

STATUTE: 1 M.R.S. §402, Sub-§3, ¶P

AGENCY: Department of Agriculture, Conservation and Forestry

CONTACT PERSON: Mari Wells-Eagar

CONTACT PERSON'S EMAIL ADDRESS: Mari.wells@maine.gov

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

We probably have a half a dozen requests a year for the ATV and snowmobile trails data. Generally we tell them we can't provide it without the landowner's permission unless it is for law enforcement or 911 type of use. In some cases they obtain permission and then we provide it. Sometimes they go to landowners and local clubs to obtain what they are asking for and in other cases they just accept the fact they can't have the data. I am not aware of any litigation that has resulted from these requests.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

We do continue to support this exception because without these private landowners we would lose the entire trail system which would be devastating to the economy. The landowners are the ones who pushed for this originally through legislation and we understand and support their position on this.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

I think so at least it seems to be to us.

4. Does your agency recommend changes to this exception? Not that I am aware of

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

ATV Maine, MSA, landowner groups like SWOAM, the Maine Farm Bureau, The Forest Products Council and 100's of local ATV and snowmobile clubs and thousands of private landowners. Providing everyone's contact information would be difficult.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review. N/A

Maine Revised Statutes
Title 1: GENERAL PROVISIONS
Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

§402. DEFINITIONS

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.

[1975, c. 758, (NEW) .]

1-A. Legislative subcommittee. "Legislative subcommittee" means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.

[1991, c. 773, §1 (NEW) .]

2. Public proceedings. The term "public proceedings" as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:

A. The Legislature of Maine and its committees and subcommittees; [1975, c. 758, (NEW) .]

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Community College System and any of its committees and subcommittees; [1989, c. 358, §1 (AMD); 1989, c. 443, §1 (AMD); 1989, c. 878, Pt. A, §1 (RPR); 2003, c. 20, Pt. 00, §2 (AMD); 2003, c. 20, Pt. 00, §4 (AFF) .]

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; [1991, c. 848, §1 (AMD) .]

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1995, c. 608, §1 (AMD) .]

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees; [2009, c. 334, §1 (AMD) .]

F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and [2009, c. 334, §2 (AMD) .]

G. The committee meetings, subcommittee meetings and full membership meetings of any association that:

(1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and

(2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.

This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach. [2009, c. 334, §3 (NEW) .]

[2009, c. 334, §§1-3 (AMD) .]

3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

A. Records that have been designated confidential by statute; [1975, c. 758, (NEW) .]

B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding; [1975, c. 758, (NEW) .]

C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over; [1991, c. 773, §2 (AMD) .]

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

(1) Is of a personal nature, consisting of:

(a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(b) Credit or financial information;

(c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;

(d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or

(e) An individual's social security number; or

(2) Would be confidential if it were in the possession of another public agency or official; [2011, c. 264, §1 (NEW) .]

D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives; [1989, c. 358, §4 (AMD) .]

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B; [1989, c. 358, §4 (AMD); 1989, c. 443, §2 (AMD); 1989, c. 878, Pt. A, §2 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1991, c. 448, §1 (AMD) .]

G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1991, c. 448, §1 (AMD) .]

H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct; [1995, c. 608, §4 (AMD) .]

I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter; [1999, c. 96, §1 (AMD) .]

J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization; [2001, c. 675, §1 (AMD) .]

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A; [2003, c. 392, §1 (AMD) .]

L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records 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. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure; [2003, c. 614, §1 (AMD) .]

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure, 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; [2011, c. 662, §2 (AMD) .]

N. Social security numbers; [2011, c. 320, Pt. E, §1 (AMD) .]

O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:

(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and

(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials; [2009, c. 1, §1 (COR) .]

P. Geographic information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information; [2011, c. 149, §1 (AMD).]

(Paragraph P as enacted by PL 2009, c. 339, §3 is REALLOCATED TO TITLE 1, SECTION 402, SUBSECTION 3, PARAGRAPH Q)

Q. (REALLOCATED FROM T. 1, §402, sub-§3, ¶P) Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the general public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials, the Department of Corrections or members of the State Board of Corrections under conditions that protect the information from further disclosure; [2013, c. 339, §1 (AMD).]

R. Social security numbers in the possession of the Secretary of State; [2013, c. 518, §1 (AMD).]

S. E-mail addresses obtained by a political subdivision of the State for the sole purpose of disseminating noninteractive notifications, updates and cancellations that are issued from the political subdivision or its elected officers to an individual or individuals that request or regularly accept these noninteractive communications; and [2013, c. 518, §2 (AMD).]

T. Records describing research for the development of processing techniques for fisheries, aquaculture and seafood processing or the design and operation of a depuration plant in the possession of the Department of Marine Resources. [2013, c. 518, §3 (NEW).]

[2013, c. 518, §§1-3 (AMD) .]

3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:

A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of furlough and dates of furlough; [2013, c. 267, Pt. B, §1 (AMD).]

B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of residence and dates of supervision; and [2013, c. 267, Pt. B, §1 (AMD).]

C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information. [2013, c. 267, Pt. B, §1 (AMD).]

[2013, c. 267, Pt. B, §1 (AMD) .]

4. Public records of interscholastic athletic organizations. Any records or minutes of meetings under subsection 2, paragraph G are public records.

[2009, c. 334, §4 (NEW) .]

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

[2011, c. 662, §3 (NEW) .]

STATUTE: 1 M.R.S. §538, Sub-§3

AGENCY: Information Resources of Maine (InforME)

CONTACT PERSON: Dan Andrews

CONTACT PERSON'S EMAIL ADDRESS: dan@informe.org

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

The records subject to the exception would included web application transaction records, payment records and web server access logs. All of these records contain information related to the identity of, or use by, users of InforME services.

Very little of the data we handle actually belongs to InforME or the network manager. The vast majority of the requests we receive are for agency data, of which we are not the custodian. In those cases, we forward the requests on to the appropriate agency.

Of those requests that are for data that are in the records of the network manager or collected by InforME, the majority of those requests are made by state agencies. Typically for law enforcements purposes. Those requests are fulfilled not in accordance with FOA, but by court order.

InforME rarely receives public FOA requests for data that belongs to InforME or the network manager.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

InforME supports the continuation of this exception. Confidentiality of user records is necessary to maintain user confidence in the InforME portal. If records containing the identity of users, or their use of the portal, were made public this would violate the privacy of InforME/Maine.gov users and discourage citizens from interacting with government through electronic means.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the

FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

To date, the problems have been few. We believe that the language of the exception is sufficiently clear.

4. Does your agency recommend changes to this exception?

We do not recommend any changes.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Greg McNeal
Chief Technology Officer
Chair of InforME Board
Greg.McNeal@maine.gov

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Not additional information to provide.

Maine Revised Statutes
Title 1: GENERAL PROVISIONS

Chapter 14: ELECTRONIC ACCESS TO PUBLIC INFORMATION

§538. COPYRIGHTS, LICENSING RESTRICTIONS AND CONFIDENTIALITY

1. Information. The information developed by the network manager for InforME and public information made available through InforME is owned by the public, and copyright or licensing restrictions may not be fixed to this information by the board, the network manager or data custodians.

[1997, c. 713, §1 (NEW) .]

2. Custody of network manager. The fact that information is in the custody of the network manager does not by itself make that information a public record.

[1997, c. 713, §1 (NEW) .]

3. User records. Information in records of the network manager or collected by InforME relating to the identity of or use by users of electronic services is confidential and may be released only with the express permission of the user or pursuant to court order. This subsection does not affect the public record status of any records of data custodians regarding users.

[2011, c. 321, §16 (RPR) .]

SECTION HISTORY

1997, c. 713, §1 (NEW). 2011, c. 321, §16 (AMD).

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STATUTE: 4 MRSA § 1806

AGENCY: Maine Commission on Indigent Legal Services

CONTACT PERSON: John Pelletier

CONTACT PERSON'S EMAIL ADDRESS: john.pelletier@maine.gov

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

Records subject to the exception include some information on attorney vouchers, requests for funds for expert or investigative assistance, and attorney evaluations. On average, the Commission receives between two and four records requests each year, mainly for attorney vouchers. Attorney vouchers are regularly redacted to eliminate personally identifying client information and information subject to the attorney-client privilege. Otherwise, to date, only two requests have been denied in part based on the exception. For one of the denials, the requestor was seeking copies of requests for investigative funds for a case that had not yet concluded. Under the statute, such requests are confidential until the case is completed; either when the judgment is affirmed on appeal or the period for appeal has expired. Following the denial, the requestor submitted a second request after the conclusion of the case and the Commission was able to comply with the request.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

The Commission supports the continuation of this exception. The records subject to exception from public disclosure contain highly personal and confidential information, including individuals' personal contact information (date of birth, social security number, home address, telephone number, etc.), sensitive details about case litigation, performance evaluations of individual attorneys, as well as information that is protected under the attorney-client privilege. The current exception protects this highly sensitive and privileged information.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential

under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

To date, no problems have been encountered with applying the records exception. The Commission believes that the statute is clear about what information is deemed “confidential” and thus excluded from disclosure.

4. Does your agency recommend changes to this exception?

No changes are recommended.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Rostered attorneys (rosters can be found at www.maine.gov/mcils), people represented by assigned counsel, the public and the press.

6. Please provide any further information that you believe is relevant to the Advisory Committee’s review.

None provided.

Maine Revised Statutes

Title 4: JUDICIARY

Chapter 37: MAINE COMMISSION ON INDIGENT LEGAL SERVICES

§1806. INFORMATION NOT PUBLIC RECORD

Disclosure of information and records in the possession of the commission is governed by this section. [2011, c. 260, §1 (NEW) .]

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Individual client information" means name, date of birth, social security number, gender, ethnicity, home address, home telephone number, home facsimile number, home e-mail address, personal cellular telephone number, personal pager number and any information protected under the attorney-client relationship. [2011, c. 260, §1 (NEW) .]

B. "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address, personal cellular telephone number, personal pager number, date of birth and social security number. [2011, c. 260, §1 (NEW) .]

C. "Request for funds for expert or investigative assistance" means a request submitted to the commission by an indigent party or by an attorney on behalf of an indigent client seeking authorization to expend funds for expert or investigative assistance, which includes, but is not limited to, the assistance of a private investigator, interpreter or translator, psychiatrist, psychologist or other mental health expert, medical expert and scientific expert. [2011, c. 260, §1 (NEW) .]

D. "Case information" means:

- (1) The court in which a case is brought;
- (2) Any criminal charges or juvenile crime charges and the type, but not the contents, of any petition giving rise to a case;
- (3) The docket number;
- (4) The identity of assigned counsel and the date of assignment;
- (5) The withdrawal of assigned counsel and the date of withdrawal; and
- (6) Any order for reimbursement of assigned counsel fees. [2011, c. 547, §1 (NEW) .]

[2011, c. 547, §1 (AMD) .]

2. Confidential information. The following information and records in the possession of the commission are not open to public inspection and do not constitute public records as defined in Title 1, section 402, subsection 3.

A. Individual client information that is submitted by a commission-rostered attorney or a court is confidential, except that the names of criminal defendants and the names of juvenile defendants charged with offenses that if committed by an adult would constitute murder or a Class A, Class B or Class C crime are not confidential. [2011, c. 260, §1 (NEW) .]

B. Information subject to the lawyer-client privilege set forth in the Maine Rules of Evidence, Rule 502 or that constitutes a confidence or secret under the Maine Rules of Professional Conduct, Rule 1.6 is confidential. [2011, c. 260, §1 (NEW) .]

C. Personal contact information of a commission-rostered attorney is confidential. [2011, c. 260, §1 (NEW) .]

D. Personal contact information of a member of the commission or a commission staff member is confidential. [2011, c. 260, §1 (NEW) .]

E. A request for funds for expert or investigative assistance that is submitted by an indigent party or by an attorney on behalf of an indigent client is confidential. The decision of the executive director of the commission hired pursuant to section 1804, subsection 1, or the executive director's designee, to grant or deny such a request is not confidential after a case has been completed. A case is completed when the judgment is affirmed on appeal or the period for appeal has expired. [2011, c. 260, §1 (NEW) .]

F. Any information obtained or gathered by the commission when performing an evaluation of an attorney is confidential, except that it may be disclosed to the attorney being evaluated. [2011, c. 260, §1 (NEW) .]

[2011, c. 260, §1 (NEW) .]

3. Confidential information disclosed by the Judicial Department. The Judicial Department may disclose to the commission confidential information necessary for the commission to carry out its functions, including the collection of amounts owed to reimburse the State for the cost of assigned counsel, as follows:

A. Case information and individual client information with respect to court proceedings that are confidential by statute or court rule in which one or more parties are represented by assigned counsel; and [2011, c. 547, §2 (NEW) .]

B. The name, address, date of birth and social security number of any person ordered by the court to reimburse the State for some or all of the cost of assigned counsel. [2011, c. 547, §2 (NEW) .]

This information remains confidential in the possession of the commission and is not open to public inspection, except that the names of criminal defendants and the names of juvenile defendants charged with offenses that if committed by an adult would constitute murder or a Class A, Class B or Class C crime are not confidential.

[2011, c. 547, §2 (NEW) .]

SECTION HISTORY

2011, c. 260, §1 (NEW) . 2011, c. 547, §§1, 2 (AMD) .

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STATUTE: 5 MRSA § 17057, sub-§ 3

AGENCY: Maine Public Employees Retirement System

CONTACT PERSON: _____Kathy Morin_____

CONTACT PERSON'S EMAIL ADDRESS: foa@mainepers.org;
kathy.morin@mainepers.org

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

This exception is for home contact information for Maine Public Employees Retirement System ("MainePERS") members, benefit recipients and staff. Member and benefit recipient home address information can be provided to certain organizations for membership recruitment purposes unless the member or recipient signs a form indicating that home address information is not authorized to be released.

MainePERS receives one or two requests per year that encompass this information. The requests generally come from organizations requesting the information for other than membership recruitment purposes.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

MainePERS strongly supports continuation of this exception as it meets the needs of its members, benefit recipients, staff and constituent groups that represent those individuals.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

No problems have been identified. MainePERS believes that the language is sufficiently clear.

4. Does your agency recommend changes to this exception?

No.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

None.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

None.

STATUTE: 5 MRSA § 17057, sub-§ 4

AGENCY: Maine Public Employees Retirement System

CONTACT PERSON: _____Kathy Morin_____

CONTACT PERSON'S EMAIL ADDRESS: foa@mainepers.org;
Kathy.Morin@mainepers.org

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

Like many institutional investors, the Maine Public Retirement System ("MainePERS") has allocated a portion of its portfolio to private market investments. The sponsors and managers of these non-public investments vigorously protect the confidentiality of their financial and commercial information. If this information were to become public once provided to MainePERS, then sponsors and managers would refuse to disclose the information to MainePERS. This would prevent MainePERS from including private market investments in its portfolio, which would be to the detriment of MainePERS members, retirees, and beneficiaries.

The records include due diligence information, performance reports, legal instruments, and documents setting forth investment strategies.

MainePERS receives approximately half a dozen FOA requests a year that encompass this information. The exception is cited in partially denying each of these requests, and responsive documents are produced with the non-public portions redacted. The requests generally come from out-of-state financial news organizations or other organizations interested in a particular manager.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

MainePERS strongly supports continuation of this exception for the reasons set forth in response to Question 1, above.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

No problems have been identified. MainePERS believes that the language is sufficiently clear.

4. Does your agency recommend changes to this exception?

No.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

None.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

MainePERS does post public information regarding private market investments on its website. See, e.g., the attached.

STATUTE: 5 MRSA § 17057, sub-§ 5

AGENCY: Maine Public Employees Retirement System

CONTACT PERSON: _____Kathy Morin_____

CONTACT PERSON'S EMAIL ADDRESS: foa@mainepers.org;
Kathy.Morin@mainepers.org

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

This exception is for personnel records of Maine Public Employees Retirement System ("MainePERS") staff. MainePERS has not received any requests for the records covered by this provision since its enactment.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

MainePERS strongly supports continuation of this exception as it makes personnel records of retirement system staff confidential in a manner consistent with how similar records of other groups of public employees are treated.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

No problems have been identified. MainePERS believes that the language is sufficiently clear.

4. Does your agency recommend changes to this exception?

No.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

None.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

None.

Maine Revised Statutes
Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES
Chapter 421: GENERAL PROVISIONS

§17057. INFORMATION NOT PUBLIC RECORD

1. Medical information. Medical information of any kind in the possession of the retirement system, including information pertaining to diagnosis or treatment of mental or emotional disorders, is confidential and not open to public inspection and does not constitute "public records" as defined in Title 1, section 402, subsection 3. Records containing medical information may be examined by the employee to whom they relate or by the State or participating local district employer of the employee for any purposes related to any claim for workers' compensation or any other benefit. The employee must be advised in writing by the retirement system of any request by the employer to examine the employee's medical records. Medical information obtained pursuant to this section remains confidential, except as otherwise provided by law, and except when involved in proceedings resulting from an appeal pursuant to section 17451 or proceedings regarding claims for other retirement benefits.

[1991, c. 824, Pt. A, §7 (RPR) .]

2. Group life insurance information. Information in the possession of the retirement system regarding a participant's designated beneficiary or amount of insurance coverage or group life insurance is confidential and not open to public inspection and does not constitute "public records" as defined in Title 1, section 402, subsection 3.

[1991, c. 824, Pt. A, §7 (RPR) .]

3. Home contact information. Except as provided in this subsection, records of home contact information of members and benefit recipients of any of the programs of the retirement system and of staff members that are in the possession of the retirement system are confidential, not open to public inspection and not public records as defined in Title 1, section 402, subsection 3.

A. For purposes of this subsection, "home contact information" means a home address, home telephone number, home facsimile transmission number or home e-mail address. [2003, c. 632, §1 (NEW) .]

B. [2007, c. 47, §1 (RP) .]

C. This subsection does not apply to the home address of a member or a benefit recipient of any of the programs of the retirement system used only for membership recruitment purposes by a nonprofit or public organization established to provide programs, services and representation to Maine public sector retirees unless the retirement system member or benefit recipient has signed a form made available by the retirement system indicating that the individual does not authorize disclosure of that individual's home address. The retirement system may not provide information under this subsection to an organization if the retirement system has determined that the organization obtained information for the purpose of membership recruitment but used the information for a purpose other than membership recruitment. [2007, c. 491, §70 (AMD) .]

[2007, c. 491, §70 (AMD) .]

4. Investment activity information. Disclosure of private market investment activity of the retirement system is governed by this subsection.

A. Documentary material, data or information in the possession of the retirement system that consists of trade secrets or commercial or financial information that relates to actual or potential private market investments of the retirement system is confidential and not open to public inspection and does not constitute "public records" as defined in Title 1, section 402, subsection 3 if, in the sole discretion of the retirement system, the disclosure of the material, data or information may:

- (1) Impair the retirement system's ability to obtain such material, data or information in the future;
- (2) Cause substantial harm to the competitive position of the retirement system or of the person or entity from whom the information was obtained; or
- (3) Result in the potential violation of state and federal laws and regulations relating to insider trading. [2011, c. 449, §1 (AMD).]

B. The following information concerning any fund in which the retirement system is invested is not exempt from disclosure:

- (1) The retirement system's total commitment to the fund;
- (2) The date of the commitment to the fund;
- (3) Contributions and distributions made to or received from the fund;
- (4) The market value of the investment;
- (5) The name of the fund; and
- (6) The interim internal rate of return of the fund. [2011, c. 449, §1 (AMD).]

C. For purposes of this subsection, "private market investment" means:

- (1) Direct investments in land, timber, mineral rights, private company equity or private company debt;
- (2) Indirect investments in limited partnerships, limited liability corporations or other entities that may invest in the investments described in subparagraph (1);
- (3) Investments in unregistered securities or funds offered under exemptions provided in Section 144(A) of the Securities Act of 1933, as amended, or Section 3(c)1 or 3(c)7 of the Investment Company Act of 1940, as amended; or
- (4) Investments or potential investments of the retirement system pursuant to the state innovation finance program authorized under Title 10, section 1026-T. [2011, c. 449, §1 (NEW).]

[2011, c. 449, §1 (AMD) .]

5. Personnel records of Maine Public Employees Retirement System staff. The following records are confidential and not open to public inspection and are not public records as defined in Title 1, section 402, subsection 3:

A. Papers relating to applications, examinations or evaluations of applicants. Except as provided in this subsection, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the retirement system for use in the examination or evaluation of applicants for positions as retirement system employees, are confidential.

- (1) Notwithstanding any confidentiality provision to the contrary, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.
- (2) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(3) This paragraph does not preclude a union representative from access to personnel records, consistent with paragraph D, that may be necessary for the bargaining agent to carry out collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this paragraph remain confidential and are not open to public inspection; [2011, c. 449, §2 (NEW) .]

B. Personal information. Records containing the following information are confidential, except that the records may be examined by the employee to whom they relate when the examination is permitted or required by law:

- (1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
- (2) Performance evaluations and personal references submitted in confidence;
- (3) Information pertaining to the creditworthiness of a named employee;
- (4) Information pertaining to the personal history, general character or conduct of members of the employee's immediate family;
- (5) Personal information pertaining to the employee's race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability, marital status and sexual orientation; social security number; personal contact information as provided in Title 1, section 402, subsection 3, paragraph O; and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance; and
- (6) 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. 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 decision, with regard to that employee, is public.

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.

This paragraph does not preclude a union representative from having access to personnel records that are necessary for the bargaining agent to carry out collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this paragraph remain confidential and are not open for public inspection; [2011, c. 449, §2 (NEW) .]

C. Other information to which access by the general public is prohibited by law; and [2011, c. 449, §2 (NEW) .]

D. Certain information for grievance and other proceedings. The retirement system may release specific information designated confidential by this paragraph to be used in negotiations, mediation, fact finding, arbitration, grievance proceedings and other proceedings in which the retirement system is a party. For

the purpose of this paragraph, "other proceedings" means unemployment compensation proceedings, workers' compensation proceedings, human rights proceedings and labor relations proceedings. [2011, c. 449, §2 (NEW).]

[2011, c. 449, §2 (NEW) .]

6. Treatment of confidential information. Confidential information provided under subsection 5 is governed by the following.

A. Only the information that is necessary and directly related to the proceeding may be released. [2011, c. 449, §2 (NEW).]

B. The proceeding for which the confidential information is provided must be private and not open to the public if possible. If the proceeding is open to the public, the confidential information may not be disclosed except exclusively in the presence of the fact finder, the parties and counsel of record and the employee who is the subject of the proceeding and provisions are made to ensure that there is no public access to the confidential information. [2011, c. 449, §2 (NEW).]

C. The retirement system may use this confidential information in proceedings and provide copies to an employee organization if that organization is a party to the proceedings and the information is directly related to those proceedings as defined by the applicable collective bargaining agreement. Confidential personnel records in the possession of the retirement system are not open to public inspection and are not public records. [2011, c. 449, §2 (NEW).]

[2011, c. 449, §2 (NEW) .]

SECTION HISTORY

1989, c. 76, (NEW). 1991, c. 480, §2 (RPR). 1991, c. 580, §2 (AMD). 1991, c. 824, §A7 (RPR). 2003, c. 632, §1 (AMD). 2005, c. 149, §§1,2 (AMD). 2007, c. 47, §§1, 2 (AMD). 2007, c. 491, §70 (AMD). RR 2009, c. 2, §3 (COR). 2009, c. 633, §1 (AMD). 2011, c. 449, §§1, 2 (AMD).

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PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

STATUTE: 5 MRSA § 90-B, sub-§ 7

AGENCY: Secretary of State

CONTACT PERSON: Kristen Muszynski

CONTACT PERSON'S EMAIL ADDRESS: kristen.muszynski@maine.gov

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

The Office of the Secretary of State has had no FOAA requests for confidential information regarding a participant in Maine's Address Confidentiality Program.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

The Office of the Secretary of State supports the continuation of this exception. The purpose of the Address Confidentiality Program is to keep a participant's address off of public documents where an abuser can easily obtain it. Were it not for the public records exception, this safety measure would not be possible.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? n/a

4. Does your agency recommend changes to this exception? No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Maine Coalition to End Domestic Violence – 430-8334, Francine Stark,
francine@mcedv.org

Maine Coalition Against Sexual Assault – 626-5506, Elizabeth Ward Saxl,
director@mecasa.org

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Maine Revised Statutes

Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES

Chapter 5: SECRETARY OF STATE

§90-B. ADDRESS CONFIDENTIALITY PROGRAM

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Address" means a residential street, school or work address of an individual, including any geographically specific description or coordinate that identifies a residential address, as specified on the individual's application to be a program participant under this section. [2011, c. 195, §1 (AMD) .]

B. "Application assistant" means an employee of a state or local agency, or of a nonprofit program that provides counseling, referral, shelter or other specialized service to victims of domestic abuse, rape, sexual assault or stalking and who has been designated by the respective agency, and trained, accepted and registered by the secretary to assist individuals in the completion of program participation applications. [2001, c. 539, §1 (NEW) .]

C. "Designated address" means the address assigned to a program participant by the secretary pursuant to this section. [2001, c. 539, §1 (NEW) .]

D. "Mailing address" means an address that is recognized for delivery by the United States Postal Service. [2001, c. 539, §1 (NEW) .]

E. "Program" means the Address Confidentiality Program established in this section. [2001, c. 539, §1 (NEW) .]

F. "Program participant" means a person certified by the Secretary of State to participate in the program. [2001, c. 539, §1 (NEW) .]

G. "Secretary" means the Secretary of State. [2001, c. 539, §1 (NEW) .]

[2011, c. 195, §1 (AMD) .]

2. Program established. The Address Confidentiality Program is established to protect victims of domestic violence, stalking or sexual assault by authorizing the use of designated addresses for such victims. The program is administered by the secretary under the following application and certification procedures.

A. Upon recommendation of an application assistant, an adult person, a parent or guardian acting on behalf of a minor or a guardian acting on behalf of an incapacitated person may apply to the secretary to have a designated address assigned by the secretary to serve as the person's address or the address of the minor or incapacitated person. [2001, c. 539, §1 (NEW) .]

B. The secretary may approve an application only if it is filed with the office of the secretary in the manner established by rule and on a form prescribed by the secretary. A completed application must contain:

(1) The application preparation date, the applicant's signature and the signature and registration number of the application assistant who assisted the applicant in applying to be a program participant;

(2) A designation of the secretary as agent for purposes of service of process and for receipt of first-class mail;

(3) The mailing address where the applicant may be contacted by the secretary or a designee and the telephone number or numbers where the applicant may be called by the secretary or the secretary's designee; and

(4) One or more addresses that the applicant requests not be disclosed for the reason that disclosure will jeopardize the applicant's safety or increase the risk of violence to the applicant or members of the applicant's household. [2001, c. 539, §1 (NEW) .]

C. Upon receipt of a properly completed application, the secretary may certify the applicant as a program participant. A program participant is certified for 4 years following the date of initial certification unless the certification is withdrawn or invalidated before that date. The secretary shall send notification of lapsing certification and a reapplication form to a program participant at least 4 weeks prior to the expiration of the program participant's certification. [2001, c. 539, §1 (NEW) .]

D. The secretary shall forward first-class mail to the appropriate program participants. [2001, c. 539, §1 (NEW) .]

E. A person who violates this paragraph commits a Class E crime.

(1) An applicant may not file an application knowing that it:

(a) Contains false or incorrect information; or

(b) Falsely claims that disclosure of the applicant's address or mailing address threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made.

(2) An application assistant may not assist or participate in the filing of an application that the application assistant knows:

(a) Contains false or incorrect information; or

(b) Falsely claims that disclosure of the applicant's address or mailing address threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made. [2001, c. 2, Pt. A, §4 (COR) .]

[2001, c. 2, Pt. A, §4 (COR) .]

3. Cancellation. Certification for the program may be canceled if one or more of the following conditions apply:

A. If the program participant obtains a name change, unless the program participant provides the secretary with documentation of a legal name change within 10 business days of the name change; [2001, c. 539, §1 (NEW) .]

B. If there is a change in the residential street address from the one listed on the application, unless the program participant provides the secretary with notice of the change in such manner as the secretary provides by rule; or [2001, c. 539, §1 (NEW) .]

C. The applicant or program participant violates subsection 2, paragraph E, subparagraph (1). [2001, c. 539, §1 (NEW) .]

[2001, c. 539, §1 (NEW) .]

4. Use of designated address. Upon demonstration of a program participant's certification in the program, state and local agencies and the courts shall accept and use only the designated address as a program participant's address unless the secretary has determined that:

A. The agency has a bona fide statutory or administrative requirement for the use of the program participant's address or mailing address, such that it is unable to fulfill its statutory duties and obligations without the residential address; and [2001, c. 539, §1 (NEW) .]

B. The program participant's address or mailing address will be used only for those statutory and administrative purposes. [2001, c. 539, §1 (NEW).]

[2013, c. 478, §1 (AMD) .]

5. Disclosure to law enforcement and state agencies. If the secretary determines appropriate, the secretary may make a program participant's address or mailing address available for use under the following circumstances:

A. If requested of the secretary by a law enforcement agency in the manner provided for by rule; or [2001, c. 539, §1 (NEW).]

B. Upon request to the secretary by a commissioner of a state agency or the commissioner's designee in the manner provided for by rule and upon a showing of a bona fide statutory or administrative requirement for the use of the program participant's address or mailing address, such that the commissioner or the commissioner's designee is unable to fulfill statutory duties and obligations without the address or mailing address. [2001, c. 539, §1 (NEW).]

[2013, c. 478, §1 (AMD) .]

6. Disclosure pursuant to court order or canceled certification. If the secretary determines appropriate, the secretary shall allow a program participant's address and mailing address to be made available for use under the following circumstances:

A. To a person identified in a court order, upon the secretary's receipt of that court order that specifically orders the disclosure of a particular program participant's address and mailing address and the reasons stated for the disclosure; or [2001, c. 539, §1 (NEW).]

B. If the certification has been canceled because the applicant or program participant violated subsection 2, paragraph E, subparagraph (1). [2001, c. 539, §1 (NEW).]

[2013, c. 478, §1 (AMD) .]

7. Confidentiality. The program participant's application, supporting materials and the program's state e-mail account are not a public record and must be kept confidential by the secretary.

[2011, c. 195, §2 (AMD) .]

8. Rules. The secretary shall adopt rules to carry out this section. These rules are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[2001, c. 539, §1 (NEW) .]

SECTION HISTORY

RR 2001, c. 2, §A4 (COR). 2001, c. 539, §1 (NEW). 2011, c. 195, §§1, 2 (AMD). 2013, c. 478, §1 (AMD).

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STATUTE: 7 MRSA § 1052, sub-§ 2-A

AGENCY: Dept. of Agriculture, Conservation & Forestry

CONTACT PERSON: Mari Wells-Eagar

CONTACT PERSON'S EMAIL ADDRESS: mari.wells@maine.gov

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

We send out a letter at the end of each year requesting confidential business information from the companies who have sold GE seed for planting to growers and dealers in Maine. The companies send the information including amount and type of seed, planting density and potential acreage. We compile this information and then do a summary of the total acreage for all crops from each company. Then we put together a report listing the companies, types of GE crops and then a total acreage for all crops and companies. We don't have more than 2 requests per year for this information.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

We support this exception

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

No problems and the language is clear.

4. Does your agency recommend changes to this exception?
No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Genetically Engineered Plants and Seeds Reporting

In 2011, the Maine Legislature amended Title 7, Chapter 103, Subchapter 11-A entitled Genetically Engineered Plants and Seeds to add a requirement for manufacturers to submit an annual report to this Department of the potential acreage of their GE crops that could be planted based on their sales. This legislation also stated that individual manufacturer's data received is confidential and may not be made public. It further stated that the Commissioner shall make public aggregate data that does not reveal the sales activities of an individual manufacturer.

Reports for the 2014 crop year were from received from the following five manufacturers:

Monsanto Company
Dow AgroSciences
Pioneer Hi-Bred International, Inc.
Syngenta Seeds, Inc.
Seedway

Potential acreage was reported for the following genetically engineered crops:

Field Corn
Canola
Soybeans
Sweet Corn
Alfalfa

Due to the low number of companies reporting sales, it is not possible to list the acreages by crop without possibly revealing the sales activity of an individual manufacturer. Therefore, the Department is reporting aggregate totals of acres that potentially could have been planted to genetically engineered crops in 2014.

Year	Acres
2014	14,436
2013	28,210
2012	20,378
2011	28,047
2010	20,011
2009	17,039

CONFIDENTIAL BUSINESS INFORMATION

Maine Genetically Engineered Seed Reporting Form

COMPANY: _____

ADDRESS: _____

CONTACT PERSON: _____ PHONE: _____

In the space below, please provide by company-owned brand, the amount of genetically engineered seed* (seed with biotech-improved traits) sold in Maine by crop and unit from January 1, 2014 – December 31, 2014. Please indicate none if you do not sell any genetically engineered seed in Maine.

Crop Type Units # Seeds/Unit Planting density¹ Potential acreage

Corn

Soybean

Alfalfa

Canola

Sweet corn

¹Planting Density = Seeds per acre

* The term "genetically engineered seeds" means the application of in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid and direct injection of nucleic acid into cells or organelles, or the fusion of cells beyond the taxonomic family, that overcome natural physiological reproductive or recombinant barriers and that are not techniques used in traditional breeding and selection according to 7 MRA §1051 (2).

Please return by January 31, 2015 to: Ann Gibbs, Department of Agriculture, Conservation and Forestry, 28 State House Station, Augusta, ME 04333-0028.
ann.gibbs@maine.gov.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Title 7: AGRICULTURE AND ANIMALS
Part 2: MARKETING, GRADING AND LABELING
Chapter 103: PRODUCTS CONTROLLED
Subchapter 11-A: GENETICALLY ENGINEERED PLANTS AND SEEDS

§1052. Responsibilities of manufacturer A manufacturer of genetically engineered plants, planting stock or seeds that present a risk of cross-contamination and are sold or distributed in this State is subject to the provisions of this subchapter. [2001, c. 330, §1 (NEW) .]

1. Instructions. The manufacturer or seed dealer of the genetically engineered plants, plant parts or seeds shall provide written instructions to all growers on how to plant the plant parts, seeds or plants and how to grow and harvest the crop to minimize potential cross-contamination. These instructions must be at least as inclusive as guidelines issued by the United States Department of Agriculture relative to the establishment of buffer zones between genetically engineered plants and wild or cultivated plants subject to the risk of cross-contamination. The manufacturer or seed dealer shall file a copy of these instructions with the commissioner at least 20 days in advance of any sale of the genetically engineered plants, plant parts or seeds in this State. [2001, c. 330, §1 (NEW) .]

2. Record keeping. The manufacturer or seed dealer shall identify and maintain, for at least 2 years after the date of sale, a list of the names and addresses of all growers of its genetically engineered plants, plant parts or seeds in this State. The list is not a public record as defined in Title 1, section 402, subsection 3. A manufacturer or seed dealer shall permit the commissioner to inspect the list when requested to facilitate an investigation into a claim of cross-contamination. A manufacturer or seed dealer is not required to keep records on seeds sold at the retail level in packets weighing less than one pound.

A manufacturer of genetically engineered seeds is not required to keep records under this subsection when the required records are being kept by a seed dealer.

[2001, c. 330, §1 (NEW) .]

2-A. Reporting. A manufacturer selling genetically engineered plant parts, plants or seeds in the State shall annually report to the commissioner the total potential acreage at a given planting density of genetically modified crops that could be grown based on the amount of each genetically engineered product sold in the State. Individual manufacturer data received under this subsection is confidential and may not be made public. The commissioner shall make public aggregate data that does not reveal the sales activities of an individual manufacturer. The commissioner shall provide aggregate data on sales of genetically engineered trees, tree seedlings, tree seeds, tree scions and other propagative materials to the Department of Agriculture, Conservation and Forestry, Bureau of Forestry.

[2009, c. 323, §2 (NEW); 2011, c. 657, Pt. W, §§5, 7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

Maine Revised Statutes
Title 7: AGRICULTURE AND ANIMALS
Chapter 103: PRODUCTS CONTROLLED

§1052. RESPONSIBILITIES OF MANUFACTURER

A manufacturer of genetically engineered plants, planting stock or seeds that present a risk of cross-contamination and are sold or distributed in this State is subject to the provisions of this subchapter. [2001, c. 330, §1 (NEW) .]

1. Instructions. The manufacturer or seed dealer of the genetically engineered plants, plant parts or seeds shall provide written instructions to all growers on how to plant the plant parts, seeds or plants and how to grow and harvest the crop to minimize potential cross-contamination. These instructions must be at least as inclusive as guidelines issued by the United States Department of Agriculture relative to the establishment of buffer zones between genetically engineered plants and wild or cultivated plants subject to the risk of cross-contamination. The manufacturer or seed dealer shall file a copy of these instructions with the commissioner at least 20 days in advance of any sale of the genetically engineered plants, plant parts or seeds in this State.

[2001, c. 330, §1 (NEW) .]

2. Record keeping. The manufacturer or seed dealer shall identify and maintain, for at least 2 years after the date of sale, a list of the names and addresses of all growers of its genetically engineered plants, plant parts or seeds in this State. The list is not a public record as defined in Title 1, section 402, subsection 3. A manufacturer or seed dealer shall permit the commissioner to inspect the list when requested to facilitate an investigation into a claim of cross-contamination. A manufacturer or seed dealer is not required to keep records on seeds sold at the retail level in packets weighing less than one pound.

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[2009, c. 323, §2 (NEW); 2011, c. 657, Pt. W, §§5, 7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

3. Violation; penalty. Failure to comply with this subchapter is a civil violation for which a penalty of not more than \$1,500 may be adjudged. In accordance with Title 5, chapter 375, the commissioner may suspend or revoke a license issued under section 1044-A if the holder of the license fails to comply with this subchapter.

[2001, c. 330, §1 (NEW) .]

SECTION HISTORY

2001, c. 330, §1 (NEW). 2009, c. 323, §2 (AMD). 2011, c. 657, Pt. W, §§5, 7 (REV). 2013, c. 405, Pt. A, §23 (REV).

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Ref #19

Nale, Craig

From: Ayotte, Shannon <Shannon.Ayotte@maine.gov>
Sent: Tuesday, October 27, 2015 9:04 AM
To: Nale, Craig
Cc: Wells, Mari
Subject: RE: FOAA Questionnaires for Right to Know Advisory Committee
Attachments: Ref33 Harness Racing.docx; Ref19 Hemp.docx; ME Hemp law 202 6-16-15.rtf; Ref 18.pdf; Ref5 Public Records Geographic Rec Trails.docx; DACF MFS Ref35.docx; DACF MFS Ref36.docx; DACF MFS Ref37.docx

Regarding Ref19 the Hemp Law, the new version of the law passed this last session is attached and the exemption has been removed in the new version. We haven't even established the program yet, so not sure what information will be expected and we haven't done a FOAA request yet so not sure how to further help with this one.

From: Wells, Mari
Sent: Thursday, October 15, 2015 1:25 PM
To: Ayotte, Shannon
Subject: Fw: FOAA Questionnaire for Right to Know Advisory Committee

Please review and forward to the affected people as you did with the last batch.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Nale, Craig <Craig.Nale@legislature.maine.gov>
Sent: Thursday, October 15, 2015 11:13 AM
To: Wells, Mari
Subject: FOAA Questionnaire for Right to Know Advisory Committee

Good Morning,

As you know, the Right to Know Advisory Committee is undertaking its review of existing public record exceptions as required by Maine's Freedom of Access Act. The purpose of the attached questionnaire is to gather information about how public access requests are affecting both the public and the agencies responsible for responding to requests. Please feel free to include any information that you may want to the Committee to consider with your responses by **November 6, 2015**.

These public records exceptions will be reviewed at a meeting of a subcommittee of the full Right to Know Advisory Committee at 10:00 am, on Friday, November 13, in room 438 of the State House (the Judiciary Committee room). Your attendance is welcome; if a formal request to attend is necessary please let me know.

In the meantime, if you have any questions at all please don't hesitate to get in touch. Thanks in advance for your help,

Craig

Craig T. Nale, Esq.
Legislative Analyst
Office of Policy and Legal Analysis
Maine State Legislature

Maine Revised Statutes
Title 7: AGRICULTURE AND ANIMALS
Chapter 406-A: HEMP

§2231. INDUSTRIAL HEMP

1. Definition. As used in this chapter, unless the context otherwise indicates, "industrial hemp" means any variety of *Cannabis sativa* L. with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis and that is grown or possessed by a licensed grower in compliance with this chapter.

[2009, c. 320, §1 (NEW) .]

2. Growing permitted. Notwithstanding any other provision of law, a person may plant, grow, harvest, possess, process, sell and buy industrial hemp if that person holds a license issued pursuant to subsection 4.

[2009, c. 320, §1 (NEW) .]

3. Application. A person desiring to grow industrial hemp for commercial purposes shall apply to the commissioner for a license on a form prescribed by the commissioner. The application must include the name and address of the applicant, the legal description of the land area to be used for the production of industrial hemp and a map, an aerial photograph or global positioning coordinates sufficient for locating the production fields. Except for employees of the Maine Agricultural Experiment Station and the University of Maine System involved in research and related activities, an applicant for an initial licensure must submit a set of the applicant's fingerprints, taken by a law enforcement officer, and any other information necessary to complete a statewide and nationwide criminal history record check by the Department of Public Safety, State Bureau of Identification and the Federal Bureau of Investigation. All costs associated with the criminal history record check are the responsibility of the applicant and must be submitted with the fingerprints. Criminal history records provided to the commissioner under this section are confidential. The results of criminal records checks received under this subsection may only be used in determining an applicant's eligibility for licensure. A person with a prior criminal conviction is not eligible for licensure.

[2009, c. 320, §1 (NEW) .]

4. License issued. Upon review and approval of an application, the commissioner shall notify the applicant and request that the application fee determined under subsection 7 be submitted. Upon receipt of the appropriate fee and in accordance with subsection 8, the commissioner shall issue a license, which is valid for a period of one year and only for the site or sites specified in the license.

[2009, c. 320, §1 (NEW) .]

5. Documentation. A licensee shall file with the commissioner documentation indicating that the seeds planted were of a type and variety of hemp approved by the commissioner as having a concentration of no more than 0.3% delta-9-tetrahydrocannabinol by dry weight and a copy of any contract to grow industrial hemp. A licensee shall notify the commissioner of the sale or distribution of industrial hemp grown by the licensee and the name of each person to whom the industrial hemp was sold or distributed.

[2009, c. 320, §1 (NEW) .]

6. Rules. The commissioner shall adopt rules to establish approved varieties of industrial hemp, protocols for testing plant parts during growth for delta-9-tetrahydrocannabinol levels and guidelines for monitoring the growth and harvest of industrial hemp. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 320, §1 (NEW) .]

7. Fees. The commissioner shall establish through rulemaking under subsection 6 an application fee, a license fee and per acre fees for monitoring, sampling and testing that are reasonable and necessary to cover the costs of the department.

All fees received pursuant to this subsection must be paid to the Treasurer of State and credited to a separate, nonlapsing account in the department. Money received pursuant to this subsection must be used for the expenses of administering this chapter.

[2009, c. 320, §1 (NEW) .]

8. Licensing contingent upon action by Federal Government. A license may not be issued under this section unless:

A. The United States Congress excludes industrial hemp from the definition of "marihuana" for the purpose of the Controlled Substances Act, 21 United States Code, Section 802(16); or [2009, c. 320, §1 (NEW) .]

B. The United States Department of Justice, Drug Enforcement Administration takes affirmative steps towards issuing a permit under 21 United States Code, Chapter 13, Subchapter 1, Part C to a person holding a license issued by a state to grow industrial hemp. [2009, c. 320, §1 (NEW) .]

The commissioner shall notify the Revisor of Statutes and the Commissioner of Public Safety when the requirements of either paragraph A or B have been met.

[2009, c. 320, §1 (NEW) .]

SECTION HISTORY

2009, c. 320, §1 (NEW) .

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STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

—
H.P. 7 - L.D. 4

An Act To Promote Industrial Hemp

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, farmers need adequate time to prepare for their upcoming growing seasons and industrial hemp cultivation involves numerous time-sensitive planning considerations; and

Whereas, cultivation of industrial hemp may provide a valuable economic opportunity for farmers that begin cultivating as soon as possible; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 7 MRSA §2231, as enacted by PL 2009, c. 320, §1, is amended to read:

§2231. Industrial hemp

1. Definition. As used in this chapter, unless the context otherwise indicates, "industrial hemp" means any variety of *Cannabis sativa* L. with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis and that is grown or possessed by a licensed grower in compliance with this chapter. As used in this chapter, unless the context otherwise indicates, "certified seed source" means a source of hemp seeds that are certified by a 3rd party as producing hemp having a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis.

2. Growing permitted. Notwithstanding any other provision of law, a person may plant, grow, harvest, possess, process, sell and buy industrial hemp if that person holds a license issued pursuant to subsection 4. A person licensed pursuant to subsection 4 may plant, grow and harvest only hemp that is grown from seeds acquired from a certified

seed source. A person licensed pursuant to subsection 4 may acquire hemp seeds directly from a certified seed source or from a hemp seed distributor licensed in this State distributing hemp seeds pursuant to subsection 2-A.

2-A. Seed distribution. The commissioner may issue a license for a hemp seed distributor if the hemp seeds distributed by the hemp seed distributor are from a certified seed source. The commissioner may issue a license under this subsection to a holder of a seed labeling license pursuant to section 1044-A.

~~3. Application. A person desiring to grow industrial hemp for commercial purposes shall apply to the commissioner for a license on a form prescribed by the commissioner. The application must include the name and address of the applicant, the legal description of the land area to be used for the production of industrial hemp and a map, an aerial photograph or global positioning coordinates sufficient for locating the production fields. Except for employees of the Maine Agricultural Experiment Station and the University of Maine System involved in research and related activities, an applicant for an initial licensure must submit a set of the applicant's fingerprints, taken by a law enforcement officer, and any other information necessary to complete a statewide and nationwide criminal history record check by the Department of Public Safety, State Bureau of Identification and the Federal Bureau of Investigation. All costs associated with the criminal history record check are the responsibility of the applicant and must be submitted with the fingerprints. Criminal history records provided to the commissioner under this section are confidential. The results of criminal records checks received under this subsection may only be used in determining an applicant's eligibility for licensure. A person with a prior criminal conviction is not eligible for licensure.~~

~~4. License issued. Upon review and approval of an application, the commissioner shall notify the applicant and request that the application fee determined under subsection 7 be submitted. Upon receipt of the appropriate fee and in accordance with subsection 8, the commissioner shall issue a license, which is valid for a period of one year and only for the site or sites specified in the license.~~

~~5. Documentation. A licensee shall file with the commissioner documentation indicating that the seeds planted were of a type and variety of hemp approved by the commissioner as having a concentration of no more than 0.3% delta 9-tetrahydrocannabinol by dry weight and a copy of any contract to grow industrial hemp. A licensee shall notify the commissioner of the sale or distribution of industrial hemp grown by the licensee and the name of each person to whom the industrial hemp was sold or distributed.~~

~~6. Rules. The commissioner shall adopt rules to establish approved varieties of industrial hemp, protocols for testing plant parts during growth for delta 9-tetrahydrocannabinol levels, an application fee, a license fee, per acre fees for monitoring, sampling and testing and guidelines for monitoring the growth and harvest of industrial hemp. Rules adopted pursuant to this subsection are major substantive routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.~~

~~7. Fees. The commissioner shall establish through rulemaking under subsection 6 an application fee, a license fee and per acre fees for monitoring, sampling and testing that~~

are reasonable and necessary to cover the costs of the department. The application fee must be no less than \$50 and no more than \$100, the license fee must be no less than \$100 and no more than \$500, and the fees for monitoring, sampling and testing must be no less than \$1 per acre and no more than \$100 per acre.

All fees received pursuant to this subsection must be paid to the Treasurer of State and credited to a separate, nonlapsing account in the department. Money received pursuant to this subsection must be used for the expenses of administering this chapter.

~~8. Licensing contingent upon action by Federal Government.~~ A license may not be issued under this section unless:

~~A. The United States Congress excludes industrial hemp from the definition of "marihuana" for the purpose of the Controlled Substances Act, 21 United States Code, Section 802(16); or~~

~~B. The United States Department of Justice, Drug Enforcement Administration takes affirmative steps towards issuing a permit under 21 United States Code, Chapter 13, Subchapter 1, Part C to a person holding a license issued by a state to grow industrial hemp.~~

~~The commissioner shall notify the Revisor of Statutes and the Commissioner of Public Safety when the requirements of either paragraph A or B have been met.~~

Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

AGRICULTURE, CONSERVATION AND FORESTRY, DEPARTMENT OF

Division of Plant Industry 0831

Initiative: Provides funding to adopt routine technical rules establishing an application fee, a license fee, a per acre fee for monitoring, sampling and testing and guidelines for monitoring the growth and harvest of industrial hemp.

OTHER SPECIAL REVENUE FUNDS	2015-16	2016-17
All Other	\$2,500	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$2,500</u>	<u>\$0</u>

Division of Plant Industry 0831

Initiative: Provides funding for one half-time Certified Seed Specialist position and related costs to conduct testing, inspection and monitoring related to the production of industrial hemp.

OTHER SPECIAL REVENUE FUNDS	2015-16	2016-17
POSITIONS - LEGISLATIVE COUNT	0.500	0.500
Personal Services	\$30,032	\$30,032

All Other	\$8,197	\$7,911
OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$38,229</u>	<u>\$37,943</u>

Office of the Commissioner 0401

Initiative: Provides funds for the Department of Administrative and Financial Services, Office of Information Technology costs associated with the Certified Seed Specialist position.

OTHER SPECIAL REVENUE FUNDS	2015-16	2016-17
All Other	\$1,968	\$1,968
OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$1,968</u>	<u>\$1,968</u>

AGRICULTURE, CONSERVATION AND FORESTRY, DEPARTMENT OF DEPARTMENT TOTALS

OTHER SPECIAL REVENUE FUNDS	2015-16	2016-17
	\$42,697	\$39,911
DEPARTMENT TOTAL - ALL FUNDS	<u>\$42,697</u>	<u>\$39,911</u>

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Daniel W. Walker
dwalker@preti.com

November 12, 2015

Senator David C. Burns, Chairperson
Right to Know Advisory Committee
13 State House Station
Augusta, Maine 04333

RE: Oxford Casino Response to Inquiry

Dear Senator Burns and the Right To Know Advisory Committee:

Thank you for the opportunity to participate in the advisory committee's scheduled review (pursuant to 1 M.R.S. Section 432(2)) of public records exceptions regarding information provided by casinos to the Gambling Control Board.

I am writing on behalf of Churchill Downs, which operates Oxford Casino. The casino industry is intensely competitive in Maine and nationally. The industry also puts exceptional emphasis on data security and cybersecurity, and more generally on protecting any information that could compromise the physical security or cybersecurity of operations. The Oxford Casino currently employs 391 people.

We understand that the specific exceptions being reviewed are:

1. 8 MRSA § 1006, sub-§1, A-H (application and licensing records and information);
2. 8 MRSA § 1006, sub-§3 (records obtained by the GCB to select a 3rd party central site monitoring system operator);
3. 8 MRSA § 1006, sub-§4 (financial, statistical and surveillance information);
4. 8 MRSA § 1007, sub-§7 (information or records in possession of the GCB received pursuant to an intelligence sharing agreement with another state or federal law enforcement or gambling agency); and
5. 8 MRSA §§ 1008 and 1052 (records or information used or produced in connection with hearings, proceedings or appeals in noncompliance with the gambling laws).

We agree that the records and information subject to these exceptions should remain confidential because, taken together, the exceptions are narrowly tailored to protect records that meet several criterion used in the Committee's process for evaluating the merits of these exceptions pursuant to 1 M.R.S. Section 432(2). These records and information within the scope of these exceptions includes personal information, social security numbers, criminal records, sensitive surveillance footage used to protect the security and safety of casino facilities, sensitive personal financial information, trade secrets, and confidential and proprietary business records.

Therefore, the exceptions under review meet several criteria used in the Committee's evaluation process, including: (1) "the exception protects an individual's privacy interest

PRETI FLAHERTY

November 12, 2015

Page 2

and...that interest substantially outweighs the public interest in the disclosure of records” (1 M.R.S. Section 432(2)(D)); (2) “public disclosure puts a business at a competitive disadvantage and...that business’s interest substantially outweighs the public interest in the disclosure of records” (1 M.R.S. Section 432(2)(E)); (3) “public disclosure jeopardizes the safety of a member of the public or the public in general and...that safety interest substantially outweighs the public interest in the disclosure or records” (1 M.R.S. Section 432(2)(G)); and (4) “the exception is as narrowly tailored as possible.” (1 M.R.S. Section 432(2)(H)).

Also relevant to the Committee’s evaluation process is the oversight of these exceptions provided by the Gambling Control Board which is “a publically accountable entity that has authority to review” the information subject to these exceptions and is able to ensure that the use of these exceptions “are consistent with the purpose of the exception and that public access to public records is not hindered.” 1 M.R.S. Section 432(2-A). This oversight, in combination with the evaluation criteria implicated above, add further support to our position that the exceptions under review should remain confidential.

Again, we appreciate the opportunity to assist in your review of these exceptions and will also be available at the Committee’s meeting on November 13th at 10:00 a.m.

Sincerely,

A handwritten signature in cursive script, appearing to read 'D Walker', with a horizontal line extending to the right.

Daniel W. Walker

DWW:dal

STATUTE: 8 MRSA § 270-A

AGENCY: Dept. of Agriculture, Conservation and Forestry

CONTACT PERSON: Mari Wells-Eagar

CONTACT PERSON'S EMAIL ADDRESS: mari.wells@maine.gov

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

ANSWER: This statutory exception protects financial health information that must be submitted by applicants seeking harness racing dates.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

ANSWER: The agency supports continuation so that business financial information is not disclosed to the public.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

ANSWER: We are not aware of any problems.

4. Does your agency recommend changes to this exception?

ANSWER: The agency does not recommend any changes.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

ANSWER: Commercial Race tracks (Scarborough Downs and Bangor Raceway), Maine Association of Agricultural Fairs and Many Agricultural Fairs which host harness racing.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review. N/A

Title 8: AMUSEMENTS AND SPORTS Chapter 11: HARNESS RACING

§270-A. Confidentiality of records and information

For the purposes of Title 1, section 402, subsection 3, the types of records and information listed in section 1006, subsection 1 when collected by or provided to the commission are designated as confidential and may not be disclosed except as provided in section 1006, subsection 2. This section applies to information or records included in an application or materials required by the commission for issuance of a commercial track license, including records obtained or developed by the commission related to an applicant or licensee. [2007, c. 483, §1 (NEW).]

SECTION HISTORY

2007, c. 483, §1 (NEW).

Maine Revised Statutes
Title 8: AMUSEMENTS AND SPORTS
Chapter 11: HARNESS RACING

§270-A. CONFIDENTIALITY OF RECORDS AND INFORMATION

For the purposes of Title 1, section 402, subsection 3, the types of records and information listed in section 1006, subsection 1 when collected by or provided to the commission are designated as confidential and may not be disclosed except as provided in section 1006, subsection 2. This section applies to information or records included in an application or materials required by the commission for issuance of a commercial track license, including records obtained or developed by the commission related to an applicant or licensee. [2007, c. 483, §1 (NEW).]

SECTION HISTORY

2007, c. 483, §1 (NEW).

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STATUTE: 9-A MRSA § 6-105-A

AGENCY: Dept. of Professional and Financial Regulation, Bureau of Consumer Credit Protection

CONTACT PERSON: Will Lund

CONTACT PERSON'S EMAIL ADDRESS: william.n.lund@maine.gov

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

Maine is part of a centralized multi-state licensing network (National Mortgage Licensing System, or NMLS) for mortgage loan originators. The licensing process involves disclosure by individual applicants of nonpublic personal and financial information about the applicants – Social Security numbers, dates of birth, places of birth, net worths, credit reports, law enforcement records and fingerprints. Maine's language in 9-A MRS sec. 6-105-A mirrors language in the other 49 states. Maine would not be permitted to participate in this system if its confidentiality laws did not match those of the other states. All participants in the system, and all members of the mortgage industry and borrowing communities, know the level of confidentiality applied by all states, so Maine has not had to assert the privilege or deny requests.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

Our agency supports continuation of the exception. All states participating in the National Mortgage Licensing System (NMLS) have enacted identical laws, and Maine would not be able to continue as a participant in NMLS if our state's laws were amended to be less stringent than the laws of the other 49 states.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

No problems have occurred in applying this exception. The language in Maine law is model language adopted by all states and sanctioned by the Federal Reserve Board. It is sufficiently clear in describing the records covered.

4. Does your agency recommend changes to this exception?

No.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Stakeholders include a) the 4,000 individuals who have provided personal and financial non-public information required to obtain their Maine mortgage loan originator licenses; b) the administrators of NMLS in Washington, DC who operate the multistate system based on the current knowledge that the laws of all 50 states, including Maine, protect the information from disclosure; and c) state mortgage regulators in all 50 states, including Maine, who are subject to binding agreements to use the information only for enforcement purposes and to apply the home states' confidentiality laws if requests for disclosure are received by any participating state.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

The types of information gathered in order to make licensing determinations on mortgage loan originator applicants (including dates of birth, Social Security numbers and credit report information) are extremely sensitive and should not be open to the public. The bureau strongly recommends no changes to current law. As stated above, the language in Maine law mirrors the text of NMLS laws in all 50 states.

Maine Revised Statutes
Title 9-A: MAINE CONSUMER CREDIT CODE
Article :

§6-105-A. UNIFORM MULTISTATE AUTOMATED LICENSING SYSTEM

For the purposes of participating in the establishment and implementation of a uniform multistate automated licensing system, referred to in this section as "the system," for loan brokers, supervised lenders that are not supervised financial organizations and individual mortgage loan originators thereof, the administrator may undertake the following actions. [2011, c. 427, Pt. B, §10 (AMD) .]

1. The administrator may establish new rules, consistent with the principles for operation and implementation established by the system, that are necessary for the State to participate in the system, including rules authorizing the system to collect license fees on behalf of the State and remit those fees to the State, authorizing collection fees by the system to pay for its services, authorizing the system to process and maintain license records and authorizing use of the system's uniform forms, upon the director's finding that each new rule is consistent with the public interest and the purposes of this Act. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 273, Pt. A, §2 (NEW); 2007, c. 273, Pt. A, §41 (AFF) .]

2. The administrator may require a credit and background investigation of each applicant for a license as a loan broker, a supervised lender that is not a supervised financial organization or a mortgage loan originator thereof by means including fingerprint checks for state and national criminal histories, commencing at the time the State joins the system pursuant to this section. The cost of the investigations must be charged to the applicants. Information obtained or held by the administrator pursuant to this subsection is nonpublic pursuant to section 6-116 and not subject to disclosure.

[2011, c. 427, Pt. B, §11 (AMD) .]

Any information provided by or to the administrator pursuant to this section that has been designated as confidential by another state's regulatory agency remains the property of the agency furnishing the information and must be kept confidential by the administrator and the system except as authorized by the agency that furnished the information. [2007, c. 273, Pt. A, §2 (NEW); 2007, c. 273, Pt. A, §41 (AFF) .]

SECTION HISTORY

2007, c. 273, Pt. A, §2 (NEW). 2007, c. 273, Pt. A, §41 (AFF). 2011, c. 427, Pt. B, §§10, 11 (AMD) .

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STATE OF MAINE
DEPARTMENT OF EDUCATION
23 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0023

Ref # 43

PAUL R. LEPAGE
GOVERNOR

WILLIAM H. BEARDSLEY
ACTING COMMISSIONER

TO: Members of the Right to Know Advisory Committee
FROM: Debra Plowman, Director of Policy, Department of Education
DATE: November 5, 2015
SUBJECT: (Ref # 43) 20-A MRSA §13004, sub-§2-A

Thank you for the opportunity to comment on the provisions contained in Title 20-A MRSA Section 13004(2-A).

Section 13004(2-A) has been confusing from the outset. As written it seems to prohibit exactly the actions that it was designed to allow. Legal Counsel for the Department and the Department of Education (DOE) employees both share frustrations in trying to sort this out.

The following contains comments from Assistant Attorney General (AAG) Sarah Forster and are submitted to the RTKAC by the Department:

“First, subpart A of this section declares the documents which support a potential certification action (complaints, responses, investigative materials) to be confidential. Then, in subpart B, it purports to make some of that information subject to limited disclosure for specific purposes, but maintains confidentiality for information designated confidential under Sections 6101 and 6103. Section 6103 is criminal history records information, and Section 6101 is essentially any information about a certificate holder other than directory information in the possession of a school administrative unit to which the Department is specifically allowed access in Section 6101(3). Simply put: these two exceptions obliterate the rule.

My understanding from Certification Legal Counsel is that without the ability to disclose that information, Sections (B)(2) and (B)(3) – the ability to share information nationally with other educator certification units in other states – are rendered meaningless. I recall from my brief involvement in the 2009 work on this change in the law that the Department was motivated by the desire to be able to participate fully in these interstate exchanges and was afraid that if Maine could not share this information, we would not be able to receive information from other states.

Also, subsection (B)(1) makes no sense, since both 6101 and 6103 are intended to make the information available to the Department to perform certification investigations – so that subsection is either redundant, or hopelessly circular.

I would advise you to ask the Committee to work with the Department to get this section straightened out so that it can either be used as intended, or eliminated. As written, I’m just not sure what it does.”

Question 1:

Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOIA request or in administrative or other litigation).

In partial response to Question 1: The Department has wrestled with this quite a bit this year as different parties attempt to FOIA information on the certification of an educator or educators, including the endorsements an educator may hold, and sometimes the date of the SBI report issued for certification or recertification purposes. Other requests have come from commercial sources with an eye towards reaching out to educators with a unique certification such as school psychologists. There has been a level of frustration expressed by community members that they cannot ascertain whether a local educator has an endorsement in the area they are teaching..

Question 2:

Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

Response: Returning to the comments above, the Department cannot urge the continuation of the policy as written.

Question 3:

Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOIA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

Response: See above comments from AAG Sarah Forster

Question 4:

Does your agency recommend changes to this exception?

Response: Yes. The statute needs not only clarification, but needs to be written to reflect the policy objective of fully participating in the sharing of certification information in interstate exchanges, creating the reciprocity necessary to participate.

Question 5:

Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Response: Stakeholders: Sarah Forster, AAG at Sarah.Forster@maine.gov, Suzan Beaudoin, DOE, Suzan.Beaudoin@maine.gov; Katherine.Hollicker@maine.gov, and Debra.Plowman@maine.gov.

Question 6:

Please provide any further information that you believe is relevant to the Advisory Committee's review.

Response: Please see above.

Thank you again for the opportunity to comment. The Department looks forward to working with you on this issue. If you have any questions, please contact me at 207-624-6614 or debra.plowman@maine.gov.

Maine Revised Statutes
Title 20-A: EDUCATION

Chapter 501: CERTIFICATION AND REGISTRATION OF TEACHERS

§13004. LIST OF PERSONS CERTIFIED; RECORDS CONFIDENTIAL

1. Records. The commissioner shall keep a list of certified teachers. This list shall be a public record. The commissioner shall send copies of the list to school boards and superintendents on their request.

[1981, c. 693, §§5, 8 (NEW) .]

2. Records confidential. Transcripts, recommendations and other documents submitted in support of an application for certification or collected by the department for verification of certification records and maintained in the office of the commissioner shall be confidential. They may only be made available to the following:

A. School boards and superintendents; [1981, c. 693, §§5, 8 (NEW) .]

B. Authorized personnel of the department in fulfilling assigned duties; and [1981, c. 693, §§5, 8 (NEW) .]

C. Individuals and their representatives who request to examine their own records. [1981, c. 693, §§5, 8 (NEW) .]

[1983, c. 806, §92 (AMD) .]

2-A. Confidentiality. The provisions of this subsection govern confidentiality. For the purposes of this subsection, the term "certification" means certification, authorization or approval under this chapter and chapter 502.

A. Complaints and responses pursuant to section 13020 and any other information or materials that may result in an action to deny, revoke or suspend certification are confidential, except when submitted in court proceedings to revoke or suspend certification. [2009, c. 331, §1 (NEW) .]

B. Except for information designated confidential under section 6101 or section 6103, information designated confidential under paragraph A may be released or used by the department as necessary to:

(1) Complete its own investigations;

(2) Provide information to a national association of state directors of teacher education and certification to which the State belongs;

(3) Assist other public authorities to investigate the same teacher's certification in another jurisdiction;

(4) Report or prevent criminal misconduct or assist law enforcement agencies in their investigations; or

(5) Report child abuse or neglect under Title 22, section 4011-A. [2009, c. 331, §1 (NEW) .]

C. The department may publish and release as public information statistical summaries of complaints and dispositions as long as the release of such information does not jeopardize the confidentiality of individually identifiable information. [2009, c. 331, §1 (NEW) .]

D. Notwithstanding paragraph A, the following information concerning final written decisions relating to disciplinary action taken by the commissioner against a person holding certification is a public record:

(1) The name of the person;

- (2) The type of action taken, consisting of denial, revocation, suspension, surrender or reinstatement;
- (3) The grounds for the action taken;
- (4) The relevant dates of the action;
- (5) The type of certification and endorsements held, including relevant dates;
- (6) The schools where the person was or is employed; and
- (7) The dates of employment. [2009, c. 567, §10 (NEW) .]

[2009, c. 567, §10 (AMD) .]

2-B. Teacher addresses. Home addresses held by the department of teachers certified to teach in the State may be made available in response to the following:

A. Formal request from a commissioner or chief executive officer of other state agencies, including the judicial branch when access to that information may be necessary in carrying out an official function; and [1987, c. 395, Pt. A, §86 (NEW) .]

B. Formal request by majority vote of any joint standing committee of the Legislature when access to that information may be necessary in carrying out an official function. [1987, c. 395, Pt. A, §86 (NEW) .]

The use of these addresses by any other agency or department of government to which they may be furnished shall be limited to the purposes for which they are furnished and by the law under which they may be furnished. It shall be unlawful for any person to solicit, disclose, receive, make use of or authorize, knowingly permit, participate in or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving assistance, directly or indirectly, derived from the records, papers, files or communications of the State or subdivisions or agencies, or acquired in the course of the performance of official duties. Any person violating this subsection shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both.

[1987, c. 395, Pt. A, §86 (NEW) .]

3. Duplication costs. Individuals requesting copies of their records shall bear the costs of copying them.

[1981, c. 693, §§5, 8 (NEW) .]

4. Rules. The state board may adopt rules to carry out this section.

[1981, c. 693, §§5, 8 (NEW) .]

SECTION HISTORY

1981, c. 693, §§5,8 (NEW). 1983, c. 470, §11 (AMD). 1983, c. 806, §92 (AMD). 1987, c. 395, §A86 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 666, §1 (AMD). 2009, c. 331, §1 (AMD). 2009, c. 567, §10 (AMD).

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Maine Revised Statutes
Title 20-A: EDUCATION
Chapter 221: SCHOOL RECORDS, AUDITS AND REPORTS

§6101. RECORD OF DIRECTORY INFORMATION

The following provisions apply to employee records. [1981, c. 693, §§5, 8 (NEW).]

1. Contents. A school administrative unit shall maintain a record of directory information on each employee as follows:

- A. Name; [1981, c. 693, §§5, 8 (NEW).]
- B. Dates of employment; [1981, c. 693, §§5, 8 (NEW).]
- C. Regular and extracurricular duties, including all courses taught in that school administrative unit; [1981, c. 693, §§5, 8 (NEW).]
- D. Post-secondary educational institutions attended; [1981, c. 693, §§5, 8 (NEW).]
- E. Major and minor fields of study recognized by the post-secondary institutions attended; and [1997, c. 452, §1 (AMD).]
- F. Degrees received and dates awarded. [1997, c. 452, §1 (AMD).]
- G. [1997, c. 452, §2 (RP).]

[1997, c. 452, §§1, 2 (AMD) .]

2. Access. The following provisions apply to access of employee records.

A. The record of directory information shall be available for inspection and copying by any person. [1981, c. 693, §§5, 8 (NEW).]

B. Except as provided in paragraph A, information in any form relating to an employee or applicant for employment, or to the employee's immediate family, must be kept confidential if it relates to the following:

- (1) All information, working papers and examinations used in the examination or evaluation of all applicants for employment;
- (2) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
- (3) Performance evaluations, personal references and other reports and evaluations reflecting on the quality or adequacy of the employee's work or general character compiled and maintained for employment purposes;
- (4) Credit information;
- (5) Except as provided by subsection 1, the personal history, general character or conduct of the employee or any member of the employee's immediate family;
- (6) Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action;
- (7) Social security number;
- (8) The teacher action plan and support system documents and reports maintained for certification purposes; and
- (9) Criminal history record information obtained pursuant to section 6103. [1995, c. 547, §4 (AMD) .]

C. Any written record of a decision involving disciplinary action taken with respect to an employee by the governing body of the school administrative unit shall not be included within any category of confidential information set forth in paragraph B. [1981, c. 693, §§5, 8 (NEW).]

[1995, c. 547, §4 (AMD) .]

3. Commissioner's review. The commissioner shall have access to any of the records or documents designated as confidential in this section for carrying out the commissioner's duties pursuant to section 13020. Copies of any such records or documents shall simultaneously be provided to the employee.

The commissioner shall also have access to support system documents for carrying out the commissioner's certification and support system approval duties pursuant to chapter 502 and to other confidential employee records for carrying out the commissioner's school approval duties pursuant to chapter 206.

[1987, c. 620, §2 (AMD) .]

SECTION HISTORY

1981, c. 693, §§5,8 (NEW). 1983, c. 470, §5 (AMD). 1983, c. 806, §60 (AMD). 1983, c. 862, §58 (AMD). 1985, c. 506, §A37 (AMD). 1987, c. 620, §§1,2 (AMD). 1995, c. 547, §§2-4 (AMD). 1997, c. 452, §§1,2 (AMD).

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Maine Revised Statutes
Title 20-A: EDUCATION

Chapter 221: SCHOOL RECORDS, AUDITS AND REPORTS

§6103. CRIMINAL HISTORY RECORD INFORMATION CONVICTION DATA

Beginning July 1, 2000, certification, authorization and renewal under chapters 501 and 502 are subject to the provisions of this section. A person who has complied with the requirements of this section is not required to submit to a subsequent national criminal history record check unless that person has not been continuously employed in a position requiring certification or authorization under chapters 501 and 502. A person who has not been continuously employed in such a position is subject to a subsequent national criminal history record check upon renewal. School vacations are not a break in employment. Fingerprinting of immediately affected applicants for certification, authorization or renewal, conducting of the needed state and national criminal history record checks by the State Bureau of Identification and forwarding of the results by the bureau to the department must begin on September 1, 1999. [1999, c. 791, §1 (AMD) .]

Beginning September 1, 1999, approval under chapters 501 and 502 is subject to the provisions of this section. A person who has complied with the requirements of this section is not required to submit to a subsequent national criminal history record check unless that person has not been continuously employed in a position requiring approval under chapters 501 and 502. A person who has not been continuously employed in such a position is subject to a subsequent national criminal history record check upon renewal. School vacations are not a break in employment. Fingerprinting of applicants for approval, conducting of the needed state and national criminal history record checks by the State Bureau of Identification and forwarding of the results by the bureau to the department must begin on September 1, 1999. [1999, c. 791, §2 (AMD) .]

1. Criminal history record information obtained; reliance. The commissioner shall obtain criminal history record information containing a record of public criminal history record information as defined in Title 16, section 703, subsection 8 from the Maine Criminal Justice Information System for any person applying for certification, authorization, approval or renewal. The commissioner may rely on information provided by the Maine Criminal Justice Information System within 24 months prior to the issuance of a certificate, authorization, approval or renewal.

[2013, c. 507, §10 (AMD) .]

2. Issuance restriction. Issuance of a certificate, authorization, approval or renewal to any person whose criminal history record information includes a criminal conviction is subject to the provisions of Title 5, chapter 341 and section 13020.

[1997, c. 452, §3 (AMD) .]

3. Confidentiality. Any information obtained pursuant to this section is confidential. The results of criminal history record checks received by the commissioner are for official use only and may not be disseminated outside the department, except that the commissioner may outsource administrative functions of software document management according to federal outsourcing standards as described in 28 Code of Federal Regulations, Section 906.2 (2011) and allow access to these results for that purpose.

[2011, c. 521, §1 (AMD) .]

3-A. Fees. The commissioner shall assess a fee of \$55 for each initial criminal history record check and \$24 for each renewal criminal history record check required by this section.

[2005, c. 519, Pt. I, §1 (AMD) .]

3-B. Reimbursement of fee.

[2013, c. 506, §13 (RP) .]

4. Expenses.

[2005, c. 457, Pt. CC, §2 (RP) .]

4-A. Phase-in plan. The fingerprinting and approval process established by this section for certain classes of individuals must be phased in as follows:

A. The fingerprinting and approval process must be phased in for all persons regularly employed in a school during the 1999-2000 school year who require department approval to continue in their positions and who have not been fingerprinted pursuant to this section prior to enactment of this subsection. The department shall issue each person a temporary approval card valid through a specified year from 2001 to 2004. Prior to July 1st of the year specified on the temporary approval card, the person must meet the requirements of this section. Once a person has met the requirements of this section, an approval card must be issued; [1999, c. 791, §4 (NEW) .]

B. A person placed under contract by a school and subject to the requirements of this section, who has not been fingerprinted prior to the effective date of this subsection, must meet these requirements by July 1, 2002; [1999, c. 791, §4 (NEW) .]

C. A person employed as a substitute who has not been fingerprinted prior to the effective date of this subsection must meet the requirements by July 1, 2002. Beginning with the 2003-2004 school year, a person employed as a substitute who needs fingerprinting and a criminal history record check pursuant to section 13011, subsection 8 must meet the requirements of this section within 8 weeks of employment by a school administrative unit. A person employed as a substitute who needs fingerprinting and a criminal history record check must be issued a temporary approval card by the department. The temporary approval card is valid for the first 8 weeks of employment, except that, for a person who has been fingerprinted pursuant to this section prior to the 20th day of employment and who has not received the results of the criminal history record check prior to the 9th week of employment, the temporary approval card remains valid until the commissioner determines whether approval is granted or denied based on the criminal history record information obtained from the State Bureau of Identification; and [2003, c. 184, §1 (AMD) .]

D. A regular employee subject to the requirements of this section who begins work in a school after the effective date of this subsection must meet these requirements prior to the 20th day of employment. Beginning with the 2003-2004 school year, a regular employee who needs fingerprinting and a criminal history record check pursuant to section 13011, subsection 8 must meet the requirements of this section within 8 weeks of employment by a school administrative unit. A regular employee who needs fingerprinting and a criminal history record check must be issued a temporary approval card by the department. The temporary approval card is valid for the first 8 weeks of employment, except that, for a person who has been fingerprinted pursuant to this section prior to the 20th day of employment and who has not received the results of the criminal history record check prior to the 9th week of employment, the temporary approval card remains valid until the commissioner determines whether approval is granted or denied based on the criminal history record information obtained from the State Bureau of Identification. [2003, c. 184, §1 (AMD) .]

[2003, c. 184, §1 (AMD) .]

5. Criminal record information obtained from the Federal Bureau of Investigation. The commissioner shall obtain other state and national criminal history record information from the Federal Bureau of Investigation for any person applying for certification, authorization, approval or renewal. The commissioner may rely on information provided by the Federal Bureau of Investigation within 24 months prior to the issuance of a certificate, authorization, approval or renewal.

[1997, c. 452, §3 (NEW) .]

6. Fingerprinting. The applicant shall submit to having fingerprints taken. The Maine State Police, upon payment by the applicant or any other entity required by law of the expenses specified in subsection 3-A, shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the Maine State Police for purposes of this section must be paid over to the Treasurer of State for deposit in accordance with Title 20-A, section 6103, subsection 10.

[2005, c. 457, Pt. CC, §3 (AMD) .]

7. Use of criminal history record. State and federal criminal history record information may be used for the purpose of screening educational personnel applicants by the commissioner in order to determine whether certification, authorization, approval or renewal of educational personnel is granted or maintained.

[1997, c. 452, §3 (NEW) .]

8. Applicant's access to criminal history record check. The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of a criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal record check may inspect and review criminal record information pursuant to Title 16, section 709.

[2013, c. 267, Pt. B, §15 (AMD) .]

9. Right of applicant and commissioner to remove fingerprints from fingerprint file. Teachers or educational personnel whose certification, authorization or approval has expired and who have not applied for renewal of certification, authorization or approval may request in writing that the State Bureau of Identification remove their fingerprints from the bureau's fingerprint file. In response to a written request, the bureau shall remove the requester's fingerprints from the fingerprint file and provide written confirmation of that removal to the requester.

The commissioner may, without notice to an applicant, remove fingerprints from the fingerprint file maintained by the State Bureau of Identification when an applicant has had no active credential for 7 years. An applicant may renew a credential after that applicant's fingerprints have been removed from the fingerprint file upon submitting again to fingerprinting.

[2011, c. 521, §2 (AMD) .]

10. Criminal History Record Check Fund. The Criminal History Record Check Fund is created as a dedicated fund within the Department of Education for the deposit of any fees collected pursuant to subsection 3-A. The purpose of the fund is to reimburse the Department of Public Safety, State Bureau of Identification for the cost of conducting the fingerprinting and needed state and national criminal history record checks pursuant to this section. The fund may not lapse, but must be carried forward to carry out the purposes of this chapter.

[2005, c. 457, Pt. CC, §4 (NEW) .]

SECTION HISTORY

1995, c. 547, §5 (NEW). 1997, c. 452, §3 (AMD). 1999, c. 35, §§1,2 (AMD). 1999, c. 110, §§1,2 (AMD). 1999, c. 791, §§1-4 (AMD). 2003, c. 184, §1 (AMD). 2005, c. 457, §§CC1-4 (AMD). 2005, c. 519, §§11,2 (AMD). 2011, c. 521, §§1, 2 (AMD). 2013, c. 267, Pt. B, §§14, 15 (AMD). 2013, c. 506, §13 (AMD). 2013, c. 507, §10 (AMD).

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STATUTE: 22 MRSA § 1494

AGENCY: Dept. of Health and Human Services

CONTACT PERSON: Kevin Wells

CONTACT PERSON'S EMAIL ADDRESS: kevin.wells@maine.gov

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

The records subject to this exception are reports from health care providers, health care facilities and medical laboratories of any abnormal condition or disorder, including an occupational injury, caused by exposure to environmental factors associated with employment, such as asbestosis, mesothelioma, silicosis, and exposure to heavy metals.

The Department is unaware of any request that would have required application of this exception.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

The Department is neither for nor against the continuation of this exception.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

There have been no problems in the application of this exception. It is clear that the records are intended to be confidential under the FOA statute. The language of the exception is sufficiently clear in describing the records that are covered.

4. Does your agency recommend changes to this exception?

The Department does not recommend any changes to this exception.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Department of Labor, Bureau of Labor Standards.

Phone: 207-623-7900

E-mail: mdol@maine.gov

Maine AFL-CIO Union

Phone: (207) 622 9675

E-mail: info@maineaflcio.org

Maine Medical Association

Phone: 207-622-3374

E-mail: info@mainemed.com

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

In practice, health care providers and health care facilities submit very few reports of occupational diseases (typically <20 per year total). The majority of the cases of occupational diseases identified by the department are a result of investigations triggered by laboratory reporting of elevated adult blood lead levels and elevated carboxyhemoglobin levels (associated with carbon monoxide poisoning.) The records which are generated as a result of these investigations include medical details, information about the exposure and the identity of the employer. There is electronic laboratory reporting of blood metals data from occupational monitoring programs.

Maine Revised Statutes
Title 22: HEALTH AND WELFARE
Chapter 259-A: OCCUPATIONAL DISEASE REPORTING

§1494. CONFIDENTIALITY

Unless otherwise authorized by section 42, subsection 5, the department may not release any information described in section 1493 regarding reporting of occupational diseases if that information identifies persons with occupational diseases directly or indirectly. The department may disclose information that relates to the site of employment to the Department of Labor, Bureau of Labor Standards if the disclosure contains only the information necessary to advance the public health and does not directly identify an individual having an occupational disease. [2011, c. 337, §2 (RPR).]

All other information submitted pursuant to this chapter may be made available to the public. [2011, c. 337, §2 (NEW).]

SECTION HISTORY

1985, c. 452, §1 (NEW). 2011, c. 337, §2 (RPR).

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