

RIGHT TO KNOW ADVISORY COMMITTEE
PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE MEETING

AGENDA

Tuesday, December 1, 2015

(To Follow Full Right to Know Advisory Meeting)

Room 438, State House, Augusta

Convene

1. Welcome and introduction of subcommittee members
2. Subcommittee public records exception review
 - Discussion and votes on recommendations to full Committee

Adjourn

PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE

Maine Freedom of Access Act - public records exceptions

Enacted 2005 - 2012

(Revised 11/23/2015)

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
1	1	402	2	Title 1, section 402, subsection 2, paragraph G, relating to committee meetings pertaining to interscholastic sports	Maine Principal's Association - Interscholastic Management Committee		
2	1	402	3	Title 1, section 402, subsection 3, paragraph C-1, relating to legislative working papers	Legislative Council, Executive Director		
3	1	402	3	Title 1, section 402, subsection 3, paragraph N, relating to Social Security Numbers	Department of Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive Director; Administrative Office of the Courts		
4	1	402	3	Title 1, section 402, subsection 3, paragraph O, relating to personal contact information concerning public employees other than elected officials	Department of Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive Director; Administrative Office of the Courts		

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
5	1	402	3	Title 1, section 402, subsection 3, paragraph P, relating to geographic information regarding recreational trails on private land	Department of Inland Fisheries and Wildlife; Department of Agriculture, Conservation and Forestry		No Modification
6	1	402	3	Title 1, section 402, subsection 3, paragraph Q, relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events for Department of Corrections or county jail	Department of Corrections		
7	1	402	3	Title 1, section 402, subsection 3, paragraph R, relating to Social Security numbers in possession of the Secretary of State	Secretary of State		
8	1	538	3	Title 1, section 538, subsection 3, relating to InformME subscriber information	Information Resources of Maine (InformME)		No Modification
9	1	1013	2	Title 1, section 1013, subsection 2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions	Commission on Governmental Ethics and Election Practices		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
10	1	1013	4	Title 1, section 1013, subsection 4, relating to Commission on Governmental Ethics and Election Practices records other than complaints	Commission on Governmental Ethics and Election Practices		
11	1	1013	3-A	Title 1, section 1013, subsection 3-A, relating to complaint alleging a violation of legislative ethics	Commission on Governmental Ethics and Election Practices		
12	4	1806		Title 4, section 1806, relating to certain information and records in the possession of the Maine Commission on Indigent Legal Services	Maine Commission on Indigent Legal Services		No Modification
13	5	1541	10-B	Title 5, section 1541, subsection 10-B, relating to internal audit working papers of the State Controller	Department of Administrative and Financial Services - Office of the State Controller		
14	5	17057	3	Title 5, section 17057, subsection 3, relating to home contact information of Maine Public Employees Retirement System members, benefit recipients and staff	Maine Public Employees Retirement System		No Modification
15	5	17057	4	Title 5, section 17057, subsection 4, relating to Maine Public Employees Retirement System private market investment activity	Maine Public Employees Retirement System		No Modification

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
16	5	17057	5	Title 5, section 17057, subsection 3, relating to Maine Public Employees Retirement System employees personal and complaint and disciplinary information	Maine Public Employees Retirement System		No Modification
17	5	90-B	7	Title 5, section 90-B, subsection 7, relating to the Address Confidentiality Program	Secretary of State		No Modification
18	7	1052	2-A	Title 7, section 1052, subsection 2-A, relating to total potential acreage of genetically modified crops reported by individual manufacturers	Department of Agriculture, Conservation and Forestry		No Modification
19	7	2231	3	Title 7, section 2231, subsection 3, relating to criminal history records provided to the Commissioner of Agriculture, Conservation and Forestry as part of an application to grow industrial hemp for commercial purposes	Department of Agriculture, Conservation and Forestry		N/A
20	8	1006	1	Title 8, section 1006, subsection 1, paragraph A, relating to information or records required by the Gambling Control Board for licensure: trade secrets and proprietary information	Department of Public Safety		No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
21	8	1006	1	Title 8, section 1006, subsection 1, paragraph B, relating to information or records required by the Gambling Control Board for licensure: would be unwarranted invasion of privacy of key executive, gaming employee or another person	Department of Public Safety		No Modification
22	8	1006	1	Title 8, section 1006, subsection 1, paragraph C, relating to information or records required by the Gambling Control Board for licensure: key executive or gaming employee compensation	Department of Public Safety		No Modification
23	8	1006	1	Title 8, section 1006, subsection 1, paragraph D, relating to information or records required by the Gambling Control Board for licensure: financial, statistical and surveillance information related to the applicant	Department of Public Safety		No Modification
24	8	1006	1	Title 8, section 1006, subsection 1, paragraph E, relating to information or records required by the Gambling Control Board for licensure: creditworthiness, credit rating or financial condition of person or project	Department of Public Safety		No Modification

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
25	8	1006	1	Title 8, section 1006, subsection 1, paragraph F, relating to information or records required by the Gambling Control Board for licensure: information from other jurisdictions conditioned on remaining confidential	Department of Public Safety		No Modification
26	8	1006	1	Title 8, section 1006, subsection 1, paragraph G, relating to information or records required by the Gambling Control Board for licensure: information designated confidential under federal law	Department of Public Safety		No Modification
27	8	1006	1	Title 8, section 1006, subsection 1, paragraph H, relating to information or records required by the Gambling Control Board for licensure: specific personal information, including Social Security number, of any individual	Department of Public Safety		No Modification
28	8	1006	3	Title 8, section 1006, subsection 3, relating to records and information developed as part of suitability requirement to select operator of central site monitoring system, held by Gambling Control Board and Dept. of Public Safety	Department of Public Safety		No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
29	8	1006	4	Title 8, section 1006, subsection 4, relating to financial, statistical and surveillance information from the central site monitoring system held by the Gambling Control Board and the Dept. of Public Safety	Department of Public Safety		No Modification
30	8	1007	2	Title 8, section 1007, subsection 2, relating to information or records received by the Gambling Control Board or Department of Public Safety from another agency pursuant to agreement	Department of Public Safety		No Modification
31	8	1008		Title 8, section 1008, relating to information or records used or produced by the Gambling Control Board or Department of Public Safety in connection with hearings, proceedings or appeals pursuant to Title 8, section 1052	Department of Public Safety		No Modification
32	8	1052		Title 8, section 1052, relating to reports, information or records compiled by the Gambling Control Board and Dept. of Public Safety concerning noncompliance with or violation of the chapter by an applicant, licensee, owner or key executive	Department of Public Safety		No Modification

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
33	8	270-A		Title 8, section 270-A, relating to records and information included in application or materials required for issuance of commercial track license	Department of Agriculture, Conservation and Forestry		No Modification
34	9-A	6-105-A		Title 9-A, section 6-105-A, last paragraph, relating to information concerning uniform multistate licensing system provided to Consumer Credit Protection by other jurisdictions	Department of Professional and Financial Regulation - Bureau of Consumer Credit Protection		No Modification
35	12	8005	1	Title 12, section 8005, subsection 1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	Department of Agriculture, Conservation and Forestry		
36	12	8005	2	Title 12, section 8005, subsection 2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs	Department of Agriculture, Conservation and Forestry		
37	12	8005	4	Title 12, section 8005, subsection 4, relating to forest management information designated confidential by agency furnishing the information	Department of Agriculture, Conservation and Forestry		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
38	12	101110		Title 12, section 10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license	Department of Inland Fisheries and Wildlife		
39	12	12551-A	10	Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch	Department of Inland Fisheries and Wildlife		
40	14	6321-A	4	Title 14, section 6321-A, subsection 4, relating to the financial information disclosed in the course of mediation under the foreclosure mediation program	Administrative Office of the Courts		
41	17-A	1176	1	Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims	Department of Public Safety		
42	17-A	1176	5	Title 17-A, section 1176, subsection 5, relating to request by crime victim for notice of release of defendant	Department of Corrections		
43	20-A	13004	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel	Department of Education		Adopt amended language offered by Dept. of Ed. And the Attorney General's Office (see handout)

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
44	21-A	1003	3-A	Title 21-A, section 1003, subsection 3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices	Maine Commission on Governmental Ethics and Election Practices		
45	21-A	1125	3	Title 21-A, section 1125, subsection 3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices		
46	21-A	1125	2-B	Title 21-A, section 1125, subsection 2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices		
47	21-A	196-A		Title 21-A, section 196-A, relating to information contained electronically in the central voter registration system	Secretary of State		
48	22	1494		Title 22, section 1494, relating to occupational disease reporting	Department of Health and Human Services		No Modification
49	22	2425	8	Title 22, section 2425, subsection 8, relating to medical marijuana registry identification cards	Department of Health and Human Services		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
50	22	1711-C	20	Title 22, section 1711-C, subsection 20, relating to hospital records concerning health care information pertaining to an individual	HealthInfoNet		
51	22	2153-A		Title 22, section 2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law	Department of Health and Human Services		
52	22	4087-A	6	Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman	Child Welfare Ombudsman		
53	24-A	2736	2	Title 24-A, section 2736, subsection 2, relating to insurer rate filings on individual health insurance policies and supporting information, in regards to protected health information and descriptions of the amount and terms or conditions or reimbursement in a contract between an insurer and a 3rd party	Department of Professional and Financial Regulation - Bureau of Insurance		

Ref #	M.R.S. TITLE	§	Sub §	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
54	25	4202		Title 25, section 4202, relating to records and information connected in any way with the work of a critical incident stress management team for law enforcement personnel	Department of Public Safety		
55	29-A	1301	6-A	Title 29-A, section 1301, relating to the social security number of an applicant for a driver's license or nondriver identification card	Secretary of State		
56	29-A	2251	7-A	Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in an accident report database	Department of Public Safety		
57	29-A	2117-A	4	Title 29-A, section 2117-A, relating to data collected or retained through the use of an automated license plate recognition system	Department of Public Safety; Department of Transportation		
58	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	Department of Public Safety		

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
59	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board	Department of Public Safety		
60	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to information about a person receiving emergency medical services as part of an application for credentialing by Emergency Medical Services Board	Department of Public Safety		
61	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 87-B	Department of Public Safety		
62	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board	Department of Public Safety		
63	30-A	4706	1	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities	Maine State Housing Authority (MaineHousing)		

Ref #	M.R.S. TITLE	§	Sub §	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
64	34-A	11221	13	Title 34-A, section 11221, subsection 13, relating to disclosure of certain sex offender registry information	Department of Public Safety		
65	34-A	11221	9-A	Title 34-A, section 11221, subsection 9-A, relating to certain sex offender registry information	Department of Public Safety		
66	34-B	1931	6	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board	Mental Health Homicide, Suicide, and Aggravated Assault Review Board (MHHS AARB)		
67	34-B	3864	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	Department of Public Safety		
68	35-A	122	1-B	Title 35-A, section 122, subsection 1-B, paragraph G, relating to information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use in the context of energy infrastructure corridors	Interagency Review Panel (Governor's Energy Office)		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
69	35-A	10106		Title 35-A, section 10106 relating to records of the Efficiency Maine Trust and its board	Efficiency Maine		
70	36	6271	2	Title 36, section 6271, subsection 2, relating to an application, information submitted in support of an application and files and communications in relation to a municipal property tax deferral program for senior citizens	Maine Municipal Association		
71	38	1310-B	2	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	Department of Environmental Protection		
72	38	580-B	11	Title 38, section 580-B, subsection 11, relating to records held by the Department of Environmental Protection or its agents regarding individual auctions administered under the carbon dioxide cap-and-trade program	Department of Environmental Protection		

Nale, Craig

From: Heidrich, David <David.Heidrich@maine.gov>
Sent: Friday, November 13, 2015 10:03 AM
To: Fouts, Henry
Subject: RE: Right to Know Advisory Committee - request for feedback
Attachments: DAFS Response - RTKAC Ref4.docx

Follow Up Flag: Follow up
Flag Status: Completed

Good afternoon, Henry.

DAFS will not be completing a questionnaire for 1 M.R.S. § 402(3)(N). I believe it is common sense as to why social security numbers are not subject to the Freedom of Access Act.

Attached is a response regarding 1 M.R.S. § 402(3)(O) – personal contact information of state employees.

Best,
 David

David Heidrich, Jr.
 Director of Communications
 Department of Administrative and Financial Services
 (207) 624-7800

From: Fouts, Henry [<mailto:Henry.Fouts@legislature.maine.gov>]
Sent: Tuesday, October 27, 2015 11:52 AM
To: Heidrich, David
Subject: Right to Know Advisory Committee - request for feedback

Hello, Mr. Heidrich:

The Right to Know Advisory Committee is undertaking its required review of existing public record exceptions under Maine's Freedom of Access Act. Two of these public records exceptions are found at 1 M.R.S. §402, Sub-§3, ¶¶ N and O ([link](#)), relating to the confidentiality of certain personal information.

The purpose of the attached questionnaires 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 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 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 very welcome – if a formal invitation is required, please let me know.

If you have any questions, please don't hesitate to get in touch.

Thanks very much, in advance.

STATUTE: 1 M.R.S. §402, Sub-§3, ¶O

AGENCY: Department of Administrative and Financial Services - Bureau of Human Resources

CONTACT PERSON: David Heidrich

CONTACT PERSON'S EMAIL ADDRESS: david.heidrich@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 Department of Administrative and Financial Services has no recent formal citations of the exception as justification for refusing a FOAA request; however, this citation has been formally used in years past. The Department also makes verbal reference to this exemption in connection with denials made in connection with 5 M.R.S. § 7070. These references occur a handful of times each year.

This exception does not prohibit the release of public records. Rather, it requires an agency and/or public access officer to redact the personal contact information of state employees when it appears on what would otherwise be considered a public document.

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

The Department of Administrative and Financial Services strongly supports the continuation of this exception for the following reasons:

- the safety of state employees – in particular those that work in a regulatory function of government – could be unnecessarily put in jeopardy without this exemption;
- this exception provides a clear distinction between the personal and private lives of our state employees;
- a wealth of information about public employees (i.e. salary, benefits plan design, etc.) is already public available;
- there no benefit to the public by making this information accessible; and

- to make the personal contact information of state employees available public could hinder the State of Maine's efforts to recruit and retain employees.

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?

We have not encountered problems in applying this exception. It is sufficiently clear in describing what information is considered confidential.

4. Does your agency recommend changes to this exception?

The only criticism of this exception the Department of Administrative and Financial Services has is that it has not kept pace with current technological advancements. Information regarding the personal social media accounts (i.e. Skype, Twitter, Facebook) of state employees that may end up in the State's possession either formally – though a resume, for example – or informally is not currently protected from release.

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

Commissioner Richard W. Rosen
Associate Commissioner Kim Smith
Bureau of Human Resources Director Joyce Oreskovich
Staff of the Bureau of Human Resources
Maine State Employees Association
Maine State Troopers Association
American Federation of State, County and Municipal Employees
Maine State Law Enforcement Association

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

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. 00, §2 (AMD); 2003, c. 20, Pt. 00, §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 MRSA § 402, sub-§3, ¶R

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).

Motor vehicle records are the most common ones subject to this exception, falling under the Driver Privacy and Protection Act, and we apply it frequently, probably on a weekly basis. Less frequently, we have FOAA requests that involve correspondence or documents that include personal information and we redact that information from the files that are provided.

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

We support this continued exemption to protect the private information of drivers and others who correspond with our agency.

2. 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?

Some of the exceptions of the DPPA, such as allowances for "research" purposes have been challenged. The FOAA makes it clear that personally identifying information is not available

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.

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

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. 00, §2 (AMD); 2003, c. 20, Pt. 00, §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 MRSA § 1013, sub-§2

AGENCY: Maine Commission on Governmental Ethics and Election Practices

CONTACT PERSON: Paul Lavin

CONTACT PERSON'S EMAIL ADDRESS: paul.lavin@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).

Under this statute, the Commission is authorized to provide advisory opinions to Legislators on certain ethics issues, such as conflicts of interest. Opinions made by the Commissioners at a public meeting are filed with the Clerk of the House or the Secretary of the Senate. Pursuant to 1 M.R.S.A. § 1013(2)(H), the Commission is permitted to delete or change parts of an opinion and to exempt an opinion in whole or in part, if necessary to protect the Legislator or others. Title 1, section 1013(4)(D) is the provision that makes the original, unaltered advisory opinion confidential. During the tenure of the current employees of the Commission (since 2003), the Commission has not believed it necessary to make confidential any portion of an advisory opinion to a Legislator.

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. Due to the sensitive nature of some issues raised in requests for advisory opinions, the Commission believes it is necessary to have the ability to protect the identities of individuals or others entities who may be referred to in or affected by its advisory opinions. The issues could involve information that is not normally available to the public such as personal or financial information about a Legislator or immediate family members or financial or other internal information about a business or other organization.

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?

As stated above, the Commission has not had to apply this exception in the past 13 years. The confidentiality of the records is clearly expressed in the statute. The statute is exception is clear regarding which records are confidential.

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.

Legislators, especially legislative leadership; representatives of print, broadcast, and web-based media; academic research and public policy organizations.

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

None at this time.

STATUTE: 1 MRSA § 1013, sub-§4

AGENCY: Maine Commission on Governmental Ethics and Election Practices

CONTACT PERSON: Paul Lavin

CONTACT PERSON'S EMAIL ADDRESS: paul.lavin@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).

Under 1 M.R.S.A. § 1013, the Ethics Commission is authorized to receive and consider complaints concerning legislative ethics, such as conflicts of interest or undue influence. This exception applies to records other than complaints of violations of legislative ethics. Once the Commission has voted to pursue a complaint, section 1013(4)(A) requires the Commission to keep investigative records (such as notes of interviews or documents requested from a Legislator or his employer) confidential unless the records have been made available to the Commissioners at a public hearing. Since this provision was enacted in 2007, the Commission has not had an occasion to apply it.

Please see RTKAC Ref #: 9 regarding the exception of certain records pursuant to section 1013(4)(D).

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. In cases where the Commission has voted to pursue a complaint and has issued a decision regarding that complaint, most investigative records that support a finding of fact, a conclusion of law, or the basis for a recommendation will likely be made public as a part of the decision. Investigative records that are not relevant to the Commission's decision should remain confidential if they are irrelevant to the Commission's decision or contain information that is not normally available to the public such as personal or financial information about a Legislator or immediate family members or financial or other internal information about a business or other organization.

Please see RTKAC Ref #: 9 regarding the exception of certain records pursuant to section 1013(4)(D).

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?

As stated above, the Commission has not had to apply this exception. The confidentiality of the records is clearly expressed in the statute. The exception is clear regarding which records are confidential.

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.

Legislators, especially legislative leadership; representatives of print, broadcast, and web-based media; academic research and public policy organizations.

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

None at this time.

STATUTE: 1 MRSA § 1013, sub-§3-A

AGENCY: Maine Commission on Governmental Ethics and Election Practices

CONTACT PERSON: Paul Lavin

CONTACT PERSON'S EMAIL ADDRESS: paul.lavin@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).

This exception applies to complaints of violations of legislative ethics laws under 1 M.R.S.A. §§ 1014 & 1015. Complaints are confidential, unless the Commission has voted to pursue the complaint (*i.e.*, investigate whether a violation occurred, which usually entails a public hearing to receive testimony). If the Commission does not vote to pursue a complaint, this exception applies to the complaint and any associated investigative records. Since this provision was enacted in 2007, the Commission has not had an occasion to apply it.

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. In order to preserve the Commission's ability to fully investigate allegations of violations of legislative ethics, it is necessary to maintain the confidentiality of legislative ethics complaints until the Commission has voted to pursue a complaint. At that point, the complaint and, with some exceptions under 1 M.R.S.A. § 1013(4), the Commission's investigative records are public records.

This exception is also necessary to maintain the confidentiality of complaints that the Commission has not voted to pursue because the complaint is outside the Commission's jurisdiction, does not provide sufficient information to make specific allegations of a violation of legislative ethics, or is otherwise defective. The Legislator against whom the complaint has been made may request the Commission to release the complaint and related records. After the Commission has voted not to pursue the complaint and has notified the complainant, the complainant is no longer required to maintain the confidentiality of the complaint.

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?

As stated above, the Commission has not had to apply this exception. The confidentiality of the records is clearly expressed in the statute. The statute is exception is clear regarding which records are confidential.

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.

Legislators, especially legislative leadership; representatives of print, broadcast, and web-based media; academic research and public policy organizations.

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

None at this time.

Maine Revised Statutes
Title 1: GENERAL PROVISIONS
Chapter 25: GOVERNMENTAL ETHICS

§1013. AUTHORITY; PROCEDURES

1. Authority. The commission has authority:

A. To issue, on request of any Legislator on an issue involving that Legislator, or on its own motion, written advisory opinions and guidance on problems or questions involving possible violations of legislative ethics; [2007, c. 642, §6 (AMD).]

B. To investigate complaints alleging a violation of legislative ethics against any Legislator, to investigate a possible violation of legislative ethics upon the commission's own motion, to hold hearings on an alleged or possible violation if the commission determines it is appropriate and to issue findings of fact together with its opinion; and [2011, c. 471, §1 (AMD).]

C. To administer the disclosure of sources of income by Legislators as required by this subchapter. [1975, c. 621, §1 (NEW).]

[2011, c. 471, §1 (AMD) .]

2. Procedure. The following procedures apply.

A. Requests for advisory opinions by members of the Legislature must be filed with the commission in writing and signed by the Legislator requesting the opinion and must contain such supporting data as the commission requires. Commission staff shall inform a Legislator upon that Legislator's request for an advisory opinion that written opinions issued by the commission are public and are submitted to the Clerk of the House and the Secretary of the Senate and entered into the legislative record. When preparing an advisory opinion on its own motion, the commission shall notify the Legislator concerned and allow the Legislator to provide additional information to the commission. In preparing an advisory opinion, either upon request or on its own motion, the commission may make such an investigation as it determines necessary. A copy of the commission's advisory opinion must be sent to the Legislator concerned and to the presiding officer of the legislative body of which the Legislator is a member. [2007, c. 642, §6 (AMD).]

B. [2007, c. 642, §6 (RP).]

B-1. Any person may file a complaint against a Legislator alleging a violation of legislative ethics only as described in sections 1014 and 1015. The complaint must be filed in writing and signed under oath and must specify the facts of the alleged violation citing the specific provisions of sections 1014 and 1015 that are alleged to have been violated, the approximate date of the alleged violation and such other information as the commission requires. A complainant shall agree in writing not to disclose any information about the complaint during the time the commission is determining whether or not to pursue the complaint or during the investigation of a complaint. A complaint that does not meet the criteria of this paragraph is considered incomplete and will not be forwarded to the commission.

(1) The Legislator against whom a complaint is filed must immediately be given a copy of the complaint and the name of the complainant. Before deciding whether to conduct an investigation or to hold any hearings, the commission shall afford the Legislator an opportunity to answer the complaint in writing and in person to the commission. The commission staff may gather preliminary factual information that will assist the commission in deciding whether to conduct a full investigation or to hold hearings.

(2) The commission shall consider only complaints against Legislators in office at the time of the filing of the complaint and only complaints relating to activity that occurred or was ongoing within 2 years of the complaint. Upon a majority vote of the commission, the commission shall conduct an investigation and hold hearings as it determines necessary.

(3) The commission shall issue its findings of fact together with its opinion regarding the alleged violation of legislative ethics to the legislative body of which the Legislator concerned is a member. That legislative body may take whatever action it determines appropriate, in accordance with the Constitution of Maine.

(4) If the commission determines that a Legislator has potentially violated professional standards set by a licensing board, its opinion and such other information as may be appropriate must be referred to the licensing board that oversees the Legislator's professional conduct. [2011, c. 471, §2 (AMD) .]

B-2. If the commission receives information other than through a complaint suggesting that a Legislator may have committed a violation of legislative ethics, the commission may commence an investigation or conduct hearings when there is probable cause to believe that a violation has occurred. The commission may consider only activities by a Legislator in office at the time of the investigation that occurred or were ongoing within 2 years of the investigation. The commission shall provide the Legislator with written notice of the possible violation and an opportunity to be heard in accordance with the requirements of paragraph B-1. The commission's consideration of the possible violation is subject to the confidentiality provisions of subsection 3-A. [2011, c. 471, §3 (NEW) .]

C. When the conduct of a particular Legislator is under inquiry and a hearing is to be held, the Legislator must be given written notification of the time and place at which the hearing is to be held. Such notification must be given not less than 10 days prior to the date set for the hearing. [2007, c. 642, §6 (AMD) .]

D. The commission has authority, through its chair or any member designated by the chair, to administer oaths, subpoena witnesses and compel the production of books, records, papers, documents, correspondence and other material and records the commission determines relevant. The State, its agencies and instrumentalities shall furnish to the commission any information, records or documents the commission designates as being necessary for the exercise of its functions and duties. In the case of refusal of any person to obey an order or subpoena of the commission, the Superior Court, upon application of the commission, has jurisdiction and authority to require compliance with the order or subpoena. Any failure of any person to obey an order of the Superior Court may be punished by that court as contempt thereof. [2007, c. 642, §6 (AMD) .]

E. The commission shall adopt rules consistent with due process for the conduct of investigations and hearings under this subchapter. Rules adopted pursuant to this paragraph are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

The commission is not bound by the strict rules of evidence, but its findings and opinions must be based upon competent and substantial evidence. [2007, c. 642, §6 (AMD) .]

E-1. The commission may permit the complainant to make a presentation to the commission as part of its consideration whether to conduct an investigation or public hearing. [2007, c. 642, §6 (NEW) .]

F. If the commission concludes that it appears that a Legislator has violated a criminal law, a copy of its findings of fact, its opinion and such other information as may be appropriate must be referred to the Attorney General. Any determination by the commission or by a legislative body that a violation of legislative ethics has occurred does not preclude any criminal action relating to the violation that may be brought against the Legislator. [2007, c. 642, §6 (AMD) .]

G. If the commission determines that a complaint filed under oath is frivolous or was filed in bad faith or if the complainant fails to appear at the hearing without being excused by the commission, the commission may order the complainant to pay to the Legislator against whom the complaint has been filed that Legislator's costs of investigation and defense, including any reasonable attorney's fees. This

order is considered a final agency action, and the complainant may appeal the order pursuant to the Maine Administrative Procedure Act. If the commission determines that the complaint was filed in bad faith, the commission shall refer the case to the Attorney General for investigation.

Such an order does not preclude any other remedy available to the Legislator against whom the complaint has been filed, including, but not limited to, an action brought in Superior Court against the complainant for damages to the Legislator's reputation. [2007, c. 642, §6 (AMD).]

H. The commission shall file with the Clerk of the House and the Secretary of the Senate a copy of written advisory opinions and guidance issued by the commission that were formally requested by a Legislator and that were considered by the commission at a public meeting, with such deletions and changes as the commission considers necessary to protect the identity of the person seeking the opinions or others. The Clerk of the House shall keep a copy of such opinions and guidance in a special binder and shall finally publish them in the Legislative Record. The commission may exempt an opinion or a part of an opinion from release, publication or inspection if it considers such action appropriate for the protection of 3rd parties and makes available to the public an explanatory statement to that effect. [2007, c. 642, §6 (AMD).]

I. A copy of the commission's findings of fact and opinions regarding complaints against Legislators must also be filed with the Clerk of the House and the Secretary of the Senate. The Clerk of the House shall keep them in a special binder and shall finally publish them in the Legislative Record. [2007, c. 642, §6 (AMD).]

J. [2007, c. 642, §6 (RP).]

K. When a Legislator has a question or problem of an emergency nature about a possible violation of legislative ethics or an issue involving that Legislator that arises during the course of legislative action, the Legislator may request an advisory opinion from the presiding officer of the legislative body of which the Legislator is a member. The presiding officer may issue an advisory opinion. An advisory opinion issued by the presiding officer must be in accordance with the principles of this subchapter, be in writing and be reported to the commission. The commission may then issue a further opinion on the matter. The presiding officer may refer such a question or problem directly to the commission, which shall meet as soon as possible to consider the question or problem. [2007, c. 642, §6 (AMD).]

L. The commission shall make reasonable efforts to resolve a complaint within 90 days of its filing. [2007, c. 642, §6 (NEW).]

[2011, c. 471, §2, 3 (AMD) .]

3. Confidentiality.

[2007, c. 642, §6 (RP) .]

3-A. Confidentiality of records and proceedings relating to screening complaints alleging a violation of legislative ethics. Notwithstanding chapter 13, a complaint alleging a violation of legislative ethics is confidential and is not a public record until after the commission has voted pursuant to subsection 2, paragraph B-1 to pursue the complaint, and a commission proceeding to determine whether to pursue a complaint must be conducted in executive session. If the commission does not vote to pursue the complaint, the complaint and records relating to the investigation of that complaint remain confidential and are not public records unless the Legislator against whom the complaint is made submits a written request that the complaint and all accompanying materials be made public. This subsection does not prohibit a complainant from disclosing information that the complainant provided to the commission as part of the complaint or investigation once the commission has determined not to pursue the complaint or the investigation of a complaint is complete. This subsection does not prevent the commission from including general information about complaints in any report to the Legislature. Any person who knowingly breaches the confidentiality of a complaint investigation commits a Class D crime. This subsection does not prevent commission staff from disclosing information to a person from whom the commission is seeking information or evidence relevant

to the complaint that is necessary to investigate the complaint or prevent the complainant or the Legislator against whom the complaint is made from discussing the complaint with an attorney or other person assisting them with the complaint. The commission or commission staff shall inform any person with whom they communicate of the requirement to keep any information regarding the complaint investigation confidential.

[2007, c. 642, §6 (NEW) .]

4. Confidentiality of records other than complaints. Commission records other than complaints are governed by this subsection.

A. Investigative records relating to complaints that the commission has voted to pursue are confidential unless they are provided to commission members or otherwise distributed at a public hearing of the commission. [2007, c. 642, §6 (NEW).]

B. Legislators' statements of sources of income are public records. [2007, c. 642, §6 (NEW) .]

C. Findings of fact and recommendations of the commission on complaints alleging violation of legislative ethics are public records. [2007, c. 642, §6 (NEW) .]

D. Advisory opinions of the commission and requests for advisory opinions from the commission are public records, except as provided in subsection 2, paragraph H. [2007, c. 642, §6 (NEW) .]

[2007, c. 642, §6 (NEW) .]

5. Prohibited communications. Communications concerning a complaint filed under this section between commission members and a complainant or between commission members and the subject of a complaint are prohibited until after the commission has voted not to pursue a complaint or the commission has taken final action on the complaint.

[2007, c. 642, §6 (NEW) .]

SECTION HISTORY

1975, c. 621, §1 (NEW). 1977, c. 252, §2 (AMD). 1989, c. 561, §§5,6 (AMD). 2007, c. 642, §6 (AMD). 2011, c. 471, §§1-3 (AMD).

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Nale, Craig

From: Swan, Bill <Bill.Swan@maine.gov>
Sent: Monday, November 30, 2015 1:14 PM
To: Theriault, Christl F.; Nale, Craig
Cc: Swan, Bill
Subject: RE: Right to Know Advisory Committee questions

Essentially the idea is that if the Department determined that we wanted to use our customer emails for something to benefit the Department, we also want to be sure that we would be allowed to give the emails to a contractor of ours doing something on our behalf (customer surveys, customer marketing, etc). The same would also apply to other State agencies ... if another State agency was doing a project that was also in the best interest of IF&W, we want to be sure we can allow them to use our customer emails for that project. Thanks, Bill

From: Theriault, Christl F.
Sent: Monday, November 30, 2015 12:35 PM
To: Nale, Craig
Cc: Swan, Bill
Subject: RE: Right to Know Advisory Committee questions

This was unique to us but I know that Bill Swan, our Licensing Director suggested it and other staff were in favor because we have allowed other agencies to access the emails when they were conducting management related surveys where the information would benefit them, IFW and our user groups plus we have hired sub-contractors to help us with marketing and management and by allowing them access to emails to then contact the license holders it helps inform us on certain issues. Bill Swan may have more specific information to help the RTKAC on this proposed language.

Bill, any added thoughts?

Thanks.

Christl Theriault

Assistant to the Commissioner
 Inland Fisheries and Wildlife
 284 State Street, #41 SHS
 Augusta, ME 04333
 Office: 207-287-1197
 Fax: 207-287-6395

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From: Nale, Craig [<mailto:Craig.Nale@legislature.maine.gov>]
Sent: Monday, November 30, 2015 12:23 PM
To: Theriault, Christl F.
Subject: RE: Right to Know Advisory Committee questions

Ok thanks, Christl. Do you know if the exception for marketing was pulled from another agency's statutes, or if this would be unique to IFW?

Craig

From: Theriault, Christl F. [mailto:Christl.F.Theriault@maine.gov]
Sent: Monday, November 30, 2015 12:20 PM
To: Nale, Craig
Subject: RE: Right to Know Advisory Committee questions

Thanks Craig,

If they can review the language tomorrow that would be great. Please see below.

The staff consensus here is that we should have similar language as Title 29-A to keep all emails confidential and include all licenses, permits and registrations, additionally we added a sentence that exempts other agencies or contractors hired by IFW when conducting marketing and research. We definitely thought it best for all emails to be confidential not just allow someone to ask to have it confidential. I modified the 29-A language a bit to fit what we felt would work for IFW. Please see below.

§10110. HUNTING AND FISHING LICENSE; CONFIDENTIAL

Confidentiality of e-mail addresses. If a person submits an e-mail address as part of the application process for a license, permit or registration under this Title, the e-mail address is confidential and may not be disclosed to anyone outside the Department of Inland Fisheries and Wildlife. Exception. Emails designated as confidential under this section are not confidential to department personnel, for law enforcement officers, for purposes of court proceedings, or to contractors (hired by Inland Fisheries and Wildlife) or other agencies if the contractor or agency is marketing the department or conducting official research for fish or game management.

Thank you,

Christl Theriault

Assistant to the Commissioner
Inland Fisheries and Wildlife
284 State Street, #41 SHS
Augusta, ME 04333
Office: 207-287-1197
Fax: 207-287-6395

Correspondence to and from this office is considered a public record and may be subject to a request under the Maine Freedom of Access Act. Information that you wish to keep confidential should not be included in email correspondence.

From: Nale, Craig [<mailto:Craig.Nale@legislature.maine.gov>]
Sent: Monday, November 30, 2015 11:44 AM
To: Theriault, Christl F.
Subject: RE: Right to Know Advisory Committee questions

Hi Christl,

Thanks for your input. The subcommittee had a general question about how email addresses are handled – whether the public opts-in or opts-out of confidentiality. They wanted me to check with DIFW about its provisions, but I believe there is only this one.

Perhaps the best way to move forward is for the subcommittee to have the discussion tomorrow about whether they endorse one approach over another. If you have proposed language, we could see if they want to review it and possibly propose changes tomorrow (subcommittee meeting follows the full committee meeting at 10), but if that's too short of a turnaround we could take this back up next interim (or let me know if you have a preference).

Craig

From: Theriault, Christl F. [<mailto:Christl.F.Theriault@maine.gov>]
Sent: Monday, November 30, 2015 9:37 AM
To: Nale, Craig
Subject: RE: Right to Know Advisory Committee questions

Craig,

I wanted to let you know that staff here do like the idea of having language similar to Title 29-A . We want to add to the language that all emails submitted when purchasing any license, permit or registration will be confidential not simply hunting or fishing licenses. We also want to add a sentence to exempt other agencies and contractors hired by IFW if working on official marketing or research for fish and game management. I have proposed some language using the Title 29-A language and am just having the AG's office provide feedback. As soon as I hear from our staff attorney there I will forward the language to you. Does that work? When is your deadline for this?

Thank you,

Christl Theriault
Assistant to the Commissioner
Inland Fisheries and Wildlife
284 State Street, #41 SHS
Augusta, ME 04333
Office: 207-287-1197
Fax: 207-287-6395

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From: Nale, Craig [<mailto:Craig.Nale@legislature.maine.gov>]
Sent: Monday, November 23, 2015 8:13 AM

To: Theriault, Christl F.

Subject: Right to Know Advisory Committee questions

Hi Christl,

Thanks again for your responses on the public records exception reviews in the Right to Know Advisory Committee. The subcommittee doing the reviews had a question about the confidentiality designation for email addresses: they were curious about the alternative possibilities of an individual being required to elect email confidentiality vs. just making the email address confidential and allowing the person to consent to its disclosure for certain reasons.

Does the Department have any stance on this? The difference in approaches can be seen in the statute under review, 12 MRSA § 10110, compared to 29-A MRSA § 251(4), for example.

Please feel free to get in touch with any questions. Best,

Craig

Craig T. Nale, Esq.

Legislative Analyst

Office of Policy and Legal Analysis

Maine State Legislature

13 State House, Augusta, ME 04330

(207) 287-1670

craig.nale@legislature.maine.gov

STATUTE: 12 MRSA § 10110

AGENCY: Dept. of Inland Fisheries and Wildlife

CONTACT PERSON: Christl Theriault

CONTACT PERSON'S EMAIL ADDRESS: christl.f.theriault @maine.gov

§10110. HUNTING AND FISHING LICENSE; CONFIDENTIAL

1. Indication of confidentiality. The commissioner shall allow an applicant for a hunting or fishing license to indicate that the applicant's e-mail address is confidential. 2. Confidential information. If a person indicates that the person's e-mail address submitted as part of the application process for a hunting or fishing license is confidential as provided in subsection 1, that information is confidential. [2011, c. 185, §1 (NEW) .] 3. Exception. E-mails designated as confidential under this section are not confidential to department personnel or law enforcement officers or for purposes of court proceedings.

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).

Prior to this becoming confidential many people or organizations asked for a list of emails from IFW's license buyers to utilize for marketing. This caused our license buyers to be very disgruntled. We also redact this information if a license buyer's email is used in an investigation because often the person's name is part of their email address so it becomes personally identifying information.

Once it became confidential there were fewer requests for the list of emails but there are still several requests per a month. The Department explains that this information is confidential in nature.

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

The Department supports this exception. More hunting, fishing and trapping license buyers are willing provide their email address knowing that it is kept confidential from the public. Being able to have access to a person's email allows IFW to reach a customer faster or more conveniently and if IFW is conducting a survey to improve the experience for our customers, contacting them via email is the most effective approach.

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 haven't been any issues in applying the exception. The statute 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.

There are thousands of stakeholders, from all of IFW's customers to Maine guides, to business that cater to the sporting public.

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

N/A

Maine Revised Statutes
Title 12: CONSERVATION

Chapter 903: DEPARTMENT OF INLAND FISHERIES AND WILDLIFE
HEADING: PL 2003, c. 414, Pt. A, §2 (new); Pt. D, §7 (aff); c. 614, §9 (aff)

§10110. HUNTING AND FISHING LICENSE; CONFIDENTIAL

1. Indication of confidentiality. The commissioner shall allow an applicant for a hunting or fishing license to indicate that the applicant's e-mail address is confidential.

[2011, c. 185, §1 (NEW) .]

2. Confidential information. If a person indicates that the person's e-mail address submitted as part of the application process for a hunting or fishing license is confidential as provided in subsection 1, that information is confidential.

[2011, c. 185, §1 (NEW) .]

3. Exception. E-mails designated as confidential under this section are not confidential to department personnel or law enforcement officers or for purposes of court proceedings.

[2011, c. 185, §1 (NEW) .]

SECTION HISTORY

2011, c. 185, §1 (NEW) .

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STATUTE: 21-A MRSA § 1003, sub-§ 3-A

AGENCY: Commission on Governmental Ethics and Election Practices

CONTACT PERSON: Paul Lavin

CONTACT PERSON'S EMAIL ADDRESS: paul.lavin@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 documents, records and other printed or electronic information that are acquired, prepared or maintained by the Commission during the conduct of an investigation, audit or other enforcement matter:

- Financial information not normally available to the public (*e.g.*, bank statements, vendor invoices, payroll records);
- Information belonging to a party committee, political action committee, ballot question committee, candidate or candidate's authorized committee, that if disclosed, would reveal sensitive political or campaign information (*e.g.*, strategy documents, polling data, internal committee communications);
- Information or records subject to a privilege against discovery or use as evidence (*see* M.R. Evid. 501 – 514); and
- Intra-agency or interagency communications related to an audit or investigation (*e.g.*, Commission staff memoranda and e-mail communications, memoranda and other communications with an independent auditor hired by the Commission, memoranda and other communications, memoranda and other communications with the Office of the Attorney General).

In 2010, the Commission undertook two investigations (regarding John Richardson's eligibility for Maine Clean Election Act funding in the 2010 Democratic gubernatorial primary election and the sources of funding for a website – cutlerfiles.com – opposing Eliot Cutler in the 2010 gubernatorial election. The Commission used this exception to deny nine FOA requests regarding these investigations.

In 2014, the Commission used the exception once for a request related to its investigation into political contributions made to the National Organization of Marriage during the 2009 people's veto campaign regarding the marriage equality law passed by the Legislature.

FOAA requests made to the Commission are typically related to investigations the Commission undertakes. It is not possible to provide any reliable estimate of the frequency of use. In 2010, the exception was used nine times; since 2010, it has been used only once.

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. It is necessary to maintain the confidentiality of certain records in order for the Commission staff to conduct thorough investigations, audits or other enforcement matters. The premature release of certain records could impair the staff's ability to gather information and evidence and to interview witnesses.

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?

The Commission is in favor of the current language of the exception and does not believe it has caused any problems. The confidentiality of the records is clearly expressed in the statute. The statute is exception is clear regarding which records are confidential.

This provision came up in FOAA litigation in 2010. MaineTodayMedia, Inc. (MTM) filed a complaint in Superior Court against the Commission after the Commission denied MTM's request for records related to John Richardson's eligibility to receive Maine Clean Election Act funds for his 2010 primary campaign for the Democratic gubernatorial nomination. The denial was based on 16 M.R.S.A. § 614 and 21-A M.R.S.A. § 1003(3-A). The complaint was later withdrawn, after an investigation by the Maine Attorney General was completed.

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.

Candidates for political office, the Governor, the Attorney General, legislative leadership, political party leadership, officers of political action committees and ballot question committees, lobbyists, Maine Citizens for Clean Elections, League of Women Voters, representatives of print, broadcast, and web-based media.

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

None at this time.

Maine Revised Statutes
Title 21-A: ELECTIONS
Chapter 13: CAMPAIGN REPORTS AND FINANCES

§1003. INVESTIGATIONS BY COMMISSION

1. Investigations. The commission may undertake audits and investigations to determine whether a person has violated this chapter, chapter 14 or the rules of the commission. For this purpose, the commission may subpoena witnesses and records whether located within or without the State and take evidence under oath. A person or entity that fails to obey the lawful subpoena of the commission or to testify before it under oath must be punished by the Superior Court for contempt upon application by the Attorney General on behalf of the commission. The Attorney General may apply on behalf of the commission to the Superior Court or to a court of another state to enforce compliance with a subpoena issued to a nonresident person. Service of any subpoena issued by the commission may be accomplished by:

- A. Delivering a duly executed copy of the notice to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person; [2013, c. 162, §1 (NEW) .]
- B. Delivering a duly executed copy of the notice to the principal place of business in this State of the person to be served; or [2013, c. 162, §1 (NEW) .]
- C. Mailing by registered or certified mail a duly executed copy of the notice, addressed to the person to be served, to the person's principal place of business. [2013, c. 162, §1 (NEW) .]

[2013, c. 162, §1 (AMD) .]

2. Investigations requested. A person may apply in writing to the commission requesting an investigation as described in subsection 1. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

[2011, c. 389, §4 (AMD) .]

2-A. Confidentiality.

[2001, c. 535, §1 (RP) .]

3. State Auditor. The State Auditor shall assist the commission in making investigations and in other phases of the commission's duties under this chapter, as requested by the commission, and has all necessary powers to carry out these responsibilities.

[1999, c. 426, §31 (AMD) .]

3-A. Confidential records. Investigative working papers of the commission are confidential, except that the commission may disclose them to the subject of the audit or investigation, other entities as necessary for the conduct of an audit or investigation and law enforcement and other agencies for purposes of reporting, investigating or prosecuting a criminal or civil violation. For purposes of this subsection, "investigative working papers" means documents, records and other printed or electronic information in the following limited categories that are acquired, prepared or maintained by the commission during the conduct of an audit, investigation or other enforcement matter:

- A. Financial information not normally available to the public; [2007, c. 571, §6 (NEW) .]

B. Information that, if disclosed, would reveal sensitive political or campaign information belonging to a party committee, political action committee, ballot question committee, candidate or candidate's political committee, or other person who is the subject of an audit, investigation or other enforcement matter, even if the information is in the possession of a vendor or 3rd party; [2013, c. 470, §1 (AMD) .]

C. Information or records subject to a privilege against discovery or use as evidence; and [2007, c. 571, §6 (NEW) .]

D. Intra-agency or interagency communications related to an audit or investigation, including any record of an interview, meeting or examination. [2013, c. 470, §1 (AMD) .]

The commission may disclose investigative working papers or discuss them at a public meeting, except for the information or records subject to a privilege against discovery or use as evidence, if the information or record is materially relevant to a finding of fact, violation or other decision by the commission concerning an audit, investigation or other enforcement matter.

[2013, c. 470, §1 (AMD) .]

4. Attorney General. Upon the request of the commission, the Attorney General shall aid in any investigation, provide advice, examine any witnesses before the commission or otherwise assist the commission in the performance of its duties. The commission shall refer any apparent violations of this chapter to the Attorney General for prosecution.

[2001, c. 470, §5 (AMD) .]

SECTION HISTORY

1985, c. 161, §6 (NEW). 1989, c. 504, §§1,31 (AMD). 1991, c. 839, §1 (AMD). 1991, c. 839, §34 (AFF). 1999, c. 426, §31 (AMD). 2001, c. 237, §1 (AMD). 2001, c. 470, §5 (AMD). 2001, c. 535, §1 (AMD). 2005, c. 301, §5 (AMD). 2007, c. 571, §6 (AMD). 2009, c. 524, §4 (AMD). 2011, c. 389, §§3, 4 (AMD). 2013, c. 162, §1 (AMD). 2013, c. 470, §1 (AMD).

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STATUTE: 21-A MRS § 1125, sub-§ 3

AGENCY: Commission on Governmental Ethics and Election Practices

CONTACT PERSON: Paul Lavin

CONTACT PERSON'S EMAIL ADDRESS: paul.lavin@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 record that is created when an individual makes a qualifying contribution using the Commission's online service (through InforME) contains credit card information and e-mail addresses. The exception protects financial and personal information that is not normally available to the public from being released.

The Commission had not had an occasion to use this exception.

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. While the Commission has not had to use it, this exception is necessary to safeguard the financial information of users of the Commission's online qualifying contribution system.

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?

As stated above, the Commission has not had to apply this exception. The confidentiality of the records is clearly expressed in the statute. The statute is exception is clear regarding which records are confidential.

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.

Candidates for the Legislature who have used the Maine Clean Election Act program, legislative leaders, officers or representatives of the four legislative caucus PACs, Maine Citizens for Clean Elections, InforME.

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

None at this time.

STATUTE: 21-A MRSA § 1125, sub-§ 2-B

AGENCY: Commission on Governmental Ethics and Election Practices

CONTACT PERSON: Paul Lavin

CONTACT PERSON'S EMAIL ADDRESS: paul.lavin@maine.gov

PLEASE NOTE: The citizen initiative approved by the voters on November 3, 2015 regarding the Maine Clean Election Act repealed 21-A M.R.S.A. § 1125(2-B). This exception is no longer necessary. See L.D. 806, Section 17. The effective date of the initiative has not been determined as yet, but will likely be no later than December 30, 2015.

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).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
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?
4. Does your agency recommend 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.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Maine Revised Statutes

Title 21-A: ELECTIONS

Chapter 14: THE MAINE CLEAN ELECTION

ACT HEADING: IB 1995, c. 1, §17 (new)

§1125. TERMS OF PARTICIPATION

1. Declaration of intent. A participating candidate must file a declaration of intent to seek certification as a Maine Clean Election Act candidate and to comply with the requirements of this chapter. The declaration of intent must be filed with the commission prior to or during the qualifying period, except as provided in subsection 11, according to forms and procedures developed by the commission. Qualifying contributions collected more than 5 business days before the declaration of intent has been filed will not be counted toward the eligibility requirement in subsection 3.

[2011, c. 389, §51 (AMD) .]

2. Contribution limits for participating candidates. Subsequent to becoming a candidate as defined by section 1, subsection 5 and prior to certification, a participating candidate may not accept contributions, except for seed money contributions. A participating candidate must limit the candidate's total seed money contributions to the following amounts:

A. Two hundred thousand dollars for a gubernatorial candidate; [2009, c. 363, §2 (AMD) .]

B. One thousand five hundred dollars for a candidate for the State Senate; or [1995, c. 1, §17 (NEW) .]

C. Five hundred dollars for a candidate for the State House of Representatives. [1995, c. 1, §17 (NEW) .]

The commission may, by rule, revise these amounts to ensure the effective implementation of this chapter.

[2009, c. 363, §2 (AMD) .]

2-A. Seed money restrictions. To be eligible for certification, a participating candidate may collect and spend only seed money contributions subsequent to becoming a candidate and prior to certification. A participating candidate may not solicit, accept or collect seed money contributions after certification as a Maine Clean Election Act candidate.

A. All goods and services received prior to certification must be paid for with seed money contributions, except for goods and services that are excluded from the definition of contribution in section 1012, subsection 2, paragraph B. It is a violation of this chapter for a participating candidate to use fund revenues received after certification to pay for goods and services received prior to certification. [2007, c. 443, Pt. B, §6 (NEW) .]

B. Prior to certification, a participating candidate may obligate an amount greater than the seed money collected, but may only receive that portion of goods and services that has been paid for or will be paid for with seed money. A participating candidate who has accepted contributions or made expenditures that do not comply with the seed money restrictions under this chapter may petition the commission to remain eligible for certification as a Maine Clean Election Act candidate in accordance with rules of the commission, if the failure to comply was unintentional and does not constitute a significant infraction of these restrictions. [2007, c. 443, Pt. B, §6 (NEW) .]

C. Upon requesting certification, a participating candidate shall file a report of all seed money contributions and expenditures. If the candidate is certified, any unspent seed money will be deducted from the amount distributed to the candidate as provided in subsection 8-A. [2009, c. 302, §11 (AMD); 2009, c. 302, §24 (AFF).]

[2009, c. 302, §11 (AMD); 2009, c. 302, §24 (AFF) .]

2-B. Seed money required for gubernatorial candidates; documentation. For seed money contributions that a candidate for Governor collects to satisfy the requirement in subsection 5, paragraph C-1, the candidate shall obtain the contributor's name, residence address, mailing address, telephone number if provided by the contributor and other information required for reporting under section 1017, subsection 5. For these contributions, the candidate shall submit to the commission during the qualifying period:

A. A contribution acknowledgment form as determined by the commission, to be completed by each person that contributes seed money, that includes the name, residence address, mailing address, optional telephone number and signature of the person making the seed money contribution acknowledging that the contribution was made with the person's personal funds and will not be reimbursed by any source; [2009, c. 363, §3 (NEW).]

B. A list of the seed money contributions in a format determined by the commission that includes the name and mailing address of the contributor; [2009, c. 363, §3 (NEW).]

C. For seed money contributions received by check or money order, photocopies of the check or money order; and [2009, c. 363, §3 (NEW).]

D. For seed money contributions received by debit or credit card, a bank or merchant account statement that contains the cardholder's name and that otherwise meets the requirements specified by the commission in order to verify compliance with subsection 5, paragraph C-1. [2009, c. 363, §3 (NEW).]

The commission may permit the submission of an online or electronic acknowledgment form as required by paragraph A for seed money contributions made via the Internet. The telephone numbers, e-mail addresses and bank account and credit card information of contributors that candidates have submitted to the commission pursuant to this subsection are confidential, except that the commission may disclose this information in a final audit or investigation report or determination if the information or record is materially relevant to a finding of fact or violation.

[2009, c. 524, §14 (AMD) .]

3. Qualifying contributions. Participating candidates must obtain qualifying contributions during the qualifying period as follows:

A. For a gubernatorial candidate, at least 3,250 verified registered voters of this State must support the candidacy by providing a qualifying contribution to that candidate; [2007, c. 240, Pt. F, §1 (AMD); 2007, c. 443, Pt. B, §6 (AMD).]

B. For a candidate for the State Senate, at least 175 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate; or [2009, c. 286, §6 (AMD).]

C. For a candidate for the State House of Representatives, at least 60 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate. [2009, c. 286, §7 (AMD).]

A payment, gift or anything of value may not be given in exchange for a qualifying contribution. A candidate may pay the fee for a money order that is a qualifying contribution in the amount of \$5 as long as the donor making the qualifying contribution pays the \$5 amount reflected on the money order. Any money order fees paid by a participating candidate must be paid for with seed money and reported in accordance with commission rules. A money order must be signed by the contributor to be a valid qualifying contribution.

The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, a procedure for a qualifying contribution to be made by a credit or debit transaction and by electronic funds transfer over the Internet. Records containing information provided by individuals who have made qualifying contributions over the Internet are confidential, except for the name of the individual making the contribution, the date of the contribution, the individual's residential address and the name and office sought of the candidate in whose support the contribution was made.

It is a violation of this chapter for a participating candidate or an agent of the participating candidate to misrepresent the purpose of soliciting qualifying contributions and obtaining the contributor's signed acknowledgement.

[2009, c. 286, §§6, 7 (AMD) .]

4. Filing with commission. A participating candidate must submit qualifying contributions, receipt and acknowledgement forms, proof of verification of voter registration and a seed money report to the commission during the qualifying period according to procedures developed by the commission, except as provided under subsection 11.

[2009, c. 363, §4 (AMD) .]

5. Certification of Maine Clean Election Act candidates. Upon receipt of a final submittal of qualifying contributions by a participating candidate, the executive director of the commission shall determine whether the candidate has:

- A. Signed and filed a declaration of intent to participate in this Act; [1995, c. 1, §17 (NEW) .]
- B. Submitted the appropriate number of valid qualifying contributions; [1995, c. 1, §17 (NEW) .]
- C. Qualified as a candidate by petition or other means no later than 5 business days after the end of the qualifying period; [2011, c. 389, §52 (AMD) .]
- C-1. As a gubernatorial candidate, collected at least \$40,000 in seed money contributions from registered voters in the State; [2009, c. 363, §5 (NEW) .]
- D. Not accepted contributions, except for seed money contributions, and otherwise complied with seed money restrictions; [2003, c. 270, §1 (AMD) .]
- D-1. Not run for the same office as a nonparticipating candidate in a primary election in the same election year; [2007, c. 443, Pt. B, §6 (AMD) .]
- D-2. Not been found to have made a material false statement in a report or other document submitted to the commission; [2007, c. 443, Pt. B, §6 (NEW) .]
- D-3. Not otherwise substantially violated the provisions of this chapter or chapter 13; [2009, c. 190, Pt. B, §2 (AMD) .]
- D-4. Not failed to pay any civil penalty assessed by the commission under this Title, except that a candidate has 3 business days from the date of the request for certification to pay the outstanding penalty and remain eligible for certification; [2011, c. 389, §52 (AMD) .]
- D-5. Not submitted any fraudulent qualifying contributions or any falsified acknowledgement forms for qualifying contributions or seed money contributions; and [2011, c. 389, §52 (NEW) .]
- E. Otherwise met the requirements for participation in this Act. [1995, c. 1, §17 (NEW) .]

The executive director shall certify a candidate complying with the requirements of this section as a Maine Clean Election Act candidate as soon as possible after final submittal of qualifying contributions and other supporting documents required under subsection 4 but no later than 3 business days for legislative candidates and 5 business days for gubernatorial candidates. The executive director may take additional time if further investigation is necessary to verify compliance with this Act as long as the commission notifies the candidate

regarding the anticipated schedule for conclusion of the investigation. A candidate or other interested person may appeal the decision of the executive director to the members of the commission in accordance with subsection 14.

A certified candidate must comply with all requirements of this Act after certification and throughout the primary and general election periods. Failure to do so is a violation of this chapter.

[2011, c. 389, §52 (AMD) .]

5-A. Revocation of certification. The certification of a participating candidate may be revoked at any time if the commission determines that the candidate or an agent of the candidate:

- A. Did not submit the required number of valid qualifying contributions; [2007, c. 443, Pt. B, §6 (NEW) .]
- B. Failed to qualify as a candidate by petition or other means; [2007, c. 443, Pt. B, §6 (NEW) .]
- C. Submitted any fraudulent qualifying contributions or qualifying contributions that were not made by the named contributor; [2007, c. 443, Pt. B, §6 (NEW) .]
- D. Misrepresented to a contributor the purpose of the qualifying contribution or obtaining the contributor's signature on the receipt and acknowledgement form; [2007, c. 443, Pt. B, §6 (NEW) .]
- E. Failed to fully comply with the seed money restrictions; [2007, c. 443, Pt. B, §6 (NEW) .]
- F. Knowingly accepted any contributions, including any in-kind contributions, or used funds other than fund revenues distributed under this chapter to make campaign-related expenditures without the permission of the commission; [2007, c. 443, Pt. B, §6 (NEW) .]
- G. Knowingly made a false statement or material misrepresentation in any report or other document required to be filed under this chapter or chapter 13; [2009, c. 363, §6 (AMD) .]
- H. Otherwise substantially violated the provisions of this chapter or chapter 13; or [2009, c. 363, §6 (AMD) .]
- I. As a gubernatorial candidate, failed to properly report seed money contributions as required by this section. [2009, c. 363, §6 (NEW) .]

The determination to revoke the certification of a candidate must be made by a vote of the members of the commission after an opportunity for a hearing. A candidate whose certification is revoked shall return all unspent funds to the commission within 3 days of the commission's decision and may be required to return all funds distributed to the candidate. In addition to the requirement to return funds, the candidate may be subject to a civil penalty under section 1127. The candidate may appeal the commission's decision to revoke certification in the same manner provided in subsection 14, paragraph C.

[2009, c. 363, §6 (AMD) .]

5-B. Restrictions on serving as treasurer. A participating or certified candidate may not serve as a treasurer or deputy treasurer for that candidate's campaign, except that the candidate may serve as treasurer or deputy treasurer for up to 14 days after declaring an intention to qualify for campaign financing under this chapter until the candidate identifies another person to serve as treasurer.

[2011, c. 389, §53 (AMD) .]

6. Restrictions on contributions and expenditures for certified candidates. After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned

on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The commission shall publish guidelines outlining permissible campaign-related expenditures.

[2011, c. 389, §54 (AMD) .]

6-A. Assisting a person to become an opponent. A candidate or a person who later becomes a candidate and who is seeking certification under subsection 5, or an agent of that candidate, may not assist another person in qualifying as a candidate for the same office if such a candidacy would result in the distribution of revenues under subsections 7 and 8-A for certified candidates in a contested election.

[2009, c. 302, §12 (AMD); 2009, c. 302, §24 (AFF) .]

6-B. Expenditures as payment to household members.

[2009, c. 302, §13 (RP) .]

6-C. Expenditures to the candidate or family or household members. Expenditures to the candidate or immediate family member or household member of the candidate are governed by this subsection.

A. The candidate may not use fund revenues to compensate the candidate or a sole proprietorship of the candidate for campaign-related services. [2009, c. 302, §14 (NEW) .]

B. A candidate may not make expenditures using fund revenues to pay a member of the candidate's immediate family or household, a business entity in which the candidate or a member of the candidate's immediate family or household holds a significant proprietary or financial interest or a nonprofit entity in which the candidate or a member of the candidate's immediate family or household is a director, officer, executive director or chief financial officer, unless the expenditure is made:

- (1) For a legitimate campaign-related purpose;
- (2) To an individual or business that provides the goods or services being purchased in the normal course of the individual's occupation or the business; and
- (3) In an amount that is reasonable taking into consideration current market value and other factors the commission may choose to consider.

For the purpose of this paragraph, "business entity" means a corporation, limited liability company, limited partnership, limited liability partnership and general partnership.

If a candidate uses fund revenues for an expenditure covered by this paragraph, the candidate shall submit evidence demonstrating that the expenditure complies with the requirements of this paragraph if requested by the commission. [2009, c. 302, §14 (NEW) .]

This subsection does not prohibit reimbursement to the candidate or a member of a candidate's household or immediate family when made in accordance with this chapter and rules adopted by the commission.

[2009, c. 302, §14 (NEW) .]

6-E. Expenditures for television advertising. A candidate must include closed-captioning within any television advertisement that the candidate provides to a broadcasting or cable television station for broadcast to the public, except for an advertisement aired in the final 4 days before an election if inclusion of closed-captioning during that period is impractical or would materially affect the timing of the candidate's advertisement.

[2011, c. 389, §55 (NEW) .]

7. Timing of fund distribution. The commission shall distribute to certified candidates revenues from the fund in amounts determined under subsection 8-A in the following manner.

A. Within 3 days after certification, for candidates certified prior to March 15th of the election year, revenues from the fund must be distributed as if the candidates are in an uncontested primary election. [2001, c. 465, §4 (AMD).]

B. Within 3 days after certification, for all candidates certified between March 15th and the end of the qualifying period of the election year, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested primary election. [2009, c. 363, §7 (AMD).]

B-1. For candidates in contested primary elections receiving a distribution under paragraph A, additional revenues from the fund must be distributed within 3 days of March 15th of the election year. [2001, c. 465, §4 (NEW).]

C. No later than 3 days after the primary election results are certified, for general election certified candidates, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested general election. [2007, c. 443, Pt. B, §6 (AMD).]

Funds may be distributed to certified candidates under this section by any mechanism that is expeditious, ensures accountability and safeguards the integrity of the fund.

[2009, c. 302, §15 (AMD); 2009, c. 302, §24 (AFF); 2009, c. 363, §7 (AMD) .]

7-A. Deposit into account; release of bank records. A candidate or a committee authorized pursuant to section 1013-A, subsection 1 shall deposit all revenues from the fund and all seed money contributions in an account, referred to in this subsection as a "campaign account," with a bank or other financial institution. The campaign funds must be segregated from, and may not be commingled with, any other funds.

A. A participating candidate shall provide to the commission a signed written authorization allowing the bank or other financial institution administering a campaign account to release to the commission all records held by that bank or institution pertaining to the campaign account, including, but not limited to, campaign account statements, records of payments or transfers from the campaign account and deposits of funds to the campaign account. [2011, c. 522, §2 (NEW); 2011, c. 522, §4 (AFF) .]

B. The executive director of the commission or its auditor, during an audit or during an investigation authorized by the commission or the chair of the commission of potential noncompliance with the requirements of this chapter, chapter 13 or a rule of the commission, may request that a candidate provide the records of a campaign account. If the candidate fails to comply with the request within 30 days of receiving it, the executive director or auditor may use the authorization obtained pursuant to paragraph A to obtain the records directly from the bank or other financial institution. [2011, c. 522, §2 (NEW); 2011, c. 522, §4 (AFF) .]

[2011, c. 522, §4 (AFF); 2011, c. 522, §2 (RPR) .]

8. Amount of fund distribution.

[2009, c. 652, Pt. A, §24 (AFF); 2009, c. 652, Pt. A, §23 (RP) .]

8-A. Amount of fund distribution. By September 1, 2011, and at least every 2 years after that date, the commission shall determine the amount of funds to be distributed to participating candidates in legislative elections based on the type of election and office. In making this determination, the commission may take into consideration any relevant information, including but not limited to:

A. The range of campaign spending by candidates for that office in the 2 preceding elections; and [2011, c. 558, §6 (AMD) .]

B. The Consumer Price Index published monthly by the United States Department of Labor, Bureau of Labor Statistics and any other significant changes in the costs of campaigning such as postage or fuel. [2011, c. 558, §6 (AMD) .]

C. [2011, c. 558, §7 (RP) .]

Before making any determination, the commission shall provide notice of the determination and an opportunity to comment to the President of the Senate, the Speaker of the House of Representatives, all floor leaders, the members of the joint standing committee of the Legislature having jurisdiction over legal affairs and persons who have expressed interest in receiving notices of opportunities to comment on the commission's rules and policies. The commission shall present at a public meeting the basis for the commission's final determination.

For contested gubernatorial primary elections, the amount of revenues distributed is \$400,000 per candidate in a primary election. For uncontested gubernatorial primary elections the amount of revenues distributed is \$200,000. For contested and uncontested gubernatorial general elections, the amount of revenues distributed is \$600,000 per candidate in the general election.

[2011, c. 558, §§6, 7 (AMD) .]

9. Matching funds.

[2011, c. 558, §8 (RP) .]

10. Candidate not enrolled in a party. An unenrolled candidate for the Legislature who submits the required number of qualifying contributions and other required documents under subsection 4 by 5:00 p.m. on April 20th preceding the primary election and who is certified is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election candidate and a general election candidate as specified in subsections 7 and 8-A. Revenues for the general election must be distributed to the candidate no later than 3 days after certification. An unenrolled candidate for Governor who submits the required number of qualifying contributions and other required documents under subsections 2-B and 4 by 5:00 p.m. on April 1st preceding the primary election and who is certified is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election gubernatorial candidate and a general election gubernatorial candidate as specified in subsections 7 and 8-A. Revenues for the general election must be distributed to the candidate for Governor no later than 3 days after the primary election results are certified.

[2011, c. 389, §56 (AMD); 2011, c. 389, §62 (AFF) .]

11. Other procedures. The commission shall establish by rule procedures for qualification, certification, disbursement of fund revenues and return of unspent fund revenues for races involving special elections, recounts, vacancies, withdrawals or replacement candidates.

[1995, c. 1, §17 (NEW) .]

12. Reporting; unspent revenue. Notwithstanding any other provision of law, the treasurer or deputy treasurer of participating and certified candidates shall report any money collected, all campaign expenditures, obligations, refunds received by a candidate or agent of that candidate and related activities to the commission according to procedures developed by the commission. If a certified candidate pays fund revenues to a member of the candidate's immediate family or household or a business or nonprofit entity affiliated with a member of the candidate's immediate family or household, the treasurer or deputy treasurer must disclose the candidate's relationship to the payee in a manner prescribed by the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections, that candidate shall return all unspent fund revenues

to the commission. If the candidate or agent of the candidate receives a refund of an expenditure made for the campaign after filing the final report, the candidate shall return those funds to the fund within 14 days of receiving the refund.

[2013, c. 334, §33 (AMD) .]

12-A. Required records. The candidate or treasurer shall obtain and keep:

A. Bank or other account statements for the campaign account covering the duration of the campaign; [2005, c. 542, §5 (NEW) .]

B. A vendor invoice stating the particular goods or services purchased for every expenditure in excess of \$50; [2013, c. 334, §34 (AMD) .]

C. A record proving that a vendor received payment for every expenditure in excess of \$50 in the form of a cancelled check, cash receipt from the vendor or bank or credit card statement identifying the vendor as the payee; and [2013, c. 334, §34 (AMD) .]

D. [2009, c. 524, §15 (RP) .]

E. A contemporaneous document such as an invoice, contract or timesheet that specifies in detail the services provided by a vendor who was paid in excess of \$500 for the election cycle for providing campaign staff or consulting services to a candidate. [2013, c. 334, §34 (AMD) .]

The candidate or treasurer shall preserve the records for 3 years following the candidate's final campaign finance report for the election cycle. The candidate and treasurer shall submit photocopies of the records to the commission upon its request.

[2013, c. 334, §34 (AMD) .]

12-B. Audit requirements for candidates for Governor. The commission shall audit the campaigns of candidates for Governor who receive funds under this chapter to verify compliance with election and campaign laws and rules. Within one month of declaring an intention to qualify for public financing, a candidate for Governor, the campaign's treasurer and any other relevant campaign staff shall meet with the staff of the commission to discuss audit standards, expenditure guidelines and record-keeping requirements.

[2007, c. 443, Pt. B, §6 (NEW) .]

12-C. Payments to political committees. If a certified candidate makes a payment of fund revenues to a political action committee or party committee, the candidate shall include in reports required under this section a detailed explanation of the goods or services purchased according to forms and procedures developed by the commission that is sufficient to demonstrate that the payment was made solely to promote the candidate's election.

[2009, c. 286, §9 (NEW) .]

12-D. Duties of the campaign treasurer and deputy treasurer. The treasurer shall file all campaign finance reports required by section 1017, this chapter and commission rules, unless the treasurer delegates the filing of reports to the deputy treasurer designated on the candidate's registration. A candidate may enter financial transactions in an electronic reporting system or on paper forms of the commission, but the report must be filed by the treasurer or deputy treasurer. The treasurer is jointly responsible with the candidate for ensuring that the campaign keeps all records required by section 1016, this chapter and commission rules. If the candidate keeps the records, the candidate shall provide the treasurer or deputy treasurer with access to the records for the purpose of filing complete and accurate campaign finance reports. The commission may hold the candidate and treasurer jointly and severally liable for any penalties assessed for violations of the

financial reporting or record-keeping requirements of this chapter, chapter 13 and commission rules. If the deputy treasurer files reports for the campaign, the commission may hold the deputy treasurer jointly and severally liable for any penalties related to reports filed by the deputy treasurer.

[2013, c. 334, §35 (NEW) .]

13. Distributions not to exceed amount in fund.

[2009, c. 524, §17 (RPR); T. 21-A, §1125, sub-§13 (RP) .]

13-A. Distributions not to exceed amount in fund. The commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund as set forth in section 1124. Notwithstanding any other provisions of this chapter, if the commission determines that the revenues in the fund are insufficient to meet distributions under subsection 8-A, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than the applicable contribution limits established by the commission pursuant to section 1015, up to the applicable amounts set forth in subsection 8-A according to rules adopted by the commission.

This subsection takes effect September 1, 2011.

[2011, c. 558, §9 (AMD) .]

14. Appeals. A candidate who has been denied certification as a Maine Clean Election Act candidate by the commission's executive director, the opponent of a candidate who has been granted certification as a Maine Clean Election Act candidate or other interested persons may challenge a certification decision by the executive director as follows.

A. A challenger may appeal to the commission within 7 days of the certification decision. The appeal must be in writing and must set forth the reasons for the appeal. [2011, c. 389, §59 (AMD) .]

B. Within 5 days after an appeal is properly made and after notice is given to the challenger and any opponent, the commission shall hold a hearing, except that the commission may extend this period upon agreement of the challenger and the candidate whose certification is the subject of the appeal, or in response to the request of either party upon a showing of good cause. The appellant has the burden of proving that the certification decision was in error as a matter of law or was based on factual error. The commission must rule on the appeal within 5 business days after the completion of the hearing. [2007, c. 443, Pt. B, §6 (AMD) .]

C. A challenger may appeal the decision of the commission in paragraph B by commencing an action in Superior Court within 5 days of the date of the commission's decision. The action must be conducted in accordance with Rule 80C of the Maine Rules of Civil Procedure, except that the court shall issue its written decision within 20 days of the date of the commission's decision. Any aggrieved party may appeal the decision of the Superior Court by filing a notice of appeal within 3 days of that decision. The record on appeal must be transmitted to the Law Court within 3 days after the notice of appeal is filed. After filing the notice of appeal, the parties have 4 days to file briefs and appendices with the clerk of the court. The court shall consider the case as soon as possible after the record and briefs have been filed and shall issue its decision within 14 days of the decision of the Superior Court. [2007, c. 443, Pt. B, §6 (AMD) .]

D. A candidate whose certification as a Maine Clean Election Act candidate is reversed on appeal must return to the commission any unspent revenues distributed from the fund. If the commission or court finds that an appeal was made frivolously or to cause delay or hardship, the commission or court may require the moving party to pay costs of the commission, court and opposing parties, if any. [2007, c. 443, Pt. B, §6 (AMD).]

[2011, c. 389, §59 (AMD) .]

SECTION HISTORY

IB 1995, c. 1, §17 (NEW). 2001, c. 465, §§4-6 (AMD). 2003, c. 270, §§1,2 (AMD). 2003, c. 448, §5 (AMD). 2003, c. 453, §§1,2 (AMD). 2003, c. 688, §§A21,22 (AMD). 2005, c. 301, §§29-32 (AMD). 2005, c. 542, §§3-5 (AMD). 2007, c. 240, Pt. F, §1 (AMD). 2007, c. 443, Pt. B, §6 (AMD). 2007, c. 567, §2 (AMD). 2007, c. 571, §§11, 12 (AMD). 2007, c. 642, §11 (AMD). 2009, c. 105, §1 (AMD). 2009, c. 190, Pt. B, §2 (AMD). 2009, c. 286, §§6-9 (AMD). 2009, c. 302, §§11-22 (AMD). 2009, c. 302, §24 (AFF). 2009, c. 363, §§2-11 (AMD). 2009, c. 524, §§14-18 (AMD). 2009, c. 652, Pt. A, §25 (AMD). 2009, c. 652, Pt. A, §23 (AMD). 2009, c. 652, Pt. A, §27 (AMD). 2009, c. 652, Pt. A, §28 (AFF). 2009, c. 652, Pt. A, §24 (AFF). 2009, c. 652, Pt. A, §26 (AFF). 2011, c. 389, §§51-59 (AMD). 2011, c. 389, §62 (AFF). 2011, c. 522, §§2, 3 (AMD). 2011, c. 522, §4 (AFF). 2011, c. 558, §§6-9 (AMD). 2013, c. 334, §§33-35 (AMD).

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STATUTE: 21-A MRSA § 196-A

<http://mainelegislature.org/statutes/21-A/title21-Asec196-A.html>

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).
2. Requests for CVR data are fairly regular before elections.
3. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
The exceptions for who is allowed to access the information are valid.
4. 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?
5. We have received numerous complaints from citizens who received "voter shaming" mailers denoting whether or not they had voted in recent elections, who felt this was a violation of their privacy. Reuse of the information is not currently prohibited, and information about whether or not someone voted is not private.
4. Does your agency recommend 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.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Maine Revised Statutes
Title 21-A: ELECTIONS
Chapter 3: VOTER REGISTRATION

§196-A. USE AND DISTRIBUTION OF CENTRAL VOTER REGISTRATION SYSTEM INFORMATION

1. Access to data from the central voter registration system. For the purposes of Title 1, section 402, information contained electronically in the central voter registration system and any information or reports generated by the system are confidential and may be accessed only by municipal and state election officials for the purposes of election and voter registration administration, and by others only as provided in this section.

A. An individual voter may obtain any information contained in that voter's record within the central voter registration system either from the registrar in the voter's municipality of residence or from the Secretary of State. The individual voter information must be made available to that voter upon request and free of charge. The Secretary of State may design a report to facilitate providing information to an individual voter. [2009, c. 564, §8 (NEW) .]

B. A political party, or an individual or organization engaged in so-called "get out the vote" efforts or activities directly related to a campaign, or an individual who has been elected or appointed to and is currently serving in a municipal, county, state or federal office, may purchase a list or report of certain voter information from the central voter registration system by making a request to the Secretary of State or to a registrar if the information requested concerns voters in that municipality. The Secretary of State or the registrar shall make available the following voter record information, subject to the fees set forth in subsection 2: the voter's name, residence address, mailing address, year of birth, enrollment status, electoral districts, voter status, date of registration, date of change of the voter record if applicable, voter participation history, voter record number and any special designations indicating uniformed service voters, overseas voters or township voters. Any person obtaining, either directly or indirectly, information from the central voter registration system under this paragraph may not sell, distribute or use the data for any purpose that is not directly related to activities of a political party, "get out the vote" efforts or activities directly related to a campaign. This paragraph does not prohibit political parties, party committees, candidate committees, political action committees or any other organizations that have purchased information from the central voter registration system from providing access to such information to their members for purposes directly related to party activities, "get out the vote" efforts or a campaign. For purposes of this paragraph, "campaign" has the same meaning as in section 1052, subsection 1. [2013, c. 330, §1 (AMD) .]

C. The registrar shall make available, in electronic form and free of charge, upon the request of any person authorized under section 312 to obtain a municipal caucus list, the following voter record information for each voter in the municipality: the voter's name, residence address, mailing address, enrollment status, electoral districts, voter status, voter record number and any special designation indicating whether the voter is a uniformed service voter, overseas voter or township voter. The Secretary of State also shall make available the statewide caucus list, in electronic form and free of charge, to the state committee of each political party. [2009, c. 564, §8 (NEW) .]

D. A municipal clerk or registrar shall make available to any person upon request and free of charge an electronic list of voters who requested or were furnished absentee ballots for their municipality for a specified election. The Secretary of State may make available free of charge the statewide absentee voter list in electronic form. The electronic list must include the information provided in section 753-B, subsection 6, paragraph A, except that the voter's record number must be provided instead of the voter's name and residence address. In addition, a municipal clerk or registrar shall make available upon

request, subject to the fees set forth in subsection 2, paragraph A, the printed list, created and maintained pursuant to section 753-B, of voters who requested or were furnished absentee ballots. [2009, c. 564, §8 (NEW).]

E. The Secretary of State or a registrar may make available, upon the request of any other governmental or quasi-governmental entity, certain voter information for that entity's authorized use only. The following information may be provided in electronic form and free of charge: the voter's name, year of birth, residence address, mailing address, electoral districts, voter status, date of registration or date of change of the voter record if applicable, voter record number and any special designations indicating uniformed service voters, overseas voters or township voters. Data made available under this paragraph may not be used for solicitation or for purposes other than the governmental or quasi-governmental entity's authorized activities and may not be redistributed.

Authorized uses of the data by the Legislature include providing voter information to a Legislator for purposes of communicating with the Legislator's constituents and conducting legislative business. [2011, c. 534, §11 (AMD).]

F. The Secretary of State shall make available to any person upon request and free of charge the following voter record information in electronic form: either the voter's first name or last name, but not both names in the same report; year of birth; enrollment status; electoral districts to include congressional district and county only; voter status; date of registration or date of change of the voter record if applicable; date of the last statewide election in which the voter voted; and any special designations indicating uniformed service voters, overseas voters or township voters. The Secretary of State or the registrar also may make available to any person upon request and free of charge any report or statistical information that does not contain the names, dates of birth, voter record numbers or addresses of individual voters. [2009, c. 564, §8 (NEW).]

G. The Secretary of State or a registrar shall make available free of charge any information pertaining to individual voters, other than participants in the Address Confidentiality Program established in Title 5, section 90-B, that is contained in the central voter registration system to a law enforcement officer or law enforcement agency that makes a written request to use the information for a bona fide law enforcement purpose or to a person identified by a court order if directed by that order. Information pertaining to individual voters who are Address Confidentiality Program participants that is contained in the central voter registration system may be made available for inspection to a law enforcement agency that is authorized by the Secretary of State pursuant to Title 5, section 90-B to obtain Address Confidentiality Program information. Data made available under this paragraph may not be used for purposes other than law enforcement or as directed in the court order. [2009, c. 564, §8 (NEW).]

H. When responding to a request about a specific voter registered in a specific municipality, the registrar of that municipality or the Secretary of State may use information contained in the central voter registration system to provide the registration status, enrollment status and electoral districts for that voter. [2009, c. 564, §8 (NEW).]

I. The Secretary of State shall make available free of charge to the federal or state court system the voter registration information for voters, other than participants in the Address Confidentiality Program established in Title 5, section 90-B, statewide or by district as requested for the purpose of jury selection or other bona fide court purposes. [2013, c. 131, §10 (NEW).]

[2013, c. 131, §10 (AMD); 2013, c. 330, §1 (AMD) .]

2. Fees. For the purpose of calculating fees pursuant to this section, a record includes the information on one individual voter. Fees paid to the Secretary of State must be deposited into a dedicated fund for the purpose of offsetting the cost of providing the information and maintaining the central voter registration system and other authorized costs relating to compliance with the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666. A municipality may keep the fees paid to the municipality. The fees for information provided pursuant to this section are as follows:

A. The fee for information provided in printed form is \$1 for the first page and 25¢ per page for all additional pages, except that the fee for additional pages of mailing labels is 75¢ per page; and [2009, c. 564, §8 (NEW) .]

B. The fee for information provided in electronic form is based on the number of records requested. The fee entitles the requestor to receive the initial electronic report or file and, upon request, up to 11 updates free of charge during the subsequent 12-month period, except that no more than one free update may be requested during any 30-day period. The fee schedule is as follows:

- (1) For 900,001 or more voter records, \$2,200;
- (2) For 600,001 to 900,000 voter records, \$1,650;
- (3) For 400,001 to 600,000 voter records, \$1,100;
- (4) For 250,001 to 400,000 voter records, \$825;
- (5) For 150,001 to 250,000 voter records, \$550;
- (6) For 100,001 to 150,000 voter records, \$275;
- (7) For 75,001 to 100,000 voter records, \$220;
- (8) For 50,001 to 75,000 voter records, \$182;
- (9) For 35,001 to 50,000 voter records, \$138;
- (10) For 25,001 to 35,000 voter records, \$83;
- (11) For 15,001 to 25,000 voter records, \$55;
- (12) For 7,501 to 15,000 voter records, \$33;
- (13) For 1,001 to 7,500 voter records, \$22; or
- (14) For 1 to 1,000 voter records, \$11. [2009, c. 564, §8 (NEW) .]

[2009, c. 564, §8 (NEW) .]

3. Response to requests. Municipal clerks, registrars and the Secretary of State's office shall respond to all requests for information from the central voter registration system pursuant to this section within 5 business days of receipt of a written request and upon payment of any applicable fee. A municipal clerk or registrar may provide only information concerning voters registered within that municipal jurisdiction. The Secretary of State may design a form to be used for all requests for information or lists from the central voter registration system.

[2009, c. 564, §8 (NEW) .]

SECTION HISTORY

2009, c. 564, §8 (NEW). 2011, c. 534, §11 (AMD). 2013, c. 131, §10 (AMD). 2013, c. 330, §1 (AMD) .

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STATUTE: 22 MRSA § 2425, sub-§ 8

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 description of records subject to the exception would include the status of an individual as a medical marijuana caregiver or a list of registered medical marijuana caregivers. Requests for these records are infrequent, usually less than once per month.

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.

Medical Marijuana Caregivers of Maine
42 Bangor Street, Augusta, Maine 04330
(207)-596-3501
mmcmaine@gmail.com
or info@mmcm-online.org

Department Of Public Safety
45 Commerce Drive
104 State House Station
Augusta, Maine 04333
Main line - (207) 626-3803

Maine Sheriff's Association
Sheriff Joel A. Merry, President
752 High Street, P.O. Box 246
Bath, ME 04530
Tel: (207) 443-8201
jmerry@sagsheriff.com

Maine Chiefs of Police Association
Post Office Box 2431
South Portland, ME 04116-2431
207-799-9318

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

None.

Maine Revised Statutes
Title 22: HEALTH AND WELFARE
Chapter 558-C: maine medical use of marijuana act

§2425. REGISTRY IDENTIFICATION CARDS

1. Application for patient registry identification card; qualifications. The department shall register and issue registry identification cards to qualifying patients who submit the documents and information described in this subsection, in accordance with the department's rules:

A. Written certification; [2009, c. 1, §5 (NEW).]

B. [2013, c. 394, §2 (RP).]

C. Name, address and date of birth of the qualifying patient, except that if the applicant is homeless no address is required; [2009, c. 631, §28 (AMD); 2009, c. 631, §51 (AFF).]

D. Name, address and telephone number of the qualifying patient's medical provider; [2013, c. 516, §10 (AMD).]

E. Name, address and date of birth of each primary caregiver, if any, named by the qualifying patient; [2009, c. 631, §28 (AMD); 2009, c. 631, §51 (AFF).]

F. If the qualifying patient names one or 2 primary caregivers, an indication of which person, if any, is designated to cultivate marijuana for the qualifying patient's medical use. Only one primary caregiver, including an employee of that caregiver, is allowed to cultivate marijuana for a registered patient; and [2013, c. 396, §9 (AMD).]

G. If the qualifying patient elects to cultivate marijuana for the qualifying patient's own medical use, the qualifying patient shall indicate that choice on the application. [2009, c. 631, §28 (NEW); 2009, c. 631, §51 (AFF).]

[2013, c. 516, §10 (AMD) .]

1-A. Criminal history record check. An applicant for a registry identification card who is a primary caregiver or who is a principal officer, board member or employee of a registered dispensary must undergo a criminal history record check annually.

[2013, c. 394, §3 (NEW) .]

2. Issuing patient registry identification card to minor child. The department may not register and issue a registry identification card to a qualifying patient who is under 18 years of age unless:

A. The qualifying patient's medical provider has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian or person having legal custody of the qualifying patient; [2013, c. 516, §11 (AMD).]

B. The parent, guardian or person having legal custody consents in writing to:

(1) The qualifying patient's medical use of marijuana;

(2) Serving as one of the qualifying patient's primary caregivers; and

(3) Controlling the acquisition of the marijuana and the dosage and the frequency of the medical use of marijuana by the qualifying patient; and [2011, c. 407, Pt. B, §23 (AMD).]

C. [2011, c. 407, Pt. B, §23 (RP).]

D. The requirements of section 2423-B, subsection 2 have been met. [2011, c. 407, Pt. B, §23 (NEW).]

[2013, c. 516, §11 (AMD) .]

3. Department approval or denial. The department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 30 days of receiving it. The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section or the department determines that the applicant does not qualify for a registry identification card or that the information provided was falsified. Rejection of an application or renewal is considered a final agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

[2013, c. 394, §4 (AMD) .]

3-A. Department revocation. The department may revoke a registry identification card for violation of this chapter and the rules adopted under this chapter. Revocation is considered a final agency action, subject to judicial review under Title 5, chapter 375, subchapter 7.

[2009, c. 631, §30 (NEW); 2009, c. 631, §51 (AFF) .]

4. Primary caregiver registry identification card. The department shall issue a registry identification card to each registered primary caregiver, if any, who is named in a registered patient's approved application pursuant to subsection 1, paragraph E and, if the registered primary caregiver employs an employee pursuant to section 2423-A, subsection 2, paragraph I, to that employee.

[2013, c. 396, §10 (AMD) .]

5. Registry identification card issuance. The department shall issue registry identification cards to registered patients, to registered primary caregivers, to employees of registered caregivers and to staff of hospice providers and nursing facilities designated by registered patients as primary caregivers within 5 days of approving an application or renewal under this section. Registry identification cards expire one year after the date of issuance except that the date of issuance and expiration date of a registered primary caregiver's registry identification card must be the same as the issuance and expiration dates on the patient's registry identification card. Registry identification cards must contain:

A. The name of the cardholder; [2011, c. 691, Pt. A, §21 (RPR).]

B. [2011, c. 383, §2 (RP); 2011, c. 407, Pt. B, §24 (RP).]

C. The date of issuance and expiration date of the registry identification card; [2011, c. 691, Pt. A, §21 (RPR).]

D. A random identification number that is unique to the cardholder; and [2011, c. 691, Pt. A, §21 (RPR).]

E. [2011, c. 383, §2 (RP); 2011, c. 407, Pt. B, §24 (RP).]

F. A clear designation showing whether the cardholder is allowed under this chapter to cultivate marijuana. [2011, c. 691, Pt. A, §21 (RPR).]

[2013, c. 396, §11 (AMD) .]

6. Notification of changes in status or loss of card. This subsection governs notification of changes in status or the loss of a registry identification card.

A. A registered qualifying patient shall notify the department within 10 days of any change in the registered qualifying patient's name, address, primary caregiver or preference regarding who may cultivate marijuana for the registered qualifying patient, if the registry identification card is no longer accurate, if the change renders the registry identification card inaccurate or if the registered qualifying patient ceases to have a debilitating medical condition. [2013, c. 394, §5 (AMD) .]

B. A registered qualifying patient who fails to notify the department as required under paragraph A commits a civil violation for which a fine of not more than \$150 may be adjudged. If the registered qualifying patient's certifying medical provider notifies the department in writing that the registered qualifying patient has ceased to suffer from a debilitating medical condition, the registered qualifying patient's registry identification card becomes void upon notification by the department to the qualifying patient. [2013, c. 516, §12 (AMD) .]

C. A registered primary caregiver shall notify the department if the card of the registered primary caregiver is no longer accurate within 10 days of the event that caused the inaccuracy and of any change in the caregiver's name or address within 10 days of such change. A registered primary caregiver who fails to notify the department of any of these changes commits a civil violation for which a fine of not more than \$150 may be adjudged. [2013, c. 394, §5 (AMD) .]

D. When a registered qualifying patient or registered primary caregiver notifies the department of any changes listed in this subsection, the department shall issue the registered qualifying patient and each registered primary caregiver a new registry identification card within 10 days of receiving the updated information and the fee required by subsection 12, paragraph E. [2013, c. 394, §5 (AMD) .]

E. When a registered qualifying patient changes the patient's registered primary caregiver, the department shall notify the old primary caregiver within 10 days. The old primary caregiver's protections as provided in this chapter expire 10 days after notification by the department. [2009, c. 1, §5 (NEW) .]

F. If a cardholder loses the cardholder's registry identification card, the cardholder shall notify the department and submit the fee required by subsection 12, paragraph E within 10 days of losing the card. Within 5 days after such notification, the department shall issue a new registry identification card with a new random identification number. [2013, c. 394, §5 (AMD) .]

[2013, c. 516, §12 (AMD) .]

7. Possession of certain documents; application for registry identification card. Possession of a registry identification card by a cardholder, the act of applying for such a registry identification card, possession of a written certification issued under section 2423-B or possession of a designation form executed under section 2423-A, subsection 1, paragraph E or F is not evidence of unlawful conduct and may not be used to support the search of that person or that person's property. The possession of or application for a registry identification card or possession of a written certification does not prevent the issuance of a warrant if probable cause exists on other grounds.

[2011, c. 407, Pt. B, §25 (RPR) .]

8. Confidentiality. This subsection governs confidentiality.

A. Applications and supporting information submitted by qualifying patients and registered patients under this chapter, including information regarding their primary caregivers and medical providers, are confidential. [2013, c. 516, §13 (AMD) .]

B. Applications and supporting information submitted by primary caregivers and medical providers operating in compliance with this chapter are confidential. [2013, c. 516, §13 (AMD) .]

C. The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list are confidential, exempt from the freedom of access laws, Title 1, chapter 13, and not subject to disclosure

except as provided in this subsection and to authorized employees of the department as necessary to perform official duties of the department. [2009, c. 631, §34 (AMD); 2009, c. 631, §51 (AFF).]

D. The department shall verify to law enforcement personnel whether a registry identification card is valid without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card. [2009, c. 1, §5 (NEW).]

E. [2009, c. 631, §51 (AFF); 2009, c. 631, §34 (RP).]

F. Applications, supporting information and other information regarding a registered dispensary are not confidential except that information that is contained within dispensary information that identifies a qualifying patient, a registered patient, the registered patient's medical provider and the primary caregiver of the qualifying patient or registered patient is confidential. [2013, c. 516, §13 (AMD).]

G. Records maintained by the department pursuant to this chapter that identify applicants for a registry identification card, registered patients, registered primary caregivers and registered patients' medical providers are confidential and may not be disclosed except as provided in this subsection and as follows:

- (1) To department employees who are responsible for carrying out this chapter;
- (2) Pursuant to court order or subpoena issued by a court;
- (3) With written permission of the registered patient or the patient's guardian, if the patient is under guardianship, or a parent, if the patient has not attained 18 years of age;
- (4) As permitted or required for the disclosure of health care information pursuant to section 1711-C;
- (5) To a law enforcement official for verification purposes. The records may not be disclosed further than necessary to achieve the limited goals of a specific investigation; and
- (6) To a registered patient's treating medical provider and to a registered patient's registered primary caregiver for the purpose of carrying out this chapter. [2013, c. 516, §13 (AMD).]

H. This subsection does not prohibit a medical provider from notifying the department if the medical provider acquires information indicating that a registered patient or qualifying patient is no longer eligible to use marijuana for medical purposes or that a registered patient or qualifying patient falsified information that was the basis of the medical provider's certification of eligibility for use. [2013, c. 516, §13 (AMD).]

I. The department may disclose to an agency of State Government designated by the commissioner and employees of that agency any information necessary to produce registry identification cards or manage the identification card program and may disclose data for statistical or research purposes in such a manner that individuals cannot be identified. [2009, c. 631, §34 (NEW); 2009, c. 631, §51 (AFF).]

J. A hearing concerning the revocation of a registry identification card under subsection 3-A is confidential. [2011, c. 407, Pt. B, §27 (AMD).]

K. Except as otherwise provided in this subsection, a person who knowingly violates the confidentiality of information protected under this chapter commits a civil violation for which a fine of up to \$1,000 may be imposed. This paragraph does not apply to a medical provider or staff of a hospice provider or nursing facility named as a primary caregiver or any other person directly associated with a medical provider or a hospice provider or nursing facility that provides services to a registered patient. [2013, c. 516, §13 (AMD).]

L. Notwithstanding any provision of this subsection to the contrary, the department shall comply with Title 36, section 175. Information provided by the department pursuant to this paragraph may be used by the Department of Administrative and Financial Services, Bureau of Revenue Services only for the administration and enforcement of taxes imposed under Title 36. [2013, c. 2, §33 (COR) .]

[2013, c. 2, §33 (COR) .]

9. Revocation of registry identification card. The department shall revoke the registry identification card of a cardholder who sells, furnishes or gives marijuana to a person who is not allowed to possess marijuana for medical purposes under this chapter. A cardholder who sells, furnishes or gives marijuana to a person who is not allowed to possess marijuana for medical purposes under this chapter is liable for any other penalties for selling, furnishing or giving marijuana to a person. The department may revoke the registry identification card of any cardholder who violates this chapter, and the cardholder is liable for any other penalties for the violation.

[2009, c. 631, §35 (AMD); 2009, c. 631, §51 (AFF) .]

9-A. Registration requirement. Registration under this section is voluntary for a qualifying patient and for a primary caregiver who is exempt under section 2423-A, subsection 3, paragraph C. Failure to register under this section does not affect authorized conduct for a qualifying patient or for a primary caregiver who is exempt under section 2423-A, subsection 3, paragraph C.

[2011, c. 407, Pt. B, §28 (NEW) .]

10. Annual report. The department shall submit to the Legislature an annual report by April 1st each year that does not disclose any identifying information about cardholders or physicians, but does contain, at a minimum:

A. The number of applications and renewals filed for registry identification cards; [2009, c. 1, §5 (NEW) .]

B. The number of qualifying patients and primary caregivers approved in each county; [2009, c. 1, §5 (NEW) .]

C. [2011, c. 407, Pt. B, §29 (RP) .]

D. The number of registry identification cards revoked; [2009, c. 1, §5 (NEW) .]

E. The number of medical providers providing written certifications for qualifying patients; [2013, c. 516, §14 (AMD) .]

F. The number of registered dispensaries; and [2009, c. 631, §36 (AMD); 2009, c. 631, §51 (AFF) .]

G. The number of principal officers, board members and employees of dispensaries. [2009, c. 631, §36 (AMD); 2009, c. 631, §51 (AFF) .]

[2013, c. 516, §14 (AMD) .]

11. Valid identification. A registered patient, registered primary caregiver or a principal officer, board member or employee of a registered dispensary who has been issued a valid registry identification card pursuant to this section must also possess a valid Maine-issued driver's license with a photo or other Maine-issued photo identification in order to establish proof of authorized participation in the medical use of marijuana under this chapter.

[2011, c. 383, §4 (NEW) .]

12. Registration and related fees. The department by rule shall establish fees in accordance with this subsection. The fees must be credited to the Medical Use of Marijuana Fund pursuant to section 2430. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. There is no annual fee to register a qualifying patient. [2013, c. 394, §6 (NEW).]

B. Primary caregiver fees are as follows.

(1) There is no annual fee to register a primary caregiver who does not cultivate marijuana for a qualifying patient.

(2) There is an annual fee to register a primary caregiver who has been designated to cultivate marijuana under subsection 2423-A, subsection 1, paragraph F. The fee must be not less than \$50 and not more than \$300 for each qualifying patient who has designated the primary caregiver.

(3) There is no fee for a registered primary caregiver to register for the remainder of the registration period a new qualifying patient in place of a former qualifying patient who has revoked the designation of the primary caregiver. [2013, c. 394, §6 (NEW).]

C. There is an annual fee to register a dispensary of not less than \$5,000 and not more than \$15,000.

There is a fee to change the location of a registered dispensary or the location at which a registered dispensary cultivates marijuana of not less than \$3,000 and not more than \$5,000. [2013, c. 394, §6 (NEW).]

D. There is an annual fee to register a principal officer, board member or employee of a registered dispensary of not less than \$25 and not more than \$50. The fee must be paid by the registered dispensary. [2013, c. 394, §6 (NEW).]

E. There is a fee to replace a registry card that has been lost, stolen or destroyed or a card that contains information that is no longer accurate of not less than \$10 and not more than \$20. [2013, c. 394, §6 (NEW).]

F. There is an annual fee for a criminal history record check for a primary caregiver or a principal officer, board member or employee of a registered dispensary of not less than \$31 and not more than \$60. The fee must be paid by the primary caregiver or by the registered dispensary for a principal officer, board member or employee of the registered dispensary. [2013, c. 394, §6 (NEW).]

G. There is a fee for laboratory testing of marijuana that is cultivated, harvested, processed, prepared or provided by a registered primary caregiver or registered dispensary of not less than \$50 and not more than \$300 per test sample. [2013, c. 394, §6 (NEW).]

Beginning January 2014 and every 2 years thereafter, the department shall review the balance in the Medical Use of Marijuana Fund established under section 2430. If the balance in the Medical Use of Marijuana Fund exceeds \$400,000, the department shall reduce the fees established under paragraphs B and C for a 2-year period beginning with the calendar year following the review.

[2013, c. 394, §6 (NEW) .]

SECTION HISTORY

IB 2009, c. 1, §5 (NEW). 2009, c. 631, §§28-36 (AMD). 2009, c. 631, §51 (AFF). 2011, c. 383, §§2-4 (AMD). 2011, c. 407, Pt. B, §§23-29 (AMD). 2011, c. 691, Pt. A, §§21, 22 (AMD). RR 2013, c. 2, §33 (COR). 2013, c. 394, §§2-6 (AMD). 2013, c. 396, §§9-11 (AMD). 2013, c. 516, §§10-14 (AMD). 2013, c. 595, Pt. J, §1 (AMD). 2013, c. 595, Pt. J, §4 (AFF).

STATUTE: 22 M.R.S. §4087-A, Sub-§6

AGENCY: Child Welfare Services Ombudsman

CONTACT PERSON: Christine Alberi

CONTACT PERSON'S EMAIL ADDRESS: christine.e.alberi@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).

All of our records are confidential under 22 MRSA §4087-A, the confidentiality section in the child protection statute. We have not a FOA request in recent years, if ever. Our reports occasionally are subpoenaed in court and we, assisted by the Attorney General's office move to quash those subpoenas. This happens on average once a year. We received verbal requests for records related to child welfare cases and our reports, and occasional written requests via email. We explain that we are not required, or allowed in most cases to disseminate child welfare records. We refer individuals back to the Department of Health and Human Services when appropriate.

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

We support the continuation of this exception. Children and parents involved in Child Welfare cases deserve confidentiality. Children in particular should not be subject to disclosure of their private information to the general 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?

There have been no major issues with the application of this exception. We are working now with the Attorney General's office to clarify some issues around whether Guardians ad litem are able to obtain our reports.

4. Does your agency recommend changes to this exception?

No, not at this time.

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

The Department of Health and Human Services, Office of Child and Family Services, Director James Martin, 207-624-7900. Our public records exception flows from the child protection public records exception. Any decisions to change this should involve discussions with the Department, children and families involved, adult children who have been in foster care, experts on childhood trauma, attorneys and Guardians ad litem, District Court Judges, foster parents, and kinship providers.

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

Maine Revised Statutes

Title 22: HEALTH AND WELFARE

Chapter 1071: CHILD AND FAMILY SERVICES AND CHILD PROTECTION ACT

§4087-A. OMBUDSMAN PROGRAM

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

A. "Ombudsman" means the director of the program and persons employed or volunteering to perform the work of the program. [2001, c. 439, Pt. X, §5 (NEW).]

B. "Program" means the ombudsman program established under this section. [2001, c. 439, Pt. X, §5 (NEW).]

[2001, c. 439, Pt. X, §5 (NEW) .]

2. Program established. The ombudsman program is established as an independent program within the Executive Department to provide ombudsman services to the children and families of the State regarding child welfare services provided by the Department of Health and Human Services. The program shall consider and promote the best interests of the child involved, answer inquiries and investigate, advise and work toward resolution of complaints of infringement of the rights of the child and family involved. The program must be staffed, under contract, by an attorney or a master's level social worker who must have experience in child development and advocacy, and support staff as determined to be necessary. The program shall function through the staff of the program and volunteers recruited and trained to assist in the duties of the program.

[2001, c. 439, Pt. X, §5 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

3. Contracted services. The program shall operate by contract with a nonprofit organization that the Executive Department determines to be free of potential conflict of interest and best able to provide the services on a statewide basis. The ombudsman may not be actively involved in state-level political party activities or publicly endorse, solicit funds for or make contributions to political parties on the state level or candidates for statewide elective office. The ombudsman may not be a candidate for or hold any statewide elective or appointive public office.

[2001, c. 439, Pt. X, §5 (NEW) .]

4. Services. The program shall provide services directly or under contract. The first priority in the work of the program and any contract for ombudsman services must be case-specific advocacy services. In performing services under this section, the program, as it determines to be appropriate, may create and maintain records and case-specific reports. Any work on systems improvements or lobbying must be adjunctive to case-specific activities. The program may:

A. Provide information to the public about the services of the program through a comprehensive outreach program. The ombudsman shall provide information through a toll-free telephone number or numbers; [2001, c. 439, Pt. X, §5 (NEW).]

B. Answer inquiries, investigate and work toward resolution of complaints regarding the performance and services of the department and participate in conferences, meetings and studies that may improve the performance of the department; [2001, c. 439, Pt. X, §5 (NEW).]

C. Provide services to persons to assist them in protecting their rights; [2001, c. 439, Pt. X, §5 (NEW) .]

D. Inform persons of the means of obtaining services from the department; [2001, c. 439, Pt. X, §5 (NEW) .]

E. Provide information and referral services; [2001, c. 439, Pt. X, §5 (NEW) .]

F. Analyze and provide opinions and recommendations to agencies, the Governor and the Legislature on state programs, rules, policies and laws; [2001, c. 439, Pt. X, §5 (NEW) .]

G. Determine what types of complaints and inquiries will be accepted for action by the program and adopt policies and procedures regarding communication with persons making inquiries or complaints and the department; [2001, c. 439, Pt. X, §5 (NEW) .]

H. Apply for and utilize grants, gifts and funds for the purpose of performing the duties of the program; and [2001, c. 439, Pt. X, §5 (NEW) .]

I. Collect and analyze records and data relevant to the duties and activities of the program and make reports as required by law or determined to be appropriate. [2001, c. 439, Pt. X, §5 (NEW) .]

[2005, c. 410, §1 (AMD) .]

4-A. Information for parents in child protective cases. The program, in consultation with appropriate interested parties, shall provide information about child protection laws and procedures to parents whose children are the subject of child protective investigations and cases under this chapter. The providing of the information under this subsection does not constitute representation of parents. Parents may seek and receive information regardless of whether they are represented by legal counsel. The information must be provided free of charge to parents.

The program shall report annually to the joint standing committee of the Legislature having jurisdiction over judiciary matters, starting February 1, 2003, on the provision of information required by this subsection.

This subsection does not create new rights or obligations concerning the provision of legal advice or representation of parents. Failure to provide information under this subsection does not create a cause of action or have any effect on a child protective proceeding.

[2001, c. 696, §36 (NEW) .]

5. Access to persons, files and records. As necessary for the duties of the program, the ombudsman has access to the files and records of the department, without fee, and to the personnel of the department for the purposes of investigation of an inquiry or complaint. The ombudsman may also enter the premises of the department for the purposes of investigation of an inquiry or complaint without prior notice. The program shall maintain the confidentiality of all information or records obtained under this subsection.

[2001, c. 439, Pt. X, §5 (NEW) .]

6. Confidentiality of records. Information held by or records or case-specific reports maintained by the program are confidential. Disclosure may be made as allowed or required in accordance with the provisions of section 4008, subsections 2 and 3. Unlawful dissemination is subject to the provisions of section 4008, subsection 4.

[2005, c. 410, §2 (RPR) .]

7. Liability. Any person who in good faith submits a complaint or inquiry to the program pursuant to this section is immune from any civil or criminal liability. For the purpose of any civil or criminal proceedings, there is a rebuttable presumption that any person acting pursuant to this section did so in good faith. The ombudsman and employees and volunteers in the program are employees of the State for the purposes of the Maine Tort Claims Act.

[2001, c. 439, Pt. X, §5 (NEW) .]

8. Penalties. A person who intentionally obstructs or hinders the lawful performance of the ombudsman's duties commits a Class E crime. A person who penalizes or imposes a restriction on a person who makes a complaint or inquiry to the ombudsman as a result of that complaint or inquiry commits a Class E crime. The Attorney General shall enforce this subsection under Title 5, section 191.

[2001, c. 439, Pt. X, §5 (NEW) .]

9. Information. Beginning January 1, 2002, information about the services of the program and any applicable grievance and appeal procedures must be given to all children and families receiving child welfare services from the department and from all persons and entities contracting with the department for the provision of child welfare services.

[2001, c. 439, Pt. X, §5 (NEW) .]

10. Report. The program shall report to the Governor, the department and the Legislature before January 1st each year on the activities and services of the program, priorities among types of inquiries and complaints that may have been set by the program, waiting lists for services, the provision of outreach services and recommendations for changes in policy, rule or law to improve the provision of services.

[2001, c. 439, Pt. X, §5 (NEW) .]

11. Oversight. The joint standing committee of the Legislature having jurisdiction over health and human services matters shall review the operations of the program and may make recommendations to the Governor regarding the contract for services under this section. The committee may submit legislation that it determines necessary to amend or repeal this section.

[2001, c. 439, Pt. X, §5 (NEW) .]

SECTION HISTORY

2001, c. 439, §X5 (NEW). 2001, c. 696, §36 (AMD). 2003, c. 20, §EEE1 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 410, §§1,2 (AMD).

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STATUTE: 29-A MRSA § 1301, sub-§6-A

AGENCY: Secretary of State

CONTACT PERSON: Kristen Muszynski

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

Responses are from our legal counsel at BMV:

A final observation that is not relevant to the specific issue addressed by this memorandum concerns permissible disclosures of SSNs. Federal statute, the Driver Privacy Protection Act, specifically 18 U.S.C. §2721(a)(2) authorizes a State Department of Motor Vehicles to disclose SSNs to designated persons for certain purposes. Maine law, 29-A M.R.S. §256 requires the Secretary of State to comply with the provisions of the Driver Privacy Protection Act in disclosing records.^[1] Another provision of the Motor Vehicle Laws, 29-A M.R.S. §1301(6-A), prohibits the Secretary of State from disseminating SSNs to any entity without specific authorization from the Legislature, except as authorized by the Driver Privacy Protection Act. Maine's Freedom of Access law, 1 M.R.S. §408-A, provides that "[e]xcept as otherwise provided by statute, a person has the right to inspect and copy any public record." However, other sections of that statute, 1 M.R.S. §402(3)(N) and (R) specifically exclude SSNs in general and SSNs in possession of the Secretary of State from the definition of public record, meaning presumably SSNs are not subject to disclosure by the Secretary of State, but 29-A M.R.S. §1301(6-A) allows disclosure of SSNs pursuant to the Driver Privacy Protection Act. ???

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject

^[1] ME. P.L. 1995, ch. 645, §B6 and B24, effective October 1, 1996.

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 SSN on any motor vehicle record disseminated is redacted (blacked out), and SSNs are not disseminated and now that SSNs are masked in the system, full SSNs would not be viewable on any MV record.

2.

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

4. If SSNs are confidential, 29-A M.R.S. 1301(6-A) should be amended to delete the reference to the DPPA.

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?

1. See the inconsistency in the paragraph from my memorandum cited above.

4. Does your agency recommend changes to this exception?

Depends on the Secretary of State's position, see answer to question 2. Secretary may consider REO point about amending section 1301(6-A) .

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

6. Unknown.

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

1. None.

Maine Revised Statutes
Title 29-A: MOTOR VEHICLES HEADING: PL
1993, c. 683, Pt. A, §2 (new); Pt. B, §5 (aff)
Chapter 11: DRIVER'S LICENSE HEADING:
PL 1993, c. 683, Pt. A, §2 (new); Pt. B, §5 (aff)

§1301. APPLICATION

1. Application required. An applicant must present to the Secretary of State an application for license on a form prepared by the Secretary of State.

[1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF) .]

2. Contents. The applicant must provide specific answers that demonstrate the experience and competence of the applicant to operate a motor vehicle.

[1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF) .]

2-A. Legal presence requirement. The Secretary of State may not issue a license to an applicant unless the applicant presents to the Secretary of State valid documentary evidence of legal presence in the United States, except that the Secretary of State may exempt a person from the requirements of this subsection if that person is renewing a noncommercial driver's license and that person has continuously held a valid driver's license under this chapter since December 31, 1989 or was born before December 1, 1964.

[2013, c. 163, §1 (AMD) .]

3. Proof of age. An applicant who has not attained the age of 23 years must provide satisfactory proof of the applicant's date of birth prior to receiving a permit or original license.

[1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF) .]

4. Examination. An applicant must pass a physical examination by actual demonstration of ability to operate a motor vehicle and a written examination. Failure to complete the driving test within the term of a learner's permit requires reexamination for the permit.

[2013, c. 381, Pt. B, §15 (AMD) .]

5. Permanent license number.

[2005, c. 250, §1 (RP) .]

6. Social security number. Notwithstanding any other provision of law, the social security number of any applicant for a license or nondriver identification card must be recorded on the application, and the Secretary of State may not issue a license or nondriver identification card to a person who does not possess and provide a valid social security number. The Secretary of State shall collect, store and verify the social security number of an applicant for a license or nondriver identification card and may use that number to establish a permanent license number or nondriver identification number. This subsection does not apply to a person who provides written proof to the Secretary of State that the person is ineligible to receive a social security number.

[2005, c. 250, §2 (RPR) .]

6-A. Confidentiality. Except as authorized under 18 United States Code, Section 2721, the Secretary of State may not disseminate information collected under subsection 6 to any entity without specific authorization from the Legislature. For every willful violation of this subsection, a person commits a civil violation for which a fine of not more than \$500 may be adjudged.

[2011, c. 149, §4 (NEW) .]

7. Physical examination. A physical examination that may be required by the Secretary of State for the issuance or renewal of a license may be performed by a licensed physician, physician assistant, nurse practitioner or other competent treatment personnel as determined by the Medical Advisory Board.

[2001, c. 159, §1 (NEW) .]

8. Organ and tissue donation. This subsection applies to organ donation under section 1402-A.

A. Before issuing or renewing a driver's license, the Secretary of State shall make available to the applicant a short statement on the opportunity to save a life through organ and tissue donation and shall provide the applicant an opportunity to become an organ or tissue donor. The applicant must be given a form on which to indicate whether the applicant intends to become a donor. [2003, c. 394, §2 (NEW); 2003, c. 394, §6 (AFF) .]

B. Information regarding the opportunity to save a life through organ and tissue donation must be prominently displayed on driver's license information mailed to applicants or distributed at offices of the bureau and must be prominently displayed on posters in offices of the bureau. [2003, c. 394, §2 (NEW); 2003, c. 394, §6 (AFF) .]

[2003, c. 394, §2 (NEW); 2003, c. 394, §6 (AFF) .]

8. (REALLOCATED TO T. 29-A, §1301, sub-§9) Vehicle used for examination.

[2003, c. 1, §28 (RAL); 2003, c. 397, §4 (NEW); 2003, c. 397, §6 (AFF) .]

9. (REALLOCATED FROM T. 29-A, §1301, sub-§8) Vehicle used for examination. An applicant for a license may not use a low-speed vehicle or autocycle to demonstrate ability to operate a motor vehicle as required under subsection 4.

[2009, c. 55, §3 (AMD) .]

10. Expired documents. The Secretary of State may not accept the following documents as identification for the purpose of issuing a nondriver identification card or driver's license:

A. An expired visa granted by the authority of the United States; [2005, c. 469, §1 (NEW) .]

B. An expired document issued by a foreign country; or [2005, c. 469, §1 (NEW) .]

C. A foreign passport showing an elapsed departure date. [2005, c. 469, §1 (NEW) .]

[2005, c. 469, §1 (NEW) .]

11. Residency requirement. A license may not be issued to a person unless the person presents acceptable documentary evidence of the person's residence or domicile in this State. The Secretary of State may exempt from the requirements of this subsection a person who has established to the satisfaction of the Secretary of State that the person is on active duty in the United States Armed Forces, the spouse or child of a person on active duty in the United States Armed Forces or a student enrolled in a university, college or school within the State.

A. Acceptable documentary evidence of a person's residence or domicile in this State must include the applicant's name and the address of the person's residence or domicile in this State. A post office box or other mail drop address is not sufficient. Acceptable documentary evidence includes, but is not limited to:

- (1) A tax return, W-2 form or paycheck stub;
- (2) A utility bill or a letter from a utility company showing application for service;
- (3) A contract to which the applicant is a party; or
- (4) A document issued by a governmental entity. [2007, c. 659, §1 (NEW) .]

B. A person who is unable to provide acceptable documentary evidence pursuant to paragraph A may meet the requirements of this subsection by:

- (1) Submitting the affidavits of 2 individuals who have a personal or professional relationship with the person and knowledge of the person and the person's residence or domicile, which may include a shelter, in this State. A single affidavit signed by a parent or guardian of a minor making an application is sufficient for the purposes of this paragraph. The Secretary of State may reject any affidavit the Secretary of State determines to be insufficient to meet the requirements of this subsection. The affidavit is a sworn statement and a false statement by the affiant constitutes false swearing, which is a violation of Title 17-A, section 452. The Secretary of State shall provide forms for the completion of affidavits. These forms must state: "By signing this statement I verify that the representations herein are true. By making false statements on this document, I realize I am committing a Class D crime punishable under Maine law."; or
- (2) By taking an oath or affirmation before the Secretary of State swearing to the person's residence or domicile, which may include a shelter. [2007, c. 659, §1 (NEW) .]

An applicant who supplies false information pursuant to this subsection makes a material misstatement of fact described in section 2103 and is subject to the penalties under that section.

[2007, c. 659, §1 (NEW) .]

12. Selective service registration. Before issuing or renewing a driver's license to a male United States citizen or immigrant who is at least 18 years of age and under 26 years of age, the Secretary of State shall provide the applicant with a short statement on the requirements of the federal Military Selective Service Act, 50 United States Code, Section 453 and a federal Military Selective Service registration form. If an applicant consents to register with the federal Selective Service System pursuant to this subsection, the Secretary of State shall forward the necessary information of the applicant to the federal Selective Service System.

[2011, c. 170, §1 (NEW) .]

SECTION HISTORY

1993, c. 683, §A2 (NEW). 1993, c. 683, §B5 (AFF). 1997, c. 437, §30 (AMD). 1997, c. 537, §59 (AMD). 1997, c. 537, §62 (AFF). 2001, c. 159, §1 (AMD). 2001, c. 671, §24 (AMD). RR 2003, c. 1, §28 (COR). 2003, c. 394, §2 (AMD). 2003, c. 394, §6 (AFF). 2003, c. 397, §4 (AMD). 2005, c. 250, §§1,2 (AMD). 2005, c. 469, §1 (AMD). 2007, c. 648, §1 (AMD). 2007, c. 659, §1 (AMD). 2009, c. 55, §3 (AMD). 2011, c. 149, §4 (AMD). 2011, c. 170, §1 (AMD). 2013, c. 163, §1 (AMD). 2013, c. 381, Pt. B, §15 (AMD) .

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STATUTE: 30-A MRSA § 4706, sub-§ 1

AGENCY: Maine State Housing Authority

CONTACT PERSON: Linda Uhl

CONTACT PERSON'S EMAIL ADDRESS: luhl@mainehousing.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 exception protects personally identifiable information of individuals who apply to or benefit from MaineHousing's programs including weatherization assistance, fuel assistance, assistance for persons who are homeless, and grants and loans for homebuyers and homeowners. It also protects the addresses of shelters and other living accommodations for victims of domestic violence. We do not typically deny FOA requests. Instead, we redact any information protected under this exception when we provide records in response to an FOA request. The statute permits MaineHousing to provide the information in response to a subpoena and in litigation. Also, MaineHousing must provide information about applicants to or beneficiaries of weatherization and fuel assistance programs to those directly involved in the administration or auditing of the programs and to any agency of the State with a legitimate reason to know.

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

MaineHousing supports the continuation of the exception. We believe the personally identifiable information of our applicants and beneficiaries should be kept private. Addresses of domestic violence shelters are protected for the safety of the residents.

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?

Problems with the application of the exception were remedied when the exception was revised in 2007. 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.

The primary stakeholders are our beneficiaries and applicants who are individuals. The community action agencies, shelters, and banks that have personally identifiable information of our beneficiaries and applicants are also stakeholders.

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

Maine Revised Statutes
Title 30-A: MUNICIPALITIES AND COUNTIES
HEADING: PL 1987, c. 737, Pt. A, §2 (new)
Chapter 201: HOUSING AUTHORITY
HEADING: PL 1987, c. 737, Pt. A, §2 (new)

§4706. RECORDS CONFIDENTIAL

1. Confidential information. Records containing the following information are deemed confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

- A. Any information acquired by an authority or a member, officer, employee or agent of an authority from applicants for residential tenancy in housing owned, financed, assisted or managed by an authority or from any residential tenants of such housing or from any 3rd person pertaining to any applicant for tenancy or to any tenant of such housing; [1993, c. 175, §1 (AMD).]
- B. Any written or recorded financial statement, as determined by an authority, of an individual submitted to an authority or a member, officer, employee or agent of an authority, in connection with an application for, or receipt of, a grant, mortgage or mortgage insurance; [2007, c. 562, §1 (AMD).]
- C. Any information acquired by the Maine State Housing Authority or a state public body, private corporation, copartnership, association, fuel vendor, private contractor or individual, or an employee, officer or agent of any of those persons or entities, providing services related to weatherization, energy conservation, homeless assistance or fuel assistance programs of the Maine State Housing Authority, when that information was provided by the applicant for, or recipient of, those services or by a 3rd person; [2007, c. 562, §2 (AMD).]
- D. Any statements of financial condition or information pertaining to financial condition submitted to any of the persons or entities set forth in paragraph C in connection with an application for services related to weatherization, energy conservation, homeless assistance or fuel assistance programs of the Maine State Housing Authority; and [2007, c. 562, §3 (AMD).]
- E. The address of a shelter or other living accommodations for victims of domestic violence. [2007, c. 562, §4 (NEW).]

[2007, c. 562, §§1-4 (AMD) .]

2. Wrongful disclosure prohibited. No member, officer, employee or agent of an authority may knowingly divulge or disclose information declared confidential by this section, except that:

- A. An authority may make such full and complete reports concerning administration of its programs as required by the Federal Government, any agency or department of the Federal Government, or the Legislature; [1993, c. 175, §3 (AMD).]
- B. An authority may publish statistics or other information of a general nature drawn from information declared confidential by this section, provided that the publication is accomplished in a manner which preserves confidentiality; [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]
- C. An authority may comply with a subpoena, request for production of documents, warrant or court order that appears on its face to have been issued or made upon lawful authority; [1993, c. 175, §3 (AMD).]

D. In any litigation or proceeding in which an authority is a party, the authority may introduce evidence based on any information that is deemed confidential and is within the control or custody of the authority; and [1993, c. 175, §3 (AMD).]

E. Any person or agency directly involved in the administration or auditing of weatherization, energy conservation or fuel assistance programs of the Maine State Housing Authority and any agency of the State with a legitimate reason to know must be given access to those records described in subsection 1, paragraphs C and D. [1993, c. 175, §4 (NEW).]

[1993, c. 175, §§3, 4 (AMD) .]

3. Waiver. This section shall not be construed to limit in any way the right of any person whose interest is protected by this section to waive, in writing or otherwise, the benefits of that protection.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

4. Penalty. A member, officer, employee or agent of an authority who violates subsection 2 commits a civil violation for which a forfeiture of not more than \$200 may be adjudged against the member, officer, employee or agent of an authority for each violation. For the purpose of applying penalties under this subsection, a separate violation is deemed to have occurred with respect to each separate act of disclosure.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD). 1993, c. 175, §§1-4 (AMD). 2007, c. 562, §§1-4 (AMD).

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STATUTE: 35-A M.R.S. §122, Sub-§1-B, ¶G

AGENCY: Interagency Review Panel (Governor's Energy Office)

CONTACT PERSON: Patrick Woodcock

CONTACT PERSON'S EMAIL ADDRESS: Patrick.C.Woodcock@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).

There has not been a request to my knowledge for information.

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

The exception is written to only apply to proprietary information for the use of the corridor. There is potential that if this information was made public than the parties could use the information to reduce their bids for the corridor and lower payments to the state. As a result, the exception seems sensible as currently written.

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?

None.

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 Electric Utilities (CMP/Emera Maine).

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

Maine Revised Statutes

Title 35-A: PUBLIC UTILITIES HEADING:
PL 1987, c. 141, Pt. A, §6 (new)

Chapter 1: ORGANIZATION, GENERAL POWERS AND
DUTIES HEADING: PL 1987, c. 141, Pt. A, §6 (new)

§122. ENERGY INFRASTRUCTURE CORRIDORS

(WHOLE SECTION TEXT REPEALED 7/30/17)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 7/30/17)

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

A. "Department" means the Department of Environmental Protection. [2007, c. 656, Pt. A, §3 (NEW).]

B. "Energy infrastructure" includes electric transmission and distribution facilities, natural gas transmission lines, carbon dioxide pipelines and other energy transport pipelines or conduits. "Energy infrastructure" does not include:

(1) Generation interconnection transmission facilities;

(2) Energy generation facilities; or

(3) Electric transmission and distribution facilities or energy transport pipelines that cross an energy infrastructure corridor or are within an energy infrastructure corridor for a distance of less than 5 miles. [2009, c. 655, Pt. A, §2 (AMD).]

C. "Energy infrastructure corridor" means a geographic area within the State designated in accordance with this section for the purposes of siting energy infrastructure. "Energy infrastructure corridor" includes statutory corridors and petitioned corridors. [2009, c. 655, Pt. A, §2 (AMD).]

D. "Generation interconnection transmission facility" has the same meaning as in section 3132, subsection 1-B. [2007, c. 656, Pt. A, §3 (NEW).]

D-1. "Petitioned corridor" means an energy infrastructure corridor designated by the commission in accordance with subsection 2. [2009, c. 655, Pt. A, §2 (NEW).]

E. "Potential developer" means a person that can demonstrate to the commission the financial and technical capability to engage in the development and construction of energy infrastructure. [2009, c. 655, Pt. A, §2 (AMD).]

F. "Project" means the development or construction of energy infrastructure within an energy infrastructure corridor. [2007, c. 656, Pt. A, §3 (NEW).]

F-1. "Proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the person who submitted the information and would make available information not otherwise publicly available. [2009, c. 655, Pt. A, §2 (NEW).]

F-2. "Searsport-Loring corridor" means the real estate, real property rights and easements and infrastructure associated with the pipeline existing on the effective date of this paragraph and associated easement corridor extending from Searsport to the former Loring Air Force Base in Limestone, Maine, as granted and conveyed by the United States Air Force to the Loring Development Authority of Maine in 2005, together with such additional rights, property, easement scope and physical rights of way as may have been or may be acquired, as are necessary to effectuate the intent of the parties to the leases,

easements and agreements existing on the effective date of this paragraph and as may be reasonably necessary or desirable to further develop the Searsport-Loring corridor as a statutory corridor for use pursuant to subsection 1-B. [2009, c. 655, Pt. A, §2 (NEW).]

F-3. "State-owned" means owned by the State or by a state agency or state authority. [2009, c. 655, Pt. A, §2 (NEW).]

F-4. "Statutory corridor" means an energy infrastructure corridor designated under subsection 1-A. [2009, c. 655, Pt. A, §2 (NEW).]

G. "Tribe" includes the Penobscot Nation, as defined in Title 30, section 6203, subsection 10; the Passamaquoddy Tribe, as defined in Title 30, section 6203, subsection 7; the Houlton Band of Maliseet Indians, as defined in Title 30, section 6203, subsection 2 and the Aroostook Band of Micmacs, as defined in Title 30, section 7202, subsection 1. [2007, c. 656, Pt. A, §3 (NEW).]

[2009, c. 655, Pt. A, §2 (AMD) .]

1-A. Statutory corridors designated. The following areas are designated as statutory corridors:

A. The Interstate 95 corridor, including that portion of Interstate 95 designated as the Maine Turnpike, in accordance with the provisions of subsection 1-C; [2009, c. 655, Pt. A, §2 (NEW).]

B. The Interstate 295 corridor; and [2009, c. 655, Pt. A, §2 (NEW).]

C. The Searsport-Loring corridor, subject to the following provisions.

(1) The Searsport-Loring corridor may be used, developed and expanded for energy infrastructure consistent with any leases, easements or other agreements in effect on the effective date of this subsection. It is not a statutory corridor until the expiration or termination of such leases, easements or other agreements.

(2) The executive director of the Loring Development Authority of Maine shall notify the Interagency Review Panel under subsection 1-B when any leases, easements or other agreements in effect on the effective date of this subsection affecting or otherwise pertaining to the Searsport-Loring corridor have expired or otherwise terminated. [2009, c. 655, Pt. A, §2 (NEW) .]

[2009, c. 655, Pt. A, §2 (NEW) .]

1-B. Use of statutory corridors; Interagency Review Panel. The Interagency Review Panel, as established in Title 5, section 12004-G, subsection 30-D and referred to in this subsection as "the panel," shall oversee the use of statutory corridors in accordance with this section.

A. The panel includes the following members:

(1) The Director of the Governor's Energy Office within the Executive Department or the director's designee;

(2) The Commissioner of Administrative and Financial Services or the commissioner's designee;

(3) The commissioner of each department or the director of any other state agency or authority that owns or controls land or assets within the statutory corridor under consideration or that commissioner's or director's designee;

(4) Four members of the public appointed by the Governor in accordance with this subparagraph, subject to review by the joint standing committee of the Legislature having jurisdiction over utilities and energy matters and to confirmation by the Senate:

(a) One member with expertise in energy and utilities selected from candidates nominated by the President of the Senate;

(b) One member with expertise in real estate or finance selected from candidates nominated by the President of the Senate;

(c) One member representing industrial or commercial energy consumers selected from candidates nominated by the Speaker of the House; and

(d) One member representing residential energy consumers selected from candidates nominated by the Speaker of the House.

Public members serve 3-year terms, except that a vacancy must be filled for the unexpired portion of the term. A public member serves until a successor is appointed. A public member may serve a maximum of 2 consecutive terms. Compensation of public members is as provided in Title 5, section 12004-G, subsection 30-D;

(5) The Public Advocate; and

(6) The Director of the Governor's Office of Policy and Management within the Executive Department or the director's designee. [2013, c. 360, §1 (AMD).]

B. The panel shall identify an initial range of value for the use of state-owned land or assets within a statutory corridor. The initial range of value must be determined by a professional appraiser who meets the qualifications of paragraph F. [2009, c. 655, Pt. A, §2 (NEW).]

C. The panel shall establish and implement a regular process for soliciting, accepting and evaluating energy infrastructure proposals for use of a statutory corridor. As part of this process, the panel shall provide public notice of the availability of the statutory corridor for energy infrastructure development, a description of the type of development anticipated in the statutory corridor and the opportunity for potential developers to submit proposals for use of the statutory corridor. [2009, c. 655, Pt. A, §2 (NEW).]

D. The panel shall evaluate and render a decision on an energy infrastructure proposal for use of a statutory corridor in accordance with subsection 1-D. The decision must be approved by the Governor prior to the entry by the State into a binding contract for use of a statutory corridor pursuant to this section. [2013, c. 360, §2 (AMD).]

E. If a proposal is accepted pursuant to subsection 1-D, the panel may enter into negotiations with the potential developer who submitted the proposal regarding a long-term occupancy agreement with the State for the use of the statutory corridor, in accordance with this paragraph.

(1) The panel shall negotiate the terms of the occupancy agreement, including but not limited to the length of the agreement and compensation to the State for use of the statutory corridor and any conditions of use. In negotiating the occupancy agreement, the panel shall take into account existing legal commitments, contractual obligations, reasonable investment-backed expectations and relevant prior state investments, when applicable.

(2) Compensation to the State may be in the form of payments made on an annual basis or the functional or financial equivalent, discounted prices for energy products or services, partial ownership by the State of the energy infrastructure on the basis of the value of the statutory corridor in proportion to the energy infrastructure as a whole, or other appropriate form. The terms of compensation may include provisions for periodic adjustment of the compensation to the State over time and reimbursement of costs to any state agency or authority that owns or controls land or assets within the statutory corridor.

(3) Negotiation of compensation to the State must be based on at least one independent appraisal performed by a professional appraiser in accordance with paragraph F. An independent appraisal performed under this subparagraph must, at a minimum, consider the costs that will be avoided by the potential developer, including but not limited to the costs of acquisition, lease or rental of private land, the costs of property taxes on private land, the costs of surveying, appraisal, environmental, engineering and other work necessary for use of private land, the costs of time and potential conflict regarding the use of private land, the unique and limited nature of the state-owned land or asset, the revenues estimated to be generated by the use of the state-owned land or asset and other relevant factors.

(4) Any occupancy agreement entered into under this section for the use of any portion of the Interstate 95 corridor that is designated as the Maine Turnpike must comply with the memorandum of agreement between the Department of Transportation and the Maine Turnpike Authority pursuant to subsection 1-C. [2009, c. 655, Pt. A, §2 (NEW).]

F. The panel shall contract for the services of a professional appraiser or appraisers to assist the panel in its duties under this subsection. The professional appraiser contracted under this paragraph must:

- (1) Have demonstrated experience in the valuation and evaluation of utility corridors or transportation corridors;
- (2) Hold a professional designation from a nationally recognized organization of appraisers; and
- (3) Be licensed by this State as a certified general real property appraiser in accordance with Title 32, section 14035 or hold a comparable license from another state.

The cost of the services of a professional appraiser who provides services in accordance with this paragraph must be paid by potential developers submitting proposals for use of the corridor under this subsection in proportion to the amount of time spent by the appraiser on each potential developer's proposal. Payments for appraisal costs collected from potential developers may be expended for the costs of appraisal services and to pay member expenses as authorized under Title 5, section 12004-G, subsection 30-D. [2013, c. 360, §3 (AMD).]

G. The following proprietary information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use, is confidential within the meaning of Title 1, section 402, subsection 3, paragraph A and may not be released by the panel or the state agency or authority involved:

- (1) Proprietary information in the possession of the state agency or authority; and
- (2) Proprietary information in the possession of the panel or a professional appraiser assisting the panel. [2009, c. 655, Pt. A, §2 (NEW).]

H. No later than February 1st of each year, the panel shall provide a written report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters that documents the activities of and actions taken by the panel under this subsection during the previous calendar year. [2009, c. 655, Pt. A, §2 (NEW).]

I. The panel may adopt rules to implement this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 655, Pt. A, §2 (NEW).]

[2013, c. 360, §§1-3 (AMD) .]

1-C. Maine Turnpike Authority; memorandum of agreement; approval of occupancy agreements.

The Maine Turnpike Authority shall negotiate the terms of and enter into a memorandum of agreement with the Department of Transportation, consistent with paragraph A, to govern the conditions under which the Maine Turnpike Authority will grant an occupancy agreement for use of Maine Turnpike Authority property as part of the Interstate 95 statutory corridor. The Maine Turnpike Authority shall approve the terms of any occupancy agreement for use of Maine Turnpike Authority property within the Interstate 95 corridor that is consistent with the memorandum of agreement.

A. The terms of the memorandum of agreement must provide for:

- (1) Application of reasonable engineering standards of the Maine Turnpike Authority to the location and design of energy infrastructure on Maine Turnpike Authority property within the Interstate 95 statutory corridor;

(2) The right of the Maine Turnpike Authority to review and approve all construction, reconstruction, expansion, improvement, maintenance or operation of energy infrastructure on Maine Turnpike Authority property as part of the Interstate 95 statutory corridor in accordance with reasonable engineering standards of the Maine Turnpike Authority. The Maine Turnpike Authority may not unreasonably withhold approval under this subparagraph;

(3) The right of the Maine Turnpike Authority to require relocation or reconfiguration of any portion of energy infrastructure and all related installations on Maine Turnpike Authority property within the Interstate 95 statutory corridor at the sole cost of the owner of the energy infrastructure so affected when and to the extent that such relocation or reconfiguration is reasonably necessary for the construction, reconstruction, expansion, improvement, maintenance or operation of the Maine Turnpike;

(4) The right of the Maine Turnpike Authority to regulate access to Maine Turnpike Authority property within the Interstate 95 statutory corridor in a reasonable manner that is consistent with the safe and proper administration of the Maine Turnpike as a limited access highway; and

(5) Reimbursement to the Maine Turnpike Authority of any reasonable costs it may incur in relation to use of the Maine Turnpike as part of the Interstate 95 statutory corridor, including, but not limited to, reasonable costs of review and inspection of design, construction, maintenance or repair of energy infrastructure and related operational costs, including, but not limited to, those for traffic control and other measures that are required to accommodate construction, maintenance or repair of energy infrastructure. [2009, c. 655, Pt. A, §2 (NEW) .]

B. The Maine Turnpike Authority shall take all reasonable precautions, without forgoing or redesigning projects that it considers necessary or convenient for operation of the Maine Turnpike, to avoid material interference with the development of energy infrastructure on Maine Turnpike Authority property as part of the Interstate 95 statutory corridor. [2009, c. 655, Pt. A, §2 (NEW) .]

[2009, c. 655, Pt. A, §2 (NEW) .]

1-D. Energy infrastructure proposal; decision criteria. The deciding authority shall evaluate and render a decision on an energy infrastructure proposal in accordance with this subsection. For the purposes of this subsection, "deciding authority" means the Interagency Review Panel acting under subsection 1-B, paragraph D and subject to the approval of the Governor, or the Public Utilities Commission acting under subsection 5-A or section 3132, subsection 6-A.

A. The deciding authority may approve an energy infrastructure proposal only if the deciding authority finds that the proposal:

(1) Materially enhances or does not harm transmission opportunities for energy generation within the State;

(2) Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the value of those rates, prices or costs but for the proposed energy infrastructure development or, if the deciding authority is unable to determine to its satisfaction the impact of the proposal on rates, prices or costs, the owner or operator of the proposed energy infrastructure agrees to pay annually an amount of money, determined by the deciding authority, to reduce rates, prices or costs over the life of the proposed energy infrastructure; and

(3) Is in the long-term public interest of the State, based on a determination made in accordance with paragraph B. [2009, c. 655, Pt. A, §2 (NEW) .]

B. The deciding authority shall determine whether an energy infrastructure proposal is in the long-term public interest of the State. In making that determination, the deciding authority shall, at a minimum, consider the extent to which the proposal:

(1) Materially enhances or does not harm transmission opportunities for energy generation within the State;

- (2) Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the expected value of those electric rates or other energy prices or costs but for the proposed energy infrastructure development;
- (3) Increases long-term economic benefits for the State, including but not limited to direct financial benefits, employment opportunities and economic development;
- (4) Ensures efficient use of the statutory corridor through collocation of energy infrastructure, collaboration between energy infrastructure developers and the preservation of options for future uses;
- (5) Minimizes conflict with the public purposes for which the state-owned land or asset is owned and any management plans for the land or asset within the statutory corridor and, when necessary, mitigates unavoidable impacts;
- (6) Limits and mitigates the effects of energy infrastructure on the landscape, including but not limited to using underground installation when economically and technically feasible;
- (7) Increases the energy reliability, security and independence of the State; and
- (8) Reduces the release of greenhouse gases. [2009, c. 655, Pt. A, §2 (NEW).]

[2013, c. 360, §4 (AMD) .]

2. Designation of petitioned corridors. The commission may, upon petition, designate petitioned corridors in accordance with this subsection.

A. The commission may designate a petitioned corridor only by rule. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

- (1) The rulemaking to designate a petitioned corridor must include a public hearing in which any member of the public may submit oral or written testimony or comments, which must be incorporated into the rule-making record in accordance with Title 5, section 8052, subsection 1. The commission shall provide an opportunity for examination of the petitioner at a rule-making hearing. The commission shall allow for written comments by any member of the public up to 7 days prior to the hearing. The commission shall allow a second round of written comments to be filed within 10 days of the hearing or within such longer time as the commission may direct.
- (2) In any rulemaking regarding the designation of a petitioned corridor, the commission shall address all written comments, including those submitted pursuant to subsection 3, and state its rationale for adopting or rejecting any proposals or recommendations contained in those written comments.
- (3) A designation of a petitioned corridor must be based on substantial evidence in the record of the rule-making hearing. [2009, c. 655, Pt. A, §2 (AMD).]

B. The commission may commence a proceeding to designate a petitioned corridor only upon the filing of a petition for the designation of a petitioned corridor by the Office of the Public Advocate, the Executive Department, Governor's Energy Office or a potential developer. [2011, c. 655, Pt. MM, §15 (AMD); 2011, c. 655, Pt. MM, §26 (AFF).]

C. The commission shall dismiss a petition for the designation of a petitioned corridor filed under this subsection if, on the basis of a preliminary review, the commission determines that the petition:

- (1) Does not contain sufficient information to support the designation of a petitioned corridor; or
- (2) Was filed by a person other than a person listed in paragraph B. [2009, c. 655, Pt. A, §2 (AMD).]

D. The commission may designate a petitioned corridor only if the commission finds, after consultation with state agencies and other entities as required under subsection 3, that a statutory corridor, a previously designated petitioned corridor or an abandoned railroad corridor owned or controlled by the Department of Transportation cannot meet the needs of the proposed energy infrastructure and that the future development of energy infrastructure within the petitioned corridor is reasonably likely to be:

(1) In the public interest, including, but not limited to, consideration of:

- (a) Encouraging collocation of energy infrastructure;
- (b) Enhancing the efficient utilization of existing energy infrastructure; and
- (c) Limiting impacts on the landscape; and

(2) Consistent with environmental and land use laws and rules of the State. A finding that the future development of energy infrastructure within the petitioned corridor is reasonably likely to be consistent with environmental and land use laws and rules of the State under this paragraph has no evidentiary value in a subsequent consolidated environmental permit proceeding undertaken by the department pursuant to subsection 6. [2009, c. 655, Pt. A, §2 (AMD).]

E. In designating a petitioned corridor, the commission shall limit the geographic area of the petitioned corridor to an area no greater in breadth and scope than is necessary to achieve the purposes of this section. [2009, c. 655, Pt. A, §2 (AMD).]

F. The commission may not designate a petitioned corridor in any of the following lands:

- (1) Houlton Band Trust Land, as defined in Title 30, section 6203, subsection 2-A;
- (2) Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6;
- (3) Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9;
- (4) Aroostook Band Trust Land, as defined in Title 30, section 7202, subsection 2;
- (5) Lands that constitute a park as defined in Title 12, section 1801, subsection 7 and Baxter State Park;
- (6) Federally owned land; and
- (7) The Maine Turnpike, as described in Title 23, section 1964, subsection 9. [2009, c. 655, Pt. A, §2 (AMD).]

[2011, c. 655, Pt. MM, §15 (AMD); 2011, c. 655, Pt. MM, §26 (AFF) .]

3. Petitioned corridors; notification and consultation prior to designation. Prior to designating a petitioned corridor under subsection 2, the commission shall, at a minimum, notify, consult with and accept comments from:

A. The department; [2007, c. 656, Pt. A, §3 (NEW).]

A-1. A state agency that owns or controls land or assets within the proposed corridor, within a statutory corridor or within a previously designated petitioned corridor; [2009, c. 655, Pt. A, §2 (NEW) .]

A-2. The Department of Transportation regarding potential use of abandoned railroad corridors owned or controlled by the department; [2009, c. 655, Pt. A, §2 (NEW) .]

B. Appropriate state and federal energy and natural resources protection agencies, as specified by rules adopted pursuant to subsection 9; [2007, c. 656, Pt. A, §3 (NEW) .]

C. The municipalities in which the petitioned corridor would be located; [2009, c. 655, Pt. A, §2 (AMD) .]

D. The Maine Land Use Planning Commission and the counties in which the petitioned corridor would be located, if the petitioned corridor, or any portion of the petitioned corridor, would be located within unorganized or deorganized territories of the State; and [2009, c. 655, Pt. A, §2 (AMD); 2011, c. 682, §38 (REV).]

E. A tribe, if the petitioned corridor, or any portion of the petitioned corridor, would be located on land of a tribe other than those lands specified in subsection 2, paragraph F. [2009, c. 655, Pt. A, §2 (AMD).]

[2009, c. 655, Pt. A, §2 (AMD); 2011, c. 682, §38 (REV) .]

4. Use of corridors; certificate and permit required.

[2009, c. 655, Pt. A, §2 (RP) .]

4-A. Use of energy infrastructure corridors; requirements. Development or construction of energy infrastructure within an energy infrastructure corridor is governed by this subsection.

A. A person may not engage in development or construction of energy infrastructure within a statutory corridor, unless:

- (1) The person has entered into an occupancy agreement with the Interagency Review Panel in accordance with subsection 1-B and, if applicable, with the Maine Turnpike Authority in accordance with subsection 1-C, and in compliance with applicable state and federal rules, regulations and laws;
- (2) The department has issued a consolidated environmental permit for the project in accordance with subsection 6; and
- (3) If the project is a transmission line that requires a certificate of public convenience and necessity under section 3132, the commission has issued a certificate of public convenience and necessity for the transmission line. [2009, c. 655, Pt. A, §2 (NEW).]

B. A person may not engage in development or construction of energy infrastructure within a petitioned corridor, unless:

- (1) The department has issued a consolidated environmental permit for the project in accordance with subsection 6;
- (2) The commission has issued a corridor use certificate for the project in accordance with subsection 5-A; and
- (3) If the project is a transmission line that requires a certificate of public convenience and necessity under section 3132, the commission has issued a certificate of public convenience and necessity approving the transmission line. [2009, c. 655, Pt. A, §2 (NEW).]

[2009, c. 655, Pt. A, §2 (NEW) .]

5. Corridor use certificate.

[2009, c. 655, Pt. A, §2 (RP) .]

5-A. Corridor use certificate. Whenever a person proposes to develop or construct energy infrastructure within a petitioned corridor, that person shall file with the commission a petition for a corridor use certificate. The petition for the corridor use certificate must contain such information as the commission by rule requires. The commission shall process a petition for a corridor use certificate in an adjudicatory proceeding. The commission shall evaluate and render a decision on any petition for a corridor use certificate in accordance with subsection 1-D. A certificate issued under this subsection must specify the terms and conditions of use of the petitioned corridor. The commission shall establish by rule procedures to minimize

duplicative filing and review requirements for the corridor use certificate for any transmission line that requires a certificate of public convenience and necessity under section 3132. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 655, Pt. A, §2 (NEW) .]

6. Environmental review; consolidated environmental permit. Whenever a person proposes to develop or construct energy infrastructure within an energy infrastructure corridor, that person shall file with the department an application for a consolidated environmental permit. The department may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. A consolidated environmental permit issued by the department takes the place of any other permits or licenses that the department would otherwise require for the proposed project. [2007, c. 656, Pt. A, §3 (NEW) .]

B. The application for a consolidated environmental permit must contain such information as the department requires, including, but not limited to, all studies and documentation necessary to determine whether the proposed project is in compliance with the environmental laws of the State administered by the department. [2007, c. 656, Pt. A, §3 (NEW) .]

C. The applicant for a consolidated environmental permit shall pay a fee no greater than the total amount of fees that would be required if individual permits were obtained by the applicant rather than the consolidated environmental permit and reimburse the department for any additional costs of regulatory review, including expenses for outside peer review or other consultants or experts assisting the department in its review. Outside review of applications under this subsection is governed by Title 38, section 344-A, except that the Commissioner of Environmental Protection is not required to obtain the consent of the applicant to enter into an agreement with an outside reviewer or require that the costs of the outside review be reimbursed by the applicant. [2009, c. 655, Pt. A, §2 (AMD) .]

D. The department shall issue its decision on an application for a consolidated environmental permit within a timeframe specified by department guideline. The decision may specify approval, denial or approval in part and denial in part. A proposed project may not be undertaken if it is denied in whole or in part by the department. [2009, c. 655, Pt. A, §2 (AMD) .]

E. Upon issuance of a consolidated environmental permit, the department shall certify to the commission that the permit has been issued and whether the proposed project complies, in part or in whole, with the environmental laws of the State administered by the department and whether other agencies and programs that are required by law to issue separate approvals for some or all aspects of the project have taken final agency action on those matters requiring their separate approval. [2007, c. 656, Pt. A, §3 (NEW) .]

F. The department shall enforce the terms of the consolidated environmental permit. [2007, c. 656, Pt. A, §3 (NEW) .]

G. The terms of the consolidated environmental permit may require additional submissions by the permit holder, studies and approvals with conditions. [2007, c. 656, Pt. A, §3 (NEW) .]

[2009, c. 655, Pt. A, §2 (AMD) .]

6-A. Revenues. Except as otherwise provided by subsection 1-C or any other law, including the Constitution of Maine, revenues generated from the use of state-owned land and assets within energy infrastructure corridors must be deposited in the energy infrastructure benefits fund established in Title 5, section 282, subsection 9.

[2009, c. 655, Pt. A, §2 (NEW) .]

6-B. Revenue from energy infrastructure corridors. Notwithstanding subsection 6-A, 20% of the revenues generated from the use of statutory corridors designated under subsection 1-A, paragraphs A and B owned by the Department of Transportation within energy infrastructure corridors must be deposited into the Secondary Road Program Fund established in Title 23, section 1803-C and 80% of the revenues must be deposited into the energy infrastructure benefits fund established in Title 5, section 282, subsection 9.

[2013, c. 369, Pt. A, §1 (AMD) .]

7. Eminent domain. This subsection grants and limits certain rights of eminent domain with respect to energy infrastructure corridors.

A. The eminent domain authority of a transmission and distribution utility within an energy infrastructure corridor is governed by section 3136. [2007, c. 656, Pt. A, §3 (NEW) .]

B. Subject to approval by the commission, a person that is not a transmission and distribution utility that receives a certificate of public convenience and necessity under section 3132 or a corridor use certificate under subsection 5-A to develop energy infrastructure within an energy infrastructure corridor may take and hold by right of eminent domain lands and easements within that corridor necessary for the proper location of the energy infrastructure covered by the certificate of public convenience and necessity or the corridor use certificate in the same manner and under the same conditions as set forth in chapter 65. The right of eminent domain granted in this paragraph does not apply to:

- (1) Lands or easements located within 300 feet of an inhabited dwelling;
- (2) Lands or easements on or adjacent to any developed or undeveloped water power;
- (3) Lands or easements so closely paralleling existing wire lines of other utilities or existing energy transport pipelines that the proposed energy infrastructure would substantially interfere with service rendered over the existing lines or pipelines, except with the consent of the owners;
- (4) Lands or easements owned or used by railroad corporations, except as authorized pursuant to section 2311;
- (5) Lands or easements owned by the State or an agency or authority of the State; and
- (6) Transmission and distribution plant that is owned, controlled, operated or managed by a transmission and distribution utility on the effective date of this section. [2009, c. 655, Pt. A, §2 (AMD) .]

C. The commission may take and hold by right of eminent domain lands and easements within an energy infrastructure corridor in accordance with this paragraph, notwithstanding any transmission and distribution utility ownership of the lands or easements.

- (1) The commission may exercise the authority under this paragraph only in an adjudicatory proceeding upon a petition by the Office of the Public Advocate or the Executive Department, Governor's Energy Office demonstrating that such action is urgently needed to avoid substantial harm to electricity consumers regarding anticipated activity associated with an energy infrastructure corridor. A determination by the commission that the exercise of eminent domain under this paragraph is urgently needed to avoid substantial harm to electricity consumers regarding anticipated activity associated with an energy infrastructure corridor constitutes reviewable final agency action.
- (2) The amount of any lands or easements taken by the commission pursuant to this subsection may be no greater than is required to avoid the harm to electricity consumers identified under subparagraph (1).
- (3) The right of eminent domain granted in this paragraph does not apply to personal property, fixtures or improvements that constitute transmission and distribution plant or an energy transport pipeline.

(4) The commission may exercise the right of eminent domain for the purposes of this paragraph in the same manner and under the same conditions as set forth in chapter 65. For the purposes of the exercise of eminent domain authorized by this paragraph, the commission is both a person and the State.

(5) The commission is authorized to assess transmission and distribution utilities to the extent necessary to obtain sufficient funds to pay for lands and easements taken pursuant to this subsection.

(6) The commission, in an adjudicatory proceeding upon petition by the Office of the Public Advocate or the Executive Department, Governor's Energy Office, may transfer or convey to any person or state agency or authority lands and easements once acquired, except that a transmission and distribution utility or the owner of an energy transport pipeline whose lands or easements were taken pursuant to this paragraph must be given the first opportunity to acquire the lands or easements to the extent necessary or useful in the performance of its duties as a transmission and distribution utility or an owner of an energy transport pipeline.

(7) The commission shall report on the circumstances of any taking by eminent domain to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters during the next regular session of the Legislature following the acquisition of lands or easements by eminent domain. [2011, c. 655, Pt. MM, §16 (AMD); 2011, c. 655, Pt. MM, §26 (AFF) .]

[2011, c. 655, Pt. MM, §16 (AMD); 2011, c. 655, Pt. MM, §26 (AFF) .]

8. Utility service territory. Nothing in this section modifies existing restrictions on entities providing service within a public utility's service territory provided under chapter 21.

[2007, c. 656, Pt. A, §3 (NEW) .]

9. Rules.

[2009, c. 655, Pt. A, §2 (RP) .]

10. Repeal. This section is repealed July 30, 2017.

[2013, c. 360, §5 (AMD) .]

SECTION HISTORY

2007, c. 656, Pt. A, §3 (NEW). 2009, c. 655, Pt. A, §2 (AMD). 2011, c. 652, §13 (AMD). 2011, c. 652, §14 (AFF). 2011, c. 655, Pt. MM, §§14-16 (AMD). 2011, c. 655, Pt. MM, §26 (AFF). 2011, c. 682, §38 (REV). 2013, c. 360, §§1-5 (AMD). 2013, c. 369, Pt. A, §1 (AMD).

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STATUTE: 36 M.R.S. §6271, Sub-§2

AGENCY: (Municipality)

CONTACT PERSON: Garrett Corbin

CONTACT PERSON'S EMAIL ADDRESS: gcorbin@memun.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).
 - a. It is the understanding of the Maine Municipal Association that the Tax Deferral for Senior Citizens program is not utilized by very many municipalities. The records subject to the exception would be the applications for tax deferral themselves, and any related tax deferral documentation. Because of the seldom use, the exception is likely rarely cited in denying records production requests.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
 - a. MMA supports continuing this exception. The basis for the exception is similar to the basis for excepting other documents containing income information. Private citizens' income information is widely recognized to be private and not subject to Maine's Freedom of Access Act.
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?
 - a. The language is believed to be sufficiently clear.
4. Does your agency recommend changes to this exception?
 - a. No, not at this time.
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

- a. MMA believes, but is not certain, that the following municipalities may be utilizing this program: Cumberland, Kennebunkport, Monmouth, Scarborough, and Wells.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

STATUTE: 36 M.R.S. §6271, Sub-§2

AGENCY: Town of Wells

CONTACT PERSON: Jonathan Carter

CONTACT PERSON'S EMAIL ADDRESS: jcarter@wellstown.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 Town of Wells since 2011, when I became its Town Manager, hasn't had a qualified application in this program.**
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. **The Ordinance is still available to all taxpayers who qualify. See below link .**
<http://www.ecode360.com/15219840>
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? **Since this hasn't been utilize, difficult to answer.**
4. Does your agency recommend changes to this exception? **The ordinance is not utilize to know.**
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available. **Board of Selectmen.**
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

ref #70

Nale, Craig

From: Curtis Lunt <townmanager@monmouthme.org>
Sent: Wednesday, October 21, 2015 5:52 PM
To: Fouts, Henry
Subject: RE: Right to Know Advisory Committee - request for feedback

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Mr. Fouts,
We do not run a senior tax deferral program under 6271. We run a senior tax rebate program authorized under another statute. We appreciate the effort you are making.
Curtis Lunt
Town Manager

From: Fouts, Henry [<mailto:Henry.Fouts@legislature.maine.gov>]
Sent: Tuesday, October 20, 2015 2:06 PM
To: Curtis Lunt
Subject: Right to Know Advisory Committee - request for feedback

Hello, Mr. Lunt:

The Right to Know Advisory Committee ([link](#)) is undertaking its required review of existing public record exceptions under Maine's Freedom of Access Act. One of these public records exceptions is found at 36 M.R.S. §6271, Sub-§2 ([link](#)), relating to municipal records in connection with property tax deferral programs for senior citizens. I understand from that your town may administer this type of tax deferral program.

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. We are looking to receive any information that your municipality may want the Committee to consider, including questionnaire responses if possible, by **November 6, 2015**.

This public records exception will be reviewed at a meeting of a subcommittee of the Right to Know Advisory Committee at 10:00 am, on Friday, November 13, in room 438 of the State House (the Judiciary Committee room). You and any other municipal representatives are very welcome to attend.

In the meantime, if you have any questions please don't hesitate to get in touch.

Thanks very much, in advance.

Best regards,

Henry

Henry D. Fouts, Esq.
Legislative Analyst
Office of Policy and Legal Analysis
Maine State Legislature

Maine Revised Statutes

Title 36: TAXATION

Chapter 908-A: MUNICIPAL PROPERTY TAX DEFERRAL FOR SENIOR CITIZENS

§6271. MUNICIPAL AUTHORITY

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

A. "Eligible homestead" means the owner-occupied principal dwelling, either real or personal property, owned by a taxpayer and the land upon which it is located. If the dwelling is located in a multiunit building, the eligible homestead is the portion of the building actually used as the principal dwelling and its percentage of the value of the common elements and of the value of the tax lot upon which it is built. The percentage is the value of the dwelling compared to the total value of the building exclusive of the common elements, if any. [2009, c. 489, §5 (NEW).]

B. "Federal poverty level" means the nonfarm income official poverty line for a family of the size involved, as defined by the federal Office of Management and Budget and revised annually in accordance with the United States Omnibus Budget Reconciliation Act of 1981, Section 673, Subsection 2. [2009, c. 489, §5 (NEW).]

C. "Household income" has the meaning set out in section 6201, subsection 7. [2009, c. 489, §5 (NEW).]

D. "Program" means a tax deferral program adopted by a municipality pursuant to subsection 2. [2009, c. 489, §5 (NEW).]

E. "Tax-deferred property" means the property upon which taxes are deferred under this chapter. [2009, c. 489, §5 (NEW).]

F. "Taxes" or "property taxes" means ad valorem taxes, assessments, fees and charges entered on the assessment and tax roll. [2009, c. 489, §5 (NEW).]

G. "Taxpayer" means an individual who is responsible for payment of property taxes and has applied to participate or is currently participating in the program under this chapter. [2009, c. 489, §5 (NEW).]

[2009, c. 489, §5 (NEW) .]

2. Authority. The legislative body of a municipality may by ordinance adopt a property tax deferral program for senior citizens, referred to in this section as "the program." Upon application by a taxpayer, a municipality may defer property taxes on property if the following conditions are met:

A. The property is an eligible homestead where the taxpayer has resided for at least 10 years prior to application; [2009, c. 489, §5 (NEW).]

B. The taxpayer is an owner of the eligible homestead, is at least 70 years of age on April 1st of the first year of eligibility and occupies the eligible homestead; and [2009, c. 489, §5 (NEW).]

C. The household income of the taxpayer does not exceed 300% of the federal poverty level. [2009, c. 489, §5 (NEW).]

An application, information submitted in support of an application and files and communications relating to an application for deferral of taxes under the program are confidential. Hearings and proceedings held by a municipality on an application must be held in executive session unless otherwise requested by the applicant. Nothing in this paragraph applies to the recording of liens or lists under subsection 3 or any enforcement proceedings undertaken by the municipality pursuant to this chapter or other applicable law.

The municipality shall make available upon request the most recent list of tax-deferred properties of that municipality required to be filed under subsection 3. The municipality may publish and release as public information statistical summaries concerning the program as long as the release of the information does not jeopardize the confidentiality of individually identifiable information.

[2009, c. 489, §5 (NEW) .]

3. Effect of deferral. If property taxes are deferred under the program, the lien established on the eligible homestead under section 552 continues for the purpose of protecting the municipal interest in the tax-deferred property. Interest on the deferred taxes accrues at the rate of 0.5% above the otherwise applicable rate for delinquent taxes. In order to preserve the right to enforce the lien, the municipality shall record in the county registry of deeds a list of the tax-deferred properties of that municipality. The list must contain a description of each tax-deferred property as listed in the municipal valuation together with the name of the taxpayer listed on the valuation. The list must be updated annually to reflect the addition or deletion of tax-deferred properties, the amount of deferred taxes accrued for each property and payments received.

The recording of the tax-deferred properties under this subsection is notice that the municipality claims a lien against those properties in the amount of the deferred taxes plus interest together with any fees paid to the county registry of deeds in connection with the recording. For a property deleted from the list, the recording serves as notice of release or satisfaction of the lien, even though the amount of taxes, interest or fees is not listed.

[2009, c. 489, §5 (NEW) .]

4. Notice. The State Tax Assessor shall prepare a one-page notice of the effect of the deferral of property taxes under this section, of the right of the municipality to file a tax lien mortgage pursuant to chapter 105 and that the deferred taxes become due and payable as established in subsection 5. This notice must have a readability score, as determined by a recognized instrument for measuring adult literacy levels, equivalent to no higher than a 6th grade reading level. A municipality that adopts the program shall provide a copy of this notice to each taxpayer applying to the program at the time of application and shall also annually provide to each taxpayer in the program, in lieu of a property tax bill, a copy of this notice together with an accounting of taxes deferred and interest accrued.

[2009, c. 489, §5 (NEW) .]

5. Lien. When it is determined that one of the events set out in subsection 6 has occurred and that a property is no longer eligible for property tax deferral under this chapter, the municipality shall send notice by certified mail to the taxpayer, or the taxpayer's heirs or devisees, listing the total amount of deferred property taxes, including accrued interest and costs of all the years and establishing a due and payable date. For events listed in subsection 6, paragraphs A, B and C, payment is due within 45 days of the date of the notice. When the event listed in subsection 6, paragraph D occurs, the total amount of deferred taxes is due and payable 5 days before the date of removal of the property from the State. The municipality shall include in the notice a statement that the lien enforcement procedures pursuant to chapter 105, subchapter 9 apply.

If the deferred tax liability of a property has not been satisfied by the date established pursuant to this subsection, the municipality may enforce the lien according to procedures in chapter 105, subchapter 9.

Partial payments accepted during the 18-month redemption period provided for in section 943 may not interrupt or extend the redemption period or in any way affect foreclosure procedures.

[2009, c. 489, §5 (NEW) .]

6. Events requiring the payment of deferred tax and interest. Subject to subsection 7, all deferred taxes and accrued interest must be paid pursuant to subsection 5 when:

A. The taxpayer dies; [2009, c. 489, §5 (NEW) .]

B. Some person other than the taxpayer becomes the owner of the property; [2009, c. 489, §5 (NEW) .]

C. The tax-deferred property is no longer occupied by the taxpayer as a principal residence, except that this paragraph does not apply if the taxpayer is required to be absent from the eligible homestead for health reasons; or [2009, c. 489, §5 (NEW) .]

D. The tax-deferred property, a mobile home, is moved out of the State. [2009, c. 489, §5 (NEW) .]

[2009, c. 489, §5 (NEW) .]

7. Election to continue deferral. If one of the events listed in subsection 6 occurs, and the ownership of the eligible homestead is transferred to another member of the same household, the transferee may apply to the municipality for continuation of the deferral of taxes if the transferee meets the conditions in subsection 2, paragraphs B and C.

[2009, c. 489, §5 (NEW) .]

8. Repeal of program. A municipality that has adopted the program under this section may discontinue it through the same procedure by which the program was adopted; however, any taxes deferred under the program continue to be deferred under the conditions of the program on the date it was ended.

[2009, c. 489, §5 (NEW) .]

SECTION HISTORY

2009, c. 489, §5 (NEW) .

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STATUTE: 38 MRSA § 1310-B

AGENCY: Environmental Protection

CONTACT PERSON: George MacDonald

CONTACT PERSON'S EMAIL ADDRESS: George.macdonald@maine.gov

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. 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 statute was enacted in 1980 to maintain confidentiality of responses to a one-time survey of Maine businesses to determine how they handle hazardous waste. The survey was conducted by the department in response to a legislative directive to publish a study of hazardous waste management in the state (see PL 1979, c. 699, §§11 and 17) and informed the development of the Maine Hazardous Waste Management Rules [06-096 CMR 850 through 857]. In the two decades following completion of the required study, Section 4 of the statute has routinely been invoked by companies applying for permits.

In 2001, the statute was amended to apply to information submitted pursuant a new law [38 MRSA §1661-A] requiring manufacturers of mercury-added products to disclose the purpose and amount of mercury in the product. See PL 2001, c. 373, §§1 and 3. In the decade or so since that change was made, numerous pages of information on mercury-added products have been marked confidential by mercury product manufacturers pursuant to section 1310-B and segregated from the department's public records. During this time, we have received two requests for public access to the segregated information. In both cases, the department followed the protocol outlined in 38 MRSA § 1310-B(2) and the requested information or a summarized version of it was made available.

In 2004, section 1310-B was again amended, this time to apply to information submitted pursuant a new law [38 MRSA §1610] requiring manufacturers to disclose information on specified electronic devices. See PL 2003, c. 661, §§1 and 2. Since that law took effect, most electronics manufacturers have marked a portion of their annual data submittals as confidential and those pages have been segregated from our public files. No requests for access to the segregated electronics information have been received.

Section 1310-B has been subsequently amended to apply to information submitted to the department related to: mercury reduction plans [38 MRSA §585-B(6)], brominated flame retardants [38 MRSA §1310], and priority toxic chemical use [38 MRSA §§2324(3)].

The Department follows section 1310-B(2) confidentiality provisions and procedures regarding requests for confidentiality when information related to toxic or hazardous substances are submitted pursuant to department rules and laws. For example, Chapter 880

of department rules, in section 3(F), provides that information submitted pursuant the law on Toxic Chemicals in Children's Products [38 MRSA §§1691-1699-B]. In three instances, records submitted under this program and claimed confidential have been requested by third parties. In one case, the submitter waived their claim of confidentiality; both other cases are currently going through the process outlined in 1310-B(2).

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

The department supports continuation of this exception. The disclosure of information bearing on the use of and exposure to hazardous substances is fundamental to the department's mission to protect public health, safety and welfare. At the same, we recognize that the regulated community must be allowed to protect legitimate trade secrets and other confidential business information. Section 1310-B provides an effective vehicle to balance these interests. To effectively evaluate applications, it is important that parties requesting applications and other approvals continue to be required to disclose the information relied on to support their application under section (4).

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?

The custodian of confidential information submitted pursuant the mercury product disclosure law, 38 MRSA §1661-A, reports that the filing of information electronically rather than on paper means we often are in the possession of multiple copies of the information. This hinders the department's ability to keep the information confidential. Furthermore, the department has limited locked storage space for confidential records.

4. Does your agency recommend changes to this exception?

Not at this time.

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

Manufacturers of mercury products, products subject to electronic waste provisions and chemicals designated under the toxic chemicals in children's products program; mercury emission sources in Maine and facilities subject to priority chemical reporting, as well as environmental and public health advocacy groups, municipal solid waste facility operators.

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

Maine Revised Statutes

Title 38: WATERS AND NAVIGATION

Chapter 13: WASTE MANAGEMENT HEADING: PL 1987, c. 517, §4 (rpr)

§1310-B. CONFIDENTIAL INFORMATION

1. Public records. Except as provided in subsections 2 and 3, information obtained by the department under this chapter is a public record as provided by Title 1, chapter 13, subchapter I.

In addition to remedies provided under Title 1, chapter 13, subchapter I, the Superior Court may assess against the department reasonable attorney fees and other litigation costs reasonably incurred by an aggrieved person who prevails in the appeal of the department's denial for a request for information under subchapter V.

[1989, c. 794, §3 (AMD) .]

2. Hazardous waste information and information on mercury-added products and electronic devices and mercury reduction plans; chemicals. Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6-A, information relating to mercury reduction plans submitted to the department under section 585-B, subsection 6, information related to priority toxic chemicals submitted to the department under chapter 27 or information related to products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to the department under section 1609 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Conservation and Forestry and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.

[2011, c. 420, Pt. A, §35 (RPR); 2011, c. 657, Pt. W, §5 (REV) .]

3. Release of information. The commissioner shall not release the designated information prior to the expiration of the time allowed for the filing of an appeal or to the rendering of the decision on any appeal.

[1979, c. 699, §17 (NEW) .]

4. License and enforcement information. Information required by the department for the purpose of obtaining a permit, license, certification or other approval may not be designated or treated as designated information under subsection 2.

[1979, c. 699, §17 (NEW) .]

5. Rules. The board may adopt rules to carry out the purposes of this section. The rules shall be consistent with the provisions of Title 1, chapter 13, subchapter I.

[1981, c. 470, Pt. A, §173 (AMD) .]

6. Prohibition; penalties.

A. It is unlawful to disclose designated information to any person not authorized by this section.

[1979, c. 699, §17 (NEW).]

B. Any person who solicits, accepts or agrees to accept, or who promises, offers or gives any pecuniary benefit in return for the disclosure of designated information is guilty of a Class D crime and to the civil penalty of paragraph C. [1979, c. 699, §17 (NEW) .]

C. Any person who knowingly discloses designated information, knowing that he is not authorized to do so, is subject to a civil penalty of not more than \$5,000. [1979, c. 699, §17 (NEW) .]

D. In any action under this subsection, the court shall first declare that the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available.

[1979, c. 699, §17 (NEW) .]

[1979, c. 699, §17 (NEW) .]

SECTION HISTORY

1979, c. 699, §17 (NEW). 1981, c. 470, §§A172,A173 (AMD). 1985, c. 267, §2 (AMD). 1987, c. 517, §24 (AMD). 1989, c. 794, §3 (AMD). 1989, c. 890, §§A40,B233 (AMD). 2001, c. 373, §1 (AMD). 2003, c. 661, §1 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 561, §7 (AMD). 2005, c. 590, §3 (AMD). 2007, c. 466, Pt. A, §72 (AMD). 2009, c. 397, §1 (AMD). 2009, c. 579, Pt. A, §1 (AMD). 2009, c. 610, §1 (AMD). 2011, c. 420, Pt. A, §35 (AMD). 2011, c. 657, Pt. W, §5 (REV).

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STATUTE: 38 MRSA § 580-B, sub-§ 11

AGENCY: Dept. of Environmental Protection

CONTACT PERSON: Eric Kennedy

CONTACT PERSON'S EMAIL ADDRESS: eric.kennedy@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).

Response: *The DEP has experienced no issues in administering or applying this public records exception. The records subject to this exception include (1) auction bid and award information specific to any one account holder; (2) carbon dioxide allowance and carbon dioxide offset allowance account holdings; and (3) carbon dioxide allowance and carbon dioxide offset allowance transactions. This exception has applied since the program began in 2009 and is applied regularly during each quarterly auction held by the Regional Greenhouse Gas Initiative (RGGI) participating states. The DEP is not aware of any requests for production of the records, however, it is well publicized and understood that these records are protected and why they need to be protected.*

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

Response: *The DEP supports continuation of this public records exception in order to protect and maintain the integrity and fairness of the allowance auction process and of the allowance market in general.*

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?

Response: *The DEP is not aware of any problems that have occurred in the application of this exemption. It is not clear that the records described are intended to be confidential under the FOA statutes, making this records exception crucial to maintaining the continued integrity and proper functioning of the allowance auctions and*

associated market. The DEP believes the language of the exception is sufficiently clear in describing the records that are covered.

4. Does your agency recommend changes to this exception?

Response: *The DEP does not recommend any changes to this exception at this time.*

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

Response: *Stakeholders whose input should be sought and considered in the evaluation of this exception include the States that participate in RGGI as well as the entities that participate in the quarterly auctions used to distribute allowances under RGGI, including regulated sources, allowance brokers, and environmental groups that participate in the allowance market.*

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

Response: *The information protected by this public records exception, is protected not only by Maine, but by the eight other states in the northeast and mid-atlantic region that participate in RGGI, including New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Maryland, and Delaware.*

Maine Revised Statutes
Title 38: WATERS AND NAVIGATION
Chapter 3-B: REGIONAL GREENHOUSE GAS INITIATIVE

§580-B. CAP-AND-TRADE PROGRAM ESTABLISHED

A carbon dioxide cap-and-trade program, referred to in this section as "the program," is established in accordance with this section. [2007, c. 317, §17 (NEW) .]

1. Application. All carbon dioxide budget units are subject to the carbon dioxide cap-and-trade program, except that a carbon dioxide budget unit is exempt from the program if:

- A. It is incapable of producing enough energy to generate 25 megawatts or more of electrical output; [2007, c. 317, §17 (NEW) .]
- B. Its sale of electricity to any power distribution system is less than 10% of its gross electrical generation on an annual basis. In calculating this percentage, all electricity transmitted to the regional grid over the facilities of a transmission and distribution utility as a result of verifiable conservation and demand-side management initiatives or any emergency mandate of the regional transmission organization or lawful order of a governmental authority is not included in the calculation of annual sales; or [2007, c. 317, §17 (NEW) .]
- C. Fifty percent or more of its annual heat input comes from the combustion of fuels other than fossil fuels. [2007, c. 317, §17 (NEW) .]

[2007, c. 317, §17 (NEW) .]

2. Contingent on initiation of comparable programs. The carbon dioxide cap-and-trade program commences no earlier than January 1, 2009 and only when other states that are participating in the regional greenhouse gas initiative that produce a minimum of 35,000,000 tons of annual carbon dioxide emissions budget and participate in a wholesale electricity market administered and overseen by the regional transmission organization have initiated a comparable carbon dioxide cap-and-trade program. Nothing in this section precludes the department from initiating air emissions licensing of carbon dioxide budget sources or from participating in auctions for the sale of carbon dioxide allowances.

[2007, c. 608, §6 (AMD) .]

2-A. Condition for withdrawal. The State shall withdraw from the regional greenhouse gas initiative when a sufficient number of other independent system operator participating states have withdrawn such that the total carbon dioxide emissions budget for the calendar year 2009, as specified in the Memorandum of Understanding, of the remaining other independent system operator participating states is less than 35,000,000 tons. If the condition is met for withdrawal from the regional greenhouse gas initiative, the department shall:

- A. Immediately take all necessary steps to withdraw the State from all memoranda of understanding and contracts with states participating in the regional greenhouse gas initiative relating to the regional greenhouse gas initiative; and [2011, c. 277, §2 (NEW) .]
- B. Submit legislation to the Legislature to make the necessary changes in law to reflect the State's withdrawal from the regional greenhouse gas initiative. [2011, c. 277, §2 (NEW) .]

[2011, c. 277, §2 (NEW) .]

3. Base annual budget. Until January 1, 2014, the base annual carbon dioxide emissions budget is established at 5,948,902 tons of carbon dioxide. For the year 2014, the base annual carbon dioxide emissions budget is established at 3,277,250 tons of carbon dioxide. Beginning with the year 2015, the annual carbon dioxide emissions budget must decline by 2.5% each year through the year 2020.

[2013, c. 369, Pt. D, §4 (AMD) .]

3-A. Interim adjustments for banked allowances. The 2014 base annual carbon dioxide emissions budget of 3,277,250 tons of carbon dioxide and base annual budgets for 2015 to 2020 must be reduced by an amount equivalent to the quantity of banked allowances in excess of the quantity of allowances required for compliance at the end of 2013. The State's interim adjustments for banked allowances must be made in proportion to the State's share of the total annual carbon dioxide emissions budget for all states participating in the regional greenhouse gas initiative.

[2013, c. 369, Pt. D, §5 (NEW) .]

4. Rules implementing program. The department shall adopt rules to implement the program. Rules must be consistent with the model rule. The rules must include, but are not limited to:

A. Provisions for the establishment of a system for the annual assignment, sale and distribution of carbon dioxide emissions allowances consistent with the carbon dioxide emissions budget; [2007, c. 317, §17 (NEW) .]

B. Provisions for the establishment of carbon dioxide budget unit compliance obligation accounts; [2007, c. 317, §17 (NEW) .]

C. Provisions for the establishment of carbon dioxide offset project allowance categories and requirements; [2007, c. 317, §17 (NEW) .]

D. Provisions for the implementation of a licensing process for carbon dioxide budget units; [2007, c. 317, §17 (NEW) .]

E. Provisions for the establishment of a carbon dioxide emissions and carbon dioxide allowance tracking program; and [2007, c. 317, §17 (NEW) .]

F. Provisions to manage the carbon dioxide allowance auction developed in coordination with other states and jurisdictions in the regional greenhouse gas initiative and in a manner that is consistent with provisions adopted by those states and jurisdictions and, to the extent feasible, that:

(1) Ensure close monitoring of allowance transactions in a manner that guards against collusion and market manipulation;

(2) Ensure ongoing authentic price discovery and minimize price volatility;

(3) Facilitate open participation for bidding to all individuals or entities that meet the financial requirements jointly adopted by the participating states;

(4) Minimize administration and transaction costs and provide for an open and transparent user-friendly system;

(5) Provide that ongoing monitoring of market activity is undertaken by entities that have complete financial independence from any market participant;

(6) For purposes of civil and criminal enforcement authority under section 349, establish a contract term at the time an allowance is purchased at the regional auction for violations of market rules jointly adopted by the participating states and jurisdictions or through another method of ensuring state jurisdiction; and

(7) Guarantee that the Attorney General, the Public Utilities Commission and the commissioner have access to all auction information and information concerning allowance trading activity, including reports provided to the regional organization by a market monitor. [2007, c. 317, §17 (NEW) .]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2013, c. 369, Pt. D, §6 (AMD) .]

5. Enforcement. Violations of this chapter are enforceable, and penalties may be imposed in accordance with sections 347-A, 348 and 349.

[2007, c. 317, §17 (NEW) .]

6. Waiver of enforcement; suspension of compliance obligation. The commissioner has authority, under the exceptional circumstances set out in paragraphs A and B, to waive or suspend requirements of this chapter.

A. If the regional greenhouse gas initiative results in price levels for allowances that will result in immediate and irreparable harm to the operations of a carbon dioxide budget unit regulated under this chapter, including but not limited to the termination of business at that location, the commissioner may, in consultation with the Attorney General and the chair of the Public Utilities Commission, grant a temporary waiver of enforcement not to exceed one year for any violation by an individual regulated carbon dioxide budget unit of a requirement of this chapter. [2007, c. 317, §17 (NEW) .]

B. In cases of emergency events that are beyond the control of a carbon dioxide budget unit, the commissioner may temporarily suspend the compliance obligation under a particular permit until such time as the emergency no longer is in effect. [2007, c. 317, §17 (NEW) .]

The department shall adopt rules for the implementation of this subsection. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A and must be submitted to the Legislature by January 15, 2008 for review by the Joint Standing Committee on Natural Resources during the Second Regular Session of the 123rd Legislature.

[2007, c. 317, §17 (NEW) .]

7. Allocation of carbon dioxide emissions allowances. The department shall allocate 100% of the annual carbon dioxide emissions allowances for public benefit to produce funds for carbon reduction and energy conservation, as specified in Title 35-A, section 10109. Except as provided in subsections 7-A and 8, the department shall sell the carbon dioxide emissions allowances at public auction, in accordance with rules adopted under subsection 4. Revenue resulting from the sale of allowances must be deposited in the Regional Greenhouse Gas Initiative Trust Fund established under Title 35-A, section 10109.

[2009, c. 652, Pt. A, §60 (RPR) .]

7-A. Voluntary renewable energy market set-aside. The department shall set aside a portion of the State's annual carbon dioxide emissions budget in a voluntary renewable market set-aside account. The allowances from this account must be retired in an amount equal to the amount of carbon dioxide emissions reduced by the voluntary purchase of eligible renewable energy credits by persons in the State up to the amount held in the set-aside account. For purposes of this subsection, "eligible renewable energy credits" means renewable energy credits generated within the states that are participating in the regional greenhouse gas initiative.

Before February 1, 2010, the portion of the State's annual carbon dioxide emissions budget that is set aside in a voluntary renewable market set-aside account pursuant to this subsection may not exceed 2% of that budget. The department shall report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters by January 15, 2010 as to whether that 2% cap is appropriate. By January 31, 2010, the

Efficiency Maine Trust, established under Title 35-A, section 10103, in consultation with the department, shall establish the cap on the portion of the State's annual carbon dioxide emissions budget that is set aside in a set-aside account.

[2009, c. 372, Pt. B, §5 (AMD) .]

8. Combined heat and power incentive; set aside. The department shall set aside a portion of the State's annual carbon dioxide emissions allowances in an allowance account for carbon dioxide budget units that are combined heat and power units and are located at integrated manufacturing facilities. The department shall use these allowances for existing carbon dioxide budget units to reflect only that portion of each unit's emissions related to electricity and thermal power generated at a carbon dioxide budget unit that is a combined heat and power unit, whether it is a combined cycle system or other energy generation configuration of which the carbon dioxide budget unit is a part, that are not transmitted across the facilities of a transmission and distribution utility.

The department shall adopt rules setting forth the proper treatment of combined heat and power units. The rules may distinguish between combined heat and power units that commence operation after July 1, 2007 and those that commence operation before July 1, 2007. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 317, §17 (NEW) .]

9. Integrated manufacturing facilities. This subsection governs the treatment of integrated manufacturing facilities under this chapter.

A. The compliance obligation for a carbon dioxide budget unit at an integrated manufacturing facility is the carbon dioxide emissions associated with electricity resulting from the combustion of fossil fuels and transmitted over the facilities of a transmission and distribution utility. Absent any contractual arrangement to the contrary, the department shall presume that electricity from sources other than carbon dioxide budget units is transmitted first. The department shall adopt rules governing the compliance obligation for electricity generated at integrated manufacturing facilities and transmitted over the facilities of a transmission and distribution utility. [2007, c. 317, §17 (NEW) .]

B. The department shall establish the Integrated Manufacturing Facility Retirement Account to ensure proper accounting for carbon emissions from the generation of electricity and heat from fossil fuels at integrated manufacturing facilities. [2007, c. 317, §17 (NEW) .]

C. The purchase of electricity pursuant to a long-term electricity contract renders the purchaser an owner of a carbon dioxide budget unit for purposes of this chapter and obligates the owner to obtain the carbon dioxide emissions allowances applicable to the compliance obligation associated with the carbon dioxide budget unit. For purposes of this paragraph, "owner" means:

- (1) The holder of any portion of the legal or equitable title in a carbon dioxide budget unit;
- (2) The holder of a leasehold interest in a carbon dioxide budget unit, other than a passive lessor or a person who has an equitable interest through such lessor whose rental payments are not based, either directly or indirectly, upon the revenues or income from that unit; or
- (3) A purchaser of electricity from a carbon dioxide budget unit under a contractual arrangement for greater than a 3-year period.

If no person has title to the electricity under subparagraphs (1) to (3), the owner is any holder of any portion of the legal or equitable title to the output of a carbon dioxide budget unit or any holder of a leasehold interest in such a unit. [2007, c. 317, §17 (NEW) .]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 317, §17 (NEW) .]

10. Annual report. The department, the Public Utilities Commission and the trustees of the Efficiency Maine Trust established pursuant to Title 35-A, section 10103 shall submit a joint report to the joint standing committees of the Legislature having jurisdiction over natural resources matters and utilities and energy matters by March 15th annually. The report must assess and address:

- A. The reductions of greenhouse gas emissions from carbon dioxide budget units, conservation programs funded by the Regional Greenhouse Gas Initiative Trust Fund pursuant to Title 35-A, section 10109 and carbon dioxide emissions offset projects; [2009, c. 652, Pt. A, §61 (RPR) .]
- B. The improvements in overall carbon dioxide emissions and energy efficiency from sources that emit greenhouse gases including electrical generation and fossil fuel fired units; [2009, c. 652, Pt. A, §61 (RPR) .]
- C. The maximization of savings through systemic energy improvements statewide; [2009, c. 652, Pt. A, §61 (RPR) .]
- D. Research and support of new carbon dioxide offset allowance categories for development in the State; [2009, c. 652, Pt. A, §61 (RPR) .]
- E. Management and cost-effectiveness of the State's energy conservation and carbon reduction programs and efforts funded by the Regional Greenhouse Gas Initiative Trust Fund, established pursuant to Title 35-A, section 10109; [2009, c. 652, Pt. A, §61 (RPR) .]
- F. The extent to which funds from the Regional Greenhouse Gas Initiative Trust Fund, established pursuant to Title 35-A, section 10109, serve customers from all classes of the State's transmission and distribution utilities; and [2009, c. 652, Pt. A, §61 (RPR) .]
- G. The revenues and expenditures of the Regional Greenhouse Gas Initiative Trust Fund, established pursuant to Title 35-A, section 10109. [2009, c. 652, Pt. A, §61 (RPR) .]

The department, the Public Utilities Commission and the trustees of the Efficiency Maine Trust may include in the report any proposed changes to the program established under this chapter.

The joint standing committee of the Legislature having jurisdiction over natural resources matters may submit legislation relating to areas within the committee's jurisdiction in connection with the program. The joint standing committee of the Legislature having jurisdiction over utilities and energy matters may submit legislation relating to areas within the committee's jurisdiction in connection with the program.

[2013, c. 369, Pt. D, §7 (AMD) .]

11. Confidentiality. To protect the integrity of individual auctions administered under the carbon dioxide cap-and-trade program established in this section, the following records are confidential as provided in this subsection.

A. Except as provided in this paragraph, the following records are confidential for a period of 3 years beginning at the time of application, submission, award or record creation by the department or its agents:

- (1) Auction bid and award information specific to any one account holder;
- (2) Carbon dioxide allowance and carbon dioxide offset allowance account holdings; and
- (3) Carbon dioxide allowance and carbon dioxide offset allowance transactions.

This paragraph does not prohibit the release of carbon dioxide allowance and carbon dioxide offset allowance account holdings and transactions in an aggregated form that does not permit the identification of any person or entity.

The commissioner may release information described in subparagraph (1), (2) or (3) before the expiration of the 3-year period if the commissioner determines that confidentiality of that information is no longer required to protect the integrity of individual auctions administered under the carbon dioxide cap-and-trade program. [2009, c. 200, §11 (NEW) .]

B. The following records remain confidential and may not be disclosed except pursuant to a court order or upon the written consent of the account holder:

- (1) Proprietary information contained in documents required to be submitted to participate in an auction conducted under the carbon dioxide cap-and-trade program; and
- (2) Carbon dioxide allowance and carbon dioxide offset allowance transaction prices. This subparagraph does not prohibit the release of transaction prices calculated in an aggregated manner that does not permit the identification of any person or entity. [2009, c. 200, §11 (NEW) .]

Records containing any emission, offset or allowance tracking information submitted for the purpose of demonstrating compliance with the carbon dioxide cap-and-trade program and rules adopted to implement the program are public records subject to disclosure under Title 1, chapter 13.

[2009, c. 200, §11 (NEW) .]

SECTION HISTORY

2007, c. 317, §17 (NEW). 2007, c. 608, §§6, 7 (AMD). 2009, c. 200, §§7-11 (AMD). 2009, c. 372, Pt. B, §§4-6 (AMD). 2009, c. 652, Pt. A, §§60, 61 (AMD). 2011, c. 277, §2 (AMD). 2013, c. 369, Pt. D, §§4-7 (AMD) .

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