RIGHT TO KNOW ADVISORY COMMITTEE
Public Records Exception Subcommittee

Monday, October 23, 2023
9:30 a.m.

Location: State House, Room 438 (Hybrid Meeting)
Public access also available through the Maine Legislature's livestream:
https://legislature.maine.gov/Audio/#438

1. Introductions

2. Overview of review process
   - Chart for exceptions under review in Titles 22 and 22-A
   - Questionnaires and responses
   - Statutory Criteria

3. Review and discussion of existing public records exceptions
   - Review approx. half of exceptions with completed responses
   - Ref. Nos. 1 to 6; 8 to 10; 13; 14; 18; 22 to 25; 27 to 29; and 39 to 44

4. Planning for next meeting

5. Adjourn

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
1	22 MRSA §17, sub-§7	Title 22, section 17, subsection 7, relating to records of child support obligors	DHHS	No change	
2	22 MRSA §42, sub-§5	Title 22, section 42, subsection 5, relating to DHHS records containing personally identifying medical information	DHHS	No change	
3	22 MRSA §261, sub-§7	Title 22, section 261, subsection 7, relating to records created or maintained by the Maternal and Infant Death Review Panel	DHHS	No change	
4	22 MRSA §264, sub-§8	Title 22, section 264, subsection 8, relating to records held by the coordinator of the Aging and Disability Mortality Review Panel	DHHS, Maine CDC	No change	
5	22 MRSA §664, sub-§1	Title 22, section 664, subsection 1, relating to State Nuclear Safety Program facility licensee books and records	DHHS, Maine CDC	No change	
6	22 MRSA §666, sub-§3	Title 22, section 666, subsection 3, relating to the State Nuclear Safety Program concerning the identity of a person providing information about unsafe activities, conduct or operation or license violation	DHHS, Maine CDC	No change	
7	22 MRSA §811, sub-§6	Title 22, section 811, subsection 6, relating to hearings regarding testing or admission concerning communicable diseases			
8	22 MRSA §815, sub-§1	Title 22, section 815, subsection 1, relating to communicable disease information	DHHS, Maine CDC	No change	
9	22 MRSA §824	Title 22, section 824, relating to persons having or suspected of having communicable diseases	DHHS, Maine CDC	No change	
10	22 MRSA §832, sub-§3	Title 22, section 832, subsection 3, relating to hearings for consent to test for the source of exposure for a blood-borne pathogen	DHHS, Maine CDC	No change	

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
11	22 MRSA §1064	Title 22, section 1064, relating to immunization information system			
*12	22 MRSA §1065, sub-§3	Title 22, section 1065, subsection 3, relating to manufacturer and distributor reports on distribution of influenza immunizing agents	Repealed	Repealed	No Action Needed
13	22 MRSA §1233	Title 22, section 1233, relating to syphilis reports based on blood tests of pregnant women	DHHS, Maine CDC	No change	
14	22 MRSA §1317-C, sub-§ 3	Title 22, section 1317-C, subsection 3, relating to information regarding the screening of children for lead poisoning or the source of lead exposure	DHHS, Maine CDC	No change	
15	22 MRSA §1413	Title 22, section 1413, relating to information that directly or indirectly identifies individuals included in amyotrophic lateral sclerosis (ALS) registry			
16	22 MRSA §1494	Title 22, section 1494, relating to occupational disease reporting			
*17	22 MRSA §1555-D, sub-§ 1	Title 22, section 1555-D, subsection 1, relating to lists maintained by the Attorney General of known unlicensed tobacco retailers	Repealed	Repealed	No Action Needed
18	22 MRSA §1596	Title 22, section 1596, relating to abortion and miscarriage reporting	DHHS, Maine CDC	No change	
19	22 MRSA §1597-A, sub-§6	Title 22, section 1597-A, subsection 6, relating to a petition for a court order consenting to an abortion for a minor			
*20	22 MRSA §1696-D	Title 22, section 1696-D, relating to the identity of chemical substances in use or present at a specific location if the substance is a trade secret	Repealed	Repealed	No Action Needed

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
*21	22 MRSA §1696-F	Title 22, section 1696-F, relating to the identity of a specific toxic or hazardous substance if the substance is a trade secret	Repealed	Repealed	No Action Needed
22	22 MRSA §1711-C, sub-§2	Title 22, section 1711-C, subsection 2, relating to hospital records concerning health care information pertaining to an individual	DHHS, Division of Licensing and Certification	No change	
23	22 MRSA §1714-E, sub-§5	Title 22, section 1714-E, subsection 5, relating to department records regarding determination of credible allegation of MaineCare fraud	DHHS, Division of Licensing and Certification	No change	
^23-*A*	*22 MRSA §1717, sub-§15 (as enacted by PL 2023, c. 309)*	*Title 22, section 1717, subsection 15, relating to personally identifying information or health information created or obtained in connection with DHHS licensing or quality assurance activities*			
24	22 MRSA §1816, sub-§2	Title 22, section 1816, subsection 2, paragraph B, relating to survey findings of health care accrediting organization, including deficiencies and work plans, of hospitals reported to DHHS	DHHS, Division of Licensing and Certification	No change	
25	22 MRSA §1828	Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities	DHHS, Division of Licensing and Certification	No change	
*26	22 MRSA §1848, sub-§1 Repealed by PL 2023, c. 37	Title 22, section 1848, subsection 1, relating to documents and testimony given to Attorney General under Hospital and Health Care Provider Cooperation Act	All of chapter 405-A, including section 1848 repealed by Public Law 2023, c. 37	All of chapter 405-A, including section 1848 repealed by Public Law 2023, c. 37	No Action Needed
27	22 MRSA §2140, sub-§17	Title 22, section 2140, subsection 17, relating to information collected by DHHS regarding compliance with Maine Death with Dignity Act	DHHS, Maine CDC	No change	
28	22 MRSA §2153-A, sub-§1	Title 22, section 2153-A, subsection 1, relating to information provided to the Department of Agriculture by the US	Dept. of Agriculture, Conservation and Forestry	No change	

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
		Department of Agriculture, Food Safety and Inspection Service			
29	22 MRSA §2153-A, sub-§2	Title 22, section 2153-A, subsection 2, relating to information provided to the Department of Agriculture by the US Food and Drug Administration	Dept. of Agriculture, Conservation and Forestry	No change	
*30	22 MRSA §2425, sub-§8	Title 22, section 2425, subsection 8, paragraph A, relating to information submitted by qualifying and registered patients under the Maine Medical Use of Marijuana Act	Repealed	Repealed	No Action Needed
*31	22 MRSA §2425, sub-§8	Title 22, section 2425, subsection 8, paragraph B, relating to information submitted by primary caregivers and physicians under the Maine Medical Use of Marijuana Act	Repealed	Repealed	No Action Needed
*32	22 MRSA §2425, sub-§8	Title 22, section 2425, subsection 8, paragraph C, relating to list of holders of registry identification cards under the Maine Medical Use of Marijuana Act	Repealed	Repealed	No Action Needed
*33	22 MRSA §2425, sub-§8	Title 22, section 2425, subsection 8, paragraph F, relating to information contained in dispensary information that identifies a registered patient, the patient's physician and the patient's registered primary caregiver under the Maine Medical Use of Marijuana Act	Repealed	Repealed	No Action Needed
*34	22 MRSA §2425, sub-§8	Title 22, section 2425, subsection 8, paragraph G, relating to information that identifies applicants for registry identification card, registered patients, registered primary caregivers and registered patients' physicians under the Maine Medical Use of Marijuana Act	Repealed	Repealed	No Action Needed
*35	22 MRSA §2425, sub-§8	Title 22, section 2425, subsection 8, paragraph J, relating hearing on revocation	Repealed	Repealed	No Action Needed

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
		of a registry identification card under the Maine Medical Use of Marijuana Act unless card is revoked			
36	22 MRSA §2425-A, sub-§12	Title 22, section 2425-A, subsection 12, relating to applications and supporting information submitted by patients, caregivers and providers under the Maine Medical Use of Marijuana Act			
*37	22 MRSA §2698-A, sub-§7	Title 22, section 2698-A, subsection 7, relating to prescription drug marketing costs submitted to the Department of Health and Human Services	Repealed	Repealed	No Action Needed
*38	22 MRSA §2698-B, sub-§5	Title 22, section 2698-B, subsection 5, relating to prescription drug information provided by the manufacturer to the Department of Health and Human Services concerning price	Repealed	Repealed	No Action Needed
39	22 MRSA §2706, sub-§4	Title 22, section 2706, relating to prohibition on release of vital records in violation of section; recipient must have "direct and legitimate interest" or meet other criteria	DHHS, Maine CDC	No change	
40	22 MRSA §2706-A, sub-§6	Title 22, section 2706-A, subsection 6, relating to adoption contact files	DHHS, Maine CDC	No change	
41	22 MRSA §2769, sub-§4	Title 22, section 2769, subsection 4, relating to adoption contact preference form and medical history form	DHHS, Maine CDC	No change	
42	22 MRSA §3022, sub-§8,12,13, 14	Title 22, section 3022, subsections 8, 12,13 and 14, relating to medical examiner information	Office of the Attorney General	No change	
43	22 MRSA §3034, sub-§2	Title 22, section 3034, subsection 2, relating to the Chief Medical Examiner missing persons files	Office of the Attorney General	No change	

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
44	22 MRSA §3109, sub-§2-A	Title 22, section 3109, subsection 2-A, relating to personal information of TANF participants surveyed by DHHS	DHHS, Office of Family Independence	No change	
45	22 MRSA §3174-X, sub-§6	Title 22, section 3174-X, relating to records of the Medicaid ombudsman program			
46	22 MRSA §3188, sub-§4	Title 22, section 3188, subsection 4, relating to the Maine Managed Care Insurance Plan Demonstration for uninsured individuals	DHHS	No change	
47	22 MRSA §3192, sub-§13	Title 22, section 3192, subsection 13, relating to Community Health Access Program medical data	DHHS	No change	
48	22 MRSA §3292	Title 22, section 3292, relating to use of confidential information for personnel and licensure actions	DHHS, Office of Family and Child Services, Office of Aging and Disability Services and Division of Licensing and Certification; and DFPR, Office of Professional and Occupational Regulation	No Change	
49	22 MRSA §3293	Title 22, section 3293, relating to confidential information provided to state employees and Bureau of Human Resources			
50	22 MRSA §3294	Title 22, section 3294, relating to confidential information provided to professional and occupational licensing boards	DFPR, Office of Professional and Occupational Regulation	No change, but recommends consideration of clarification	
51	22 MRSA§3295	Title 22, section 3295, relating to confidential information provided in unemployment compensation proceedings related to state employment			
52	22 MRSA §3474, sub-§1	Title 22, section 3474, subsection 1, relating to adult protective records			

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
53	22 MRSA §3762, sub-§3	Title 22, section 3762, subsection 3, relating to TANF recipients	DHHS, Office of Family Independence	No change	
54	22 MRSA §4007, sub-§1-A	Title 22, section 4007, subsection 1-A, relating to a protected person's current or intended address or location in the context of child protection proceeding	DHHS, Office of Family Independence	No change, but is this an exception?	
55	22 MRSA §4008, sub-§1	Title 22, section 4008, subsection 1, relating to child protective records	DHHS, Office of Family Independence	No change	
56	22 MRSA §4008, sub-§3-A	Title 22, section 4008, subsection 3-A, relating to records of child death and serious injury review panel	DHHS, Office of Family Independence	No change	
57	22 MRSA §4008, sub-§3-A	Title 22, section 4008, subsection 3-A, relating to records of child death and serious injury review panel	DHHS, Office of Family Independence	No change	
58	22 MRSA §4018, sub-§4	Title 22, section 4018, subsection 4, relating to information about a person delivering a child to a safe haven	DHHS, Office of Family Independence	No change	
59	22 MRSA §4019, sub-§9	Title 22, section 4019, subsection 9, relating to files, reports, records, communications and working papers used or developed by child advocacy centers	DHHS, Office of Family Independence	No change	
60	22 MRSA §4021, sub-§3	Title 22, section 4021, subsection 3, relating to information about interviewing a child without prior notification in a child protection case	DHHS, Office of Family Independence	No change	
61	22 MRSA §4036, sub-§1-A	Title 22, section 4036, subsection 1-A, relating to child protective case documents in a proceeding awarding parental rights and responsibility	DHHS, Office of Family Independence	No change	
62	22 MRSA §4087-A, sub-§6	Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman	DHHS, Office of Family Independence	No change	
63	22 MRSA §4306	Title 22, section 4306, relating to general assistance	DHHS, Office of Family Independence	No change	

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
64	22 MRSA §5307, sub-§2	Title 22, section 5307, subsection 2, relating to fingerprint-based criminal background check for "high-risk" MaineCare providers	DHHS	No change	
65	22 MRSA §5328, sub-§1	Title 22, section 5328, subsection 1, relating to community action agencies records about applicants and providers of services			
66	22 MRSA §5409, sub-§1 and 2	Title 22, section 5409, subsections 1 and 2, relating to records held by the Maine Health Insurance Marketplace	DHHS, Office of the Health Insurance Marketplace	No change	
67	22 MRSA §7250, sub-§1	Title 22, section 7250, subsection 1, relating to the Controlled Substances Prescription Monitoring Program	DHHS, Office of Behavioral Health	No change	
68	22 MRSA §7703, sub-§2	Title 22, section 7703, subsection 2, relating to facilities for children and adults	DHHS, Office of Family Independence	No change	
69	22 MRSA §8110, sub-§5	Title 22, section 8110, subsection 5, relating to criminal history record information for employees of a children's residential care facility, an emergency children's shelter, a shelter for homeless children or any group home that provides care for children	DHHS, Office of Family Independence	No change	
70	22 MRSA §8302-C, sub-§1	Title 22, section 8302-C, subsection 1, relating to criminal history record information for child care providers and child care staff members	DHHS, Office of Family Independence	No change	
71	22 MRSA §8707	Title 22, section 8707, relating to records of the Maine Health Data Organization			
72	22 MRSA §8714, sub-§1	Title 22, section 8714, subsection 1, relating to protected health information in data collected by MHDO			
73	22 MRSA §8715-A, sub-§2	Title 22, section 8715-A, subsection 2, relating to cancer-incidence registry data and vital statistics data reported to MHDO			

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	**DESCRIPTION**	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
74	22 MRSA §8733	Title 22, section 8733, relating to information provided to MHDO by a prescription drug manufacturer, wholesale drug distributor or pharmacy benefits manager			
75	22 MRSA §8754	Title 22, section 8754, relating to medical sentinel events and reporting	DHHS, Division of Licensing and Certification	No change	
76	22 MRSA §8824, sub-§ 2	Title 22, section 8824, subsection 2, relating to the newborn hearing program	DHHS, Maine CDC	No change	
77	22 MRSA §8943	Title 22, section 8943, relating to the registry for birth defects	DHHS, Maine CDC	No change	
78	22 MRSA §9061	Title 22, section 9061, relating to criminal background check record or other personally identifiable information for direct access worker	DHHS, Division of Licensing and Certification	No change	

*Statute Repealed since last review in 2015—no RTKAC action needed
^*Exception enacted by 131st Legislature*

STATUTE: 22 MRSA §17, sub-§7

AGENCY: Department of Health and Human Services

CONTACT PERSON: Jerry Joy, DHHS, OFI

RETURN BY: September 2, 2022

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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

The Division submits obligor case information to the financial institution data match program on a quarterly basis. This information includes obligor name, social security number and arrears amount and is used to identify account holders in financial institutions in Maine. We are aware of no requests for this information having been made in any forum.

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

The Division supports the continuation of this exception.

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

There have been no problems. The records are clear that the information is intended to be confidential and adequately describes the covered records.

4. Does your agency recommend changes to this exception?

No, we would not recommend any changes.

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

There would be no stakeholders. This function is part of a federal program requirement.

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

STATUTE: 22 MRSA §42, sub-§5

AGENCY: Department of Health and Human Services

CONTACT PERSON: Rita Owsiak

RETURN BY: September 30, 2022

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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

Type of Records: Notifiable Conditions, including outbreak investigations
Frequency of FOAAs: Low (2-3 times per year). Most requests do not include a request for identity of individual.

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

Support: Identity of individual is not usually pertinent to information requested.

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

None.

4. Does your agency recommend changes to this exception?

No.

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

The business/office managers who assist with correspondence in filling these requests.

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

N/A

STATUTE: 22 MRSA §261, sub-§7

AGENCY: Department of Health and Human Services

CONTACT PERSON: Tera Pare, Maine CDC

RETURN BY: September 30, 2022

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Thank you.

QUESTIONS

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

The Maine CDC Maternal Child Health Program does not have any experience in using this public records exception for the basis of denying a FOAA request. The program has not been involved with any FOA request or in administrative or other litigation.

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

Maine CDC supports the continuation of this record exception in order to prevent the release of individual health information outside of its intended public health purpose.

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

The program has not encountered any problems in the application of this exception.

4. Does your agency recommend changes to this exception?

No changes recommended.

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

Maine CDC

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

STATUTE: 22 MRSA §264, sub-§8

AGENCY: Department of Health and Human Services

CONTACT PERSON: Tera Pare, Maine CDC

RETURN BY: September 30, 2022

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Thank you.

QUESTIONS

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

The Maine Aging and Disability Mortality Review panel was just established by statute in 2021 to identify trends in mortality and serious injury occurring to members of the home and community based services waiver recipients and to make programmatic-level recommendations for improving the system for protecting adults receiving services, including modifications to law, rules, training, policies and procedures. The intention is for the panel coordinator only to collect and review private health information, and then the coordinator would aggregate and deidentify the data for review by the panel. The work augments case-specific responses which are managed by the DHHS Office of Aging and Disability Services as well as Adult Protective Services.

The panel coordinator, as defined by statute and as recommended by The Department of Health and Human Services (HHS), Office of Inspector General (OIG), Administration for Community Living, and The

HHS Office for Civil Rights* has access to confidential records which are held by other entities and protected by law, including HIPAA. Those records include death certificates; autopsy, medical examiner and coroner reports; emergency medical personnel reports and documentation; health care information such as medical records from physicians, specialists, hospital, and emergency room records, and records from personal plans and treatment plans, service plans and agreements, documents from providers of services and case managers, documents related to an APS case or investigation, reports relating to incidents or reportable events that include the 12 months prior to an adult's death or serious injury. Access to these records is not denied; the summary review prepared by the panel coordinator for the panel, however, is deidentified to protect the rights associated with that information and because it is not necessary for the purposes of the panel to have exposure to identifying information.

Comprehensive reviews are presented to the panel when a death may be considered unexpected, premature, preventable, or when issues with the system of care are indicated. The panel, which will begin meeting in November 2022, is anticipated to review 2-3 such cases quarterly. An annual report will be submitted to the Commissioner yearly.

* https://oig.hhs.gov/reports-and-publications/featured-topics/group-homes/group-homes-joint-report.pdf

Given that this panel is a result of new legislation and hasn't even met yet, there have been no requests for this information yet.

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

The Maine CDC supports the continuation of this exception. The records used to formulate comprehensive reviews are available separately through usual request channels, such as medical records requests. The manner in which the information is used by this panel ensures the highest level of protection of information and is in keeping with the intention of trend-based analysis rather than individual case review.

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

Although the panel has not convened, there are no problems anticipated in the application of this exception. The records gathered and held by the panel coordinator, as described in the statute, are clearly defined.

4. Does your agency recommend changes to this exception?

Not at this time.

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

In addition to panel members, who include a representative from the statewide protection and advocacy agency for individuals with disabilities contracted by the department, Disability Rights Maine; a representative from the long-term care ombudsman program; a member of the Maine Developmental

Services Oversight and Advisory Board; health care and service providers, other stakeholders would include individuals served by home and community-based services and their families.

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

The panel as defined by https://legislature.maine.gov/legis/statutes/22/title22sec264.html will begin meeting quarterly in November. We will include in our annual report any issues which arise related to confidentiality of records held on behalf of the panel.

STATUTE: **22 MRSA §664, sub-§1**

AGENCY: Department of Health and Human Services

CONTACT PERSON: Jay Hyland, Maine CDC jay.hyland@maine.gov

RETURN BY: September 30, 2022

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Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation). The only records involved are restricted under federal law and relate to security or radioactive materials use. These types of records have never been requested and therefore they have never been denied.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Maine CDC supports the continuation of the exception because it aligns with federal regulation. There are instances where knowing the privileged information could influence emergency response activities and helps us to keep the public safe from radiological exposure.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? No problems have occurred. The language is clear.

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

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

Power, Dan Laing, Independent Spent Fuel Storage Installation Manager. 207-882-6321 or dlaing@3yankees.com

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

STATUTE: **22 MRSA §666, sub-§3**

AGENCY: Department of Health and Human Services

CONTACT PERSON: Jay Hyland, Maine CDC – jay.hyland@maine.gov

RETURN BY: September 30, 2022

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Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation). In 34 years, I only remember this specific rule being applied once. The State Nuclear Safety Inspector was not the individual to whom the whistleblower came to. The whistleblower came to the US Nuclear Regulatory Commission (NRC), but the State Nuclear Safety Officer was involved with the investigation that followed the original notification. The records kept confidential was only the name of the whistleblower.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Maine CDC supports the continuation of the exception because it aligns with federal regulation. In this instance mentioned in the response to Paragraph 1 above, the State Nuclear Safety Inspector may have been excluded from the investigation, if they could not keep the identity of the whistleblower confidential. Having regulations or statutes that mirror the federal requirements make it easier for us to work together. If whistleblowers' identities were not protected by this statute, then they might never come forward.

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

records that are covered? No problems have occurred, the statute appears clear and understandable.

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

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

Maine CDC

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

STATUTE: 22 MRSA §815, sub-§1

AGENCY: Department of Health and Human Services

CONTACT PERSON: Tera Pare, Maine CDC

RETURN BY: September 30, 2022

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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

Although the Maine CDC receives hundreds of thousands of notifiable disease or condition reports from physicians, and some psychotherapist reports for Tuberculosis cases or any disease case leading towards court mandated isolation, it is rare that FOAA requests are submitted, aside from the individual (case) or their attorney requesting it themselves. In those cases, Maine CDC would be able to provide the records to the attorney, if they complete a form with a release from their client (the case), who is giving permission for the attorney to receive their private health information.

Maine CDC shares a number of reports with the public on the rates of various diseases or conditions, without revealing the identities of the cases who were reported to have those diseases or conditions, in order to prevent or control a communicable, occupational, or environmental disease or condition.

The Maine Notifiable Conditions Law (22 MRS Ch 250) identifies many provisions related to restrictions on release due to confidentiality as well as permitted release of information for public health purposes and for the public. In compliance with the Health Information Portability and Accountability Act of 1996 [P.L. 104-91], its implementing regulations, and State law, persons and entities who are required to preserve the confidentiality of protected health information nonetheless must disclose such information to public health authorities such as the Department for the purpose of preventing or controlling communicable, occupational or environmental disease.

Once Maine CDC receives this reported data, it may not release any potentially identifying information to the public or the media, unless otherwise specified in the governing statute or rule. The Department will consider the type and amount of information, any direct identifiers and geographic factors when determining whether the information may potentially identify individuals and will restrict or suppress such identifying information prior to releasing any other health information. The Department releases aggregate public health data frequently for public health and for public health action. In terms of frequency, notifiable conditions are released 24 hours/day 7 days/week to Maine CDC.

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

The Department supports continuing this exception, because of the highly sensitive personal health information that would be revealed if we did not deny, based on confidentiality. Maine CDC is not a HIPAA entity, so there are no other laws preventing Maine CDC from sharing these data, upon FOAA requests, so the risk of stigma or judgment against these individuals, if the public were able to name the individuals with a particular disease or condition, would be very high.

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

We have experienced no problems with applying this exception.

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

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

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
Please see the link below for information that is released to public regarding nationally notifiable conditions list in Maine:

- https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/disease-reporting/documents/notifiable-conditions-rule-2-17-2021.pdf

STATUTE: 22 MRSA §824

AGENCY: Department of Health and Human Services

CONTACT PERSON: Tera Pare, Maine CDC

RETURN BY: September 30, 2022

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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

Reporting of suspected or confirmed diseases or conditions designated as notifiable is mandated under Maine State Law [22 M.R.S.§ §820 and 822]. Though the primary responsibility of reporting lies with health care providers, the following entities are also required to report notifiable diseases in Maine: medical laboratories (including blood donor centers and blood banks), veterinarians, veterinary medical laboratories, health care facilities, childcare facilities, correctional facilities, educational institutions, and local health officers.

Maine CDC shares a number of reports with the public on the rates of various diseases or conditions, without revealing the identities of the cases who were reported to have those diseases or conditions, in order to prevent or control a communicable, occupational, or environmental disease or condition.

Once Maine CDC receives this reported data, it may not release any names or potentially identifying information to the public or the media, unless otherwise specified. This particular statute gives sole discretion to the Department to determine whether, or how much data is necessary to be shared in order to protect the spread of contagious diseases or conditions while protecting the individual cases or suspected cases from being

revealed. The Department will consider the type and amount of information, any direct identifiers and geographic factors when determining whether the information may potentially identify individuals and will restrict or suppress such identifying information prior to releasing any other health information. The Department releases aggregate public health data frequently for public health and for public health action.

The agency does receive regular requests related to notifiable conditions, but not that many for specific names. The kinds of requests do relate, however, to particular identifiers like race, which could potentially identify a case if that geographic area has a proportionately small number of individuals who fit that demographic identifier. Therefore, the Maine CDC must be cognizant of other factors besides just the name or address, when considering whether to release certain data to the public.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
Maine CDC supports continuing this record exception to prevent the release of individual health information outside of its intended public health purpose.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
There have been no problems, and the agency finds this language sufficiently clear.

4. Does your agency recommend changes to this exception?

No changes recommended.

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

Maine CDC

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

Please see link below for information that is released to public regarding nationally notifiable conditions list in Maine.

- https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/disease-reporting/documents/notifiable-conditions-rule-2-17-2021.pdf

STATUTE: 22 MRSA §832, sub-§3

AGENCY: Department of Health and Human Services

CONTACT PERSON: Tera Pare, Maine CDC

RETURN BY: September 30, 2022

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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

   The Maine CDC receives notifiable conditions reports from blood born pathogen tests as stated in this section of Chapter 250; however we have not received a specific request for this information, because the incidence of this kind of hearing is quite rare.

2. Please state whether your agency supports or opposes continuation of this exception and explain the reasons for that position. Maine CDC supports the continuation of this exception in order to prevent the release of individual health information outside of its intended public health purpose. For this provision, if there was a hearing to require an individual to provide a bloodborne pathogen test, that individual may experience a number of adverse reactions in the event that this information was requested, and Maine CDC released it.

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

4. Does your agency recommend changes to this exception?

   No changes recommended.

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

   Maine CDC

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

Please see link below for information that is released to public regarding nationally notifiable conditions list in Maine.

- https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/disease-reporting/documents/notifiable-conditions-rule-2-17-2021.pdf

STATUTE: 22 MRSA §1233

AGENCY: Department of Health and Human Services

CONTACT PERSON: Tera Pare, Maine CDC

RETURN BY: September 30, 2022

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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

Reporting of suspected or confirmed diseases or conditions designated as notifiable, like syphilis in prenatal women for this statutory exception, is mandated under Maine State Law at 22 M.R.S. §§820 and 822. Though the primary responsibility of reporting lies with health care providers, the following entities are also required to report notifiable diseases in Maine: medical laboratories (including blood donor centers and blood banks), veterinarians, veterinary medical laboratories, health care facilities, childcare facilities, correctional facilities, educational institutions, and local health officers.

Within the notifiable conditions law there are provisions related to confidentiality and release of information for public health purposes and for the public. In compliance with the Health Information Portability and Accountability Act of 1996 [P.L. 104-91], its implementing regulations, and State law, healthcare facilities and other required reporters must preserve the confidentiality of protected health information nonetheless, except when they must disclose such information to public health authorities such as the Maine CDC, for the purpose of preventing or controlling communicable, occupational or environmental disease.

The confidentiality laws, including 22 MRS Section 1233, prohibits data released to the public or the media from containing potentially identifying information, unless

otherwise specified in this rule. The Maine CDC will consider the type and amount of information, any direct identifiers and geographic factors when determining whether the information may potentially identify individuals and will restrict or suppress such identifying information prior to releasing any other health information. All information submitted to the Maine CDC pursuant to this rule which does not contain individually identifiable health information and that is not restricted data may be made available to the public in accordance with 22 MRS §824 and the Department of Health and Human Services's data release policy and protocols, available to the public, upon request.

Although the request for Maine CDC to release personal health information under FOAA may be rare, it is crucial that this exception remain, to protect both public health and personal health information and privacy.

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

Maine CDC supports the continuation of this exception, in order to prevent the release of individual health information outside of it's intended public health purpose. The Department of Health and Human Services Maine CDC is not a HIPAA entity. Therefore, these confidentiality provisions are critical in protecting patient health information.

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

Section 1233 appears sufficiently clear with the language "Such reports shall be kept in a special file at the bureau and shall not be considered a public record."

4. Does your agency recommend changes to this exception?

No changes recommended.

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

Maine CDC

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

Please see links below for information that is released to public regarding nationally notifiable conditions list in Maine.

- https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/disease-reporting/documents/notifiable-conditions-rule-2-17-2021.pdf

- https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/disease-reporting/documents/MeCDC-LabGuide-2022.pdf

STATUTE: 22 MRSA §1317-C, sub-§3

AGENCY: Department of Health and Human Services

CONTACT PERSON: Tera Pare, Maine CDC

RETURN BY: September 30, 0222

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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

Under this statute, Maine CDC's Child Lead Poisoning Prevention Unit does not release individual-level data or information that would identify a lead poisoned child, and we do not release individuals' blood lead level information without authorization from the child's parent or guardian. Requests for these records are very infrequent; perhaps once per year does the agency deny or modify a request for records, based on this statute. The agency has had to redact information covered by the statute in fulfilling requests for legal proceedings.

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

Maine CDC supports the continuation of the exception, in order to protect the privacy of children's medical health information, i.e., children's blood lead levels.

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

The statute prohibits the Department's Maine CDC from releasing information, if that information either directly or *indirectly* identifies children, families or other persons. What constitutes indirect identification and whether other mandates contained in other sections of 22 MRS Ch 252 (e.g., §§1320-A and 1321) that make information about properties publicly available may be considered indirect identification and are, therefore, inconsistent with §1317-C(3): this issue should be noted. The Maine CDC has received differing legal guidance from internal counsel and the Attorney General's Office on whether or not §1317-C(3) is in conflict with §§1320-A and 1321.

In addition, because §1317-C(3) includes authority to "disclose information that relates to the address of a residential unit in which an environmental lead hazard or case of lead poisoning has been identified if the disclosure contains only the information necessary to advance the public health and does not directly identify an individual," the Maine CDC routinely fulfills requests for lead inspection reports and abatement orders issued for dwelling units where lead poisoned children reside, because these notifications and documents do not directly identify a lead poisoned child living in the dwelling.

4. Does your agency recommend changes to this exception?
We would welcome a discussion among all relevant stakeholders and would be happy to participate in the legislative process revise the current statute to either clarify or remove the prohibition against indirect identification, in order to resolve internal inconsistencies within the Lead Poisoning Control Act.

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

Pine Tree Legal Associates – Attorney Lynn Ward, lward@ptla.org
Maine Chapter of the American Academy of Pediatrics
Maine Medical Association

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

22 MRS Ch 252 §§1320 and 1320-A authorize the Department's Maine CDC to inspect a property for the presence of lead-based substances under three different scenarios, one of which is in response to the identification of a lead poisoned child living at the property. When the Department orders an inspection of a rental property, property owners typically want to know why the Department is inspecting the premises. In other words, the

property owner wants to know the specific authority for inspection. Maine CDC's practice is to inform the property owner that the inspection is being conducted as a result of one of various reasons under §§1320 and 1320-A. No staff disclose whether there is a lead-poisoned child living at the property, in order to comply with §1317-C.

There is also federal guidance about sharing similar information covered under this exception in Maine law that may be helpful to consider. Refer to: https://www.cdc.gov/nceh/lead/resources/policy-resources.htm.

STATUTE: 22 MRSA §1596

AGENCY: Department of Health and Human Services

CONTACT PERSON: Tera Pare, Maine CDC

RETURN BY: September 30, 2022

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Thank you.

QUESTIONS

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

The identity of any patient or health care professional reporting pursuant to 22 MRSA §1596 is confidential and the department ensures the confidentiality of the identity of patients or health care professionals reporting the information. Both abortions and miscarriage reports are considered restricted vital statistics data, reports and records as defined in its rule at 10-146 CMR Ch. 4.

The form used and prescribed by the State Registrar of Vital Statistics for reporting abortions occurring in the State of Maine excludes the name of the patient and any data shared related to abortions does not identify the name of the health care professional reporting the abortion.

Standard data tables are provided on the Data, Research, and Vital Statistics (DRVS) website. Statistics are also shared with the U.S. CDC who produce the Abortion Surveillance Report which is displayed by State/Area of Residence and State/Area of Clinical Service.

Requests for abortion data outside of the standard tables occur very seldom; only one FOAA request was requested in the past year and data items that could potentially identify an individual were suppressed when the request was fulfilled.

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

DRVS does not provide exemptions for the release of abortion or miscarriage data that identifies the identity of any patient or health care professional reporting the data and would oppose any exception that could jeopardize the privacy of those individuals and facilities, safeguards of confidentiality in laws and ethical guidelines.

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

No problems have occurred with denying the release of this data. Current law and regulations clearly protect their confidentiality as an exception to a public record.

4. Does your agency recommend changes to this exception?

No.

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

N/A

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

DRVS is charged with safeguarding access to this information by developing regulation for such disclosures. Abortion can be a very politically charged and polarizing topic. Maine CDC finds it important to assure patients that they may expect their identity to be protected, and providers can report their cases without retaliation or fear for their safety.

STATUTE: 22 MRSA §1711-C, sub-§2

AGENCY: Department of Health and Human Services

CONTACT PERSON: Bill Montejo, Director of the Division of Licensing and Certification

RETURN BY: September 30, 2022

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Thank you.

QUESTIONS

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

The records subject to this are individual patient medical records obtained as part of quality-of-care investigations in hospitals. The majority of DLC investigations are under federal CMS authority which makes these records subject to CMS FOIA release and not State authority. For investigations done under state licensure authority we cite this as reason to not disclose/release individual medical records to anyone other than the individual patient upon any FOAA request from anyone other than the patient whom the record is about.

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

DLC supports continuation of these statute as individual medical records should not be released to anyone other than the patient under FOAA.

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

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

DLC has not incurred any problems or specific challenges in regards to application of this exception.

4. Does your agency recommend changes to this exception?

DLC has no recommendations at this time.

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

The primary stake holder would be the Maine Hospital Association, Jeff Austin, jaustin@themha.org

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

N/A

STATUTE: **22 MRSA §1714-E, sub-§5**

AGENCY: Department of Health and Human Services

CONTACT PERSON: **William Logan**

RETURN BY: September 30, 2022

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation). Records subject to this exemption would be investigative records of DHHS staff, primarily in the Program Integrity unit. This exemption has not been cited as a basis for denial to my knowledge. DHHS is unaware of any FOAA request for these types of records during the past several years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Supports continuation. Removing the exemption could negatively impact investigations by Department staff or law enforcement. The Department further notes that the confidentiality only applies for a limited period - it does not applyafter the provider subject to the payment suspension has received notice of the suspension.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? No problems. The statutory language is clear on the records covered and that those records are intended to be confidential.

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

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available. William Savage, AAG is the Chief of the Health Care Crimes Unit in the AAG's office. william.savage@maine.gov

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

STATUTE: 22 MRSA §1816, sub-§2

AGENCY: Department of Health and Human Services

CONTACT PERSON: Bill Montejo, Director of the Division of Licensing and Certification

RETURN BY: September 30, 2022

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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

This was a change that was a result of the most recent legislative session and is only just now becoming effective. This allows for the sharing of survey documents from accreditation organizations with the State Agency and allows for continued confidentiality of those records consistent with federal CMS requirements.

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

DLC supports continuation of this as we were the ones who submitted for this requirement to the legislature.

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

There have been no problems, and this has only recently become effective.

4. Does your agency recommend changes to this exception?

No

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

Stakeholders already participated in in providing feedback as part of the last legislative session where this change was made.

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

This is an exemption that was recently enacted during the last legislative session and has only recently taken effect.

STATUTE: 22 MRSA §1828

AGENCY: Department of Health and Human Services

CONTACT PERSON: Bill Montejo, Division of Licensing and Certification

RETURN BY: September 30, 2022

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Thank you.

QUESTIONS

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

DLC applies this records exception to all relicensure surveys and complaint surveys it conducts under its State Licensing authority. The records subject to this exemption include medical and treatment records, facility investigation and incident reports, and non-redacted facility risk and quality documents that contain identifiable information.

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

DLC supports continuation of this exemption as it is necessary to maintain patient confidence that their individual medical record information will not be made readily available to the public. There is a process for the release of survey and investigation findings to be made public which document any regulatory violations and the evidence that supports those violations without the release of identifiable and confidential records.

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

We have not encountered any problems and we feel that there is clarity in the current language.

4. Does your agency recommend changes to this exception?

No

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

The Key stake holders would be the Maine Long Term Care Ombudsman Program, Brenda Gallant at bgallant@maineombudsman.org and the Maine Hospital Association with the contact being Jeff Austin at jaustin@themha.org .

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

There is an existing process for public release of survey findings and the evidence to support those findings which does protect confidential medical and patient information in the form of regulatory statements of deficiencies and the corresponding facility plans of correction.

STATUTE: 22 MRSA §1848, sub-§1

AGENCY: Department of Health and Human Services

CONTACT PERSON: Bill Montejo, Division of Licensing and Certification

RETURN BY: September 30, 2022

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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

The Division of Licensing and Certification has not had any issues under this exemption. This exemption applies to records including interview/testimony notes to the AG's office as the result of subpoena regarding an AG office investigation into a Certificate of Public Advantage. There have not been any requests for a Certificate of Public Advantage in the past 10 years; the last request was in 2010.

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

This exemption is directed to confidentiality of AG records and DLC will defer to the AG's office for continuation recommendation.

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

DLC is not aware of any problems in regard to application of this exemption.

4. Does your agency recommend changes to this exception?

The exemption applies to AG office records obtained via a subpoena.

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

The Office of the Maine Attorney General.

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

STATUTE: 22 MRSA §2140, sub-§17

AGENCY: Department of Health and Human Services

CONTACT PERSON: Tera Pare, Maine CDC

RETURN BY: September 30, 2022

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22 MRS §2140 pertains to Maine's Death with Dignity Act, a recent law enacted in 2019 that establishes that all reporting of patient-directed care to end life is kept confidential. The reporting consists of a minimum of four forms that are completed and sent to Data, Research, and Vital Statistics (DRVS). The required forms are the patient request for medication, the attending physician form, a consulting physician form and an end-of-life closure form. A fifth form, an Interpreter Form, is required if the individual used an interpreter. DRVS staff review the forms to ensure completeness and that the dates are within the parameters outlined in the law.

To date, DRVS has received two requests, where both requestors wanted everything our agency retained, regarding these cases that did not contain the forms. Part of their request asked for information on the health-care providers' identities. Due to § 2140(17)(C), Maine CDC DRVS denied this request for information.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
DRVS is charged with safeguarding access to this information by developing regulation for such disclosures. We would oppose any changes that required any of the data be made

public. Families of decedents should have the expectation that their loved ones' medical decision, patient-directed care, cause and manner of death are kept private, just as any medical record should be. Providers should also feel free to report required medical record documentation without fear of being targeted by individuals who oppose the law.

Maine CDC is not HIPAA protected and therefore relies on these critical statutes to protect personal health information.

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

There have been no problems. It is clear in the law and in Department rule that these forms are confidential. If a form is missing or incomplete, the provider is contacted by phone in order to obtain the information. There has never been a provider that did not comply with the law. Reports are linked with death certificates which are also confidential and will not be released.

4. Does your agency recommend changes to this exception?

No

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

N/A

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

It is important that the patient's family and providers know that their identities are kept confidential. An individual's treatment and care plan is between their provider and themselves.

STATUTE: 22 MRSA §2153-A, sub-§§1 and 2

AGENCY: Department of Agriculture, Conservation and Forestry

CONTACT PERSON: Shannon Ayotte

RETURN BY: October 30, 2022

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Thank you.

QUESTIONS

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

A. Per Director of Quality Assurance and Regulations: In my five years with DACF, the only time we have not provided requested information is when we either did not collect it or could not provide it in the format requested. That has happened maybe twice with Weights & Measures when solicitors were requesting detailed information in a specific spreadsheet format. State inspection reports are a matter of public record; we have no reason not to share them if requested. We have never had a request for inspection information under our Fed/State or FDA contract inspections. If we did, our protocol would be to forward that request to the federal project officer.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Supports as if we want to receive this kind of information from FSIS and FDA we must have those statutory confidentiality provisions. Without them in place, those agencies will not share the information.

3. Please identify any problems that have occurred in the application of this exception. NA

Is it clear that the records described are intended to be confidential under the FOA statutes? Yes
Is the language of the exception sufficiently clear in describing the records that are covered? Yes

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

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

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

STATUTE: 22 MRSA §2706, sub-§4

AGENCY: Department of Health and Human Services

CONTACT PERSON: Tera Pare, Maine CDC

RETURN BY: September 30, 2022

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Thank you.

QUESTIONS

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

Data, Research, and Vital Statistics (DRVS) is the custodians of certificates and records of birth, marriage, and death and has charge of the statewide system for the registration of vital statistics.

22 MRS §2706, sub-§4 is the exception to the law that acknowledges that it is unlawful for any employee of the State or of any municipality in the State to disclose data contained in such records, except as authorized in 22 MRS §2706 and except that a clerk of a municipality may cause to be printed in the annual town report the births reported within the year covered by the report, by number of births and location by city or town where birth occurred, deaths reported within the year covered by the report, by date of death, name, age and location by city or town where death occurred, and marriages reported within the year covered by the report by names of parties and date of marriage. All other details of birth, marriage, divorce or death may not be available to the general public, except as specified in department rules.

22 MRS §2706, sub-§4 identifies other exceptions to include all content of 22 MRS §2706, what may be printed in the municipal clerk's annual town report, as well as what is specified in Chapter 4 of 10-146 Department rule.

Subsections of 22 MRS §2706 provide how vital records are registered and filed for a child not born of marriage, data used for statistical research, reporting data and the release of the data, furnishing copies or data as required for national statistics, records that may be disclosed to authorized individuals, restriction of access of records according to the procedures for the Address Confidentiality Program, the length of time for a record to become a public record, and genealogical research.

Chapter 4 of 10-146 Department rule regulates the disclosure of vital statistics data, reports, and records as well as the release of and access to vital statistics data, reports, and records; including when, where, what conditions apply, what version is accessed, and how that is done.

DRVS receives requests (written, online, in person) for copies of vital records daily. The typical day consists of at least 100 or more requests for copies of vital records with at least 10 administrative denials due to absence of application, identification, the direct and legitimate interest or in the record (or lineage) and the required fee.

De-identified birth, death and fetal death data are shared with the U.S. CDC National Center for Health Statistics to be used in national statistics. Other U.S. Government agencies receive data with personal identifiers in order for the agency to conduct their administrative duties such as SSA for death benefits and to stop the issuances of monthly SSA payments or the State Department and TSA in issuing passports. The Maine Health Data Organization receives annual birth and death files to link with their hospital utilization and provider files and conduct analysis. The linked file is given a unique identifier and identifying information is protected by their disclosure and release policy. Vital records are provided to State agencies to conduct their official business. Only the minimum needed is provided. Some of the agencies are DHHS Child Support and Recovery, the Maternal, Infant and Fetal Mortality Review (MIFMR) Committee and several of Maine CDC's surveillance programs.

Researchers conducting health, medical and social research that could potentially reduce morbidity and mortality, furthering scientific understanding of disease processes or for improving health and social service may access vital records data only after an application, protocol of their study is submitted, approved or exempt from research documentation from their Institutional Review Board (IRB), approval from DHHS IRB, and a signed data sharing agreement.

Genealogists can apply for a researcher card to access records for purposes of their genealogic research only. There is an application with several criteria they must meet. To protect and preserve the integrity of the records from excessive handling. Genealogists can no longer have hands on access to the records but have access to birth, death, and marriage indexes. They can request up to three records weekly from DRVS.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
DRVS supports the continuation of this exception. The confidentiality of these records safeguard against identity fraud and misuse and protects an individual's personal information.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
Maine CDC DRVS has not experienced any problems, because the law is clear. There are individuals or companies attempting to secure that information, but if they are not entitled to the record or a government agency, genealogist, or researcher with approved protocols, then they are not able to obtain the records.

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

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

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

STATUTE: 22 MRSA §2706-A, sub-§6

AGENCY: Department of Health and Human Services

CONTACT PERSON: Tera Pare, Maine CDC

RETURN BY: September 30, 2022

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Thank you.

QUESTIONS

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

Data, Research, and Vital Statistics (DRVS) maintains files of the names and addresses of adopted persons and their adoptive and genetic parents, as well as relatives, who have registered, known as the "Adoption Reunion Registry". These files are confidential and not open to public inspection.

The only exception to the law is when the state registrar has received requests for contact from a person who has been adopted and is now 18 years of age or older, an adoptive parent if the adopted person is deceased, or if the adopted person is determined by a court to be incapacitated. The request must be related to the same adoption and both persons must indicate, at the time of registration, that contact with the other person is desired, as specified by 22 MRS §2706-A, sub-§5.

On average, DRVS has receives approximately 10 requests per year over the past 5 years for the release of the files and the exception is granted by administrative procedure, only if persons submitting the request comply with the standards specified by 22 MRS §2706-A, sub-§5.

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

DRVS supports continuation of this exception, to ensure accurate identification of the registrant and assist in identifying the other party, without the biological parent who placed their child into adoption worrying about being revealed.

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

No problems have occurred in the application of this exception besides the requests received without the accurate identification of either party. Requests received without accurate identification are rejected and are provided with the opportunity to resubmit the requests with the accurate identification, but this issue does not pertain to the wording of § 2706-A(6), which is clear.

§2706-A(5) adequately provides the avenue to provide this data in certain circumstances, as described in Paragraph 1 above.

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

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

6. Please provide any further information that you believe is relevant to the Advisory Committee's review. Contact preference and medical history forms are not always provided to the biological parents by the courts. DRVS plans to work with the courts going forward to ensure the forms are provided prior to the final adoption.

STATUTE: 22 MRSA §2769, sub-§4

AGENCY: Department of Health and Human Services

CONTACT PERSON: Tera Pare, Maine CDC

RETURN BY: September 30, 2022

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Thank you.

QUESTIONS

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

Data, Research, and Vital Statistics (DRVS) maintains contact preference and medical history forms for children who are adopted only if completed and provided by the birth parents. A birth parent may use the forms to describe their medical history and contact preference as to whether they would like to be contacted. The birth parents may update the forms as needed. The forms are placed in a sealed file, along with the original birth certificate of the adoptee.

The completed contact preference form and medical history form have the same level of confidentiality as the original birth certificate as specified by 22 MRS §2769, sub-§4. Access to an original birth certificate by adopted person is governed by 22 MRS §2768. An adopted person, the adopted person's attorney or, if the adopted person is deceased, the adopted person's descendants may obtain a copy of that person's original certificate of birth from the State Registrar of Vital Statistics.

The exception to law requires the adopted person, the adopted person's attorney or, if the adopted person is deceased, the adopted person's descendants to submit a written application, proof of identification, and may require a waiting period and impose a fee for the noncertified copy of the unaltered original certificate of birth to the applicant. If a

contact preference or medical history form has been completed and submitted to the state registrar, the state registrar also must provide that information.

DRVS has received approximately 79 requests this past year for access to an original birth certificate by adopted person. Administrative denials are given frequently to persons not entitled to receive access to the original birth certificate or to applicants who failed to provide identification and/or payment of the required fee. In 2017, one denial was in response to an FOA request.

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

DRVS supports continuation of this exception to ensure that the release of information is only provided to entitled persons by requiring a written application and identification to protect the integrity of vital records and to ensure their proper use.

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

No problems have occurred in the application of this exception. It is clear that the records described in this section are intended to be confidential and FOAA would not apply, which is appropriate for this sensitive matter.

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

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

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

STATUTE: **22 MRSA §3022, sub-§§8, 12, 13, 14**

AGENCY: Office of the Attorney General

CONTACT PERSON: Jonathan Bolton and Danna Hayes

RETURN BY: October 30, 2022

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Thank you.

QUESTIONS

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

   The Office of Chief Medical Examiner applies this public record exception to every report request received. The records subject to the exception include: the Investigative Summary, Report of Examination or Autopsy report, medical records, law enforcement records, inter-agency communication, and photographs. We apply this exception over a hundred times a month.

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

   The Office of Chief Medical Examiner supports the continuation of this exception to protect the privacy of a decedent, and the integrity of law enforcement investigations.

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

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

It is clear the records are intended to be confidential. The language is sufficiently clear in describing what records are covered.

4. Does your agency recommend changes to this exception?

No.

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

N/A

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

N/A

STATUTE: **22 MRSA §3034, sub-§2**

AGENCY: Office of the Attorney General

CONTACT PERSON: Jonathan Bolton and Danna Hayes

RETURN BY: October 30, 2022

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Thank you.

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   The Office of Chief Medical Examiner has not had any requests for missing person information. Most information regarding a missing person is released by the investigating law enforcement agency.

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

   Supports continuation of exception.

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

   The language is clear.

4. Does your agency recommend changes to this exception?

   No.

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

   N/A.

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

   N/A.

STATUTE: 22 MRSA §3109, sub-§2-A

AGENCY: Department of Health and Human Services

CONTACT PERSON:

Julian Baer
Sr. Program Manager – TANF/ASPIRE
Office for Family Independence
Department of Health and Human Services
julian.baer@maine.gov
207-592-4620

RETURN BY: September 30, 2022

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Response: The public records exception found in sub-§2-A of the above-referenced legislation has not yet been applied. The required survey has not yet been administered, and thus there have been no requests for production of records related to the required survey.

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

Response: The Office for Family Independence strongly supports this exception in State statute, as it is consistent with numerous federal statutes and regulations requiring confidentiality of information pertaining to participation in assistance programs.

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

Response: N/A.

4. Does your agency recommend changes to this exception?

Response: No.

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

Response: The Office of the Attorney General.

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

Response: None at this time pertaining specifically to the exception cited above.

Statutory Review of Proposed Public Records Exceptions
Criteria Considered by Judiciary Committee

1 M.R.S. §434(2), (2-A) & (2-B)
A. Whether a record protected by the proposed exception **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 proposed exception;
C. Whether **federal law** requires a record covered by the proposed exception to be confidential;
Does the proposed public record exception meet one or more of the following (D, E, F, or G)?
D. Whether the proposed 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;
G-1. Whether public access to the record ensures or would ensure that members of the public are able to make **informed health and safety decisions**;
This criterion applies to all reviews:
H. Whether the proposed exception is as **narrowly tailored** as possible;
I. **Any other criteria** that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.
If the public records exception creates broad confidentiality for an agency:
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 [above], 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. **Accessibility of public records.** In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.
ARCHIVES NOTE: 5 MRSA §95-C(1)(C) provides that records of archival value that are transferred to the Maine State Archives for permanent retention lose their confidential status, even if the statute designates such records as confidential, when they have been in existence for 75 years.