

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

—
S.P. 456 - L.D. 1465

An Act To Amend the Laws Governing Freedom of Access

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 1 MRSA §400 is enacted to read:

§400. Short title

This subchapter may be known and cited as "the Freedom of Access Act."

Sec. 2. 1 MRSA §402, sub-§3, ¶M, as amended by PL 2005, c. 381, §1, is further amended to read:

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure ~~and~~, systems and software. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;

Sec. 3. 1 MRSA §402, sub-§§5 and 6 are enacted to read:

5. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.

6. Reasonable office hours. "Reasonable office hours" includes all regular office hours of an agency or official.

Sec. 4. 1 MRSA §408, as amended by PL 2009, c. 240, §4, is repealed.

Sec. 5. 1 MRSA §408-A is enacted to read:

§408-A. Public records available for inspection and copying

Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record.

1. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee as provided in subsection 8.

2. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 8.

A. A request need not be made in person or in writing.

B. The agency or official shall mail the copy upon request.

3. Acknowledgment; clarification; time 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 a reasonable period of time, and may request clarification concerning which public record or public records are being requested. The agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request. The agency or official shall make a good faith effort to fully respond to the request within the estimated time.

4. Refusals; denials. If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide written notice of the denial, stating the reason for the denial, within 5 working days of the request for inspection or copying.

5. Schedule. Inspection, conversion pursuant to subsection 7 and copying of a public record subject to a request under this section may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody or control of the public record requested. If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.

6. No requirement to create new record. An agency or official is not required to create a record that does not exist.

7. Electronically stored public records. An agency or official having custody or control of a public record subject to a request under this section shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency

or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

A. If in order to provide access to an electronically stored public record the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the agency or official may charge a fee to cover the cost of conversion as provided in subsection 8.

B. This subsection does not require an agency or official to provide a requester with access to a computer terminal.

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.

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.

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.

E. The agency or official may charge for the actual mailing costs to mail a copy of a record.

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 and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than \$30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 10 applies.

10. Payment in advance. The agency or official having custody or control of a public record subject to a request under this section may require a requester to pay all or a portion of the estimated costs to complete the request prior to the search, retrieval, compiling, conversion and copying of the public record if:

A. The estimated total cost exceeds \$100; or

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.

11. Waivers. The agency or official having custody or control of a public record subject to a request under this section may waive part or all of the total fee charged pursuant to subsection 8 if:

A. The requester is indigent; or

B. The agency or official considers release of the public record requested to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

Sec. 6. 1 MRSA §409, sub-§1, as amended by PL 2009, c. 240, §5, is further amended to read:

~~1. Records. If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. Any person aggrieved by a refusal or denial to inspect or copy a record under section 408-A may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.~~

Sec. 7. 1 MRSA §412, as amended by PL 2007, c. 576, §2, is further amended to read:

§412. Public records and proceedings training for certain elected officials and public access officers

~~1. Training required. Beginning July 1, 2008, A public access officer and an elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or public access officer shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official or the person is designated as a public access officer pursuant to section 413, subsection 1. For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.~~

2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:

- A. The general legal requirements of this chapter regarding public records and public proceedings;
- B. Procedures and requirements regarding complying with a request for a public record under this chapter; and
- C. Penalties and other consequences for failure to comply with this chapter.

An elected official or a public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C

regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official or public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected. A public access officer shall file the record with the agency or official that designated the public access officer.

4. Application. This section applies to a public access officer and the following elected officials:

- A. The Governor;
- B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;
- C. Members of the Legislature elected after November 1, 2008;
- E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;
- F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;
- G. Officials of school administrative units ~~and school boards~~; and
- H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

Sec. 8. 1 MRSA §§413 and 414 are enacted to read:

§413. Public access officer

1. Designation; responsibility. Each agency, county, municipality, school administrative unit and regional or other political subdivision shall designate an existing employee as its public access officer to serve as the contact person for that agency, county, municipality, school administrative unit and regional or other political subdivision with regard to requests for public records under this subchapter. The public access officer is responsible for ensuring that each public record request is acknowledged within a reasonable period of time and that a good faith estimate of when the response to the request will be complete is provided according to section 408-A. The public access officer shall serve as a resource within the agency, county, municipality, school

administrative unit and regional or other political subdivision concerning freedom of access questions and compliance.

2. Acknowledgment and response required. An agency, county, municipality, school administrative unit and regional or other political subdivision that receives a request to inspect or copy a public record shall acknowledge and respond to the request regardless of whether the request was delivered to or directed to the public access officer.

3. No delay based on unavailability. The unavailability of a public access officer may not delay a response to a request.

4. Training. A public access officer shall complete a course of training on the requirements of this chapter relating to public records and proceedings as described in section 412.

§414. Public records; information technology

An agency shall consider, in the purchase of and contracting for computer software and other information technology resources, the extent to which the software or technology will:

1. Maximize public access. Maximize public access to public records; and

2. Maximize exportability; protect confidential information. Maximize the exportability of public records while protecting confidential information that may be part of public records.

Sec. 9. 6 MRSA §174, sub-§5, as enacted by PL 2007, c. 563, §1, is amended to read:

5. Organization; conduct of business; employees. Within one week after each annual election or appointment, the directors shall meet for the purpose of electing a chair, treasurer and clerk to serve for the ensuing year and until their successors are appointed and qualified. The directors from time to time may choose and employ and fix the compensation of any other necessary officers and agents, who serve at the pleasure of the directors. The treasurer shall furnish bond in the sum and with sureties approved by the directors. The airport authority shall pay the cost of the bond.

The directors may adopt and establish bylaws consistent with the laws of this State and necessary for the convenience and the proper management of the affairs of the airport authority and perform other acts within the powers delegated by law to the directors.

The directors must be sworn to the faithful performances of their duties, including the duties of a member who serves as clerk or clerk pro tem. The directors shall publish an annual report that includes a report of the treasurer.

The directors shall appoint and fix the salary of an airport manager who may not be a director. The airport manager has such power and authority as the directors in their bylaws or by resolution specify and delegate to the airport manager. Subject to approval of or authorization from the directors, the airport manager may appoint any other

employees necessary to carry out the corporate purposes of the airport authority and may fix their salaries.

Business of the airport authority must be conducted in accordance with the applicable provisions of the ~~freedom of access laws, Title 1, sections 401 to 412~~ Freedom of Access Act.

Sec. 10. 12 MRSA §8424, sub-§2, as amended by PL 1981, c. 278, §4, is further amended to read:

2. Application for spray project eligibility. Forest land owners may apply to the director prior to December 1st of any year to be eligible to participate in the spray projects for the following 5 years. The application ~~shall~~ must show:

- A. The name and address of the applicant and its agent, if any;
- B. The number and location on maps prescribed by the director of the acres of forest land for which application is being made;
- C. The location on maps prescribed by the director of the timber types, timber ages and proportions of spruce, fir and non-host species within such forest land;
- D. The location on maps of private and public road access to such forest land;
- E. The location on maps of all residences within that forest land;
- F. A 5-year cutting plan for such forest land showing plans for timber cutting, road construction and other planned land utilizations; and
- G. Any other information pertinent to the description, utilization and management of such forest land as the director may require for purposes of spray project and management program planning.

The date for submission of the information required under subsection 2, paragraph C, may be extended by the director upon a showing that such information is not then available.

Cutting plans accompanying the application may be utilized by the Bureau of Forestry for planning purposes, and may be shared with other government agencies, but ~~shall do~~ not constitute records available for public inspection or disclosure pursuant to Title 1, section ~~408~~ 408-A.

For excise tax purposes, such application must designate one person who ~~shall~~ must be billed and notified of any lien recorded under this subchapter. When a tax bill or notice of lien is sent to this person, it ~~shall constitute~~ constitutes notice to all other landowners listed on the application. Each forest ~~landowner shall be~~ land owner is jointly and severally liable for any tax, penalty or interest imposed under this subchapter.

Sec. 11. 21-A MRSA §22, sub-§3, as amended by PL 2009, c. 564, §1, is further amended to read:

3. Confidential information. Notwithstanding subsection 1 and Title 1, section ~~408~~ 408-A, if a registered voter meets certain conditions, the voter's information must be kept confidential as provided in this subsection.

A. For a voter who is certified by the Secretary of State as a program participant in the Address Confidentiality Program pursuant to Title 5, section 90-B, all records maintained by the registrar pertaining to that voter must be kept confidential and must be excluded from public inspection.

B. For a voter who submits to the registrar a signed statement that the voter has a good reason to believe that the physical safety of the voter or a member of the voter's immediate family residing with the voter would be jeopardized if the voter's residence address were open to public inspection, that voter's residence address and mailing address, if the mailing address is the same as or discloses the voter's residence address, must be kept confidential and must be excluded from public inspection. The remainder of the information in that voter's record that is designated as public information in section 196-A remains a public record and may be made available to the public according to the use and distribution requirements provided in that section. The voter's signed statement is also a public record. A voter's address that is excluded from public inspection under this paragraph may be made available free of charge to a law enforcement officer or law enforcement agency that makes a written request to use the information for a bona fide law enforcement purpose or to a person identified by a court order if directed by that order.

Sec. 12. 21-A MRSA §22, sub-§5, as enacted by PL 2003, c. 584, §1, is amended to read:

5. Signature and identification number of registered voter. Notwithstanding subsection 1 and Title 1, section ~~408~~ 408-A, the voter's signature and identification number on the voter registration application and associated records in electronic format are designated as nonpublic records and the registrar shall exclude those items from public inspection. Voter signatures on voter registration applications and associated records in a printed hard-copy format are public records in accordance with subsection 1 and Title 1, section ~~408~~ 408-A.

Sec. 13. 21-A MRSA §22, sub-§7, as enacted by PL 2011, c. 342, §5, is amended to read:

7. Incoming voting list. After the incoming voting list is unsealed following the election, the list must be made available for public inspection and copying in accordance with Title 1, section ~~408~~ 408-A.

Sec. 14. 21-A MRSA §1104, as enacted by PL 1989, c. 802, §1, is amended to read:

§1104. Public records

The commission shall retain for public inspection all completed code forms accepted by the commission under section 1103. A code subscribed to by a candidate is a public record under Title 1, section ~~408~~ 408-A.

Sec. 15. 25 MRSA §2006, first ¶, as amended by PL 2011, c. 298, §11, is further amended to read:

Notwithstanding Title 1, ~~sections 401 to 410~~ chapter 13, subchapter 1, all applications for a permit to carry concealed handguns and documents made a part of the application, refusals and any information of record collected by the issuing agency during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 2003 and 2005 are confidential and may not be made available for public inspection or copying. The applicant may waive this confidentiality by written notice to the issuing authority. All proceedings relating to the issuance, refusal or revocation of a permit to carry concealed handguns are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant.

Sec. 16. 25 MRSA §2929, sub-§3, as enacted by PL 1997, c. 291, §3, is amended to read:

3. Disclosure required. The restrictions on disclosure provided under subsection 2 apply only to those portions of databases, reports, audio recordings or other records of the bureau or a public safety answering point that contain confidential information. Other information that appears in those records and other records, except information or records declared to be confidential under other law, is subject to disclosure pursuant to Title 1, section ~~408~~ 408-A. The bureau shall develop procedures to ensure protection of confidential records and information and public access to other records and information. Procedures may involve developing edited copies of records containing confidential information or the production of official summaries of those records that contain the substance of all nonconfidential information.

Sec. 17. 25 MRSA §2957, as repealed and replaced by PL 1999, c. 790, Pt. A, §33, is amended to read:

§2957. Confidentiality

Notwithstanding any other provisions of law, the investigative records of the agency are confidential and all meetings of the board are subject to Title 1, ~~sections 401 to 410~~ chapter 13, subchapter 1, except that those meetings may be held in executive session to discuss any case investigations or any disciplinary actions.

Sec. 18. 29-A MRSA §2251, sub-§7, as amended by PL 2011, c. 390, §1, is further amended to read:

7. Report information. An accident report made by an investigating officer or a report made by an operator as required by subsection 2 is for the purposes of statistical analysis and accident prevention.

A report or statement contained in the accident report, or a report as required by subsection 2, a statement made or testimony taken at a hearing before the Secretary of State held under section 2483, or a decision made as a result of that report, statement or testimony may not be admitted in evidence in any trial, civil or criminal, arising out of the accident.

A report may be admissible in evidence solely to prove compliance with this section.

Notwithstanding subsection 7-A, the Chief of the State Police may disclose the date, time and location of the accident and the names and addresses of operators, owners, injured persons, witnesses and the investigating officer. On written request, the chief may furnish a photocopy of the investigating officer's report at the expense of the person making the request. The cost of furnishing a copy of the report is not subject to the limitations of Title 1, section ~~408, subsection 3~~ 408-A.

Sec. 19. 29-A MRSA §2251, sub-§7-A, ¶C, as enacted by PL 2011, c. 390, §2, is amended to read:

C. The Department of Public Safety, Bureau of State Police may publicly disseminate nonpersonally identifying accident report data that are contained in an accident report database maintained, administered or contributed to by the Bureau of State Police. The cost of furnishing a copy of such data is not subject to the limitations of Title 1, section ~~408~~ 408-A.

Sec. 20. 32 MRSA §9418, first ¶, as enacted by PL 1987, c. 170, §19, is amended to read:

Notwithstanding Title 1, ~~sections 401 to 410~~ chapter 13, subchapter 1, all applications for a license to be a contract security company and any documents made a part of the application, refusals and any information of record collected by the commissioner during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 9405 and 9411-A, and all information of record collected by the commissioner during the process of ascertaining whether a natural person meets the requirements of section 9410-A, are confidential and may not be made available for public inspection or copying. The applicant or natural person may waive this confidentiality by written notice to the commissioner. All proceedings relating to the issuance of a license to be a contract security company are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant.

Sec. 21. 33 MRSA §651, last ¶, as enacted by PL 2009, c. 575, §1, is amended to read:

Notwithstanding Title 1, section ~~408, subsection 3~~ 408-A, this chapter governs fees for copying records maintained under this chapter.

Sec. 22. 34-A MRSA §1216, sub-§1, as amended by PL 2005, c. 487, §§2 to 4, is further amended to read:

1. Limited disclosure. All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any person receiving services from the department must be kept confidential and may not be disclosed by any person, except that public records must be disclosed in accordance with Title 1, section ~~408~~ 408-A; criminal history record information may be disseminated in accordance with Title 16, chapter 3, subchapter 8; and documents other than those documents pertaining to information obtained by the department for the purpose of evaluating a client's ability to participate in a community-based program or from informants in a correctional or detention facility for the purpose of determining whether

facility rules have been violated or pertaining to a victim's request for notice of release may, and must upon request, be disclosed:

- A. To any person if the person receiving services, that person's legal guardian, if any, and, if that person is a minor, that person's parent or legal guardian give informed written consent to the disclosure of the documents referred to in this subsection after being given the opportunity to review the documents sought to be disclosed;
- B. To any state agency if necessary to carry out the statutory functions of that agency;
- C. If ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503;
- D. To any criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile criminal justice or for criminal justice agency employment;
- E. To persons engaged in research if:
 - (1) The research plan is first submitted to and approved by the commissioner;
 - (2) The disclosure is approved by the commissioner; and
 - (3) Neither original records nor identifying data are removed from the facility or office that prepared the records.

The commissioner and the person doing the research shall preserve the anonymity of the person receiving services from the department and may not disseminate data that refer to that person by name or number or in any other way that might lead to the person's identification;

F. To persons who directly supervise or report on the health, behavior or progress of a juvenile, to the superintendent of a juvenile's school and the superintendent's designees and to agencies that are or might become responsible for the health or welfare of a juvenile if the information is relevant to and disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation, including reintegration into the school; or

G. To any state agency engaged in statistical analysis for the purpose of improving the delivery of services to persons who are or might become mutual clients if:

- (1) The plan for the statistical analysis is first submitted to and approved by the commissioner; and
- (2) The disclosure is approved by the commissioner.

The commissioner and the state agency requesting the information shall preserve the anonymity of the persons receiving services from the department and may not disseminate data that refer to any person by name or number or that in any other way might lead to a person's identification.

Notwithstanding any other provision of law, the department may release the names, dates of birth and social security numbers of juveniles receiving services from the department and, if applicable, eligibility numbers and the dates on which those juveniles received

services to the Department of Health and Human Services for the sole purpose of determining eligibility and billing for services under federally funded programs administered by the Department of Health and Human Services and provided by or through the department. The department may also release to the Department of Health and Human Services information required for and to be used solely for audit purposes, consistent with federal law, for those services provided by or through the department. Department of Health and Human Services personnel must treat this information as confidential in accordance with federal and state law and must return the records when their purpose has been served.

Sec. 23. 35-A MRSA §6410, sub-§5, as enacted by PL 1995, c. 616, §10, is amended to read:

5. Water districts; organization; conduct of business. Within one week after each annual appointment or election, the trustees of a water district shall meet for the purpose of electing a chair, treasurer and clerk from among them to serve for the ensuing year and until their successors are elected or appointed and qualified. The trustees, from time to time, may choose and employ and fix the compensation of any other necessary officers and agents who serve at the pleasure of the trustees. The treasurer shall furnish bond in the sum and with sureties approved by the trustees. The water district shall pay the cost of the bond.

The trustees may adopt and establish bylaws consistent with the laws of this State and necessary for the convenience and the proper management of the affairs of the water district, and perform other acts within the powers delegated by law to the trustees.

The trustees ~~shall~~ must be sworn to the faithful performances of their duties including the duties of a member who serves as clerk or clerk pro tem. The trustees shall publish an annual report that includes a report of the treasurer.

Business of the district must be conducted in accordance with the applicable provisions of the ~~freedom of access laws, Title 1, sections 401 to 410~~ Freedom of Access Act.

Sec. 24. 38 MRSA §640, sub-§4, as enacted by PL 1989, c. 453, §2, is amended to read:

4. Release of public information. All information submitted to the agencies by the applicants for a license under the Federal Power Act ~~shall constitute~~ constitutes a public record pursuant to Title 1, section 402, unless such information is otherwise exempted from public disclosure by state law. Release of this information to members of the public ~~shall be~~ is governed by Title 1, section ~~408~~ 408-A.

Sec. 25. Appropriations and allocations. The following appropriations and allocations are made.

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General 0310

Initiative: Provides funds to increase one part-time Assistant Attorney General position to full-time to serve as a Public Access Ombudsman.

GENERAL FUND	2011-12	2012-13
POSITIONS - LEGISLATIVE COUNT	0.000	0.500
Personal Services	\$0	\$38,889
All Other	\$0	\$5,178
GENERAL FUND TOTAL	<u>\$0</u>	<u>\$44,067</u>

In House of Representatives, 2012

Read twice and passed to be enacted.

..... Speaker

In Senate, 2012

Read twice and passed to be enacted.

..... President

Approved 2012

..... Governor