



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1021

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H.P. 719

House of Representatives, March 14, 2013

**An Act To Establish as a Public Record the Performance Evaluation  
of a Municipal Employee**

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Reference to the Committee on State and Local Government suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative RYKERSON of Kittery.  
Cosponsored by Representatives: BROOKS of Winterport, EVANGELOS of Friendship,  
McGOWAN of York.

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

2 **Sec. 1. 30-A MRSA §2702, sub-§1, ¶B**, as amended by PL 1997, c. 770, §3, is  
3 further amended to read:

4 B. Municipal records pertaining to an identifiable employee and containing the  
5 following:

6 (1) Medical information of any kind, including information pertaining to  
7 diagnosis or treatment of mental or emotional disorders;

8 (2) ~~Performance evaluations and personal~~ Personal references submitted in  
9 confidence;

10 (3) Information pertaining to the creditworthiness of a named employee;

11 (4) Information pertaining to the personal history, general character or conduct  
12 of members of an employee's immediate family; and

13 (5) Complaints, charges or accusations of misconduct, replies to those  
14 complaints, charges or accusations and any other information or materials that  
15 may result in disciplinary action. If disciplinary action is taken, the final written  
16 decision relating to that action is no longer confidential after the decision is  
17 completed if it imposes or upholds discipline. The decision must state the  
18 conduct or other facts on the basis of which disciplinary action is being imposed  
19 and the conclusions of the acting authority as to the reasons for that action. If an  
20 arbitrator completely overturns or removes disciplinary action from an employee  
21 personnel file, the final written decision is public except that the employee's  
22 name must be deleted from the final written decision and kept confidential. If the  
23 employee whose name was deleted from the final written decision discloses that  
24 the employee is the person who is the subject of the final written decision, the  
25 entire final written report, with regard to that employee, is public.

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

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

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

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

35 **Sec. 2. 30-A MRSA §2702, sub-§2**, as enacted by PL 1987, c. 737, Pt. A, §2 and  
36 Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is  
37 further amended to read:

38 **2. Employee right to review.** On written request from an employee or former  
39 employee, the municipal official with custody of the records shall provide the employee,  
40 former employee or the employee's authorized representative with an opportunity to

1 review the employee's personnel file, if the municipal official has a personnel file for that  
2 employee. These reviews ~~shall~~ must take place during normal office hours at the location  
3 where the personnel files are maintained. For the purposes of this subsection, a personnel  
4 file includes, but is not limited to, any ~~formal or informal employee evaluations and~~  
5 reports relating to the employee's character, credit, work habits, compensation and  
6 benefits ~~which~~ that the municipal official may possess. The records described in  
7 subsection 1, paragraph B, may also be examined by the employee to whom they relate,  
8 as provided in this subsection.

9

### **SUMMARY**

10 This bill removes from the list of records that are confidential the performance  
11 evaluation of a municipal employee.