Second Annual Report
of the
RIGHT TO KNOW ADVISORY COMMITTEE

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Table of Contents

Page

Executive Summary i

I. Introduction 1

II. Advisory Committee Duties 2

III. Recent Court Decisions Related to Freedom of Access Issues 3

IV. Right to Know Advisory Committee Subcommittees 6

V. Actions Related to Right to Know Advisory Committee Recommendations Contained in First Annual Report 7

VI. Right to Know Advisory Committee Recommendations 9

VII. Future Plans 14

Appendices

A. Authorizing legislation, Public Law 2005, chapter 631
B. Membership list, Right to Know Advisory Committee
C. Responses to survey on Freedom of Access issues
D. Draft legislation: Proposed changes to mandatory training for elected officials
E. Recommendations concerning existing public records exceptions, Titles 1 - 9-B
F. Proposed revision of the Freedom of Access Laws, prepared by Christopher Parr
G. Draft legislation: Proposed changes to LD 1881, An Act to Improve Transparency and Accountability in Government

EXECUTIVE SUMMARY

This is the second annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's Freedom of Access laws. The 16 members are appointed by the Governor, the Chief Justice, the Attorney General, the President of the Senate and the Speaker of the House of Representatives. More information is available on the Advisory Committee's website: http://www.maine.gov/legis/opla/righttoknow.htm. The Office of Policy and Legal Analysis provides staffing to the Advisory Committee while the Legislature is not in session.

By law, the Advisory Committee must meet at least four times per year. During 2007, the Advisory Committee met four times: September 19, October 29, December 5 and December 19. The Advisory Committee has three subcommittees. This year, two subcommittees—the Education and Training Subcommittee and the Legislative Subcommittee---held meetings and made recommendations for the Advisory Committee's consideration.

The Advisory Committee serves as the central source and coordinator of information about Maine's Freedom of Access laws and the people's right to know. In carrying out this duty, the Advisory Committee believes it is useful to include in its annual reports a digest of the developments in case law relating to Maine's Freedom of Access laws. For the first time, this report includes a summary of pending Supreme Judicial Court cases and recent Supreme Judicial Court decisions.

The Advisory Committee makes the following recommendations:

- Continue to support the establishment of an ombudsman position
- Implement changes to Public Law 2007, chapter 349 to address difficulties identified with the practical application of the mandatory training law
- Continue, amend and repeal existing public records exceptions in Titles 1 - 9-B
- Amend LD 1881, An Act to Improve the Transparency and Accountability in Government (*not supported by one member*)
- Oppose LD 1878, An Act to Generate Savings by Changing Public Notice Requirements

In 2008, the Right to Know Advisory Committee will continue to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access and the recommendations of the Advisory Committee for existing public records exceptions in Titles 1 through 9-B. The Advisory Committee will meet on January 30, 2008 to plan its activities for the year. With staffing assistance from its legal extern during the upcoming legislative session, the Advisory Committee looks forward to a full year of activities and working with the Governor and Legislature to implement the recommendations contained in its second annual report.

I. INTRODUCTION

This is the second annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's Freedom of Access laws. Public Law 2005, chapter 631 is included as Appendix A. The first annual report of the Advisory Committee can be found on the Legislature's webpage at www.maine.gov/legis/opla/reportsnew.htm.

The Right to Know Advisory Committee has 16 members; 15 members are currently serving on the Advisory Committee and there is one vacancy. During 2007, Ralph Stetson resigned from the Advisory Committee for professional reasons. The Speaker of the House of Representatives has yet to appoint a replacement representing newspaper publishing interests. The chair of the Advisory Committee is elected annually by the members. The Advisory Committee members are:

Sen. Barry Hobbins Chair	*Senate member of Judiciary Committee, appointed by President of the Senate*
Rep. Deborah Simpson	*House member of Judiciary Committee, appointed by Speaker of the House*
Shenna Bellows	*Representing the public, appointed by the President of the Senate*
Karla Black	*Representing State Government interests, appointed by the Governor*
Robert Devlin	*Representing county or regional interests, appointed by the President of the Senate*
Sheriff Mark Dion	*Representing law enforcement interests, appointed by the President of the Senate*
Richard Flewelling	*Representing municipal interests, appointed by the Governor*
James T. Glessner	*Member of the Judicial Branch*
Suzanne Goucher	*Representing broadcasting interests, appointed by the Speaker of the House*
Mal Leary	*Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House*
Judy Meyer	*Representing the Press, appointed by the President of the Senate*

Maureen O'Brien	*Representing broadcasting interests, appointed by the President of the Senate*
Linda Pistner	*Attorney General's designee*
Harry Pringle	*Representing school interests, appointed by the Governor*
Chris Spruce	*Representing the public, appointed by the Speaker of the House*
Vacant	*Representing newspaper publishers, appointed by the Speaker of the House*

The complete membership list or the Advisory Committee, including contact information, is included as Appendix B.

By law, the Advisory Committee must meet at least four times per year. During 2007, the Advisory Committee met four times: September 19, October 29, December 5 and December 19. The Education and Training Subcommittee met on October 3 and November 27. The Legislative Subcommittee met on October 29, December 5, December 12 and December 19. All of the meetings were held in the Judiciary Committee Room of the State House in Augusta and open to the public. Each meeting was also accessible through the audio link on the Legislature's webpage. The Advisory Committee also established a webpage which can be found at www.maine.gov/legis/opla/righttoknow.htm. Agendas and summaries of the meetings are included on the webpage.

II. RIGHT TO KNOW ADVISORY COMMITTEE DUTIES

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

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

state of Maine's Freedom of Access laws and the public's access to public proceedings and records;

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

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

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

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

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the Freedom of Access laws.

III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES

By law, the Advisory Committee serves as the central source and coordinator of information about Maine's Freedom of Access laws and the people's right to know. In carrying out this duty, the Advisory Committee believes it is useful to include in its annual reports a digest of the developments in case law relating to Maine's Freedom of Access laws. The Advisory Committee has identified the following Law Court decisions (since 1999) and cases pending before the Law Court on Freedom of Access issues.

Pending Cases involving Maine's Freedom of Access laws

- Blethen Maine Newspapers, Inc. v. Portland School Committee: In July 2007, the Portland School Committee held an executive session to question the school superintendent and two other school officials about a $2.5 million shortfall. The Portland Press Herald asserted that the closed meeting was improper, because budget matters cannot be discussed in executive session, and sued to obtain notes taken in the meeting. In Augusta 2007, the Superior Court (Cole, J.) held that portions of the executive session held by the Portland School Committee were improper under the Freedom of Access laws. Justice Cole determined that notes of committee members are public records, and also declared public portions of the notes of school district Attorney Pringle. The School

Committee appealed to the Maine Supreme Judicial Court. Oral arguments were held November 28, 2007. No final ruling has been made as of the preparation of this report.

- James P. Moore v. Charles Abbott, Esq., Hon. Eugene Beaulieu and Marvin Glazier: The Attorney General created in 2004 an independent panel to investigate allegations that prosecutors and police misled the jury, altered notes, ignored alternative suspects and destroyed evidence concerning the 1988 murder of 12-year-old Sarah Cherry. A citizen, James Moore, asked for the records of the panel that supported its four-page report finding no misconduct. When no documents were forthcoming, Moore appealed the refusals to the Superior Court. Justice Crowley ruled that the panel did not fall under the Freedom of Access laws because it was not a government agency, was independent from government control and received no government funding. Moore appealed the ruling to the Supreme Judicial Court. The Maine Civil Liberties Union filed an amicus brief. No final ruling has been made as of the preparation of this report.

Maine Supreme Judicial Court Opinions involving Maine's Freedom of Access laws (since 2004)

- Citizens Communications Co. v. Attorney General; Societe Colas, S.A. et al. v. Department of the Attorney General, and Department of Environmental Protection, 2007 ME 114 (2007) (6-0 decision) Draft settlement documents exchanged between the City of Bangor, the Department of Environmental Protection and Citizens Communications Co., concerning response costs for clean-up of an uncontrolled hazardous waste site, were sought via a Freedom of Access law request by parties subject to third-party and fourth-party complaints. The Maine Supreme Judicial Court, sitting as the Law Court, refused to create a common law settlement negotiation privilege. The Court also ruled that draft consent decrees exchanged by adverse parties on opposite sides of the bargaining table are not protected by the attorney-client privilege.

- Paul A. Cyr v. Madawaska School District, 2007 ME 28 (2007) (4-3 decision) Although an investigative report prepared by an attorney hired to investigate a controversy initiated when a school district decided to not re-employ a probationary teacher is a public record under the Freedom of Access laws, the Maine Supreme Judicial Court ruled that portions of the report are confidential under Title 20-A, section 6101, subsection 2, Paragraph B, subparagraph (5) and may be redacted. Specifically, the information relating to an employee or applicant, or to the employee's immediate family, is confidential if it relates to the personal history, general character or conduct of the employee or any member of the employee's immediately family. The Court also held that the "Final Summary of Conclusions and Recommendations" section, which offers broad recommendations for the future conduct of school board, does not relate to the personal history, general character or conduct of any employee and is not confidential pursuant to Title 20-A, section 6201.

- South Portland Police Patrol Association et al. v. City of South Portland, 2006 ME 55 (2006) (5-0 decision) The report prepared by the city's director of human resources as part of an internal investigation into a compliant against the deputy police chief alleging

harassment, discrimination and a hostile work environment is a confidential record under Title 30-A, section 2702, subsection 1, paragraph B, subparagraph (5) and is not subject to public disclosure under the Freedom of Access laws, even if the report was not housed in the deputy police chief's personnel file.

- Winifred B. French Corp. et al. v. Pleasant Point Passamaquoddy Reservation, 2006 ME 53 (2006) (6-0 decision) The Freedom of Access laws do not apply to the Pleasant Point Passamaquoddy Reservation when the Tribal reservation is acting in its business capacity, rather than its municipal capacity, when it entered into lease of tribal land with the developer of a liquefied natural gas facility. The Supreme Judicial Court held that neither the documents concerning the proposed liquefied natural gas facility not meetings of the Reservation's governor and council need be open to the public.

- Clarence B. Dow et al. v. Caribou Chamber of Commerce, et al., 2005 ME 113 (7-0 decision) The Supreme Judicial Court ruled that the Caribou Chamber of Commerce and Industry is not subject to Maine's Freedom of Access laws because it is not a public agency. Individuals sought various documents from the Caribou Chamber of Commerce and Industry (CCCI), claiming that CCCI qualifies as a public agency or political subdivision. The Court applied a four-part test to determine whether CCCI qualified as a public entity under the Freedom of Access laws, and found that it did not: 1) whether the entity is performing a governmental function. Although administration of the development fund revolving loan, the promotion of tourism, job creation and retention and local business development, as well as making efforts to increase the city's tax base may be activities carried out by a governmental entity, the fact that the corporation renders services that benefit the city does not render that corporation a public entity; 2) whether the funding of the entity is governmental. At least 60 percent of CCCI's total revenue comes from city appropriations, but the city provides the funding on an annual basis only after considering CCCI's requests for funding equally with all other requests. CCCI does not have statutory funding and taxing authority, and the city is free to reduce or cease altogether the funding. The city could never become obligated to pay any debts incurred by CCCI; 3) the extent of governmental involvement or control. The Court found that the two ex officio members of the eleven-member board cannot control decisions of the board.; and 4) whether the entity was created by private or legislative action. CCCI was created by the private action of local individuals when two prior private entities, that also performed public functions, merged.

- Blethen Maine Newspapers, Inc. v. State of Maine et al., 2005 ME 56 (3+1 - 3 decision) A divided Supreme Judicial Court ordered the release of redacted Attorney General investigatory records relating to allegations of sexual abuse by eighteen now-deceased Roman Catholic priests. The Attorney General had responded to a Freedom of Access request for the records by asserting that disclosure would constitute an unwarranted invasion of personal privacy within the meaning of the Criminal History Record Information Act, Title 16, section 614. Three members of the Court and one concurring member agreed to the release, finding that the public interest in evaluating a comprehensive government investigation in response to an alleged pattern of conduct that

spanned several decades involving the sexual abuse of children by members of the clergy, and the records were the basis of the Attorney General's decision not to initiate criminal prosecutions, outweighed the privacy interests of the alleged victims, witnesses and deceased priests and their families.

- Medical Mutual Insurance Company of Maine et al. v. Bureau of Insurance et al., 2005 ME 12 (5-0 decision) Compensation information contained in an annual statement that insurer was required to file with the Superintendent of Insurance is public information. The Court held that the information is not designated confidential by statute under the Maine Business Corporation Act or any other statute, and is not within the scope of the privilege against discovery.

IV. RIGHT TO KNOW ADVISORY COMMITTEE SUBCOMMITTEES

Given the broad scope of the Advisory Committee's ongoing duties and responsibilities, the Advisory Committee created three subcommittees to organize and focus its work: 1) Education and Training; 2) Legislative; and 3) Compliance and Resources. Each of the subcommittees was charged with a specific duty as outlined in Title 1, section 411, subsection 6; all of the subcommittees agreed to include the authority to make recommendations for statutory changes as one of its charges as described in Title 1, section 411, subsection 6, paragraph G.

Education and Training Subcommittee. The Education and Training Subcommittee's focus is to serve as a central source and coordinator of information about Maine's Freedom of Access laws; to serve as a resource to support training and education about Maine's Freedom of Access laws; and to support the provision of information about public access to records and proceedings via the Internet. See Title 1, section 411, subsection 6, paragraphs B, C, and D. Judy Meyer is the chair the subcommittee, and the following serve as members: Karla Black, Richard Flewelling, Sheriff Mark Dion, Mal Leary Maureen O'Brien, Linda Pistner and Harry Pringle.

During 2007, the Education and Training Subcommittee met on two occasions. The subcommittee developed draft legislation to amend the law mandating training on Freedom of Access laws for elected officials, Public Law 2007, chapter 349. The recommendation of the subcommittee was adopted by the Advisory Committee. See discussion of Advisory Committee recommendations in Section VI.

Legislative Subcommittee. The Legislative Subcommittee's focus is to serve as an adviser to the Legislature when legislation affecting public access is proposed; to participate in the review and evaluation of public records exceptions, both existing and those proposed in new legislation; and to examine inconsistencies in statutory language and to propose clarifying standard language. See Title 1, section 411, subsection 6, paragraphs E, F and H. Christopher Spruce is the chair of the subcommittee and the following serve as members: Shenna Bellows, Karla Black, Suzanne Goucher, Mal Leary and Linda Pistner. Harry Pringle also participated in the subcommittee's review of LD 1881, An Act to Improve the Transparency and Accountability in Government, and in the review of existing public records exceptions.

During 2007, the Legislative Subcommittee had four meetings. The subcommittee reviewed the existing public records exceptions in Titles 1 through 9-B. The subcommittee made a recommendation to continue, amend or repeal each exception to the Advisory Committee. The subcommittee also reviewed pending legislation carried over by the Judiciary Committee, LD 1881, An Act to Improve the Transparency and Accountability in Government. The subcommittee proposed draft legislation to amend LD 1881 to the Advisory Committee. See discussion of Advisory Committee recommendations in Section VI.

Compliance and Resources Subcommittee. The Compliance and Resources Subcommittee's focus is to provide guidance in ensuring access to public records and public proceedings and to help establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws; and to review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public. See Title 1, section 411, subsection 6, paragraphs A and J. James T. Glessner is the chair of the subcommittee and the following serve as members: Shenna Bellows, Karla Black, Robert Devlin, Mal Leary and Linda Pistner.

The Compliance and Resources Subcommittee did not have any meetings in 2007.

V. ACTIONS RELATED TO RIGHT TO KNOW ADVISORY COMMITTEE RECOMMENDATIONS CONTAINED IN FIRST ANNUAL REPORT

The Right to Know Advisory Committee made several recommendations in its first annual report. The actions taken in 2007 as a result of those recommendations are summarized below.

Recommendation: ***Develop training and education materials on the Freedom of Access laws for legislators through the distribution of written materials at the 123rd Legislature's Pre-Legislative Conference and participation in the Committee Chairs and Leads Orientation in January 2007***

Action: With the permission of the Legislative Council, the Advisory Committee put together a written presentation for legislators introducing them to the Right to Know Advisory Committee and its purposes and providing a basic overview of Maine's Freedom of Access laws, especially as it applies to legislative proceedings. The written packet was distributed to all legislators during the 123rd Legislature's Pre-Legislative Conference, December 4th - 6th. The documents provided legislators with basic information about the importance of the Freedom of Access laws as well as their responsibility under the laws with regard to their constituents and the public in general. The packet included brief summaries of the Freedom of Access laws, the responsibilities of the Right to Know Advisory Committee and a list of the members, and a written copy of the Frequently Asked Questions and the corresponding answers that are found on Maine's exemplary Freedom of Access webpage: www.maine.gov/foaa. In addition, Sen. Hobbins, Rep. Simpson and Judy Meyer conducted an informal question and answer session on the Freedom of Access laws at the Committee Chairs and Leads Orientation on January 16, 2007.

Recommendation: ***Establish an internship with the University of Maine Law School to assist the Advisory Committee with the review of public records exceptions***

Action: The Advisory Committee's inquiry to the Law School last January was too late to attract interest among law students in an internship for the Spring 2007 Semester. However, the Advisory Committee resubmitted its internship/externship proposal to the University of Maine Law School in October 2007 for the Spring 2008 Semester. Right to Know Advisory Committee Staff and Linda Pistner, Chief Deputy Attorney General and Advisory Committee member, interviewed two applicants for the externship. Maryann Nowak, a second year law student at the University of Maine Law School, was selected as the Advisory Committee's extern during the spring semester, beginning January 16th. Externs are expected to devote 18 hours per week and will receive 6 hours of credit at the completion of the semester. The extern will work under the supervision of the Chief Deputy Attorney General, who currently serves as a member of the Right to Know Advisory Committee, in consultation with the Chair of the Advisory Committee. The Attorney General's Office will provide access to a computer, e-mail and telephone to the extern. Externs do not receive compensation.

The extern will have the opportunity to provide direct staffing services to the Advisory Committee as well as assisting the Advisory Committee in carrying out its duties during the legislative session. The extern may act as liaison between the Advisory Committee and the Joint Standing Committee on Judiciary, as well as other committees of the Legislature, and their staff. The extern may also act as liaison between the Advisory Committee and the Governor's Office, the designated FOA contact persons for state agencies and departments and organizations representing public officials. General responsibilities may include analyzing policy and legal issues for the Advisory Committee, drafting legislation, conducting research and preparing study reports related to Freedom of Access laws in Maine and other states.

Recommendation: ***Establish a Public Access Ombudsman position within the Attorney General's Office***

Action: Legislation to create an ombudsman position was included in LD 1822, An Act to Implement the Recommendations of the Right to Know Advisory Committee and submitted to the Joint Standing Committee on Judiciary in the First Regular Session of the 123rd Legislature. The ombudsman legislation was removed from LD 1822 and put into its own bill, LD 1923, An Act to Implement the Recommendations of the Right to Know Advisory Committee Creating the Public Access Ombudsman. LD 1923 was carried over to the Second Regular Session after being recommitted to the Judiciary Committee from the Special Appropriations Table. Funding for the half-time position in the Attorney General's Office (at a cost of approx. $40 K annually) was not available last session. LD 1923 will be considered again by the Judiciary Committee in January or February 2008.

Recommendation: ***Require mandatory training for certain "chief" elected officials regarding the Freedom of Access laws***

Action: The Advisory Committee's recommendation to require mandatory training on FOA issues for elected officials was adopted by the Legislature with some amendments. The law (Public Law 2007, chapter 349) requires that elected officials complete a mandatory training course beginning July 1, 2008 within 120 days of taking elected office. Those serving in elected office on 7/1/08 must complete training by 11/1/08. The Advisory Committee is required to approve the training course and maintain records of those elected officials who have completed the training. The Advisory Committee has proposed amendments to Public Law 2007, chapter 349 to address certain issues related to implementation and administration of the law. See discussion of Advisory Committee recommendations in Section VI.

Recommendation: ***Conduct a survey of state agencies, officials and the public to solicit feedback and comments on Freedom of Access issues***

Action: The Advisory Committee conducted its survey during January 2007. The Advisory Committee asked for input on any practical problems experienced with compliance with FOA laws, suggestions for areas of the FOA laws that needed to be clarified and suggestions for changes in the laws or for the development of best practices. There were 35 responses to the survey: 9 from state government, 2 from the public, 1 from the media and 23 from school administrators. Several of the respondents took advantage of the opportunity to respond anonymously. A chart outlining all of the responses to the survey is included as Appendix C. The Advisory Committee reviewed the responses and referred the suggestions for changes to the Freedom of Access laws to the Legislative Subcommittee for further discussion and action.

VI. RIGHT TO KNOW ADVISORY COMMITTEE RECOMMENDATIONS

❑ Continue to support the establishment of an ombudsman position

The Advisory Committee reiterates its support for LD 1923, An Act to Implement the Recommendations of the Right to Know Advisory Committee Creating the Public Access Ombudsman, carried over by the Judiciary Committee. The Advisory Committee unanimously endorses the establishment of a Public Access Ombudsman, a funded half-time position within the Office of the Attorney General. The Advisory Committee believes the ombudsman is needed to complement the work of the Advisory Committee and to assist the Advisory Committee in carrying out its duties. The Ombudsman will educate and assist state agencies, local governments and the public with regard to understanding Maine's Freedom of Access laws. The Advisory Committee supports the position as part of the State budget (estimated between 40K and 60K annually). In the long run, the Ombudsman will lead to greater awareness and compliance with the Freedom of Access laws and generate greater efficiencies and cost savings for state agencies asked to respond to requests for access to public records and proceedings.

❑ Implement changes to Public Law 2007, chapter 349 to address difficulties identified with the practical application of the mandatory training law

The Advisory Committee is proposing changes to PL 2007, chapter 349 that will address the difficulties identified with the practical application of the mandatory training law as first enacted. Proposed draft legislation is included as Appendix D.

The Advisory Committee's proposed draft makes the following changes:

- The draft amends the training requirements to establish minimum content requirements for the training programs. The language specifically states that a thorough review of the information contained under the Frequently Asked Questions heading on the State's Freedom of Access law website meets the minimum requirements. A training course provided by other organizations is also satisfactory if it contains all the information on the State's Freedom of Access law website. The original bill directed the Right to Know Advisory Committee to establish standards and approve training programs. The draft deletes the role of the Advisory Committee in establishing standards and approving courses.

- The draft addresses the certification of completion for an elected official who completes the required training. The original law required the elected official to send notice of the completion to the Advisory Committee. The draft requires the elected official to make a written record of the completion information and either keep it or file it with the public entity to which that official was elected. The completion record is a public record. The Advisory Committee is directed to recommend to the Legislature a process for collecting the completion data and making it available to the public.

- The draft addresses the application of the mandatory training requirement to elected officials. Current law applies beginning July 1, 2008. The draft revises the application to legislators to begin for legislators elected after November 1, 2008. This avoids the unnecessary training requirement applying to legislators on July 1, 2008, but who are not reelected the following November. The draft also specifically spells out the elected officials who are subject to the training, with a general description of those who, as part of the duties of their office, exercise executive or legislative powers as elected officials of a regional or other political subdivision.

❑ Continue, amend and repeal existing public records exceptions in Titles 1-9-B

As required by law, the Advisory Committee reviewed the existing public records exceptions identified in Title 1 through Title 9-B. The Advisory Committee's recommendations are summarized below. Further summary and explanation of the Advisory Committee's recommendations, including proposed statutory changes, descriptions of objections and issues identified for review by the Judiciary Committee, are included in Appendix E.

The Advisory Committee recommends that the following public records exceptions be continued without change.

- ♦ 1 MRSA § 402, sub-§ 3, ¶ A (records designated confidential by statute)

- 1 MRSA § 402, sub-§ 3, ¶ D (collective bargaining information)
- 1 MRSA § 402, sub-§ 3, ¶ E (records of faculty and administrative committees)
- 1 MRSA § 402, sub-§ 3, ¶ F (confidential records in possession of associations)
- 1 MRSA § 402, sub-§ 3, ¶ H (municipal ambulance and emergency medical services)
- 1 MRSA § 402, sub-§ 3, ¶ I (juvenile records of municipal fire departments)
- 1 MRSA § 402, sub-§ 3, ¶ K (personal information concerning minors held by municipal recreation departments)
- 1 MRSA § 402, sub-§ 3, ¶ L (security plans, procedures and risk assessments prepared to prevent to prepare for acts of terrorism)
- 1 MRSA § 402, sub-§ 3, ¶ M (records relating to information technology infrastructure and systems)
- 1 MRSA § 538, sub-§ 3 (InforME subscriber information)
- 1 MRSA § 1013, sub-§§ 2 and 3 (Commission on Governmental Ethics and Election Practices)
- 3 MRSA § 156 (prehearing conference materials for confirmation of gubernatorial appointments) *divided vote at subcommittee level of 3-2*
- 3 MRSA § 159 (prehearing conference materials for confirmation of gubernatorial appointments) *divided vote at subcommittee level of 3-2*
- 5 MRSA § 90-B, sub-§7 (Address Confidentiality Program)
- 5 MRSA § 95, sub-§ 11 (state archives patrons)
- 5 MRSA § 200-H (AG Maine Elder Death Analysis Review Team *divided vote at subcommittee level of 4-1*
- 5 MRSA § 211, sub-§ 4 (AG investigations of unfair trade practices)
- 5 MRSA § 244-C, sub-§§ 2 and 3 (working papers of State Auditor) *divided vote at subcommittee level of 4-1*
- 5 MRSA § 244-D, sub-§ 1 (identity of complainants to State auditor)
- 5 MRSA § 791 (confidential business information relating to code of fair practices)
- 5 MRSA § 957, sub-§ 4 (State Employee Assistance Program client records)
- 5 MRSA § 1743, sub-§ 5 (evaluations of proposals for public improvements construction projects)
- 5 MRSA § 1747, sub-§ 3 (prebid qualifications for public improvements construction projects)
- 5 MRSA §1976, sub-§ 1 (records created or stored on State Government computer system)
- 5 MRSA § 3360-D, sub-§ 4(Victims' Compensation Fund applications and awards)
- 5 MRSA § 4572, sub-§ 2 (medical information or history of applicant in employment discrimination complaint)
- 5 MRSA § 4573, sub-§ 2 (records of medical or physical disability)
- 5 MRSA § 13119-A (economic and community development activities of DECD)
- 5 MRSA § 13120-M, sub-§ 2 (Maine Rural Development Authority activities)
- 5 MRSA § 15302-A, sub-§ 2 (Maine Technology Institute activities)
- 5 MRSA § 17057, sub-§ 1 (Maine State Retirement System information)
- 5 MRSA § 17057, sub-§ 3 (home contact information of MSRS members)
- 5 MRSA § 19203 (disclosure of HIV test results)

- 5 MRSA § 19203-D, sub-§ 1 (disclosure of medical records concerning HIV status)
- 5 MRSA § 19507 (records of DHHS Office of Advocacy)
- 5 MRSA § 20047, sub-§ 1 (DHHS Office of Substance Abuse patient records)
- 7 MRSA § 20,sub-§ 1 (information reported to Department of Agriculture)
- 7 MRSA § 306-A, sub-§ (agricultural development grant program and market research information)
- 7 MRSA § 951-A (minimum standards for planting potatoes)
- 7 MRSA § 2103-A, sub-§ 4 (patented and nonreleased potato varieties)
- 7 MRSA § 2226, sub-§ 1 (ginseng license applications and locations of ginseng plantings)
- 8 MRSA § 416-A, sub§ 9 (personal records of Tri-State Lotto prize winners)
- 8 MRSA § 1006, sub-§ 1 (information or records required by Gambling Control Board)
- 8 MRSA § 1006, sub-§ 3 (central site monitoring system operator records of Gambling Control Board)
- 8 MRSA § 1006, sub-§ 4 (financial, statistical and surveillance information held by Gambling Control Board)
- 8 MRSA § 1052 (reports concerning noncompliance or violations held by Gambling Control Board)
- 8 MRSA § 1052, sub-§ 3 (complaints and investigative records of Gambling Control Board)
- 9-A MRSA § 2-304, sub-§ 2 (reports of supervised lenders)
- 9-A MRSA § 6-116 (records of Office of Consumer Credit Regulation)
- 9-A MRSA § 6-117 (confidential information shared by other state or federal regulatory agencies)
- 9-B MRSA § 226, sub-§ 1 (nondisclosure of information held by Bureau of Financial Institutions)
- 9-B MRSA § 252, sub§ 3-A (confidential information shared by other state or federal regulatory agencies)

The Advisory Committee recommends that the following public records exceptions be continued without change, but with objections raised by a subcommittee member.

- 1 MRSA § 402, sub-§ 3, ¶ C (legislative records, working papers and drafts)
- 1 MRSA § 402, sub-§ 3, ¶ G (positions on legislation and insurance materials in possession of associations of governmental entities)
- 1 MRSA § 402, sub-§ 3, ¶ J (working papers of advisory organizations during existence)
- 1 MRSA 402, sub-§ 3-A (criminal justice agency records relating to prisoner, adult probationer or parolee identities and addresses)
- 4 MRSA § 1701, sub-§ 7 (working papers relating to Judicial Compensation Commission)
- 5 MRSA § 3305-B, sub-§ 1 (State Planning Office records relating to energy policy)

The Advisory Committee recommended statutory changes to the following public records exceptions.

- 1 MRSA §402, sub-§3, ¶O (personal contact information)
- 3 MRSA §997 (OPEGA)
- 4 MRSA § 17, sub-§ 3 (State Court Administrator complaint and investigate files)
- 4 MRSA §809 (AG investigations of unauthorized practice of law)
- 5 MRSA §7070 (state employee and applicant records)
- 5 MRSA §15321 (Maine Technology Centers)
- 7 MRSA §607 (Board of Pesticides Control - minority recommends amendment)
- 7 MRSA §2992-A (Maine Dairy Promotion Board)
- 7 MRSA §2998-B (Maine Dairy and Nutrition Council)

The Advisory Committee recommends that the Judiciary Committee conduct further review of the following public records exceptions.

- 1 MRSA §402, sub-§3, ¶B (general exception for privileged records)
- 1 MRSA §402, sub-§3, ¶N (Social Security numbers)
- 5 MRSA §1545 (outstanding unpaid checks issued by the State)
- 5 MRSA §1976, sub-§ 2 (records created or stored on State Government computer system)
- 5 MRSA §22009 (Baxter Compensation Authority claimant information)
- 7 MRSA §607 (Board of Pesticides Control, test information)
- 7 MRSA §1052 (genetically engineered food and seeds)
- 7 MRSA §4204 and §4205 (nutrient management plans)

❑ Review Freedom of Access laws revision proposed by Christopher Parr

Christopher Parr, Staff Attorney for the State Police within the Department of Public Safety, prepared a revision of the Freedom of Access laws and submitted the revision as part of the Department of Public Safety's response to the survey conducted earlier in 2007. See discussion of Advisory Committee recommendations contained in first annual report in Section V, and Appendix C. The proposed changes have been suggested in an effort to clarify the Freedom of Access laws and improve the understanding and application of these laws by state agencies and other government entities. The Advisory Committee recommends that the Joint Standing Committee on Judiciary review the proposed revision and consider whether these statutory changes have merit. While the Advisory Committee does not make any specific recommendation that the amendments be adopted, the Advisory Committee does believe that the proposed amendments deserve careful consideration by the Judiciary Committee. Mr. Parr's proposed revision is included as Appendix F.

❑ Amend LD 1881, An Act to Improve the Transparency and Accountability in Government (*not supported by one member*)

The Advisory Committee spent considerable time discussing the provisions included in LD 1881, An Act to Improve the Transparency and Accountability in Government. The Advisory

Committee does recognize that the current law lacks a specific requirement for a response to a records request. The Advisory Committee reviewed a discussion draft prepared for the Legislative Subcommittee but was concerned that the proposed changes would create more complexity than necessary. Instead of the discussion draft modeled on the provisions in LD 1881, the Advisory Committee prefers proposed language to clarify Title 1, section 408 that was presented to the Advisory Committee by Christopher Parr, Staff Attorney for the Maine State Police in the Department of Public Safety. The Advisory Committee recommends that LD 1881 be amended to clarify Title 1, section 408 to require an agency or public official to acknowledge receipt of a public records request within a reasonable period of time and allow an agency or official to request clarification of a request to facilitate the response. Proposed draft legislation is included as Appendix G.

The Advisory Committee voted 10-1 in favor of the recommendation. Shenna Bellows objected and stated that she would support LD 1881 as drafted.

❑ **Oppose LD 1878, An Act to Generate Savings by Changing Public Notice Requirements**

LD 1878, An Act to Generate Savings by Changing Public Notice Requirements, has been carried over by the State and Local Government Committee and will be considered during the Second Regular Session of the 123rd Legislature. As drafted, LD 1878 would phase out the statutory requirement that government entities publish legal or public notices in a newspaper and require instead that the notices be published on an accessible website. The Advisory Committee opposes any change in law that would restrict the public's notice of government meetings and activities because it would run counter to the principles of open government and public access underlying Maine's Freedom of Access laws. The Advisory Committee recognizes that the bill may have been introduced with good intentions, but feels strongly that the public interest in providing accessible notices about public proceedings to all Maine residents outweighs any interest in financial savings. The Advisory Committee will submit a letter in opposition to LD 1878 to the State and Local Government Committee.

VII. FUTURE PLANS

In 2008, the Right to Know Advisory Committee will continue to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access and the recommendations of the Advisory Committee for existing public records exceptions in Titles 1 through 9-B. The Advisory Committee will meet on January 30, 2008 to plan its activities for the year. With staffing assistance from its legal extern during the upcoming legislative session, the Advisory Committee looks forward to a full year of activities and working with the Governor and Legislature to implement the recommendations contained in its second annual report.

APPENDIX A

Authorizing Legislation, Public Law 2005, Chapter 631

CHAPTER 631

H.P. 1503 - L.D. 2111

An Act To Implement the Recommendations of the Freedom of Access Advisory Committee

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

Sec. 1. 1 MRSA §411 is enacted to read:

§411. Right To Know Advisory Committee

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Duties and powers. The advisory committee:

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

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

C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as who to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws;

D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics;

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

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

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

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

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

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

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

7. Outside funding for advisory committee activities. The advisory committee may seek outside funds to fund the cost of public hearings, conferences, workshops, other meetings, other activities of the advisory committee and educational and training materials. Contributions to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution shall certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the advisory committee's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory committee.

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

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

10. Report. By January 15, 2007 and at least annually thereafter, the advisory committee shall report to the Governor, the Legislative Council, the joint standing committee of

the Legislature having jurisdiction over judiciary matters and the Chief Justice of the Supreme Judicial Court about the state of the freedom of access laws and the public's access to public proceedings and records.

Sec. 2. 1 MRSA §431, sub-§3 is enacted to read:

3. Advisory committee. "Advisory committee" means the Right To Know Advisory Committee established in Title 5, section 12004-J, subsection 14 and described in section 411.

Sec. 3. 1 MRSA §432, as enacted by PL 2003, c. 709, §3, is amended to read:

§432. Exceptions to public records; review

1. Recommendations. During the second regular session of each Legislature, the review committee ~~shall~~ may report out legislation containing its recommendations concerning the repeal, modification and continuation of public records exceptions and any recommendations concerning the exception review process. Before reporting out legislation, the review committee shall notify the appropriate committees of jurisdiction concerning public hearings and work sessions and shall allow members of the appropriate committees of jurisdiction to participate in work sessions.

2. Process of evaluation. According to the schedule in section ~~434~~ 433, the ~~review~~ advisory committee shall evaluate each public records exception that is scheduled for review that biennium. This section does not prohibit the evaluation of a public record exception by either the advisory committee or the review committee at a time other than that listed in section 433. The ~~review committee shall use the~~ following criteria ~~to determine~~ apply in determining whether each exception scheduled for review should be repealed, modified or remain unchanged:

A. Whether a record protected by the exception still needs to be collected and maintained;

B. The value to the agency or official or to the public in maintaining a record protected by the exception;

C. Whether federal law requires a record to be confidential;

D. Whether the exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;

E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;

F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;

H. Whether the exception is as narrowly tailored as possible; and

I. Any other criteria that assist the review committee in determining the value of the exception as compared to the public's interest in the record protected by the exception.

2-A. Accountability review of agency or official. In evaluating each public records exception, the advisory committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

2-B. Recommendations to review committee. The advisory committee shall report its recommendations under this section to the review committee no later than the convening of the second regular session of each Legislature.

3. Assistance from committees of jurisdiction. The ~~review~~ advisory committee ~~shall~~ may seek assistance in evaluating public records exceptions from the joint standing committees of the Legislature having jurisdiction over the subject matter related to the exceptions being reviewed. The ~~review~~ advisory committee may hold ~~joint~~ public hearings ~~with~~ after notice to the appropriate committees of jurisdiction. ~~The review committee shall notify the appropriate committees of jurisdiction concerning work sessions and shall allow members of the appropriate committees of jurisdiction to participate in work sessions.~~

Sec. 4. 1 MRSA §433, sub-§1, as enacted by PL 2003, c. 709, §3, is repealed.

Sec. 5. 1 MRSA §433, sub-§§2 and 3 are enacted to read:

2. Scheduling guidelines. The advisory committee shall use the following list as a guideline for scheduling reviews of public records exceptions.

A. Exceptions codified in the following Titles are scheduled for review in 2008:

(1) Title 1;

(2) Title 2;

(3) Title 3;

(4) Title 4;

(5) Title 5;

(6) Title 6;

(7) Title 7;

(8) Title 8;

(9) Title 9-A; and

(10) Title 9-B.

B. Exceptions codified in the following Titles are scheduled for review in 2010:

(1) Title 10;

(2) Title 11;

(3) Title 12;

(4) Title 13;

(5) Title 13-B;

(6) Title 13-C;

(7) Title 14;

(8) Title 15;

(9) Title 16;

(10) Title 17;

(11) Title 17-A;

(12) Title 18-A;

(13) Title 18-B;

(14) Title 19-A;

(15) Title 20-A; and

(16) Title 21-A.

C. Exceptions codified in the following Titles are scheduled for review in 2012:

(1) Title 22;

(2) Title 23;

(3) Title 24;

(4) Title 24-A; and

(5) Title 25.

D. Exceptions codified in the following Titles are scheduled for review in 2014:

(1) Title 26;

(2) Title 27;

(3) Title 28-A;

(4) Title 29-A;

(5) Title 30;

(6) Title 30-A;

(7) Title 31;

(8) Title 32;

(9) Title 33;

(10) Title 34-A;

(11) Title 34-B;

(12) Title 35-A;

(13) Title 36;

(14) Title 37-B;

(15) Title 38; and

(16) Title 39-A.

3. Scheduling changes. The advisory committee may make adjustments to the scheduling guidelines provided in subsection 2 as it determines appropriate and shall notify the review committee of such adjustments.

Sec. 6. 1 MRSA §434, sub-§2-A are enacted to read:

2-A. Accountability review of agency or official. In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

Sec. 7. 5 MRSA §12004-J, sub-§14 is enacted to read:

14. Freedom of Access Advisory	Right To Know and Ex-Committee	Legislative Per Diem penses for Legislators and Expenses Only for Certain Members	1 MRSA §411

Sec. 8. Appropriations and allocations. The following appropriations and allocations are made.

LEGISLATURE

Legislature 0081

Initiative: Provides a base allocation of $500 in fiscal year 2006-07 in the event outside funding is received to fund certain expenses of the Right To Know Advisory Committee.

OTHER SPECIAL REVENUE FUNDS	**2005-06**	**2006-07**
All Other	$0	$500
OTHER SPECIAL REVENUE FUNDS TOTAL	$0	$500

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APPENDIX B

Membership List, Right to Know Advisory Committee

Right to Know Advisory Committee
P.L. 2005, chapter 631

Appointments by the Governor

Karla Black
161 Pleasant Street
Richmond, ME 04357

Representing State Government Interests

Richard Flewelling
P.O. Box 244
Freeport, ME 04102

Representing Municipal Interests

Harry Pringle
44 Neal Street
Portland, ME 04102

Representing School Interests

Appointments by the President

Sen. Barry J. Hobbins
110 Main Street
Suite 1508
Saco, ME 04072
(207) 282-5985

Senate Member of the Judiciary Committee

Shenna Bellows
Maine Civil Liberties Union
401 Cumberland Ave.
Portland, ME 04101
(207) 775-5444

Representing the Public

Robert Devlin
Kennebec County Administrator
125 State Street
Augusta, ME 04330
(207) 622-0971

Representing County or Regional Interests

Mark Dion
Cumberland County Sheriff's Department
36 County Way
Portland, ME 04102
(207) 774-1444

Representing Law Enforcement Interests

Judy Meyer
Lewiston Sun Journal
104 Park Street
Lewiston, ME 04243-4400
(207) 689-2902

Representing the Press

Maureen O'Brien
WCSH 6
1 Congress Square
Portland, ME 04101
(207) 828-6666

Representing Broadcasting Interests

Appointments by the Speaker of the House

Rep. Deborah L. Simpson
551 Turner Street
Auburn, ME 04210
(207) 777-1379

House Member of the Judiciary Committee

Suzanne Goucher
Maine Association of Broadcasters
69 Sewell Street, Suite 2
Augusta, ME 04330
(207) 623-3870

Representing Broadcasting Interests

Mal Leary
Capitol News Service
17 Pike Street
Augusta, ME 04330
(207) 621-2384

Representing a Statewide Coalition of Advocates of Freedom of Access

Chris Spruce
c/o Island Housing Trust
P.O. Box 851
Mount Desert, ME 04660
(207) 667-3186

Representing the Public

Attorney General

Linda Pistner
Chief Deputy Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800

Designee

Chief Justice

James T. Glessner
State Court Administrator
P.O. Box 4820
Portland, ME 04112
(207) 822-0792

Member of the Judicial Branch

Staff:

Peggy Reinsch & Colleen McCarthy Reid
Office of Policy and Legal Analysis
(207) 287-1670

APPENDIX C

Responses to Survey on Freedom of Access Issues

Right to Know Advisory Committee
January 2007 Survey Results: Maine's Freedom of Access Laws

Respondent	Practical problems or issues with compliance with request for public records?	Are there provisions of FOA laws that need clarification?	Any suggestions or recommendations for changes in statute or development of best practices?	Additional comments
Department of Education #1	▪ still confusion over 5 day rule---public mistakenly believes agency must turn over documents immediately or w/in 5 days ▪ confusion over whether "access" is enough or if agency obligated to send copies of documents at public's request ▪ does law give public access to databases or is agency obligated to consolidate data from databases	No	Address issues raised in column #1 through amendments to statute or through recommendations for best practices	None
Department of Education #2	Concern raised that draft complaint investigative reports related to Individuals with Disabilities Act (IDEA) are public records	Add exception for draft complaint investigative reports under IDEA in 1 MRSA § 402, sub-§ 3; final report remains a public record	Exception needed because draft investigative reports should be considered internal working documents and often have multiple provisions	Willing to discuss issue further

Right to Know Advisory Committee
January 2007 Survey Results: Maine's Freedom of Access Laws

Respondent	Practical problems or issues with compliance with request for public records?	Are there provisions of FOA laws that need clarification?	Any suggestions or recommendations for changes in statute or development of best practices?	Additional comments
Department of Public Safety	See additional comments	See additional comments	See additional comments	Suggest amendments to certain FOA sections (§§ 401-410) that include: ■ adding definitions of terms "agency" and "official" ■ allow agencies to request written clarification about the public record being requested ■ require agency to acknowledge receipt of FOA request ■ clarify that requester may request record in a paper, electronic or magnetic medium and require copy of record in that medium if certain criteria are met ■ clarify that a reasonable fee may be charged for cost of copying or printing as well as for cost of data

Right to Know Advisory Committee
January 2007 Survey Results: Maine's Freedom of Access Laws

Respondent	Practical problems or issues with compliance with request for public records?	Are there provisions of FOA laws that need clarification?	Any suggestions or recommendations for changes in statute or development of best practices?	Additional comments
				storage supplies if electronic copies are provided ■ clarify that fee may be charged of not more than $10 per hour for searching, retrieving, compiling and *reviewing* requests ■ clarify that requester may be charged for costs of mailing ■ require requester to notify if response to request should continue if costs will exceed $20 ■ allow agency or official to require partial payment up front in certain circumstances ■ require agency or official to communicate a denial within 5 days after

Right to Know Advisory Committee
January 2007 Survey Results: Maine's Freedom of Access Laws

Respondent	Practical problems or issues with compliance with request for public records?	Are there provisions of FOA laws that need clarification?	Any suggestions or recommendations for changes in statute or development of best practices?	Additional comments
				final determination of denial rather than within 5 days of request
Maine Human Rights Commission	FOA requires MHRC to disclose contents of investigative files to parties in a proceeding at any time---provision in Maine Human Right Act preventing disclosure of contents of a file until conclusion of case does not apply to parties	Clarify to allow MHRC to prevent mandatory disclosure of investigative files if disclosure "could reasonably be expected to interfere with law enforcement proceedings" –federal EEOC not required to do so	Amend to provide exception for investigative information held by civil law enforcement agency like MHRC---current law only provides exception for criminal law enforcement agencies; see 16 MRSA § 614, sub-§ 1, ¶ A	None
Maine Warden Service	▪ Lack of resources to comply with large FOA requests ▪ Lack of understanding on part of public when certain records are protected from disclosure by law	None	Create a "citizens guide" to FOA that agencies to distribute to citizens about their rights to view documents	Comprehensive training for state employees is still needed---mindset needs to be improved that documents are public and "owned" by public, especially for employees who have first contact with public
Office of Consumer Credit Regulation	Complying with FOA requests is very time-consuming because personal and financial	None	None	None

Right to Know Advisory Committee
January 2007 Survey Results: Maine's Freedom of Access Laws

Respondent	Practical problems or issues with compliance with request for public records?	Are there provisions of FOA laws that need clarification?	Any suggestions or recommendations for changes in statute or development of best practices?	Additional comments
	information embedded in public documents needs to be blocked out			
Office of Securities	None	None	None	None
Anonymous	No consistency in law and mixed messages are sent to the public: ▪ Law permits "reasonable fee" to be charged for copying; state agencies are not consistent in amounts and some agencies do not charge ▪ Some agencies charge for staff time (not to exceed $10 hour) and some do not ▪ Some agencies require advance payment as permitted by statute (for requests over	Clarify the following provisions: ▪ Fees that may be charged by agencies to remove discretion and make mandatory or eliminate altogether ▪ Provide specific authority to allow agencies to ask that scope of request be narrowed and subsequently permit a denial because a request is overly broad ▪ Clarify fee waiver provision since arguably *all* public records contribute significantly to public's understanding of government activities	▪ Statute should exclude all SS #'s not just those in possession of IF&W ▪ Statute should exclude back-up tapes and other storage devices from public disclosure---e-mail and computer tapes should not be used as primary source of records ▪ Clarify whether a "draft" document is a public record ▪ Allow statute to distinguish between a commercial requester and a non-commercial requester---plaintiff's attorneys are now using FOA requests to	Agencies often placed in untenable position because of inconsistencies with law's application or unaddressed issues in law--agencies are open to criticism and attack Better guidance on how law is to be applied uniformly across state government is needed

Right to Know Advisory Committee
January 2007 Survey Results: Maine's Freedom of Access Laws

Respondent	Practical problems or issues with compliance with request for public records?	Are there provisions of FOA laws that need clarification?	Any suggestions or recommendations for changes in statute or development of best practices?	Additional comments
	$100) and some do not Unfair perception that an agency that charges discretionary fees is trying to obstruct public access Difficult to provide estimate of time needed to comply with requests for electronic information Agencies increasingly faced with expansive and broad requests that are very difficult to comply with	▪ Clarify 5-day rule in § 409 since it often misleads public into thinking agencies must respond to requests within 5 days	obtain access to non-discoverable info in litigation ▪ Clarify whether agencies are required to mail records--- agencies that require requesters to come in person to inspect records are often viewed as unreasonable	
Anonymous	Certain state laws prohibit disclosure of information but do not designate that information as "confidential" and do not fit exception in § 402, sub-§-3, ¶ A	▪ Clarify that exception includes records that are designated confidential or otherwise prohibited from disclosure ▪ Exceptions to public records should list relevant privileges that	▪ Consider adding an exception for confidential records provided by federal agencies to state agencies remain confidential and are not subject to disclosure by state	State agencies often caught between competing interests when someone requests information submitted to an agency by a third party---not always clear what should be disclosed and whether certain privileges apply

Right to Know Advisory Committee
January 2007 Survey Results: Maine's Freedom of Access Laws

Respondent	Practical problems or issues with compliance with request for public records?	Are there provisions of FOA laws that need clarification?	Any suggestions or recommendations for changes in statute or development of best practices?	Additional comments
		apply rather than requiring those interpreting law to review evidentiary rules and/or case law ▪ Clarify time frame to comply with requests—often believed to be 5 days ▪ Question as to what electronic records are available for disclosure and how it relates to back up tapes and agency retention periods ▪ Clarify that all SS#'s in possession of state agencies are confidential		
Resident, City of Lewiston	▪ Difficulties with city and state agencies with regard to complaint about electrical inspector	None	None	None

Right to Know Advisory Committee
January 2007 Survey Results: Maine's Freedom of Access Laws

Respondent	Practical problems or issues with compliance with request for public records?	Are there provisions of FOA laws that need clarification?	Any suggestions or recommendations for changes in statute or development of best practices?	Additional comments
	employed by city of Lewiston ▪ Feels that city's electrical inspector is not properly licensed ▪ Feels that complaint not being acted upon properly			
Resident, Town of Otisfield	▪ Town records are poorly organized and maintained---difficult to locate records ▪ Some records are not available in town government center	None	None	None
Wiscasset Newspaper	See additional comments	See additional comments	See additional comments	▪ Concerned about legal advice being given that a posted notice on outside of a building or on a calendar at town office is sufficient "public" notice under § 406 ▪ Public officials are not

Right to Know Advisory Committee
January 2007 Survey Results: Maine's Freedom of Access Laws

Respondent	Practical problems or issues with compliance with request for public records?	Are there provisions of FOA laws that need clarification?	Any suggestions or recommendations for changes in statute or development of best practices?	Additional comments
				being specific about nature of executive sessions as required under § 405, sub-§ 4 ▪ Provision permitting executive session if public discussion could reasonably be expected to cause damage to an "individual's right to privacy" is way too liberal and overused by public officials ▪ Provision permitting executive session for discussions of labor contracts being misinterpreted to allow executive session for discussion of *any* contract ▪ Concern raised about holding executive sessions without an attorney being present to discuss "legal

Right to Know Advisory Committee
January 2007 Survey Results: Maine's Freedom of Access Laws

Respondent	Practical problems or issues with compliance with request for public records?	Are there provisions of FOA laws that need clarification?	Any suggestions or recommendations for changes in statute or development of best practices?	Additional comments
				matters" ▪ Why are records of "advisory organizations" not public? See § 402, sub-§3, ¶ J ▪ Concern raised bout how long agency has to produce record---some public officials believe law allows 5 days to produce a record
Biddeford School Dept.	See additional comments	See additional comments	See additional comments	Difficult experience with Freedom of Access Coalition audit request for crisis plan---person making request was told by secretary that needed to see Superintendent and provided first name only; Supt, tried to contact person by telephone who was thought to make request; several months later Biddeford schools

Right to Know Advisory Committee
January 2007 Survey Results: Maine's Freedom of Access Laws

Respondent	Practical problems or issues with compliance with request for public records?	Are there provisions of FOA laws that need clarification?	Any suggestions or recommendations for changes in statute or development of best practices?	Additional comments
				identified in newspaper as being noncompliant
Brunswick School Dept.	Complying is not difficult, but complying "on the spot" which is the public expectation does cause problems at times	Public needs better understanding of law's requirements for time frame to respond and the labor and production costs	None	None
Ellsworth School Dept.	Recent issues with whether emergency crisis plan (or parts of it) are public record	Need to clarify with regard to emergency crisis plan *Addressed with legislation already PL 2007, c. 408*	None	None
Fayette Central School	See additional comments	See additional comments	See additional comments	No difficulty with present statute
Kittery Public Schools	No significant issues, although questions are often raised about how long schools have to comply with a request	Clarify time line to respond to request and what is "reasonable" when asked to provide copies based on volume of material requested	Additional training for school administrators	None
Wells-Ogunquit Community School District	Only a few requests made	None	No, have been able to accommodate few requests for public records	None
CSD 10/Union 42	School board members have challenged superintendent's interpretation of aspects of law	Should school districts be consistent on charges/fees? Should there be a form that the public should use to make FOA requests?	See comments on column #2 Also additional training for school officials and board members	None

Right to Know Advisory Committee
January 2007 Survey Results: Maine's Freedom of Access Laws

Respondent	Practical problems or issues with compliance with request for public records?	Are there provisions of FOA laws that need clarification?	Any suggestions or recommendations for changes in statute or development of best practices?	Additional comments
Moosabec CSD 917./Union 103	Time and cost to respond is a practical issue; also there is no private area in the schools for the public to review records	None	None	None
MSAD #9	Sometimes difficult for "frontline" employees to deal with requests ---public may view their initial response as blocking access to info	None	None	None
MSAD #11	No practical problems	Clarify access to specific information included in emergency crisis plans *Addressed with legislation already PL 2007, c. 408*	More education so school systems will not be the brunt of occasional "stings" by the media	None
MSAD #20	Many individuals seem to use requests to "threaten and intimidate" and not because they want to review records	None	None	None
MSAD #23 and #38	Former employees that request copies of personnel file often require lots of photocopying of information that does not usually have value	None	Require employees to review/inspect personnel file before requesting copy of records in file	None

Right to Know Advisory Committee
January 2007 Survey Results: Maine's Freedom of Access Laws

Respondent	Practical problems or issues with compliance with request for public records?	Are there provisions of FOA laws that need clarification?	Any suggestions or recommendations for changes in statute or development of best practices?	Additional comments
MSAD #27	No issues with compliance	Redacting personal information or other information that is confidential is very time consuming and may not be satisfactory since confidential information may be inferred by individual receiving documents	No suggestions	Statute seems workable as written---changes may lead to more confusion and would require additional training
MSAD #31, 65 and Dennistown Plantation	Misunderstanding of public about time frame for when documents must be provided	None	Provide a short version of law and requirements to all public officials and make available to public	Surprise visits to public offices in an attempt to embarrass public officials without a clear intent to do otherwise is not productive and petty
MSAD #42	None	None	Provide a "FOA Guide for Dummies" to public officials	Don't like "catch you" approach that has been used in some areas
SU# 69	No significant difficulties	Find law to be workable	None	Current law provides public and press ample opportunity to access information---any increase in public access may jeopardize operating efficiency and privacy of students and staff

Right to Know Advisory Committee
January 2007 Survey Results: Maine's Freedom of Access Laws

Respondent	Practical problems or issues with compliance with request for public records?	Are there provisions of FOA laws that need clarification?	Any suggestions or recommendations for changes in statute or development of best practices?	Additional comments
SU #76	FOA used to harass supt. office on 2 occasions by disgruntled former employee requesting 20-25 documents ---didn't seem to be a point to the requests other than to create imposition on staff	Require requests to be made in writing and include some plausible reason for making the request	Other changes are not needed	None
SU #96	None	None	None	None
SU #104	None	None	None	None
SU #107	Few problems	Clarify that parts of emergency plans are not public *Addressed with legislation already PL 2007, c. 408*	More training and training materials to be distributed to school staff	
Anonymous	None	None	Better information provided to public	None
Anonymous	Making sure confidential student information isn't misplaced	None	None	None
Anonymous	Has been used as "fishing expedition" with broad requests for info/records and the requester has not returned to review info/records	Make public more aware that law permits a reasonable time to comply with requests	▪ Provide a time frame for how long agency or public official has to keep info/records requested if requester has not returned ▪ Require that requester	

Right to Know Advisory Committee
January 2007 Survey Results: Maine's Freedom of Access Laws

Respondent	Practical problems or issues with compliance with request for public records?	Are there provisions of FOA laws that need clarification?	Any suggestions or recommendations for changes in statute or development of best practices?	Additional comments
			pay at time of request for costs of producing records	

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APPENDIX D

Draft legislation: Proposed changes to mandatory training for elected officials

Proposal to Amend Title 1, section 412: Clarify Elements of Mandatory Training Course, Certification, Application

Additions to original draft are double-underlined; deletions from original draft are ~~underlined and struck-through~~.

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

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

~~**2. Approval by advisory committee; minimum requirements.** The training course under subsection 1 must be approved by the advisory committee. The training must be designed to be completed by an official in less than 2 hours. At a minimum, the training must include instruction in:~~

~~A. The general legal requirements of this chapter regarding public records and public proceedings;~~

~~B. Procedures and requirements regarding complying with a request for a public record under this chapter; and~~

~~C. Penalties and other consequences for failure to comply with this chapter.~~

2-A. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an elected official in less than 2 hours.

A. At a minimum, the training must include instruction in:

(1) The general legal requirements of this chapter regarding public records and public proceedings;

(2) Procedures and requirements regarding complying with a request for a public record under this chapter; and

(3) Penalties and other consequences for failure to comply with this chapter.

B. An elected official meets the training requirements of this section by conducting a thorough review of all the information made available on the State's Freedom of Access website under the Frequently Asked Questions heading

C. To meet the requirements of this subsection any other training course must include all the information made available on the State's Freedom of Access website under the Frequently Asked Questions heading, and may include additional information.

~~**2-A. Minimum requirements.** The training course required under subsection 1 must be designed to be completed by an official in less than 2 hours. An organization or agency may offer training that meets the requirements of this subsection. The training course must include instruction in the following:~~

~~A. Public records:~~

~~(1) Definition of "public record"~~

~~(2) Exceptions;~~

~~(3) How requests are made;~~

~~(4) Timing of response and how to identify what must be withheld;~~

~~(5) Inspection of public records;~~

~~(6) Copying requests and charges;~~

~~(7) Retention and disposition of records;~~

~~(8) No legal requirement that an agency of public official create, summarize or format records or answer questions;~~

~~B. Public meetings:~~

~~(1) Entities whose meetings are subject to the law;~~

~~(2) Notice requirements;~~

~~(3) Emergency meetings;~~

~~(4) Executive sessions;~~

~~(5) Public comment;~~

~~(6) Recording of meetings by the entity or the public;~~

~~C. Appeals:~~

~~(1) From denial of access to a document;~~

~~(2) For failure to follow meeting requirements;~~

~~(3) Civil and criminal penalty provisions;~~

~~D. Other issues:~~

~~(1) Written request may not be required;~~

~~(2) Identification or explanation of reason for request may not be required;~~

~~(3) "Liberal" construction;~~

~~(4) "Public" business.~~

~~A training course that includes all the information made available on the State's Freedom of Access website under the Frequently Asked Questions heading meets the requirements of this subsection.~~

3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official shall ~~send~~ make a written or an electronic ~~notification to the advisory committee~~ record attesting to the fact that the training has been completed. ~~The advisory committee shall maintain a record of those elected officials who have completed the training required by this section and make that record available to the public in accordance with the requirements of this chapter.~~ The record must identify the training completed and the date of completion. The elected official shall keep the record ~~and make it available to any person who may wish to review or copy it~~ or file it with the public entity to which the official was elected. The advisory committee shall ~~develop a means~~ recommend to the Legislature a process for collecting the completion records in a central registry and for making that information publicly available.

4. Application. This section applies to the following elected officials:

A. The Governor;

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

C. Members of the Legislature elected after November 1, 2008; ~~and~~

~~D. An elected official of a county, municipality, school district or school board or any regional or other political subdivision who, as part of the duties of the office, exercises executive or legislative powers.~~

E. ~~Elected commissioners~~ Commissioners, treasurer, district attorney, sheriff, register of deeds, register of probate and budget committee members of any county government;

F. ~~Elected municipal~~ Municipal officers, as defined in section 72, subsection 12, clerk, treasurer, assessors and budget committee members of any municipal government;

G. ~~Elected officials~~ Officials of any school ~~district~~ unit or school board; and

H. ~~Elected officials~~ Officials of any regional or other political subdivision who, as part of the duties of the office, exercise executive or legislative powers. For the purposes of this section, "regional or other political subdivision" means any administrative entity or instrumentality created pursuant to Title 30-A, chapters 115 and 119, ~~incorporated fire fighting unit that is organized under Title 13-B and is officially recognized by any authority created by statute,~~ quasi-municipal corporation and special purpose district, including, but not limited to, any water district, sanitary district, hospital district, school district of any type, ~~any volunteer fire association as defined in Title 30-A, section 3151,~~ a transit district as defined in Title 30-A, section 3501, subsection 1, and a regional transportation corporation as defined in Title 30-A, section 3501, subsection 2~~, and any emergency medical service~~. *(definition taken from Maine Tort Claims Act, definition of political subdivision, 14 MRSA §8102, sub-§3).*

Summary

This bill amends the training requirements that are mandatory for elected officials, as enacted by Public Law 2007, chapter 349.

This bill establishes the minimum content requirements for the training programs. An elected official who completes a training program that contains the elements established in the statute satisfies the training requirement. The language specifically states that a training course that contains all the information contained under the Frequently Asked Questions heading on the State's Freedom of Access law website meets the minimum requirements. The original bill directed the Right to Know Advisory Committee to establish standards and approve training programs. This bill deletes the role of the Advisory Committee in establishing standards and approving courses.

This bill addresses the certification of completion for an elected official that completes the required training. The original law required the elected official to send notice of the completion to the Advisory Committee. This bill requires the elected official to make a written record of the completion information and either keep it or file it with the public entity to which that official was elected. The completion record is a public record. The Advisory Committee is directed to recommend to the Legislature a process for collecting the completion data and making it available to the public.

This bill addresses the application of the mandatory training requirement to elected officials. Current law applies beginning July 1, 2008. This bill makes revises the application to legislators to begin for legislators elected after November 1, 2008. This avoids the unnecessary training requirement applying to legislators on July 1, 2008, but who are not reelected the following November. This bill also specifically spells out the elected officials who are subject to the training, with a general description of those who, as part of the duties of their office, exercise executive or legislative powers as elected officials of a regional or other political subdivision.

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APPENDIX E

Recommendations concerning existing public records exceptions, Title 1 - 9-B

LEGISLATIVE SUBCOMMITTEE RECOMMENDATIONS

Existing Public Records Exceptions

Identified as of October 23, 2007

Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, 9-A, 9-B

FINAL 12.19.07

Shaded sections = NO CHANGE unanimous recommendation by Legislative Subcommittee

TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
1	*402*	*3*	*Title 1, section 402, subsection 3, paragraph A: Records that have been designated confidential by statute*	•	•	•	No change
1	*402*	*3*	*Title 1, section 402, subsection 3, paragraph 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*	• Attorney General	• Frequently	• Issues raised, but leave to committee to recommend	No change, but ask JUD to review (see AG's comments)
1	*402*	*3*	*Title 1, section 402, subsection 3, paragraph 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*	• Legislature	•	•	No change, but objection (SB)
1	*402*	*3*	*Title 1, section 402, subsection 3, paragraph 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*	• Governor's Office • DAFS Bureau of Human Resources, and Office of	• Gov: Not in 2 years • BHR: no public request, one former	• Gov: No change • BHR: no changes	No change

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LEGISLATIVE SUBCOMMITTEE RECOMMENDATIONS

Existing Public Records Exceptions

Identified as of October 23, 2007

Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, 9-A, 9-B

FINAL 12.19.07

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TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
			collective bargaining with its employees and their designated representatives	Employee Relations	employee		
1	*402*	*3*	*Title 1, section 402, subsection 3, paragraph E, relating to 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*	• Maine Maritime Academy • Maine Community College System • University of Maine System	• MeMarA: No record for 10 years • MCCS: None that recall • UMS: Infrequently subject of litigation; rarely asserted	• MeMarA: No change • MCCS: No change • UMS: Change proposed	No change
1	*402*	*3*	*Title 1, section 402, subsection 3, paragraph F, relating to 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 and 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*	• County association • Maine Municipal Association • Maine School Management • Maine Police Chiefs • Maine Sheriffs Association • Others?	• • MMA: No problems	• • MMA: No change	No change
1	*402*	*3*	*Title 1, section 402, subsection 3, paragraph G, relating to materials related to the development of positions on legislation or materials that are*	• County association • Maine Municipal	• • MMA: No problems	• • MMA: No change	No change, but objection (SB)

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LEGISLATIVE SUBCOMMITTEE RECOMMENDATIONS

Existing Public Records Exceptions

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Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, 9-A, 9-B

FINAL 12.19.07

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TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
			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	Association • Maine School Management • Maine Police Chiefs • Maine Sheriffs Association • Others?			
1	*402*	*3*	*Title 1, section 402, subsection 3, paragraph H, relating to medical records and reports of municipal ambulance and rescue units and other emergency medical service units*	• Maine Emergency Medical Services	• Occasionally heard of confusion or problems	• No change	No change
1	*402*	*3*	*Title 1, section 402, subsection 3, paragraph I, relating to juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter*	• Maine Municipal Association • State Fire Marshal	• MMA: No knowledge • SFMO: N/A	• MMA: • SFMO: N/A	No change
1	*402*	*3*	*Title 1, section 402, subsection 3, paragraph J, relating to 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*	• Governor's Office • Legislature	• Gov: no •	• Gov: no change •	No change, but objection (SB)
1	*402*	*3*	*Title 1, section 402, subsection 3, paragraph K, relating to personally identifying information concerning minors that is obtained or maintained*	• Maine Municipal Association • Maine School	• MMA: No knowledge • .	• MMA: No knowledge • .	No change

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LEGISLATIVE SUBCOMMITTEE RECOMMENDATIONS

Existing Public Records Exceptions

Identified as of October 23, 2007

Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, 9-A, 9-B

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TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
			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	Management Association • Department of Education	• DOE: no	• Remove DOE as exempted agency	
1	*402*	*3*	*Title 1, section 402, subsection 3, paragraph L, relating to records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism*	• Department of Defense, Veterans and Emergency Management • Maine Police Chiefs • Maine Sheriffs Association • Maine Municipal Association • Counties association • Maine School Management Association • Legislature	• DVEM: less than 4 per year • . • . • MMA: No knowledge • . • . •	• DVEM: no change • . • . • MMA: No knowledge • . • . •	No change
1	402	3	Title 1, section 402, subsection 3, paragraph M, relating to architecture, design, access authentication, encryption and security of information technology infrastructure and systems	• DAFS Office of Information Technology • Legislature • Judicial Branch	• OIT: none in last 12 months	• OIT: no substantive changes	No change

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LEGISLATIVE SUBCOMMITTEE RECOMMENDATIONS

Existing Public Records Exceptions

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Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, 9-A, 9-B

FINAL 12.19.07

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TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
1	402	3	Title 1, section 402, subsection 3, paragraph N, relating to social security numbers in possession of the Department of Inland Fisheries and Wildlife	• Department of Inland Fisheries and Wildlife	• Very rare	• No change	No change, but ask JUD to review, proposed amendment
1	*402*	*3*	*Title 1, section 402, subsection 3, paragraph O relating to personal contact information concerning public employees other than elected officials*	• Governor's Office • Legislature • Judicial Branch • Maine Municipal Association • Counties association • Maine School Management Association • DAFS Bureau of Human Resources or Employee Relations	• Gov: 3 or 4 in last year (Gov's Apptmnts) • . • . • MMA: no problems • . • BHR: requests fairly regularly, but not as FOA requests	• Gov: clarify if applies to voluntary appointees • . • . • .MMA: no change • . • BHR: no changes (compare with 5 §7070, sub-§1,¶A)	AMEND
1	*402*	*3-A*	*Title 1, section 402, subsection 3-A, Paragraph C relating to criminal justice agency records pertaining to a prisoner's, adult probationer's or parolee's identity, conviction data and current address or location if the Commissioner of Corrections determines that it would be detrimental to the*	• *Department of Corrections*	• *Rarely - one incident a year at most*	• *No change*	No change, but objection (SB)

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Existing Public Records Exceptions

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Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, 9-A, 9-B

FINAL 12.19.07

Shaded sections = NO CHANGE unanimous recommendation by Legislative Subcommittee

TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
			welfare of a client to disclose the information.				
1	538	3	Title 1, section 538, subsection 3, relating to InforME subscriber information	• DAFS Office of Information Technology	• 1 or 2 times per year	• No change	No change
1	1013	2, 3	Title 1, section 1013, subsections 2 and 3, relating to the Commission on Governmental Ethics and Election Practices	• Ethics Commission • Legislature	• Ethics: one case in 2006 •	• Ethics: yes, needs more clarity	No change - Ethics Commission planning amendments; see also comments (SB)
3	156		Title 3, section 156, relating to prehearing conference materials for legislative confirmations of gubernatorial appointments	• Legislature • Governor's Office	• . • Gov: never withheld	• . • Gov: no change	3-2 in favor of no change (2 in favor of repeal)
3	159		Title 3, section 159, relating to prehearing conference materials for legislative confirmations of gubernatorial appointments	• Legislature • Governor's Office	• . • Gov: never withheld	• . • Gov: no change	3-2 in favor of no change (2 in favor of repeal)
3	997	1, 3, 4-6	Title 3, section 997, subsections 1, 3, 4, 5 and 6, relating to the Office of Program Evaluation and Governmental Accountability activities and working papers	• Legislature • OPEGA	• . • OPEGA: sub-§3 - once; sub-§5 - three times	• . • OPEGA: yes	AMEND, ask JUD to review and finalize language
4	17	3	Title 4, section 17, subsection 3, relating to State Court Administrator complaints and investigative	• Judicial Branch	•	•	AMEND

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LEGISLATIVE SUBCOMMITTEE RECOMMENDATIONS

Existing Public Records Exceptions

Identified as of October 23, 2007

Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, 9-A, 9-B

FINAL 12.19.07

Shaded sections = NO CHANGE unanimous recommendation by Legislative Subcommittee

TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
			files				
4	809		Title 4, section 809, relating to investigations of attorneys by the Attorney General	• Attorney General	• No	• Can repeal - 16 §614 covers adequately	REPEAL
4	1701	7	Title 4, section 1701, subsection 7, relating to the Judicial Compensation Commission concerning working papers in the possession of a legislative employee	• Judicial Compensation Commission • Legislature	•	•	No change, but objection (SB)
~~5~~	~~48-A~~	~~5~~	~~Title 5, section 48-A, subsection 5, relating to confidential communications facilitated by privileged interpreters for the deaf~~	~~• ??~~	~~•~~	~~•~~	
5	90-B	7	Title 5, section 90-B, subsection 7, relating to the Address Confidentiality Program	• Secretary of State	• Never had request	• No change	No change
5	95	11	Title 5, section 95, subsection 11, relating to state archives patrons	• Secretary of State, State Archivist	• No problems	• No change; laws may work too well	No change
5	200-H		Title 5, section 200-H, relating to the Office of the Attorney General, Maine Elder Death Analysis Review Team	• Attorney General, Maine Elder Death Analysis Review Team	• Not been cited	• No changes	4-1 in favor of no change
5	*211*	*4*	*Title 5, section 211, subsection 4 relating to nondisclosure of information produced in connection with an investigation under the Attorney General's Unfair Trade Practices authority*	• Attorney General	• Rarely	• No change	No change

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Existing Public Records Exceptions

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Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, 9-A, 9-B

FINAL 12.19.07

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TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
5	244-C	2, 3	Title 5, section 244-C, subsections 2 and 3, relating to the Department of Audit activities and working papers	• Department of Audit	• No requests	• Yes. Sub-§2, ¶A - delete last clause	4-1 in favor of no change; 1 in favor of amending
5	244-D	1	Title 5, section 244-D, subsection 1, relating to identity of person making complaint alleging fraud, waste, inefficiency or abuse through hotline or other referral service established by the State Auditor	• Department of Audit	•	•	No change
5	791		Title 5, section 791, relating to the code of fair practices and affirmative action concerning confidential business information	• DAFS Bureau of Human resources • DAFS Bureau of General Services	• BHR: none • BGS: not applied by BGS	• BHR: no changes • BGS: don't know	No change
~~5~~	~~957~~	~~5-A~~	~~Title 5, section 957, subsection 5-A, relating to State Employee Assistance Program client records~~	• ~~DAFS Bureau of Human Resources~~ • ~~State Employee Assistance Program~~ • ~~DHHS Office of Substance Abuse~~	•	•	
5	957	5	Title 5, section 957, subsection 5, relating to State Employee Assistance Program client records	• DAFS Bureau of Human Resources • State Employee Assistance Program • DHHS Office of Substance Abuse	• BHR: no cases in recent memory • . • DHHS: very rarely	• BHR: no changes • . • DHHS: no changes	No change

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LEGISLATIVE SUBCOMMITTEE RECOMMENDATIONS

Existing Public Records Exceptions

Identified as of October 23, 2007

Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, 9-A, 9-B

FINAL 12.19.07

Shaded sections = NO CHANGE unanimous recommendation by Legislative Subcommittee

TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
5	1545		Title 5, section 1545, relating to outstanding unpaid checks issued by the State	• Treasurer of State • DAFS Bureau of General Services	• Treas: requests infrequent • Controller: no inquiry since enacted 1997	• Treas: no changes • Controller: no changes	4-0 in favor of no change, but ask JUD to review (SB abstained)
5	1743	5	Title 5, section 1743, subsection 5, relating to public improvements construction contracts concerning evaluations of proposals	• DAFS Bureau of General Services	• Not aware of any requests	• No changes	No change
5	1747	3	Title 5, section 1747, subsection 3, relating to public improvement contracts concerning prebid qualifications	• DAFS Bureau of General Services	• Infrequent; no denials	• No changes	No change
5	1976	1	Title 5, section 1976, subsection 1, relating to the State Government computer system	• DAFS Office of Information Technology • Attorney General	• OIT: not often used • AG: little if any direct experience	• OIT: none at this time • AG: Yes = clarify	No change to subsection 1, ask JUD to review subsection 2
5	3305-B	1	Title 5, section 3305-B, subsection 1, relating to the Executive Department, State Planning Office concerning energy policy	• State Planning Office	• No denials	• No changes	No change, but objection (SB)
5	3360-D	4	Title 5, section 3360-D, subsection 4, relating to the Victims' Compensation Fund concerning applications and awards	• Attorney General, Victims' Compensation Board	• No formal requests	• No changes	No change
5	4572	2	Title 5, section 4572, subsection 2, relating to	• Maine Human	• Infrequent	• No	No change

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LEGISLATIVE SUBCOMMITTEE RECOMMENDATIONS

Existing Public Records Exceptions

Identified as of October 23, 2007

Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, 9-A, 9-B

FINAL 12.19.07

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TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
			medical information or history of an applicant in an employment discrimination complaint	Rights Commission	requests other than parties	changes, but maybe clarification	
5	4573	2	Title 5, section 4573, subsection 2, relating to records of mental or physical disability	• Maine Human Rights Commission	• No	• No changes	No change
5	4612	5	Title 5, section 4612, subsection 5, relating to 3rd-party records	• Maine Human Rights Commission	• Infrequent requests other than parties	• No changes	No change
5	7070	1	Title 5, section 7070, subsection 1, relating to state employee applicants	• DAFS Bureaus of Human Resources and Employee Relations	• Regularly	• No changes; conflict with 1 §402, sub-§3, ¶O?	AMEND to fix conflict
5	7070	2, 4	Title 5, section 7070, subsections 2 and 4, relating to state employees' personal information	• DAFS Bureau of Human Resources and Employee Relations • Maine State Employees Association • Others?	• BHR: Regularly	• BHR: yes - specify, and avoid conflict with sub-§2, ¶D-1	AMEND TO fix conflict
5	13119-A		Title 5, section 13119-A, relating to economic and community development activities of the	• Department of Economic and	• . • MMA: no	• . • MMA	No change

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LEGISLATIVE SUBCOMMITTEE RECOMMENDATIONS

Existing Public Records Exceptions

Identified as of October 23, 2007

Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, 9-A, 9-B

FINAL 12.19.07

Shaded sections = NO CHANGE unanimous recommendation by Legislative Subcommittee

TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
			Department of Economic and Community Development and municipalities	Community Development • Maine Municipal Association	problems		
5	13120-M	2	Title 5, section 13120-M, subsection 2, relating to Maine Rural Development Authority activities	• Department of Economic and Community Development • Maine Rural Development Authority	•	•	No change
5	15302-A	2	Title 5, section 15302-A, subsection 2, relating to Maine Technology Institute activities	• Department of Economic and Community Development • Maine Technology Institute	• . • MTI: infrequently	• . • MTI: no changes	No change
5	15321	3	Title 5, section 15321, subsection 3, relating to Applied Technology Development Center System records and proceedings	• Department of Economic and Community Development • Applied Technology Development Center System	•	•	AMEND, ask JUD to review and finalize language
5	17057	1	Title 5, section 17057, subsection 1, relating to	• Maine Public	• Highly	• No	No change

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TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
			Maine State Retirement System information	Employees Retirement System	infrequent	changes; interpreta-tion?	
5	17057	3	Title 5, section 17057, subsection 3, relating to home contact information of Maine State Retirement System members, benefit recipients and staff	• Maine Public Employees Retirement System	• Fewer than 6 requests per year	• No changes	No change
5	*19203*		*Title 5, section 19203, relating to the disclosure of the results of an HIV test.*	• DHHS, Maine CDC • Department of Corrections • Other agencies that might have results of employee tests?	• DHHS: almost never request • DOC: rarely cited	• DHHS: no change • DOC: no changes	
5	*19203-D*	*1 and 2*	*Title 5, section 19203-D, subsections 1 and 2, relating to the disclosure of medical records containing information regarding a person's HIV status.*	• DHHS, Maine CDC • Other agencies that might have results of employee tests?	• DHHS: rarely requested	• DHHS: no change	
5	*19507*		*Title 5, section 19507, relating to the disclosure of information, materials and records of the DHHS Office of Advocacy*	• DHHS Office of Advocacy	• None	• No changes	
5	20047	1	Title 5, section 20047, subsection 1, relating to Department of Health and Human Services, Office	• DHHS Office of Substance Abuse	• None - doesn't have	• No changes	

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TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
			of Substance Abuse records concerning patients		records		
5	22009	2	Title 5, section 22009, subsection 2, relating to Baxter Compensation Program claimant information	• (Baxter Compensation Authority) • Attorney General	• No direct experience	• YES - continue protection	JUD to review, maybe draft?
7	20	1	Title 7, section 20, subsection 1, relating to information reported to the Department of Agriculture, Food and Rural Resources	• Department of Agriculture, Food and Rural Resources	• Used several times	• No change	No change
7	306-A	3	Title 7, section 306-A, subsection 3, relating to agricultural development grant program, market research or development activities	• Department of Agriculture, Food and Rural Resources	• Applicants requested in RFP	• No change	No change
7	607	4	Title 7, section 607, subsection 4, relating to results of pesticides tests	• Department of Agriculture, Food and Rural Resources, Pesticides Control Board	• Not used in last 25 years	• No change	Ask JUD to review, seek public comment
7	951-A		Title 7, section 951-A, relating to minimum standards for planting potatoes	• Department of Agriculture, Food and Rural Resources • Potato Board	• DAFRR: never been a request • MPB: not custodian of records	• DAFRR: no change • MPB: ?	No change
7	1052	2	Title 7, section 1052, subsection 2, relating to growers of genetically engineered plants and seeds	• Department of Agriculture, Food	• No requests	• No change	Ask JUD to review, seek

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TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
				and Rural Resources			public comment
7	2103-A	4	Title 7, section 2103-A, subsection 4, relating to patented and nonreleased potato varieties	• Department of Agriculture, Food and Rural Resources • Potato Board	• DAFRR: Rarely a request • MPB: not a custodian of records	• DAFRR: none • MPB: ?	No change
7	2226	1	Title 7, section 2226, subsection 1, relating to ginseng license applications, licensees and locations of ginseng plantings	• Department of Agriculture, Food and Rural Resources • ~~Attorney General~~	• 20 requests over years for growers, not sites. Some growers signed waiver	• No change	No change
7	*2992-A*	*1*	*Title 7, subsection 2992-A, subsection 1, paragraph C, subparagraph (2), relating to records and meetings of Maine Dairy Promotion Board which may be closed to public when disclosure would adversely affect competitive position of milk industry*	• Department of Agriculture, Food and Rural Resources • Maine Dairy Promotion Board	• • MDPB: once	• • MDPB: no changes	AMEND, ask JUD to review and finalize language
7	*2998-B*	*1*	*Title 7, section 2998-B, subsection 1, paragraph C, subparagraph (2), relating to records and meetings of Maine Dairy and Nutrition Council which may be closed to public when disclosure would adversely affect competitive position of milk*	• Department of Agriculture, Food and Rural Resources • Maine Dairy and	• • MDNC: once	• • MDNC: no changes	AMEND, ask JUD to review and finalize language

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			industry	Nutrition Council			
7	4204	10	Title 7, section 4204, subsection 10, relating to nutrient management plans	• Department of Agriculture, Food and Rural Resources	• One request - farm voluntarily provided	• No change	Ask JUD to review, seek public comment
7	4205	2	Title 7, section 4205, subsection 2, relating to livestock operation permits and nutrient management plans	• Department of Agriculture, Food and Rural Resources	• One request - farm voluntarily provided	• No change	Ask JUD to review, seek public comment
8	416-A	9	Title 8, section 416-A, subsection 9, relating to the Tri-State Lotto concerning personal records in connection with payment of prize	• DAFS Bureau of Alcoholic Beverages and Lottery Operations	• 2 or 3 per year	• No changes	No change
~~8~~	~~416-A~~	~~9~~	~~Title 8, section 416-A, subsection 9, relating to records concerning payment of Tri-state Lotto prizes~~	~~• DAFS Bureau of Alcoholic Beverages and Lottery Operations~~	~~•~~	~~•~~	
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	• DPS Gambling Control Board	• Once	• No changes	No change
8	1006	1	Title 8, section 1006, subsection 1, paragraph B, relating to information or records required by the	• DPS Gambling Control Board	• Once	• No changes	No change

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TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
			Gambling Control Board for licensure: would be unwarranted invasion of privacy of key executive, gaming employee or another person				
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	• DPS Gambling Control Board	• Once	• No changes	No change
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 applicant	• DPS Gambling Control Board	• Once	• No changes	No change
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 or person or project	• DPS Gambling Control Board	• Once	• No changes	No change
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	• DPS Gambling Control Board	• Once	• No changes	No change
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	• DPS Gambling Control Board	• Once	• No changes	No change

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TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
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	• DPS Gambling Control Board	• Once	• No changes	No change
~~8~~	~~1006~~	~~3~~	~~Title 8, section 1006, subsection 3, relating to suitability requirement to select operator of central site monitoring system~~	~~• DPS Gambling Control Board~~	~~• Not since enacted~~	~~• No changes~~	No change
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	• DPS Gambling Control Board • Department of Public Safety	• GCB: Not since enacted	• GCB: No changes	No change
8	1006	4	Title 8, section 1006, subsection ~~3~~ 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	• DPS Gambling Control Board • Department of Public Safety	• GCB: Not since enacted	• GCB: No changes	No change
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	• DPS Gambling Control Board • Department of Public Safety	• See sub-§3	• See sub-§3	No change
8	1052	3	Title 8, section 1052, subsection 3, relating to all complaints and investigative records of the Gambling Control Board during the pendency of an investigation	• DPS Gambling Control Board	• GCB: none	• GCB: no changes	No change

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TITLE	SECTION	SUB-§	DESCRIPTION	DEPARTMENT/AGENCY	APPLIED	PROPOSED ACTION	COMMENTS
9-A	2-304	2	Title 9-A, section 2-304, subsection 2, relating to reports of supervised lenders	• DPFR Bureau of Consumer Credit Regulation	• Only occasional	• No changes	No change
9-A	6-116		Title 9-A, section 6-116, relating to the Department of Professional and Financial Regulation, Office of Consumer Credit Regulation	• DPFR Bureau of Consumer Credit Regulation	• Only occasional	• No changes	No change
9-A	*6-117*		*Title 9-A, section 6-117, relating to confidential information shared by other state or federal regulatory agencies*	• *DPFR, Bureau of Consumer Credit Regulations*	• Only occasional	• No changes	No change
9-B	*226*	*1*	*Title 9-B, section 226, subsection 1, relating to the Department of Professional and Financial Regulation, Bureau of Financial Institutions, concerning nondisclosure of information (does not expressly designate information as confidential)*	• DPFR Bureau of Financial Institutions	• Once or twice a year	• No changes, but not "standard" language	Flag language
9-B	*252*	*3-A*	*Title 9-B, section 252, subsection 3-A, relating to the Department of Professional and Financial Regulation, Bureau of Financial Institutions, concerning confidential information from other state or federal agencies*	• DPFR Bureau of Financial Institutions	• One every several years	• No changes	Flag language

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Proposed Draft Legislation to Make Statutory Changes to Existing Public Records Exceptions

Sec. 1. 1 MRSA § 402, sub-§ 3, ¶ O is amended to read:

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 ~~of a governmental entity,~~ as defined in Title 14, section 8102, subsection 1 ~~2~~, except that "public employee" does not include elected officials.

Sec. 2. 3 MRSA § 997 is amended to read:

§ 997. Conduct and issuance of program evaluation reports

The director and the office shall adhere to the following provisions relative to conducting and issuing program evaluation reports under this chapter.

1. Review and response. Prior to the presentation of a program evaluation under this chapter to the committee by the office, the director of the evaluated state agency or other entity must have an opportunity to review a draft of the program evaluation report. Within 15 calendar days of receipt of the draft report, the director of the evaluated state agency or other entity may provide to the office comments on the draft report. If provided to the office by the comment deadline, the comments must be included in the final report when it is presented to the committee. Failure by the director of an evaluated agency or other entity to submit its comments on the draft report by the comment deadline may not delay the submission of a report to the committee or its release to the public.

All documents, writings, drafts, electronic communications and information transmitted pursuant to this subsection are confidential and may not be released to the public prior to the time the office issues its program evaluation report pursuant to subsection 3. A person violating the provisions of this subsection regarding confidentiality is guilty of a Class E crime.

2. Submission of final report to committee. The director shall issue program evaluation reports, favorable or unfavorable, of any state agency or other entity, and these reports are public records. The director shall notify the committee when each final program evaluation report under this chapter is completed. The report must then be placed on the agenda for a future committee meeting. At the meeting where a report appears on the agenda for the first time, the director will release that report to the committee and to the public simultaneously. The committee, at its discretion, may vote to endorse, to endorse in part or

to decline to endorse the report submitted by the director. If the committee determines it is necessary, the committee may report out to the Legislature legislation to implement the findings and recommendations of any program evaluation report presented to it by the office.

~~**3. Confidentiality.** The director shall issue program evaluation reports, favorable or unfavorable, of any state agency or other entity, and these reports are public records, except that, prior to the release of a program evaluation report pursuant to subsection 2 or the point at which a program evaluation is no longer being actively pursued, all papers, physical and electronic records and correspondence and other supporting materials comprising the working papers in the possession of the director or other entity charged with the preparation of a program evaluation report are confidential and exempt from disclosure pursuant to Title 1, chapter 13. All other records or materials in the possession of the director or other entity charged with the preparation of a program evaluation report under this chapter that would otherwise be confidential or exempt from disclosure are exempt from disclosure pursuant to the provisions of Title 1, chapter 13. Prior to the release of a program evaluation report pursuant to subsection 2 or the point at which a program evaluation is no longer being actively pursued, all papers, physical and electronic records and correspondence and other supporting materials comprising the working papers in the possession of the director or other entity charged with the preparation of a program evaluation report are confidential and may not be released or disclosed by the director to the Legislative Council or an agent or representative of the Legislative Council. This subsection may not be construed to prohibit or prevent public access to the records of a state agency or other entity in the possession of the director that would otherwise be subject to disclosure pursuant to the provisions of Title 1, chapter 13. The director shall refer requests for access to those records directly to the state agency or other entity that is the official custodian of the requested records, which shall respond to the request for public records.~~

3-A. Confidentiality of working papers. Except as provided in this subsection, working papers that support reports released pursuant to subsection 2, or that are related to any program evaluation no longer being actively pursued, are confidential and exempt from disclosure pursuant to Title 1, chapter 13. Working papers may not be disclosed to any person including the Legislative Council or an agent or representative of the Legislative Council. For the purposes of this subection, "working papers" means all papers, physical and electronic records and correspondence and other supporting materials comprising the working papers in the possession of the director or other entity charged with the preparation of a program evaluation report. In accordance with subsection 4, all records or materials in the possession of the director or other entity charged with the preparation of a program evaluation report under this chapter that would otherwise be confidential or exempt from disclosure also remain exempt from disclosure pursuant to the provisions of Title 1, chapter 13. Prior to the release of the final program evaluation report, the director has sole discretion to disclose working papers to the state agency or other entity subject to the program evaluation when disclosure will not prejudice the program evaluation and provided they remain confidential in the hands of the receiving entity. After the release of the final program evaluation report, the director has sole discretion to release working papers, provided they remain confidential in the hands of the receiving entity, as necessary to:

A. The department, commission or agency that was subject to the audit or investigation;

B. Federal agencies providing a grant to the audited entity;

C. Law enforcement agencies for the purpose of criminal law enforcement or investigations;

D. Other auditors in their work reviewing the Office of Program Evaluation and Government Accountability; or

E. Other departments of audit existing within Maine state government.

This subsection may not be construed to prohibit or prevent public access to the records of a state agency or other entity in the possession of the director that would otherwise be subject to disclosure pursuant to the provisions of Title 1, chapter 13. The director shall refer requests for access to those records directly to the state agency or other entity that is the official custodian of the requested records, which shall respond to the request for public records.

4. Information available to office. Upon request of the office and consistent with the conditions and procedures set forth in this section, state agencies or other entities subject to program evaluation must provide the office access to information that is privileged or confidential as defined by Title 1, chapter 13, which governs public records and proceedings.

A. Before beginning a program evaluation under this chapter that may require access to records containing confidential or privileged information, the office shall furnish a written statement of its determination that it is necessary for the office to access such records and consult with representatives of the state agency or other entity to discuss methods of identifying and protecting privileged or confidential information in those records. During that consultation, the state agency or other entity shall inform the office of all standards and procedures set forth in its policies or agreements to protect information considered to be confidential or privileged. The office shall limit its access to information that is privileged or confidential by appropriate methods, which may include examining records without copying or removing them from the source.

B. Documentary or other information obtained by the office during the course of a program evaluation under this chapter is privileged or confidential to the same extent under law that that information would be privileged or confidential in the possession of the state agency or other entity providing the information. Any privilege or statutory provision, including penalties, concerning the confidentiality or obligation not to disclose information in the possession of a state agency or other entity or its officers or employees applies equally to the office. Privileged or confidential information obtained by the office during the course of a program evaluation may be disclosed only as provided by law and with the agreement of the state agency or other entity subject to the program evaluation that provided the information.

C. If the office accesses information classified as privileged or confidential pursuant to state agency or other entity policy or procedures or by agreement, the office shall comply with the state agency's or other entity's standards or procedures for handling that information. The office may include in its working papers the excerpts from information classified as confidential or privileged as may be necessary to complete

the program evaluation under this chapter, as long as the use does not infringe on department policies or procedures applicable to the original provision of information.

~~**5. Confidentiality of working papers.** Except as provided in this subsection, working papers are confidential and may not be disclosed to any person. Prior to the release of the final program evaluation report, the director has sole discretion to disclose working papers to the state agency or other entity subject to the program evaluation when disclosure will not prejudice the program evaluation. After release of the final program evaluation report, working papers may be released as necessary to the state agency or other entity that was subject to the program evaluation under this chapter.~~

6. Confidential sources. If data supplied by an individual are needed to initiate, continue or complete a program evaluation under this chapter, the director may, by written memorandum to the file, provide that the individual's identity will remain confidential and exempt from disclosure under Title 1, chapter 13, and this written memorandum protects the identity of the person from disclosure under Title 1, chapter 13, notwithstanding any other provision of law to the contrary.

7. Disposition of final report. A final copy of a program evaluation report under subsection 2, including recommendations and the evaluated state agency's or other entity's comments, must be submitted to the commissioner or director of the state agency or other entity examined at least one day prior to the report's public release, and must be made available to each member of the Legislature no later than one day following the report's receipt by the committee. The office may satisfy the requirement to provide each Legislator a copy of the report by furnishing the report directly by electronic means or by providing notice to each Legislator of the availability of the report on the office's publicly accessible site on the Internet.

Sec. 3. 4 MRSA § 17 is amended to read:

§ 17. Duties of State Court Administrator

The State Court Administrator, subject to the supervision and direction of the Chief Justice of the Supreme Judicial Court, is responsible for administration and management of the court system. The State Court Administrator shall:

3. Investigate complaints. Investigate complaints with respect to the operation of the courts and relating to court and judicial security. Notwithstanding any other provision of law, ~~such~~ complaints and investigative files that relate to court and judicial security are confidential. Nothing in this section precludes dissemination of such information to another criminal justice agency;

Sec. 4. 4 MRSA § 809 is repealed.

Sec. 5. 5 MRSA § 7070 is amended to read:

§ 7070. Personnel records

Every appointment, transfer, promotion, demotion, dismissal, vacancy, change of salary rate, leave of absence, absence from duty and other temporary or permanent change in status of employees in both the classified service and the unclassified service of the Executive and Legislative Departments shall be reported to the director at such time, in such form and together with such supportive or pertinent information as he shall by rule prescribe.

The director shall maintain a perpetual roster of all officers and employees in the classified and unclassified services, showing for each person such data as he and the board deem pertinent.

Records of the Bureau of Human Resources shall be public records and open to inspection of the public during regular office hours at reasonable times and in accordance with the procedure as the director may provide.

The following records shall be confidential and not open to public inspection, and shall not be "public records," as defined in Title 1, section 402, subsection 3:

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

A. Notwithstanding any confidentiality provision other than this subsection, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

B. Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

C. This subsection does not preclude union representatives from access to personnel records, consistent with subsection 4, which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection;

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

A. Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

B. Performance evaluations and personal references submitted in confidence;

C. Information pertaining to the credit worthiness of a named employee;

D. Information pertaining to the personal history, general character or conduct of members of the employee's immediate family;

D-1. Personal information pertaining to the employee's race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability and marital status; social security number; personal contact information as provided in Title 1, section 402, subsection 3, paragraph O ~~home telephone number and home address~~; and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance. When there is a work requirement for public access to personal information under this paragraph that is not otherwise protected by law, that information may be made public. The Director of the Bureau of Human Resources, upon the request of the employing agency, shall make the determination that the release of certain personal information not otherwise protected by law is allowed; and

E. Except as provided in section 7070-A, complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

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

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

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

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

This subsection does not preclude union representatives from having access to personnel records, consistent with subsection 4, that may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this subsection remain confidential and are not open for public inspection;

3. Other information. Other information to which access by the general public is prohibited by law.

4. Disclosure of certain information for grievance and other proceedings. The Director of Human Resources may release to the Director of Employee Relations specific information designated confidential by this section which has been requested by the Director of Employee Relations to be used in negotiations, mediation, fact-finding, arbitration, grievance proceedings and other proceedings in which the Director of Employee Relations represents the State as defined in this subsection. For the purpose of this subsection, "other proceedings" means unemployment compensation proceedings, workers' compensation proceedings, human rights proceedings and labor relations proceedings.

Confidential information provided under this subsection to the Bureau of Employee Relations shall be governed by the following.

A. The information to be released shall be information only as necessary and directly related to the proceeding as determined by the Director of Human Resources.

B. The Director of Employee Relations shall specify in writing the confidential information required in the proceedings and the reasons explaining the need for the information, and shall provide a copy of the written request to the employee or employees.

C. The proceeding for which the confidential information is provided shall be private and not open to the public; or, if the proceeding is open to the public, the confidential information shall not be disclosed except exclusively in the presence of the fact finder, the parties and counsel of record, and the employee who is the subject of the proceeding and provisions are made to ensure that there is no public access to the confidential information.

The Director of Employee Relations may use this information in grievance proceedings and provide copies to the employee organization that is a party to the proceedings, provided the information is directly related to those proceedings as defined by the applicable collective bargaining agreement. Confidential personnel records in the possession of the Bureau of Employee Relations shall not be open to public inspection and shall not be "public records," as defined in Title 1, section 402, subsection 3.

Sec. 6. 5 MRSA § 15321, sub-§ 3 is amended to read:

3. Technology centers. The following provisions govern technology centers.

A. A technology center may be incorporated as a nonprofit organization, be part of a nonprofit organization, be incorporated as a for-profit organization or be part of a for-profit organization. The following provisions govern a for-profit technology center.

(1) Services made available to a technology center by the center director must be made available to all tenants of a for-profit center.

(2) A for-profit center in a targeted technology may apply for available funding. A for-profit center selected for funding shall accept the funding as a loan that may be paid back in the form of cash, equity or royalties as agreed

upon by the for-profit center and the Department of Economic and Community Development.

B.

C. Each technology center shall provide shared, low-cost space to selected tenants and be designed to be self-sufficient with regard to operational costs and structural maintenance. Existing real estate must be considered where suitable. Specific business support tailored to each tenant must be provided by existing organizations such as the small business development centers and regional economic development districts. Each technology center must have simultaneous-broadcast or interactive-television capability or access to these capabilities nearby to facilitate common training for the system.

D. The records and proceedings of the technology centers are ~~not considered~~ public for the purposes of Title 1, chapter 13 except that the following records are designated as confidential for the purposes of Title 1, section 402, subsection 3, paragraph A:

(1) A record obtained or developed by the technology center prior to receipt of a written application or proposal in a form acceptable to the technology center for assistance from the technology center. After receipt by the technology center of the application or proposal, a record pertaining to the application or proposal may not be considered confidential unless it is confidential under another provision of this subsection;

(2) A peer review or analysis or other document related to the evaluation of a grant application or proposal;

(3) A record that the person, including the technology center, to whom the record belongs or pertains has requested be designated confidential and that the technology center has determined contains proprietary information, trade secrets or commercial or financial information, the release of which could be competitively harmful to the submitter of the information, could impair the technology center's ability in the future to obtain similar necessary information solely through the voluntary provision of such information and could affect other technology center interests, such as program effectiveness and compliance. For purposes of this subparagraph, the following terms have the following meanings:

(a) "Commercial or financial information" means information related to businesses, commerce, trade, employment, profits or finances, including personal finances.

(b) "Trade secret" means a secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There

must be a direct relationship between the trade secret and the productive process.

(4) A financial statement, credit report or tax return of an individual or other record obtained or developed by the technology center, the disclosure of which would constitute an invasion of personal privacy as determined by the technology center;

(5) A record, including a financial statement or tax return obtained or developed by the technology center in connection with monitoring or servicing activity of the technology center, pertaining to financial assistance provided or to be provided by or with the assistance of the technology center;

(6) A record obtained or developed by the technology center that contains an assessment by a person who is not employed by the technology center of the creditworthiness or financial condition of a person or project;

(7) A financial statement or business and marketing plan in connection with a project receiving or to receive financial or other assistance from the technology center, if the person to whom the statement or plan belongs or pertains has requested that the record be designated confidential; and

(8) Those employee personnel records made confidential pursuant to section 957, subsection 5 and section 17057.

Sec. 7. 7 MRSA § 2992-A sub-§ 1 is amended to read:

1. Board established as a public instrumentality. The Maine Dairy Promotion Board is established as a public body corporate and politic and a public instrumentality of the State. The exercise of powers conferred by this chapter is held to be the performance of essential government functions.

A. Employees of the board may not be construed to be state employees for any purpose, including the state civil service provisions of Title 5, Part 2 and Title 5, chapter 372.

B. The board may not be construed to be a state agency for any purposes, including the budget, accounts and control, auditing, purchasing or other provisions of Title 5, Part 4.

C. Notwithstanding paragraphs A and B:

(1) Employees of the board, including employees hired after July 1, 1996, are state employees for the purposes of the state retirement provisions of Title 5, Part 20 and the state employee health insurance program under Title 5, chapter 13, subchapter II;

(2) All meetings and records of the board are subject to the provisions of Title 1, chapter 13, subchapter I, except that by majority vote of those members present recorded in a public session records and meetings of the board may be closed to the public when public disclosure of the subject matter of the records or meetings would adversely affect the competitive position of the milk industry of the State or segments of that industry. The Commissioner of Agriculture, Food and Rural Resources and those members of the Legislature appointed to serve on the joint standing committee of the Legislature having jurisdiction over agricultural, conservation and forestry matters have access to all material designated confidential by the board;

(3) For the purposes of the Maine Tort Claims Act, the board is a governmental entity and its employees are employees as those terms are defined in Title 14, section 8102;

(4) Funds received by the board pursuant to chapter 611 must be allocated to the board by the Legislature in accordance with Title 5, section 1673; and

(5) Except for representation of specific interests required by subsection 2, members of the board are governed by the conflict of interest provisions set forth in Title 5, section 18.

Sec. 8. 7 MRSA § 2998-B, sub-§ 1 is amended to read:

1. Council established as a public instrumentality. The Maine Dairy and Nutrition Council is established as a public body corporate and politic and a public instrumentality of the State. The exercise of powers conferred by this chapter is held to be the performance of essential government functions.

A. Employees of the council may not be construed to be state employees for any purpose, including the state civil service provisions of Title 5, Part 2 and Title 5, chapter 372.

B. The council may not be construed to be a state agency for any purposes, including the budget, accounts and control, auditing, purchasing or other provisions of Title 5, Part 4.

C. Notwithstanding paragraphs A and B:

(1) Employees of the council, including employees hired after July 1, 1996, are state employees for the purposes of the state retirement provisions of Title 5, Part 20 and the state employee health insurance program under Title 5, chapter 13, subchapter II;

(2) All meetings and records of the council are subject to the provisions of Title 1, chapter 13, subchapter I, except that by majority vote of those members present recorded in a public session records and meetings of the ~~board~~ council may be closed to the public when public disclosure of the subject matter of the records or meetings would adversely affect the

competitive position of the milk industry of the State or segments of that industry. The Commissioner of Agriculture, Food and Rural Resources and those members of the Legislature appointed to serve on the joint standing committee of the Legislature having jurisdiction over agricultural, conservation and forestry matters have access to all material designated confidential by the council;

(3) For the purposes of the Maine Tort Claims Act, the council is a governmental entity and its employees are employees as those terms are defined in Title 14, section 8102;

(4) Funds received by the council pursuant to chapters 603 and 611 must be allocated to the board by the Legislature in accordance with Title 5, section 1673; and

(5) Except for representation of specific interests required by subsection 2, members of the council are governed by the conflict of interest provisions set forth in Title 5, section 18.

Summary

This bill implements the recommendations of the Right to Know Advisory Committee regarding statutory changes to existing public records exceptions. The bill makes the following changes.

Under current law, personal contact information concerning public employees is not a public record. Section 1 of the bill clarifies that the exception also applies to personal contact information of voluntary appointees serving in state government positions without compensation by cross-referencing the definition of "employee" in the Maine Tort Claims Act. Section 5 of the bill also addresses a potential conflict with this exception and the law governing state employee personnel records to clarify that personal contact information of state employees and applicants for state employment are not public records.

Section 2 of the bill clarifies the law governing the confidentiality of reports, records and working papers of the Office of Program Evaluation and Government Accountability. The bill clarifies that final program evaluation reports are public records and subject to disclosure. With regard to other records and working papers, the bill provides that those working papers and records that support reports or are related to any program evaluation are confidential and may not be disclosed except at the discretion of the Director of OPEGA in certain circumstances. Prior to the release of a program evaluation report, the bill gives the Director of OPEGA discretion to disclose working papers to the agency subject to the evaluation when disclosure will not prejudice the program evaluation and the agency agrees to keep the working papers confidential. After the release of a program evaluation report, the bill gives the Director of OPEGA discretion to disclose working papers as necessary and as long as the working papers remain confidential to the state agency subject to the program evaluation or any federal agency providing funding to that agency, to law enforcement agencies for the purposes of criminal investigation, to other state audit agencies and to other auditors reviewing the work of OPEGA.

Section 3 of the bill narrows the current exception providing confidentiality to complaint and investigative files maintained by the State Court Administrator to only those complaints and investigations that are related to court and judicial security.

Section 4 of the bill repeals the exception making confidential any investigations by the Attorney General of the unauthorized practice of law. There is another provision in current law—Title 16, section 614—that addresses when investigative records or information held by the Attorney General for any type of investigation may be disclosed to the public. The provision repealed by section 4 of the bill is not necessary.

Section 6 of the bill narrows the exception in current law that designates the records and proceedings of Maine Technology Centers as not public for the purposes of the Freedom of Access laws. The bill provides that the records and proceedings are public but for certain records designated as confidential, including records that are confidential by other provisions of law, financial statements, credit reports, tax returns and records that contain proprietary information or trade secrets. The approach taken in the bill is modeled on a similar exception in current law for records of the Maine Technology Institute.

Sections 7 and 8 of the bill require that the Maine Dairy Promotion Board and Maine Dairy and Nutrition Council take a publicly recorded vote supported by a majority of the members before closing meetings or records to the public as allowed under current law when public disclosure of the subject matter would adversely affect the competitive position of the milk industry of the State or segments of that industry.

APPENDIX F

Proposed revision of the Freedom of Access Laws, prepared by Christopher Parr

DEPARTMENT OF PUBLIC SAFETY'S SUGGESTED REVISIONS TO CLARIFY 1 MRSA, CHAPTER 13: Public Records and Proceedings

Below please find a copy of 1 MRSA c. 13, sub-c. 1, §§ 401 – 410 that includes suggested amendments to those sections that our agency believes would improve and clarify the Maine Freedom of Access Act. Comments also are included in order to explain why a given amendment is being suggested.

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Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

Subchapter 1: FREEDOM OF ACCESS

§401. Declaration of public policy; rules of construction

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

§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.

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.

1-B. Agency. "Agency" means a public governmental department, bureau, unit, authority, association, council, committee, board, task force, commission, or similar organization of the State of Maine, or of a county or municipality of the State of Maine.

1-C. Official. "Official" has the same meaning as "employee" as defined in Title 14, section 8102, subsection 1: "A person acting on behalf of a governmental entity in any official capacity, whether temporarily or permanently, and whether with or without compensation from local, state or federal funds, including elected or appointed officials;

volunteer firefighters as defined in Title 30-A, section 3151; emergency medical service personnel; members and staff of the Consumer Advisory Board pursuant to Title 34-B, section 1216; members of the Maine National Guard but only while performing state active service pursuant to Title 37-B; sheriffs' deputies as defined in Title 30-A, section 381 when they are serving orders pursuant to section 3135; and persons while performing a search and rescue activity when requested by a state, county or local governmental entity, but the term "employee" does not mean a person or other legal entity acting in the capacity of an independent contractor under contract to the governmental entity.

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;

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;

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;

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;

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; and

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.

3. Public record~~s~~. The term "public record~~s~~" 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;

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;

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;

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;

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;

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;

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;

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;

I. Juvenile records and reports of municipal fire departments regarding the

investigation and family background of a juvenile fire setter;

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;

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;

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;

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems. 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;

N. Social security numbers in the possession of the Department of Inland Fisheries and Wildlife; and

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) For the purposes of this paragraph "~~P~~public employee" means an employee of a governmental entity, as defined in Title 14, section 8102, subsection 2, except that "public employee" does not include elected officials.

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, conviction data, address of furlough and dates of furlough;

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, conviction data, address of residence and dates of supervision; and

C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, conviction data 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.

COMMENT: The amendments in this section attempt to clarify the meaning of certain words used in Chapter 13, sub-Chapter 1. Amendments to other sections based on the amendments to this section are accordingly reflected in sections that follow.

§402-A. Public records defined (REPEALED)

§403. Meetings to be open to public

Except as otherwise provided by statute or by section 405, all public proceedings shall be open to the public, any person shall be permitted to attend any public proceeding and any public record or minutes of such proceedings that is required by law shall be made promptly and shall be open to public inspection.

§404. Recorded or live broadcasts authorized

In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The ~~body or~~ agency or official holding the public proceedings may make reasonable rules and regulations governing these activities, so long as these rules or regulations do not defeat the purpose of this subchapter.

§404-A. Decisions (REPEALED)

§405. Executive sessions

Those ~~bodies or~~ agencies falling within this subchapter may hold executive sessions subject to the following conditions.

1. Not to defeat purposes of subchapter. ~~These~~ An executive sessions ~~shall~~ may not be used to defeat the purposes of this subchapter as stated in section 401.

2. Final approval of certain items prohibited. No ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official actions ~~shall~~ may be finally approved at an executive sessions.

3. Procedure for calling of an executive session~~s~~. An ~~E~~executive sessions ~~may~~ must be called ~~only~~ by a public, recorded vote of 3/5 of the members, present and voting, of such ~~bodies or~~ agencies.

4. Motion contents. A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent.

5. Matters not contained in motion prohibited. No ~~other~~ matters other than any identified in a motion to go into executive session may be considered ~~in~~ during that ~~particular~~ executive session.

6. Permitted deliberation. Deliberations on only the following matters may be conducted ~~in~~ during an executive sessions ~~on the following matters and no others~~:

A. Discussion or consideration of the hiring, employment, appointment, nomination, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual official or group of ~~public~~ officials~~, appointees or employees~~ of the ~~body or~~ agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:

(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy would be violated;

(2) Any person charged or investigated shall be permitted to be present at an executive session if ~~he~~ that person so desires;

(3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against ~~him~~ that person be conducted in open session. A request, if made to the agency, must be honored; and

(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion shall be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal;

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, provided that:

(1) The student and legal counsel and, if the student be a minor, the student's parents or legal guardians shall be permitted to be present at an executive session if the student, parents or guardians so desire.

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the ~~body or~~ agency;

D. Discussion of labor contracts and proposals and meetings between ~~a public~~ an agency and its negotiators. The parties must be named before the ~~body or~~ agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;

E. Consultations between ~~a body or~~ an agency and its attorney concerning the legal rights and duties of the ~~body or~~ agency, pending or contemplated litigation, settlement offers and matters where the duties of the ~~public body's~~ agency's counsel to ~~his client~~ the agency pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the ~~State, municipality or other public~~ agency or person at a substantial disadvantage.

F. Discussions of information contained in records made, maintained or received by ~~a body or~~ an agency when access by the general public to those records is prohibited by statute;

G. Discussion or approval of the content of examinations administered by ~~a body or~~ an agency for licensing, permitting or employment purposes; consultation between ~~a body or~~ an agency and any entity that provides examination services to that ~~body or~~ agency regarding the content of an examination; and review of examinations with the person examined; and

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.

§405-A. Recorded or live broadcasts authorized (REPEALED)

§405-B. Appeals (REPEALED)

§405-C. Appeals from actions (REPEALED)

§406. Public notice

Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of ~~a body or~~ an agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the ~~body or~~ agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.

§407. Decisions

1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any ~~public~~ official~~, employee or appointee~~. The agency shall, except in case of probationary ~~employees~~officials, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to appraise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof ~~shall~~ must be kept by the agency and made available to any interested member of the public who may wish to review it.

§408. Public records available for public inspection and copying

1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record. An agency or official

may request written clarification regarding the public record or public records being requested, but in any case the agency or official must acknowledge receipt of the request within a reasonable period of time.

COMMENT: Currently a person may make a FOAA request of such breadth that, as a practical and legal matter, an agency's ability to respond to the request is extremely difficult.

This amendment would permit an agency or official to request written clarification regarding the public record or public records being requested so that the agency or official will be accurately informed about what public record or public records are being requested.

The amendment also would necessitate that an agency or official acknowledge receipt of the request within a reasonable period of time.

1-A. Copy medium. A person may request a copy of any public record.

A. If any public record exists in electronic or magnetic form, the person may request a copy of the public record or public records in a paper, electronic or magnetic medium.

B. An agency or official shall provide a copy of a public record or public records in the requested medium if:

1. The agency or official has the technological ability to produce the public record or public records in that medium;

2. The agency or official is not required to purchase any computer software, hardware, or data storage supplies in order to accommodate the request;

3. Providing a copy of the public record or public records does not violate the terms of a contractual agreement between the agency or official and a 3rd party;

4. An unreasonable burden would not be placed on the agency or official due to a need either to review the public record or public records to determine whether some or all of the information in it may be released publicly, or to redact information from the public record or public records that is protected by law; and

5. Providing the record in the requested medium is the most efficient and cost-effective means for the agency or official to do so.

COMMENT: This amendment would clarify that a requester may request a copy of public record or public records in a paper, electronic, or magnetic medium, and would require the copy of the public record or public records to be furnished in the requested medium if certain criteria are met.

2. **Inspection, translation and copying scheduled.** Inspection, translation and

copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record or public records sought.

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

A. The agency or official may charge a reasonable fee to cover the cost of copying or printing the requested public record or public records, as well as for the costs for any data storage supplies that are used to make electronic copies of the requested public record or public records.

> **COMMENT**: This amendment would clarify that a reasonable fee may be charged to cover the cost of printing a requested public record or public records, as well as for the costs for any data storage supplies that are used to make electronic copies of the requested public record or public records.

B. ~~The~~ An agency or official may charge a fee to cover the ~~actual~~ cost of searching for, retrieving, ~~and~~ compiling and reviewing ~~the~~ a requested public record or public records of not more than $10 per hour ~~after the first hour~~ of aggregate ~~staff~~ time ~~per~~ devoted to responding to a request. Compiling the public record or public records includes reviewing and redacting confidential information.

> **COMMENT**: This amendment would clarify that a reasonable fee may be charged to cover the cost of searching for, retrieving, compiling, and reviewing a public record or public records. The amendment also would clarify that the cost amount is based on the aggregate amount of time devoted by officials to respond to a request.

C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.

D. An agency or official may not charge for inspection, but may charge a fee in accordance with paragraph B of this subsection if the public record or public records to be inspected must be sought, retrieved, compiled or reviewed in order for inspection to occur.

> **COMMENT**: Currently FOAA prohibits an agency or official from charging a fee for an inspection of a public record or public records. This amendment would clarify that a fee may be charged to cover any cost incurred in order to find, retrieve, compile, and review a public record or

public records in order for the inspection to occur.

E. If a person requests that the public record or public records be sent by mail, the agency or official may charge a fee to cover the actual cost of mailing the public record or public records.

COMMENT: This amendment would clarify that an agency or official may charge a fee to cover the actual cost of mailing a public record or public records to a requester, if the requester asks that copies of the public record or public records requested be sent by mail.

4. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than $20, the agency or official shall inform the requester before ~~proceeding~~ continuing with the process of responding to the request. The requester must then notify the agency or official if the requester wants the agency or official to continue with the process of responding to the request. ~~If the estimate of the total cost is greater than $100, subsection 5 applies.~~

COMMENT: This amendment would require that, when the cost of responding to a request is estimated to exceed $20, an agency or official must inform a requester of that estimate before continuing with the process of responding to the request. The amendment also would clarify that the requester, once so informed, must notify the agency or official that he or she wants the agency or official to continue with the process of responding to the request.

5. Payment in advance. ~~The~~ An agency or official may require a requester to pay ~~all or a portion of~~ the estimated costs to complete the request prior to the translation, search, retrieval, compiling, review and copying of the public record or public records ~~if~~ as follows:

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

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

C. An agency or official may require a requester to pay an advance partial payment of up to $20 when the estimated total cost to respond to the request exceeds that amount.

D. An agency or official may require a requester to pay an advance partial payment of up to $10 when the estimated total cost to respond to a request is more than $10 but less than $20.

E. An agency or official may require a requester to pay advance full payment of up to $10 when the estimated cost to respond to a request is less than $10.

An agency or official also may require advance payment in full for any properly assessed outstanding fees owed by the requester with respect to any previous requests made by that person for a public record or public records. The agency or official may require that such payment in full be made first before any additional public records are released to the requester owing such properly assessed outstanding fees.

COMMENT: Currently FOAA permits an agency or official to require a requester to pay all or a portion of the estimated costs to respond to a request only if the estimated total cost exceeds $100 or the requester has failed to pay a properly assessed fee related to a previous FOAA request. Consequently, an agency or official may diligently and completely respond to a request, make available for inspection and/or provide copies of a public record or public records to a requester, but then not ever recover from the requester any of the costs that were incurred to respond to the request because the two thresholds established in the current statute were not met. Sometimes such costs—though less than $100—are substantial, and FOAA provides no legal mechanism for an agency or official to collect outstanding fees that are owed by a requester.

This amendment would permit an agency or official to require advance payment of estimated costs, as reflected in the amendment above. The amendment also would permit an agency or official to require advance payment in full of any properly assessed outstanding fees owed by the requester with respect to any previously made FOAA requests made by that person for a public record or public records. The agency or official may require that such payment in full be made before any additional public records are released to the requester owing such properly assessed outstanding fees.

6. Waivers. The agency or official may waive part or all of the total fee if:

A. The requester is indigent; or

B. Release of the public record or public records requested is in the public interest because ~~it~~ doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

§409. Appeals

1. Records. If any ~~body or~~ agency or official~~, who has~~ having custody or control of any public record, shall refuse permission to so inspect or copy or abstract a public record or public records, this denial shall be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days ~~of the request for~~

~~inspection by any person~~ after the agency or official has made a final determination that the request is denied in whole or part. Any person aggrieved by denial may appeal therefrom, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

> **COMMENT**: Currently the FOAA requires that an agency communicate a denial of a FOAA request to the requester within five working days of the request for inspection. As a practical matter, and especially given the breadth of some FOAA requests, it is often difficult for an agency or official to search for and retrieve a requested public record or public records, let alone compile and review the public record or public records to determine whether such may be publicly released, within only 5 working days.
>
> This amendment would require that an agency or official communicate to the requester the denial of a FOAA request within 5 working days after the agency or official has made a final determination that the request is denied in whole or part.

2. Actions. If any ~~body or~~ agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action shall be illegal and the officials ~~responsibile~~ responsible shall be subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.

3. Proceedings not exclusive. The proceedings authorized by this section shall not be exclusive of any other civil remedy provided by law.

§410. Violations

For every willful violation of this subchapter, the ~~state government agency or local government entity~~ agency whose ~~officer or employee~~ official committed the violation shall be liable for a civil violation for which a forfeiture of not more than $500 may be adjudged.

APPENDIX G

Draft legislation: Proposed changes to LD 1881, An Act to Improve Transparency and Accountability in Government

Proposal to address clarification, acknowledgment (replace LD 1881) 12/26/07

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

1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record. An agency or official may request clarification concerning the public record or public records being requested, but in any case the agency or official must acknowledge receipt of the request within a reasonable period of time.

SUMMARY

Currently a person may make a Freedom of Access request of such breadth that, as a practical and legal matter, an agency's ability to respond to the request is extremely difficult.

This amendment permits an agency or official to request clarification concerning the public record or public records being requested so that the agency or official will be accurately informed about what public record or public records are being requested.

The amendment also requires an agency or official to acknowledge receipt of the request within a reasonable period of time.

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