information about how the public can participate in the meeting and the proposed policy or instructions on how to obtain a copy of the proposed policy in advance of the meeting. Once the meeting is convened, the members shall vote on whether to support the chair's determination that an emergency or urgent issue exists that prevents the public body from meeting in person.

(2) If 2/3 of the members vote in support of the chair's determination under subparagraph (1), after an opportunity for hearing, the members may vote on whether to adopt a policy authorizing remote methods of participation in public proceedings of the body under this section;

B. *[repealed]*

C. The policy adopted pursuant to paragraph A must provide members of the public a meaningful opportunity to attend by remote methods when members of the body participate by remote methods, and reasonable accommodations may be provided when necessary to provide access to individuals with disabilities;

D. If the body allows or is required to provide an opportunity for public input during the proceeding, an effective means of communication between the members of the body and the public must be provided;

E. Notice of the proceeding must be provided in accordance with section 406. When the public may attend by remote methods pursuant to paragraphs C and D, the notice must include the means by which members of the public may access the proceeding using remote methods. The notice must also identify a location for members of the public to attend in person. The body may limit public attendance at a proceeding solely to remote methods if there is an emergency or urgent situation that requires the body to meet only by remote methods;

F. A member of the body who participates in a public proceeding by remote methods is present for purposes of a quorum and voting;

G. All votes taken during a public proceeding using remote methods must be taken by roll call vote that can be seen and heard if using video technology, and heard if using only audio technology, by the other members of the public body and the public; and

H. The public body must make all documents and other materials considered by the public body available, electronically or otherwise, to the public who attend by remote methods to the same extent customarily available to members of the public who attend the proceedings of the public body in person, as long as additional costs are not incurred by the public body. The public body must make the proposed policy regarding remote participation available in advance of the meeting if meeting remotely under paragraph A, subparagraphs (1) and (2).

The policy adopted by a public body pursuant to this subsection applies to a board, ~~or~~ committee or subcommittee that is within the jurisdiction of the public body, unless the board, ~~or~~ committee or subcommittee adopts its own policy under this subsection. The county commissioners of a county, the municipal officers of a municipality or the officers of any regional or other political subdivision may adopt a policy pursuant to this subsection that applies to all public bodies subject to this subchapter within the county, municipality or regional or other political subdivision, unless the municipal officers, county commissioners or other officers of any regional or other political subdivision specifically authorizes a public body within that county, municipality or regional or other political subdivision to adopt its own policy. Notwithstanding this paragraph, a school board retains the right to adopt its own policy pursuant to this subsection.

Summary

This proposed draft legislation reflects the recommendations of the Right to Know Advisory Committee to amend the remote participation law. The draft makes the following changes to the current law authorizing a public body to adopt a written policy governing the conditions upon which members of the public body and the public may participate in public proceedings using remote methods:

1. It adds additional language to reinforce the authority for a public body to allow the public and members of the public body to participate in a public proceeding by remote methods; and

2. It clarifies that the county commissioners of a county, the municipal officers of a municipality or the officers of a regional or other political subdivision may adopt one remote participation policy that applies to all public bodies within the county, municipality or regional or other political subdivision unless the municipal officers, county commissioners or other officers of any regional or other political subdivision specifically authorizes an individual public body within that county, municipality or regional or other political subdivision to adopt its own policy.

APPENDIX F

Recommended legislation to amend the laws related to records of disciplinary actions against public employees

RECOMMENDED LEGISLATION TO AMEND THE LAWS RELATED TO RECORDS OF DISCIPLINARY ACTIONS AGAINST PUBLIC EMPLOYEES

Sec. 1. 5 MRSA §95-B, sub-§ 7 is amended to read:

7. Disposition of records. Notwithstanding any collective bargaining agreement or other employment contract entered into on or after January 1, 2024 that provides for the removal, destruction or purging of records, records ~~Records~~ may not be destroyed or otherwise disposed of by any local government official, except as provided by the records retention schedule established by the State Archivist pursuant to section 95-C, subsection 2, paragraph A, subparagraph (3). Records that have been determined to possess archival value must be preserved by the municipality.

Sec. 2. 5 MRSA §7070, sub-§2, paragraph E is amended to read:

E. Except as provided in section 7070-A, complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public. In response to a request to inspect or copy the final written decision in accordance with Title 1, section 408-A, the Bureau of Human Resources shall produce the final written decision in its possession or custody whether located in a personnel file or in another location.

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

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

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

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days;

Sec. 3. 30-A MRSA §503, sub-§1, paragraph B, sub-¶ 5 is amended to read:

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public. In response to a request to inspect or copy the final written decision in accordance with Title 1, section 408-A, the county shall produce the final written decision in its possession or custody whether located in a personnel file or in another location.

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

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

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

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and

Sec. 4. 30-A MRSA §2702, sub-§1, paragraph B, sub-¶ 5 is amended to read:

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public. In response to a request to inspect or copy the final written decision in accordance with Title 1, section 408-A, the municipality shall produce the final written decision in its possession or custody whether located in a personnel file or in another location.

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

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

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

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and

Sec. 5. Revision of record retention schedules. The State Archivist shall revise the record retention schedules applicable to state and local government personnel records as follows.

1. Notwithstanding any collective bargaining agreement or other employment contract entered into on or after January 1, 2024 to the contrary, final written decisions relating to disciplinary action must be maintained for a period of 20 years.

2. For final written decisions relating to less serious conduct or disciplinary action as described in the schedules, the schedules may provide for a shorter retention period of no less than five years.

3. For final written decisions relating to law enforcement employee disciplinary actions that could be used to impeach the credibility of the law enforcement officer if the law enforcement officer is a witness in a criminal case, the schedules may provide for a retention period of more than 20 years.

4. The schedules must use consistent terminology related to records that are not retained and provide definitions for terms used in the schedule such as “remove,” “purge” and “destroy.”

SUMMARY

This draft implements the recommendations of the Right to Know Advisory Committee related to records of disciplinary actions against public employees.

Section one states that local government records may not be disposed of unless in accordance with record retention schedules established by the State Archivist.

Sections two, three, and four amend the statutes governing state, municipal and county employee personnel records to require that, in response to Freedom of Access Act requests for final written decisions, the responding public body provide records in its possession or custody regardless of the specific file location. Sections two and three also require the final written decisions applicable to state and county employees to state the conduct or other facts on the basis of which the disciplinary action is being imposed and the conclusions of the state or county employer as to the reasons for that action.

Section five directs the State Archivist to revise the record retention schedules applicable to state and local government personnel records to require that final written decisions relating to disciplinary action be maintained for a period of 20 years or a lesser period depending on the severity of the conduct or disciplinary action. The State Archivist may increase the retention period beyond 20 years for final written decisions relating to law enforcement employee disciplinary actions that could be used to impeach the credibility of the law enforcement officer if the law enforcement officer is a witness in a criminal case. It also requires that the schedules utilize consistent terminology and define terms related to the disposition of records.

APPENDIX G

Recommended legislation to amend public records exceptions

RECOMMENDED LEGISLATION TO AMEND EXISTING PUBLIC RECORDS EXCEPTIONS REVIEWED IN TITLES 24 AND 24-A

Sec. 1. 24 MRSA §2302-A, sub-§ 3 is amended to read:

3. Confidentiality. Any information provided pursuant to this section shall not identify the names of patients. If patient names are identified in information provided pursuant to this section, the patient names are confidential.

Sec. 2. 24 MRSA §2510, sub-§§1 and 2 are amended to read:

1. Confidentiality; exceptions. Any reports, information or records received and maintained by the board pursuant to this chapter, including any material received or developed by the board during an investigation ~~shall be~~ is confidential, except for information and data that is developed or maintained by the board from reports or records received and maintained pursuant to this chapter or by the board during an investigation and that does not identify or permit identification of any patient or physician; provided that the board may disclose any confidential information only:

A. In a disciplinary hearing before the board or in any subsequent trial or appeal of a board action or order relating to such disciplinary hearing;

B. To governmental licensing or disciplinary authorities of any jurisdiction or to any health care providers or health care entities located within or outside this State that are concerned with granting, limiting or denying a physician's privileges, but only if the board includes along with the transfer an indication as to whether or not the information has been substantiated by the board;

C. As required by section 2509, subsection 5;

D. Pursuant to an order of a court of competent jurisdiction;

E. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any patient or physician is first deleted;

F. To other state or federal agencies when the information contains evidence of possible violations of laws enforced by those agencies.

2. Confidentiality of orders in disciplinary proceedings. Orders of the board relating to disciplinary action against a physician, including orders or other actions of the board referring or scheduling matters for hearing, ~~shall not be~~ are not confidential.

Sec. 3. 24 MRSA §2604 is amended to read:

§2604. Records of superintendent

For the purpose of evaluation of policy provisions, rate structures and the arbitration process and for recommendations of further legislation, the Superintendent of Insurance shall retain the

information and maintain the files in the form and for such period as the superintendent determines necessary. The superintendent shall maintain the reports filed in accordance with this section, and all data or information derived therefrom that identifies or permits identification of the insured or insureds or the incident or occurrences for which a claim was made, as ~~strictly~~ confidential records. Data and information derived from reports filed in accordance with this section that do not identify or permit identification of the insured or insureds or the incident or occurrence for which a claim was made may be released by the superintendent or otherwise made available to the public. Reports made to the superintendent and records thereof kept by the superintendent are not subject to discovery and are not admissible in any trial, civil or criminal, other than proceedings brought before or by the board.

Sec. 4. **24-A MRSA §6907, sub-§1** is amended as follows:

1. Financial information. Any personally identifiable financial information, supporting data or tax return of any person obtained by Dirigo Health under this chapter is confidential ~~and not open to public inspection~~.

Sec. 5. **24-A MRSA §6907, sub-§2** is amended as follows:

2. Health information. Health information obtained by Dirigo Health under this chapter that is covered by the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, 110 Stat. 1936 or information covered by chapter 24 or Title 22, section 1711-C is confidential ~~and not open to public inspection~~.

Summary

This draft implements statutory changes recommended by the Right To Know Advisory Committee after reviewing certain existing public records exceptions in Titles 23, 24 and 24-A.

Section 1 clarifies the subsection to require that patient names contained in utilization review data reports filed by nonprofit hospitals and medical service organizations with the Superintendent of Insurance be kept confidential.

Section 2 makes grammatical corrections.

Section 3 removes the word “strictly” from the section of statute requiring confidentiality for all data or information that identifies or permits identification of the insured or insureds or the incident or occurrences for which a claim was made contained in records of the superintendent maintained in accordance with the section.

Sections 4 and 5 remove unnecessary language.

APPENDIX H

Existing public records exceptions in Titles 23, 24 and 24-A recommended to continue without change

PUBLIC RECORDS EXCEPTIONS REVIEWED IN 2022: TITLES 23, 24 AND 24-A RECOMMENDED TO BE CONTINUED WITHOUT CHANGE

The following public records exceptions reviewed in Titles 23, 24 and 24-A should remain in law as written:

- Title 23, section 63, relating to records regarding negotiations for and appraisals of property and engineering estimates held by the Department of Transportation and the Maine Turnpike Authority
- Title 23, section 1980, subsection 2-B, relating to recorded images used to enforce tolls on the Maine Turnpike
- Title 23, section 1982, relating to patrons of the Maine Turnpike
- Title 23, section 4244, subsections 3 and 4, relating to design-build contracting proposals
- Title 23, section 4251, subsection 10-A, relating to records in connection with public-private transportation project proposals of at least $25,000,000 or imposing new tolls
- Title 23, section 8115-A, relating to records of the Northern New England Passenger Rail Authority
- Title 24, section 2302-A, sub-§ 3, relating to utilization review data provided by nonprofit hospital or medical service organization
- Title 24, section 2307, subsection 3, relating to an accountant's work papers concerning nonprofit hospital or medical service organizations
- Title 24, section 2329, subsection 8, relating to alcoholism and drug treatment patient records of nonprofit hospitals and medical service organizations
- Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act
- Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act
- Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels
- Title 24, section 2986, subsection 2, relating to billing for forensic examinations for alleged victims of gross sexual assault
- Title 24, section 2986, subsection 3, relating to District Court hearings on storing or processing forensic examination kit of gross sexual assault
- Title 24-A, section 216, subsections 2 and 5, relating to records of the Bureau of Insurance
- Title 24-A, section 222, subsection 13-A, paragraph A, subparagraph 2-A, relating to any group capital calculation or liquidity stress test and supporting information with respect to insurance holding company
- Title 24-A, section 225, subsection 3, relating to insurance examination reports
- Title 24-A, section 226, subsection 2, relating to insurance examination reports furnished to the Governor, the Attorney General and the Treasurer of State pending final decision

- Title 24-A, section 227, relating to information pertaining to individuals in insurance examination reports
- Title 24-A, section 414, subsections 4 and 5, relating to insurance certificate of authority audit work papers
- Title 24-A, section 423-C, subsection 4, relating to insurance reports of material transactions
- Title 24-A, section 423-G, subsection 4, relating to corporate governance annual disclosure filings
- Title 24-A, section 731-B, subsection 1, paragraph B-2, relating to documents filed with BOI by an insurer assuming reinsurance
- Title 24-A, section 796-A, relating to proprietary business information of special purpose insurance vehicle filed with the Superintendent of Insurance
- Title 24-A, section 962, relating to protected valuation information filed by insurers
- Title 24-A, section 994, subsection 2, paragraph A, and subsection 4 relating to property and casualty actuarial report, work papers or actuarial opinion summary in possession or control of Bureau of Insurance
- Title 24-A, section 1420-N, subsection 6, relating to insurers and producers
- Title 24-A, section 1905, subsection 1, relating to credit and investigative reports concerning insurance administrator applicants
- Title 24-A, section 1911, relating to insurance audits and examinations
- Title 24-A, section 2169-B, subsection 6, insurance scoring model
- Title 24-A, section 2187, subsection 6, relating to insurance fraud reporting
- Title 24-A, section 2204, subsection 4, relating to insurance investigative information (definition)
- Title 24-A, section 2268, subsection 1, relating to documents, materials and other information provided to BOI about insurer’s information security program
- Title 24-A, section 2304-A, subsection 7, relating to insurance rate filings
- Title 24-A, section 2323, subsection 4, relating to reports of insurers concerning loss and expense experience
- Title 24-A, section 2325-B, subsection 9, relating to modified policy forms and rate filings of the mandatory property and casualty insurance market assistance program
- Title 24-A, section 2384-B, subsection 8, relating to workers' compensation insurance rating concerning claims and self-insurance
- Title 24-A, section 2384-C, subsection 7, relating to workers' compensation insurance concerning claims and self-insurance
- Title 24-A, section 2393, subsection 2, relating to workers' compensation pool self-insurance and surcharges
- Title 24-A, section 2412, subsection 8, relating to insurance contracts and forms
- Title 24-A, section 2479, relating to records of the Interstate Insurance Product Regulation Commission

- Title 24-A, section 2483, subsection 6, relating to the Interstate Insurance Product Regulation Commission work papers and information regarding privacy of individuals and proprietary information of insurers
- Title 24-A, section 2736, subsection 2, relating to rate filings on individual health insurance policies
- Title 24-A, section 2749, subsection 3, relating to utilization review data for health insurance contracts
- Title 24-A, section 2808-B, subsection 2-A, relating to rate filings for small group health plans
- Title 24-A, section 2842, subsection 8, relating to relating to alcoholism and drug treatment patient records for group and blanket health insurance
- Title 24-A, section 2847, subsection 3, relating to utilization review data for group and blanket health insurance
- Title 24-A, section 4204, subsection 2-A, relating to quality assurance programs of health maintenance organizations
- Title 24-A, section 4224, subsections 1 and 2, relating to quality assurance committees of health maintenance organizations
- Title 24-A, section 4228, subsection 3, relating to utilization review data for health maintenance organizations
- Title 24-A, section 4233, subsection 2, relating to health maintenance organizations work papers filed with the Superintendent of Insurance
- Title 24-A, section 4245, subsections 1 and 3, relating to health maintenance organizations accreditation survey report
- Title 24-A, section 4312, relating to independent external review requests and proceedings
- Title 24-A, section 4320-S, subsection 4, relating to proprietary information reported by health insurance carriers related to compliance with mental health parity requirements
- Title 24-A, section 4406, subsection 3, relating to delinquent insurers
- Title 24-A, section 4612-A, subsection 1, relating to information reported by the Superintendent of Insurance to the National Association of Insurance Commissioners Insurance Regulatory Information System board
- Title 24-A, section 6458, subsection 1, relating to risk-based capital standards for insurers
- Title 24-A, section 6708, subsection 2, relating to examination of documents relation to captive insurance companies
- Title 24-A, section 6715, relating to information submitted to the Superintendent of Insurance by captive insurance companies
- Title 24-A, section 6807, subsection 7, paragraph A, relating to individual identification data of viators
- Title 24-A, section 6818, subsections 6 and 8, relating to fraudulent viatical or life insurance settlements information provided for enforcement
- Title 24-A, section 6907, subsection 1, relating to personally identifiable financial information obtained by Dirigo Health

APPENDIX I

Correspondence from Advisory Committee related to recommendations

STATE OF MAINE

RIGHT TO KNOW ADVISORY COMMITTEE

TO: Chief Edward J. Tolan, Executive Director, Maine Chiefs of Police Association
Municipal, county and state law enforcement agencies in Maine

FROM: Representative Thom Harnett, Chair, Right to Know Advisory Committee

DATE: January 9, 2023

RE: Survey: Access to and use of encrypted radio channels by municipal, county and state law enforcement agencies

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The Right to Know Advisory Committee considered the topic of encrypted radio communications by police and emergency service providers. This topic was previously discussed by the Advisory Committee in 2012. At that time, the Advisory Committee determined that radio encryption practices were not widespread in Maine, thereby reducing concerns, at that time, regarding the potential for law enforcement agencies to use encrypted radio channel transmissions to restrict public access to critical public safety information. The Advisory Committee did agree that if current practices regarding the availability and use of encrypted radio channels were to change significantly, it would be appropriate to revisit the topic. It came to the attention of the Advisory Committee during its first meeting in September that some departments or agencies are using encrypted radio channels for at least some of their radio transmissions, and in a few instances, for all of their radio transmissions. Therefore, the Advisory Committee established a Subcommittee to reexamine and discuss the issue. The Subcommittee identified a need for more data regarding the extent of access to and use of encrypted radio channels within the State by municipal, county and state law enforcement agencies.

Given the need for data, the Advisory Committee requests that the following information be collected **for the period January 2023 – June 2023** and reported back to the Advisory Committee by *July 31, 2023*:

1. Did your department/agency have the capability to use an encrypted radio channel?

2. If so, did your department/agency use an encrypted radio channel at any time?

3. When examining the use of encrypted radio channels within your department/agency, how often is an encrypted channel used: always, often, sometimes, rarely, never?

4. If an encrypted radio channel was used, or an encrypted radio transmission was sent, please describe the type of situation(s). (Ex. In all situations, only by certain individuals, only in tactical situations, only for certain types of information, etc.)

5. If an encrypted radio channel was used for tactical situations, how many tactical situations were there during this time period?

6. If an encrypted radio channel was used, do you rely on any criteria or policies regarding its use?

Thank you for providing this data. If you have any questions or concerns about our request, please do not hesitate to reach out to Advisory Committee staff, Rachel Olson or Colleen McCarthy Reid at (207) 287-1670.