

Right to Know Advisory Committee

Friday, September 26, 2025

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RIGHT TO KNOW ADVISORY COMMITTEE

Friday, September 26, 2025
10:00 a.m.

Location: State House, Room 228 (Hybrid Meeting)
Public access also available through the Maine Legislature's livestream:
<https://legislature.maine.gov/Audio/#228>

1. Introductions
2. Election of Chair
3. Review Advisory Committee duties and remote participation policy
4. Review and discussion of the Nineteenth Annual Report of the Right to Know Advisory Committee and status of actions related to those recommendations
5. Review of responses to letters/questionnaires sent out in spring of 2025
6. Review of new public records exceptions enacted or amended in the first session
7. Review letter from Judiciary committee to the RTKAC
8. LD 101 – RTKAC representatives
9. Discussion of potential issues and topics for 2025
 - a. Continuing review of existing public records exceptions in Titles 25 - 32
 - b. Burdensome FOAA requests
 - c. Public employee record retention
 - d. Judiciary committee recommendations
 - e. Other suggested issues and topics?
 - f. Formation of subcommittees?
10. Public Comment: focused on suggested topics for RTKAC to consider in 2025
11. Confirm meetings schedule
 - Wednesday, October 15 at 10 am
 - Wednesday, October 29 at 10 am
 - Thursday, November 13 at 10 am
 - *If needed* – Wednesday November 19 at 10 am
12. Adjourn

Right to Know Advisory Committee

1 MRSA §411

Membership List

Name	Representation
Rep. Rachel Henderson	House member of Judiciary Committee, appointed by the Speaker of the House
Sen. Anne Carney	Senate member of Judiciary Committee, appointed by the President of the Senate
Amy Beveridge	Representing broadcasting interests, appointed by the President of the Senate
Jonathan Bolton	Attorney General's designee
Justin Chenette	Representing the public, appointed by the President of the Senate
Lynda Clancy	Representing newspaper and other press interests, appointed by the President of the Senate
Linda Cohen	Representing municipal interests, appointed by the Governor
Julie Finn	Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court
Betsy Fitzgerald	Representing county or regional interests, appointed by the President of the Senate
Jen Lancaster	Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House
Brian MacMaster	Representing law enforcement interests, appointed by the President of the Senate
Kevin Martin	Representing state government interests, appointed by the Governor
Judy Meyer	Representing newspaper publishers, appointed by the Speaker of the House
Tim Moore	Representing broadcasting interests, appointed by the Speaker of the House
Kim Monaghan	Representing the public, appointed by the Speaker of the House
Eric Stout	A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor
Cheryl Saniuk-Heinig	A member with legal or professional expertise in the field of data and personal privacy, appointed by the Governor
Connor P. Schratz	Representing school interests, appointed by the Governor

§411. Right To Know Advisory Committee

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

[PL 2005, c. 631, §1 (NEW).]

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

A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

C. One representative of municipal interests, appointed by the Governor; [PL 2005, c. 631, §1 (NEW).]

D. One representative of county or regional interests, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

E. One representative of school interests, appointed by the Governor; [PL 2005, c. 631, §1 (NEW).]

F. One representative of law enforcement interests, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

G. One representative of the interests of State Government, appointed by the Governor; [PL 2005, c. 631, §1 (NEW).]

H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

I. One representative of newspaper and other press interests, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

J. One representative of newspaper publishers, appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; [PL 2015, c. 250, Pt. A, §1 (AMD).]

M. The Attorney General or the Attorney General's designee; [PL 2021, c. 313, §2 (AMD).]

N. One member with broad experience in and understanding of issues and costs in multiple areas of information technology, including practical applications concerning creation, storage, retrieval and accessibility of electronic records; use of communication technologies to support meetings, including teleconferencing and Internet-based conferencing; databases for records management and reporting; and information technology system development and support, appointed by the Governor; and [PL 2021, c. 313, §3 (AMD).]

O. One representative having legal or professional expertise in the field of data and personal privacy, appointed by the Governor. [PL 2021, c. 313, §4 (NEW).]

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

[PL 2021, c. 313, §§2-4 (AMD).]

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

A. Except as provided in paragraph B, members are appointed for terms of 3 years. [PL 2005, c. 631, §1 (NEW).]

B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed. [PL 2005, c. 631, §1 (NEW).]

C. Members may serve beyond their designated terms until their successors are appointed. [PL 2005, c. 631, §1 (NEW).]

[PL 2005, c. 631, §1 (NEW).]

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

[PL 2005, c. 631, §1 (NEW).]

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

[PL 2005, c. 631, §1 (NEW).]

6. Duties and powers. The advisory committee:

A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws; [PL 2005, c. 631, §1 (NEW).]

B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for agencies and public officials. The advisory committee shall also provide general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries; [RR 2005, c. 2, §1 (COR).]

C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as whom to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws; [RR 2005, c. 2, §1 (COR).]

D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section 412, subsection 3 and for making that information publicly available; [PL 2007, c. 576, §1 (AMD).]

E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation; [PL 2005, c. 631, §1 (NEW).]

F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released; [PL 2005, c. 631, §1 (NEW).]

G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations; [PL 2005, c. 631, §1 (NEW).]

H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered; [PL 2005, c. 631, §1 (NEW).]

I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records; [PL 2005, c. 631, §1 (NEW).]

J. Shall review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public; and [PL 2005, c. 631, §1 (NEW).]

K. May undertake other activities consistent with its listed responsibilities. [PL 2005, c. 631, §1 (NEW).]

[PL 2007, c. 576, §1 (AMD).]

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

[PL 2005, c. 631, §1 (NEW).]

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

[PL 2005, c. 631, §1 (NEW).]

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

[PL 2005, c. 631, §1 (NEW).]

10. Report. By January 15, 2007 and at least annually thereafter, the advisory committee shall report to the Governor, the Legislative Council, the joint standing committee of the Legislature having jurisdiction over judiciary matters and the Chief Justice of the Supreme Judicial Court about the state of the freedom of access laws and the public's access to public proceedings and records.

[PL 2005, c. 631, §1 (NEW).]

SECTION HISTORY

RR 2005, c. 2, §1 (COR). PL 2005, c. 631, §1 (NEW). PL 2007, c. 576, §1 (AMD). PL 2015, c. 250, Pt. A, §§1, 2 (AMD). PL 2021, c. 313, §§2-4 (AMD).

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Right to Know Advisory Committee Policy on Remote Participation

In accordance with Title 1, Section 403-B of the Maine Revised Statutes, it is the policy of the Right to Know Advisory Committee (“the Advisory Committee”) to allow Advisory Committee members to participate remotely in Advisory Committee meetings, including subcommittee meetings, under certain circumstances and using certain methods of remote participation.

1. Notice of Advisory Committee Meetings

The Advisory Committee will notify the public of the date, time and location of each Advisory Committee meeting on the Advisory Committee’s webpage, <https://legislature.maine.gov/right-to-know-advisory-committee>, and on the Maine Legislature’s calendar, <https://legislature.maine.gov/Calendar>. If applicable, the notice will specify the means by which members of the public may access the meeting remotely. Members of the public may also sign up to receive notices of upcoming meetings through email by subscribing to the interested parties list for the Advisory Committee at <https://lists.legislature.maine.gov/sympa/>. Notice of meetings will generally be provided at least one week before each meeting unless the Advisory Committee is meeting due to an emergency or urgent issue.

2. Remote Participation by Advisory Committee Members

Advisory Committee members are expected to be physically present for Advisory Committee meetings except when it is not practicable for a member to attend a meeting in person. Except as permitted by this Policy, only those Advisory Committee members who are physically present at the physical location of an Advisory Committee meeting may participate in the meeting.

3. Circumstances and Conditions Under Which Remote Participation is Permissible

A. Existence of an emergency or urgent issue.

(1) If, as determined by the Advisory Committee chair, an emergency or urgent issue arises that requires the Advisory Committee to immediately schedule a meeting to address the emergency or urgent issue, one or more Advisory Committee members may participate in the meeting from a remote location.

(2) If, as determined by the Advisory Committee chair, an emergency or urgent issue arises that requires the entire Advisory Committee to meet remotely, the Advisory Committee chair may authorize the Advisory Committee to conduct a virtual meeting without a physical location. Advisory Committee members would participate in such a virtual meeting from remote locations, and the public would be permitted to attend remotely.

B. Circumstances in which physical presence of Advisory Committee member is not practicable. An Advisory Committee member may participate in an Advisory Committee meeting from a remote location under the following circumstances:

(1) When the Advisory Committee member has an illness or other physical or mental condition that causes the member to face significant difficulties traveling to and attending the Advisory Committee meeting or that is contagious and would pose a substantial health risk to others if the Advisory Committee member attended in person, or when the Advisory Committee member does not satisfy health or safety screening requirements applicable to the noticed meeting location;

(2) When there is a reasonable chance that the Advisory Committee member’s health or safety will be compromised by attending the Advisory Committee meeting in person;

(3) When the Advisory Committee member will be absent from the State at the time of a meeting and face significant difficulties traveling to and attending the Advisory Committee meeting in person;

(4) When the time or distance for an Advisory Committee member to travel one way to a meeting exceeds the lesser of 60 minutes or 60 miles;

(5) When the Advisory Committee member's residence is on an island that is not connected to the mainland by a bridge;

(6) When events or occurrences out of the control of the Advisory Committee member or the effects of such events or occurrences make travel by the Advisory Committee member to the physical location not practicable; or

(7) When an emergency or urgent issue, as determined by the Advisory Committee chair, requires the Advisory Committee to meet remotely.

If an Advisory Committee member determines it is not practicable for them to participate in a meeting in person, the member shall notify the Advisory Committee staff as soon as possible. If the Advisory Committee chair determines that an emergency or urgent issue requires the Advisory Committee to meet remotely, the Chair shall notify Advisory Committee staff as soon as possible.

4. Form of Remote Participation

When one or more Advisory Committee members will be participating remotely or the Advisory Committee will be conducting a virtual meeting, the Advisory Committee will schedule a meeting using an internet-based virtual meeting platform (e.g., Zoom) that provides simultaneous audio and video reception for all participants. The Advisory Committee will provide access to the virtual meeting to Advisory Committee members and the public.

5. Responsibilities of Advisory Committee Members Who Participate Remotely

Any Advisory Committee member who participates remotely must:

A. Have the technology, including Internet access, in their remote location sufficient to be seen and heard during the meeting and participate in the same capacity as those members physically present and be responsible for any costs associated with obtaining and maintaining the technology and equipment necessary to participate remotely.

B. Maintain decorum to the same extent as those Advisory Committee members physically present. The Advisory Committee Chair, in consultation with the Advisory Committee Administrator and after an oral or written warning, may deny an Advisory Committee member the option to participate remotely pursuant to this Policy if the member has failed to comply with this subsection on more than one occasion.

6. Procedures Applicable When Advisory Committee Members Participate Remotely

A. A member of the Advisory Committee who participates from a remote location in accordance with this Policy is present for purposes of a quorum and voting.

B. If any Advisory Committee member is participating in an Advisory Committee meeting from a remote location, all votes taken by the Advisory Committee during the meeting must be taken by roll call vote that can be seen and heard by the other members of the Advisory Committee and the public.

C. If any Advisory Committee member is participating from a remote location, the Advisory Committee shall make all non-confidential documents and other materials, electronic or otherwise, considered by it during the meeting available to the public who attend by remote means to the same extent customarily available to members of the public who attend Advisory Committee meetings in person, so long as no additional costs are incurred by the Advisory Committee.

7. Accessibility to the Public

It is the policy of the Advisory Committee to make its meetings as accessible as possible to all members of the public. In addition to remote attendance as permitted under section 4, members of the public may appear at a location designated in the public notice to attend any Advisory Committee meeting. When an emergency or urgent issue requires the Advisory Committee to meet remotely and the Advisory Committee chair determines that allowing any in-person attendance is not practicable, remote attendance by the public must be permitted.

The Advisory Committee will provide reasonable accommodations as necessary to allow members of the public with disabilities to access its meetings. A member of the public seeking a particular accommodation for a disability should request this by contacting the Advisory Committee staff at (207) 287-1670.

This Policy was adopted by the Advisory Committee on October 26, 2021 following a public hearing held on October 26, 2021.

Status of Recommendations from 19th Annual Report:

1. **Recommendation:** Amend certain provisions of law in Titles 25, 26, 27, 30-A and 32 relating to previously enacted public records exceptions
Status: LD 1828, "An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Public Records Exceptions," was passed in the first session (PL 2025 Ch. 111). The bill implemented the recommended legislation drafted by the RTKAC.
2. **Recommendation:** Establish a new public records exception in Title 5 related to information received by the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations
Status: LD 1826, "An Act to Protect the Confidentiality of Personally Identifiable Information in Records of the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations," was passed in the first session (PL 2025 Ch. 188). The bill implemented this recommendation.
3. **Recommendation:** Review provisions of law relating to state, county and municipal employee personnel records and consider whether establishing consistency among provisions is appropriate
Status: The RTKAC recommended review of Title 5, section 7070, relating to state personnel records; Title 30-A, section 503, relating to county personnel records; and Title 30-A, section 2702, relating to municipal personnel records.
4. **Recommendation:** Review Title 1, section 402, subsection 3, paragraph H, relating to records held by emergency medical service units
Status: The RTKAC recommended review of Title 1, section 402, subsection 3, paragraph H, which excepts from the definition of a public record medical records and reports of municipal ambulance and rescue units and other emergency medical service units.
5. **Recommendation:** Request that the State Archivist convene a working group with stakeholders to make recommendations regarding a tiered system of retention for public employee disciplinary records
Status: Letter sent to the state archivist 2/7/25. Group met June 12, 2025. See report and summary.
6. **Recommendation:** Request that the Criminal Law Advisory Commission provide guidance related to records that could be used to impeach a witness in a criminal case (so-called Brady/Giglio materials)
Status: Letter sent to CLAC 2/7/25. RTKAC to follow up on status.
7. **Recommendation:** Amend Title 1, section 408-A, subsections 4 and 4-A, to provide an agency additional time to file an action for protection from a request for inspection or copying that is unduly burdensome or oppressive and specify that a series of requests may be denied as unduly burdensome or oppressive

Status: Status: LD 1827, "An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Public Records Requests," was passed in the first session (PL 2025 Ch. 175). The bill implemented this recommendation.

8. **Recommendation:** Continue discussions regarding resources available to entities responsible for responding to FOAA requests and solicit information regarding the resources these entities have for responding to FOAA requests

Status: Survey sent 2/7/2025. See summary of responses.

9. **Recommendation:** Continue discussions regarding the development of a formal FOAA dispute mediation process

Status: RTKAC to continue discussion.

10. **Recommendation:** Amend Title 1, section 412, subsection 4, to include all boards established under Title 5, chapter 379 in the FOAA training requirement and amend Title 1, section 413 to require those boards to designate an existing employee as its public access officer to serve as the contact person with regard to requests for public records

Status: Status: LD 1813, "An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning State Boards and Commissions," was passed in the first session (PL 2025 Ch. 187). The bill implemented this recommendation.

11. **Recommendation:** Request information from the Maine Municipal Association and the Maine County Commissioners Association regarding FOAA and record retention trainings each association provides to its members including the number of trainings and information regarding types and numbers of attendees, for consideration by the Advisory Committee next year

Status: Request sent 2/7/25. See summary of responses.

12. **Recommendation:** Amend Title 1, section 408-A, subsection 4, to require that a written notice of a denial of a request for inspection or copying of a record provided by a body, agency or an official include a citation to the statutory authority used for the basis of the denial

Status: LD 1797, "An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Denials of Public Records Requests," was passed in the first session (PL 2025 Ch. 186). The bill implemented this recommendation.

13. **Recommendation:** Send a letter to the Maine Press Association and the Maine Association of Broadcasters asking that these groups coordinate with the Maine Chiefs of Police Association, the Maine Sheriffs Association, Maine State Police and the Maine Office of the Attorney General to convene a meeting to share information among stakeholders regarding the pressures and constraints experienced by both members of the media and law enforcement when reporting on or releasing information related to public safety incidents and ongoing criminal investigations

Status: Request sent 2/7/25. See summary of responses.

Representative Erin Sheehan, Chair
Senator Anne Carney
Amy Beveridge
Jonathan Bolton
Hon. Justin Chenette
Lynda Clancy
Linda Cohen
Julie Finn
Betsy Fitzgerald



Jen Lancaster
Brian MacMaster
Kevin Martin
Judy Meyer
Hon. Kimberly Monaghan
Tim Moore
Cheryl Saniuk-Heinig
Eric Stout
Connor P. Schratz

STATE OF MAINE

RIGHT TO KNOW ADVISORY COMMITTEE

February 7, 2025

Maine Press Association
Diane Norton, Executive Director
P.O. Box 336
Camden, ME 04843
Via Email: mainepressmail@gmail.com

Maine Association of Broadcasters
Tim Moore, President & CEO
91 Auburn Street, Suite J #1150
Portland, ME 04103
Via Email: tmoore@mab.org

Re: Meeting between representatives of the press and representatives of law enforcement to share concerns regarding the prompt release of information during critical public safety incidents

To Whom it May Concern:

I am writing on behalf of the Right to Know Advisory Committee. As you may know, in 2023 the Advisory Committee formed a subcommittee which discussed, among other things, the pressures and constraints experienced by both members of the media and law enforcement when reporting on or releasing information related to public safety incidents and ongoing criminal investigations. Representatives of the media asked the Advisory Committee to develop recommendations for facilitating the prompt release by law enforcement of information about public safety incidents or criminal investigations, especially those that occur on the weekend, without the delays incident to submission of formal public records requests under the Freedom of Access Act (FOAA). The Advisory Committee subsequently sent a letter to the Maine Chiefs of Police Association requesting that it coordinate with the Maine Sheriffs Association, the Maine State Police, the Maine Office of the Attorney General, the Maine Press Association and the Maine Association of Broadcasters to convene a meeting to share information among stakeholders regarding these issues.

During the course of its work in 2024, the Advisory Committee learned that this meeting has not taken place. At its final meeting, members of the Advisory Committee representing broadcasting and press interests suggested that their respective associations may be able to convene a meeting for this purpose. As such, the Advisory Committee recommended sending a letter to your organizations, asking that you coordinate with the Maine Chiefs of Police Association, the Maine Sheriffs Association, the Maine State Police and the Maine Office of the Attorney General to convene this meeting, with the aim of increasing understanding between members of the law enforcement and media communities regarding each other's concerns in an effort to enhance collaboration during and immediately after public safety incidents.

The Advisory Committee hopes that you will be willing to facilitate a meeting with stakeholders to address this issue, as was discussed at the final meeting of the Advisory Committee.

We hope that, with the assistance of an experienced facilitator, meeting participants will:

- Share information about the pressures and constraints experienced by members of the media when gathering and timely reporting information regarding public safety incidents and ongoing criminal investigations; and the deadlines, staffing issues, complex legal issues and other challenges facing law enforcement during these incidents; and
- Develop recommendations for increasing collaboration between law enforcement agencies and representatives of the media in a way that will ensure the public has access to timely, reliable information about significant public safety incidents and criminal investigations.

If possible, we ask that you report on the meeting and any recommendations that are developed by meeting participants when the Advisory Committee reconvenes next year.

Thank you for your offer of assistance and for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Erin Sheehan', with a long horizontal line extending to the right.

The Honorable Erin Sheehan, Chair
Right to Know Advisory Committee

Representative Erin Sheehan, Chair
Senator Anne Carney
Amy Beveridge
Jonathan Bolton
Hon. Justin Chenette
Lynda Clancy
Linda Cohen
Julie Finn
Betsy Fitzgerald



Jen Lancaster
Brian MacMaster
Kevin Martin
Judy Meyer
Hon. Kimberly Monaghan
Tim Moore
Cheryl Saniuk-Heinig
Eric Stout
Connor P. Schratz

STATE OF MAINE

RIGHT TO KNOW ADVISORY COMMITTEE

TO: Kate Dufour, Maine Municipal Association

FROM: The Honorable Erin Sheehan, Chair, Right to Know Advisory Committee

DATE: February 7, 2025

RE: Survey: Resources for responding to Freedom of Access Act requests

During its meetings in 2023 and 2024, the Right to Know Advisory Committee considered several topics related to challenges faced by entities responding to public records requests under the Freedom of Access Act (FOAA). To assist in its work in 2023, the Advisory Committee formed a subcommittee which was charged with addressing, among other things, the definition of a “burdensome” FOAA request as used in 1 M.R.S. §408-A(4); issues related to individuals making repeated FOAA requests; and whether the Public Access Ombudsman should be given different or expanded authorities. As a result of the Subcommittee’s discussions, the Advisory Committee recommended sending a survey to various entities regarding their experiences with burdensome FOAA requests. In 2024, the Advisory Committee reestablished a subcommittee to review the survey responses it received and made a number of recommendations for changes based on those responses. For a summary of those recommendations, please see the 19th Annual Report of the Right to Know Advisory Committee which is available on the Legislature’s website.¹

As the subcommittee discussed the issues related to burdensome requests, it became clear to members that there is significant variability in the resources available to entities responsible for responding to FOAA requests. While some respondents may have institutional capacity to manage a large number of requests, other, smaller entities may lack any dedicated resources for FOAA-related tasks.

To better understand the scope of the resources available to entities responsible for responding to FOAA requests, the subcommittee recommended to the Advisory Committee that it distribute a survey to those entities to determine resource capacity as well as any gaps in resources. The Advisory Committee voted to accept this recommendation. Therefore, the Advisory Committee

¹ Available at: <https://legislature.maine.gov/right-to-know-advisory-committee-annual-reports>

requests the following information from your organization by July 1, 2025. **Please note that information provided to the Right to Know Advisory Committee in response to this survey will be distributed to Advisory Committee members and is public information.**

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees.
2. Please provide the approximate number of FOAA requests that you have received annually since 2021.
3. Please provide the number of individuals in your organization responsible for responding to FOAA requests. Are these individuals tasked with FOAA work part time or full time, or is FOAA an extra task that is not specifically accounted for?
4. Do you feel your organization has sufficient resources to respond to FOAA requests?
5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?

Thank you for your attention to this matter. You may provide your responses by email to Lindsay.Laxon@legislature.maine.gov or via mail to:

Right to Know Advisory Committee
c/o Office of Policy and Legal Analysis
13 State House Station Cross Office Building,
Room 215 Augusta, Maine 04333-0013

If you have any questions or concerns about our request, please do not hesitate to reach out to Advisory Committee staff, Lindsay Laxon or Colleen McCarthy Reid, at (207) 287-1670.

RE: Maine Municipal Association and the Maine County Commissioners Association response regarding FOAA and record retention trainings each association provides to its members.

BACKGROUND

The 2024 Right to Know Advisory Committee (2024 Advisory Committee) considered what training public employees receive regarding the use of personal email addresses and other personal communication methods in light of the obligations established by FOAA. The members reviewed training materials provided to State employees and guidance developed by the Public Access Ombudsman; however, the members were interested in learning what training is provided to municipal and county employees regarding FOAA and record retention requirements and continuing the discussion in 2025.

Therefore, the 2024 Advisory Committee recommended requesting information from the Maine Municipal Association (MMA) and the Maine County Commissioners Association (MCCA) regarding FOAA and record retention trainings each association provides to its members including the number of trainings and information regarding types and numbers of attendees, for consideration by the Advisory Committee next year.

The 2024 Advisory Committee sent a letter to MMA and MCCA on February 7, 2025.

MMA responded to the request on March 31, 2025, and no response was received from MCCA. The information below summarizes MMA's response to the 2024 Advisory Committee's request.

SUMMARY OF RESPONSE

- MMA provides FOAA and record retention training at:
 - FOAA-specific training, or “trainings presented by MMA Legal Services attorneys and advertised as a training meeting the minimum training requirements in 1 MRSA §412” (e.g., Elected Officials Workshop; Understanding FOAA; and MTCCA Law for Clerks); and
 - “Other trainings not advertised as meeting the minimum training requirements in 1 MRSA §412” (e.g., Planning Board/Board of Appeals Workshop and MTCTA Tax Collectors and Treasurers Workshop).
 - See Attachment 2, “Freedom of Access Act (FOAA) Trainings Presented by MMA Legal Service Attorneys” for syllabi of trainings.
- Approximately 2,700 municipal, county and school officials and volunteers attended FOAA training from March 2, 2021 to January 23, 2025 across 37 trainings.
 - See Table 1 for a summary of total participants by year; by year and position; and by year and training.
 - See Attachment 1 from MMA; contains a chart with the date, training, total participants and title/role for each FOAA training provided from March 2, 2021 to January 23, 2025.
- Five types of trainings advertised as “training meeting the minimum training requirements in 1 MRSA §412”: Elected Officials Workshop, Understanding FOAA,

Maine Towns and City Clerks Association (MTCCA) Municipal Law, MTCCA Records Management, Maine Town, City & County Managers' Association (MTCMA) Institute.

- 934 reported participants across 21 “Elected Officials Workshop” trainings.
- 927 reported participants across 8 “Understanding FOAA” trainings.
- 316 reported participants across 4 “MTCCA Municipal Law” trainings.
- 269 reported participants across 2 “MTCCA Records Management” trainings.
- 218 reported participants Across 2 “MTCMA Institute” trainings.
- Attendees held the following title/position:
 - Administrative Assistant
 - Assessor
 - Budget Committee
 - Clerk/Deputy Clerk
 - Code Enforcement Officer
 - County Official
 - Elected Officer (mayor, councilor, selectperson, plantation assessors)
 - Other (not defined in response from Maine Municipal Association)
 - Other Official (not defined in response from Maine Municipal Association)
 - Planning Board
 - Public Safety
 - School Board Member
 - Summer Intern
 - Tax Collector/Treasurer
 - Town/City Manager
 - Tribal Clerk

Table 1. Participants Per Year at Maine Municipal Association FOAA Training, by Position and by Training ^{1 2}

YEAR	TOTAL PARTICIPANTS	# OF PARTIPANTS BY TITLE/ROLE		# OF PARTICIPANTS BY TRAINING	
2021	523	Elected Officer	219	Elected Officials Workshop (5 trainings ³)	220
		Clerk/Deputy Clerk	161		
		Town/City Manager	20		
		Administrative Assistant	33		
		Other	16		
		Planning Board	13	Understanding FOAA (2 trainings)	190
		Tax Collector/Treasurer	13		
		Public Safety	10		
		Budget Committee	7		
		County Official	8		

¹ The information contained in this table summarizes Attachment 1 sent with the memo, “FOAA Training and Education” from MMA to the members of the Right to Know Advisory Committee per request of the 2024 Advisory Committee; MMA response dated March 31, 2025.

² Raw data can be found at [MMA training data.xlsx](#). This footnote is for staff reference and can be removed.

³ See [Attachment 1](#) from MMA memo, “FOAA Training and Education,” for attendance per training.

		Other Official	8	MTCCA Municipal Law (1 training)	113
		Code Enforcement Officer	6		
		Assessor	3		
		Tribal Clerk	3		
		Summer Intern	2		
		School Board Member	1		
2022	582	Clerk/Deputy Clerk	230	Elected Officials Workshop (5 trainings)	231
		Elected Officer	217		
		Other	49		
		Administrative Assistant	22	MTCCA Records Management (1 training)	148
		Town/City Manager	19		
		Planning Board	15		
		Tax Collector/Treasurer	12	Understanding FOAA (1 training)	135
		Public Safety	5		
		Budget Committee	4		
		Code Enforcement Officer	4	MTCCA Municipal Law (1 training)	68
		Assessor	3		
		County Official	2		

Table 1. Participants Per Year at Maine Municipal Association FOAA Training, by Position and by Training

YEAR	TOTAL PARTICIPANTS	# OF PARTICIPANTS BY TITLE/ROLE		# OF PARTICIPANTS BY TRAINING	
2023	622	Elected Officer	230	Elected Officials Workshop (5 trainings ⁴)	235
		Clerk/Deputy Clerk	125		
		Town/City Manager	74		
		Other	70		
		Administrative Assistant	31	Understanding FOAA (2 trainings)	213
		County Official	26		
		Planning Board	18		
		Tax Collector/Treasurer	12		
		Budget Committee	10	MTCMA Institute (1 training)	105
		Public Safety	10		
		Summer Intern	7		
		Code Enforcement Officer	5		
		Assessor	2	MTCCA Municipal Law (1 training)	69
		School Board Member	1		
		Tribal Clerk	1		
2024	898	Clerk/Deputy Clerk	258	Understanding FOAA (3 trainings)	389
		Elected Officer	242		
		Town/City Manager	110		
		Other	101	Elected Officials Workshop (5 trainings)	209
		Planning Board	56		
		Tax Collector/Treasurer	37		
		Administrative Assistant	36	MTCCA Records Management	121
		Code Enforcement Officer	17		

⁴ See Attachment 1 from MMA memo, "FOAA Training and Education," for attendance per training.

		Public Safety	10	(1 training)	113
		County Official	9	MTCMA	
		Assessor	8	Institute	
		Budget Committee	6	(1 training)	
		Summer Intern	5	MTCCA	66
		Tribal Clerk	2	Municipal Law	
		School Board Member	1	(1 training)	
2025	39 ⁵	Elected Officer	30	Elected Officials Workshop (1 training)	39
		County Official	5		
		Clerk/Deputy Clerk	1		
		Code Enforcement Officer	1		
		Town/City Manager	2		
TOTAL		2664			

⁵ Additional trainings scheduled after memo sent to members. Not included in this summary is attendance at four “Understanding FOAA” trainings (03/04/2025; 06/24/2025; 09/03/2025 and 12/03/2025), three additional “Elected Officials Workshops” (04/01/2025; 05/29/2025; 11/20/2025), and one “MTCCA Municipal Law Workshop” (07/08/2025).

Representative Erin Sheehan, Chair
Senator Anne Carney
Amy Beveridge
Jonathan Bolton
Hon. Justin Chenette
Lynda Clancy
Linda Cohen
Julie Finn
Betsy Fitzgerald



Jen Lancaster
Brian MacMaster
Kevin Martin
Judy Meyer
Hon. Kimberly Monaghan
Tim Moore
Cheryl Saniuk-Heinig
Eric Stout
Connor P. Schratz

STATE OF MAINE

RIGHT TO KNOW ADVISORY COMMITTEE

TO: State Agency Freedom of Access Contacts

FROM: The Honorable Erin Sheehan, Chair, Right to Know Advisory Committee

DATE: February 7, 2025

RE: Survey: Resources for responding to Freedom of Access Act requests

During its meetings in 2023 and 2024, the Right to Know Advisory Committee considered several topics related to challenges faced by entities responding to public records requests under the Freedom of Access Act (FOAA). To assist in its work in 2023, the Advisory Committee formed a subcommittee which was charged with addressing, among other things, the definition of a “burdensome” FOAA request as used in 1 M.R.S. §408-A(4); issues related to individuals making repeated FOAA requests; and whether the Public Access Ombudsman should be given different or expanded authorities. As a result of the Subcommittee’s discussions, the Advisory Committee recommended sending a survey to various entities regarding their experiences with burdensome FOAA requests. In 2024, the Advisory Committee reestablished a subcommittee to review the survey responses it received and made a number of recommendations for changes based on those responses. For a summary of those recommendations, please see the 19th Annual Report of the Right to Know Advisory Committee which is available on the Legislature’s website.¹

As the subcommittee discussed the issues related to burdensome requests, it became clear to members that there is significant variability in the resources available to entities responsible for responding to FOAA requests. While some respondents may have institutional capacity to manage a large number of requests, other, smaller entities may lack any dedicated resources for FOAA-related tasks.

To better understand the scope of the resources available to entities responsible for responding to FOAA requests, the subcommittee recommended to the Advisory Committee that it distribute a survey to those entities to determine resource capacity as well as any gaps in resources. The Advisory Committee voted to accept this recommendation. Therefore, the Advisory Committee

¹ Available at: <https://legislature.maine.gov/right-to-know-advisory-committee-annual-reports>

requests the following information from your organization by July 1, 2025. **Please note that information provided to the Right to Know Advisory Committee in response to this survey will be distributed to Advisory Committee members and is public information.**

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees.
2. Please provide the approximate number of FOAA requests that you have received annually since 2021.
3. Please provide the number of individuals in your organization responsible for responding to FOAA requests. Are these individuals tasked with FOAA work part time or full time, or is FOAA an extra task that is not specifically accounted for?
4. Do you feel your organization has sufficient resources to respond to FOAA requests?
5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?

Thank you for your attention to this matter. You may provide your responses by email to Lindsay.Laxon@legislature.maine.gov or via mail to:

Right to Know Advisory Committee
c/o Office of Policy and Legal Analysis
13 State House Station Cross Office Building,
Room 215 Augusta, Maine 04333-0013

If you have any questions or concerns about our request, please do not hesitate to reach out to Advisory Committee staff, Lindsay Laxon or Colleen McCarthy Reid, at (207) 287-1670.

Municipalities

Towns that have reported received MORE than 10 FOAA requests annually since 2021	Number of employees responsible for responding to FOAA requests
Biddeford (45 requests)	1, FOAA not their primary responsibility
Cambridge (200-250)	2 part time employees
Cape Elizabeth (12-15 from 2021-23; 27 in 2024)	1, but many simple requests are directed to individual departments
Hermon (5-15)	1, FOAA not their primary responsibility
Lewiston (50-150)	1, FOAA not their primary responsibility
Minot (40)	1, FOAA not their primary responsibility
Newfield (15)	1, FOAA not their primary responsibility
Old Orchard Beach (80)	1, FOAA not their primary responsibility
Windham (185-385)	2, municipal and police, FOAA not their primary responsibility

Of the towns that report receiving more than ten FOAA requests annually since 2021:

- Three towns stated that they do **not** feel they have sufficient resources to handle the volume of FOAA requests they receive
 - In general, these towns report that some requests can be long and/or complex and time-consuming; that they involve gathering information across different departments; that municipal employees already have increasing responsibilities in other areas; and that having to explain to a requestor that a request is burdensome is, in itself, time-consuming
 - Two towns stated that an additional part-time position dedicated to FOAA requests would be helpful
- Many noted that, while their FOAA resources are currently sufficient, they may not be able to handle an increase in requests

The remaining municipal respondents report receiving fewer than ten FOAA requests annually since 2021. Of those towns:

- All but one stated that they have sufficient resources to handle FOAA requests. Most report having 1-2 employees who respond to FOAA requests in addition to other duties

State agencies

Of the 9 responding agencies, 2 reported that their resources for responding to FOAA requests are insufficient. Of those agencies:

- Both report having only one employee specifically delegated FOAA-related responsibilities, but FOAA is not the employee's primary/main responsibility in either case
 - None of the 9 responding agencies report having any employees that are solely dedicated to responding to FOAA requests

PUBLIC EMPLOYEE DISCIPLINE RECORDS STAKEHOLDER WORKSHOP REPORT

PREPARED BY THE MAINE STATE ARCHIVES
AND NEW ENGLAND FIRST AMENDMENT COALITION



TO: Maine Right to Know Advisory Committee
FROM: Maine State Archives and New England First Amendment Coalition
RE: Public Employee Discipline Records Stakeholder Workshop on June 12, 2025
DATE: August 14, 2025

Introduction and Participants

On June 12, 2025, the Maine State Archives convened a stakeholder discussion on behalf of the Right to Know Advisory Committee to discuss a potential shift to a tiered retention and disclosure system of public employee disciplinary records. Attendees represented a range of state and local agencies, including the Maine State Police, the Maine State Archives, the Maine Education Association, as well as media and freedom of information organizations, including the Maine Freedom of Information Coalition, the Sun Journal, and the New England First Amendment Coalition.

Attendees

- Steve Collins, Sun Journal
- Christian Cotz, Maine State Archivist
- Jesse Hargrove, President, Maine Education Association
- Judith Meyer, Maine Freedom of Information Coalition
- Lincoln Ryder, Interim Executive Director, Maine Criminal Justice Academy
- Lt. Col. Brian P. Scott, Maine State Police
- Justin Silverman, Executive Director, New England First Amendment Coalition
- Christie Young, Human Resources Director at City of Augusta, Maine

Absent

- Steve Bailey, Executive Director, Maine School Management Association
- Mark Brunton, President, MSEA
- Kate Cough, Editor, The Maine Monitor
- Matt Dudley, Director of Organizational Development, State of Maine
- Toni Dyer, Maine County Commissioners Association
- Tom Feeley, General Counsel at MSEA-SEIU Local 1989

MSA Staff

- Tammy Marks, Deputy Director
- Susan Verrier, Records Management Analyst II
- Tiffany Tattan-Awley, Records Management Analyst I

Summary of Discussion

The main issues for consideration at the meeting were:

- (1) The creation of a tiered system of record retention based on the “seriousness” of the misconduct.
 - a. How would such tiers be defined? (i.e., financial loss, termination, etc.)
 - b. Would definitions be universal across all agencies and employee roles?
 - c. Who would determine what tier would apply to each action recorded?
- (2) Whether the availability of these records is appropriately governed by the record retention schedule or whether it would be appropriate to limit the amount of time that such records are public pursuant to the Freedom of Access Act.

Tiered Record Retention System

On the first issue, the group discussed a variety of concerns across agencies and vacillated on the question of whether or not a tiered system would be advantageous.

Above all else, the group agreed that state agencies must clearly and consistently define key terms, including “discipline,” “suspension,” and “final agency action.” Attendees explained how definitions vary among their respective agencies, meaning there is little consistency in what kinds of discipline are recorded, retained as records, and subject to FOAA across state agencies. This lack of consistency can result in downstream effects on behavior modification and public trust.

By way of example, one attendee explained that the Maine State Police and a local police department might define key disciplinary terms differently, meaning the same misconduct occurring at separate agencies may yield different disciplinary outcomes. Because the discipline may be defined differently between agencies, the same misconduct might become public record at one agency and not at another. Different agencies will then give different information to requesters about which records are available to the public, further complicating the process. This may give the appearance that one of the two agencies is withholding information that the other is providing. This cuts against the goal of building trust with the communities these agencies serve and with members of the media, who have an obligation to report on incidents of misconduct fairly and accurately.

While there was consensus among the workshop attendees that defining key terms is a top priority, the group spent much of the meeting discussing arguments for and against a tiered system.

Arguments Against a Tiered System

Some of the group expressed concerns that a tiered system would be unnecessarily complicated when the goal is to simplify the process and create uniformity across agencies. The idea presupposes that everyone making decisions about discipline is using the same matrix that requires public disclosure when certain circumstances exist. In reality there could be two separate cases involving nearly identical misconduct which result in different discipline because of variance in the model’s application.

The group was also concerned that a tiered system could result in more employee grievances, as employees might be inclined to involve their unions and argue that a mandatory higher level of discipline, which would be subject to FOAA, is disproportionate to the offense. In such a case, the agency would be incentivized to mitigate the discipline to a lower level to avoid public disclosure.

One attendee pointed out that this system is particularly vulnerable to problems of favoritism, wherein the supervisor is responsible for disciplining an employee with whom he or she is close and treats serious misconduct as a lesser offense to circumvent disclosure requirements. In a similar vein, another attendee noted that a tiered system can be counterproductive to the goal of progressive discipline and modifying inappropriate behavior among employees. Efforts to reform these employees may be stymied in a system that disincentivizes certain discipline for fear of public disclosure.

The group also discussed the difficulties of determining the criteria for the tiers. In particular, there was resistance to making the disclosure metric the financial impact to the employee. That is, if an employee were to receive paid suspension, it would not be public record, while unpaid suspension or termination would be public. At many agencies, this would favor high-level supervisors who are more likely to receive paid suspension than lower-level employees.

Attendees also considered whether to treat differently the records of employees whose roles require certification or licensure. This would include the police and other law enforcement officers, as well as other public employees, such as bus drivers, who are required to have a special license.

The group concluded that a bright line rule regarding certifications would be overinclusive, as it would put people with vastly different levels of responsibility to the public in the same category for disciplinary

purposes. Alternatively, an effective tiered system might consider, but not center around, whether an employee holds a position of trust, such as a schoolteacher or police officer, as opposed to a public works employee.

Arguments For a Tiered System

Throughout the discussion, the group also considered the merits of a tiered system. To start, the group generally agreed that different levels of misconduct warrant different treatment, as not all offenses require disclosure. A system more attuned to these nuances would mean minor infractions—some of which may be part of the learning process and professional growth in a particular job—would not follow someone for the rest of their career as a public employee.

A tiered system might also better reflect the progressive discipline model employed by many state agencies. That is, only certain levels of disciplinary action would become public record, and public employees would only receive such discipline after repeated incidents of misconduct. This gives offending employees the opportunity to correct their behavior and continue their professional development before their misconduct becomes public record.

A tiered system also balances important considerations of recruitment, retention, and employee privacy. One attendee noted that he was not particularly concerned about a chilling effect on recruitment because few people enter their roles as public employees expecting to engage in malfeasance. It may, however, cause issues with retention once misconduct has occurred and employees are worried about their missteps being made public. A tiered system would help protect against that.

Other Considerations

The State Police and Maine Education Association (MEA) were particularly concerned about issues of due process and privacy. Lt. Col. Brian P. Scott of the Maine State Police said that under the Fourteenth Amendment, public employees have a constitutionally protected liberty interest in maintaining one's reputation. In light of due process concerns, he recommended a uniform tiered system where the tiers are based on sustained findings, not subjective misconduct labels.

Jesse Hargrove of the MEA was particularly worried that a threshold based on sustained findings would negatively affect public education employees. Lower-level discipline of teachers and school administrators, such as brief suspensions, he explained, may be misinterpreted by the public. Highlighting how agencies treat — and define — discipline differently, Hargrove explained that a suspension in the context of public education might be a final agency action regardless of whether the decision is made at the school level or the school board level, and regardless of whether it is appealable. Hargrove noted that teachers and administrators may err in relatively minor ways as they learn how to do their jobs, which nonetheless results in an unpaid suspension—discipline which may not be of much relevance to the public.

In response, other attendees pointed out that parents should have the right to know when and why their child's teacher has been suspended, even if it is for a minor administrative infraction. Moreover, they argued, because suspension is not the first line of action in a progressive discipline model, suspension would only come after adequate due process. If a teacher is suspended after being made aware of an issue, and having an opportunity to correct course, the relevant disciplinary records should be public.

Public Accessibility vs. Retention Schedule

Finally, the group briefly discussed whether the amount of time a record is available to the public should mirror the retention schedule. One attendee noted that Brady-Giglio protocols require law enforcement to retain certain materials forever for prosecutorial purposes, though such records may not be available to the public for as long.

The group concluded that there is no strong argument in favor of retaining non-Brady-Giglio records that are no longer available to the public. Moreover, retaining non-Brady-Giglio records longer than they are subject to FOIA seems to conflict with the general record retention schedule.

Recommendations

Further Consideration of Tiered System

While the workgroup did not explicitly endorse a two-tiered retention metric, consensus began to form around a system similar to the following:

- Tier 1: When there are sustained findings relating to higher levels of discipline, including but not limited to suspension, demotion and termination, records will be considered public in perpetuity.
- Tier 2: When there are sustained findings relating to any form of discipline outside the scope of Tier 1, records will be considered public for five years.
- Prior to a sustained finding for Tier 1 and Tier 2 offenses, records will not be public pursuant to FOIA.

It should be noted that one significant concern regarding this model is the inability of the public to access documents related to reports of employee of misconduct that do not result in a sustained finding. Attendees recognized the possibility of abuse but disagreed on the likelihood of such abuse occurring and to what extent. At least one attendee also emphasized the difficulty in monitoring favoritism and bias within public agencies without information on even minor infractions.

Development of Consistent Guidelines

As previously discussed, it is of critical importance to clearly and consistently define key terms, such as “discipline,” “suspension,” and “final agency action.”

Better Guidance on CBA Implications

It is also important to note that a tiered retention system may conflict with collective bargaining agreements (CBAs), as some negotiated retention schedules are shorter than either of the proposed tiers. In theory, any law the RTKAC proposes will preempt a CBA, but attendees noted that agencies may flout new rules. Accordingly, the proposed system must be explicit in addressing possible conflicts with CBAs.

SUMMARY OF REPORT

PUBLIC EMPLOYEE DISCIPLINE RECORDS STAKEHOLDER WORKSHOP REPORT

Prepared by the Maine State Archives and New England First Amendment Coalition

On June 12, 2025, the Maine State Archives convened a stakeholder discussion on behalf of the Right to Know Advisory Committee to discuss a potential shift to a tiered retention and disclosure system of public employee disciplinary records. Attendees represented a range of state and local agencies, including the Maine State Police, the Maine State Archives, the Maine Education Association, as well as media and freedom of information organizations, including the Maine Freedom of Information Coalition, the Sun Journal, and the New England First Amendment Coalition.

ISSUES CONSIDERED

The main issues for consideration at the meeting were:

- (1) The creation of a tiered system of record retention based on the “seriousness” of the misconduct.
 - a. How would such tiers be defined? (i.e., financial loss, termination, etc.)
 - b. Would definitions be universal across all agencies and employee roles?
 - c. Who would determine what tier would apply to each action recorded?
- (2) Whether the availability of these records is appropriately governed by the record retention schedule or whether it would be appropriate to limit the amount of time that such records are public pursuant to the Freedom of Access Act.

DISCUSSION

The group discussed a variety of concerns across agencies and vacillated on the question of whether or not a tiered system would be advantageous. Above all else, the group agreed that state agencies must clearly and consistently define key terms, including “discipline,” “suspension,” and “final agency action.” Because the discipline may be defined differently between agencies, the same misconduct might become public record at one agency and not at another.

While there was consensus among the workshop attendees that defining key terms is a top priority, the group spent much of the meeting discussing arguments for and against a tiered system.

Arguments Against a Tiered System

- Concerns that a tiered system would be unnecessarily complicated when the goal is to simplify the process and create uniformity across agencies.
- Concerns that a tiered system could result in more employee grievances, as employees might be inclined to involve their unions and argue that a mandatory higher level of discipline, which would be subject to FOAA, is disproportionate to the offense.
- Concern that this system is particularly vulnerable to problems of favoritism, wherein the supervisor is responsible for disciplining an employee with whom he or she is close and treats serious misconduct as a lesser offense to circumvent disclosure requirements.
- Concern around the difficulties of determining the criteria for the tiers. In particular, there was resistance to making the disclosure metric the financial impact to the employee.
- Concerns regarding whether to treat differently the records of employees whose roles require certification or licensure. This would include the police and other law enforcement officers, as well as other public employees, such as bus drivers, who are required to have a special license.
 - The group concluded that a bright line rule regarding certifications would be overinclusive, as it would put people with vastly different levels of responsibility to the public in the same category for disciplinary purposes. Alternatively, an effective tiered system might consider, but not center around, whether an employee holds a position of trust, such as a schoolteacher or police officer, as opposed to a public works employee.

Arguments For a Tiered System

- Throughout the discussion, the group also considered the merits of a tiered system. The group generally agreed that different levels of misconduct warrant different treatment, as not all offenses require disclosure. A system more attuned to these nuances would mean minor infractions—some of which may be part of the learning process and professional growth in a particular job—would not follow someone for the rest of their career as a public employee.
- A tiered system might also better reflect the progressive discipline model employed by many state agencies. That is, only certain levels of disciplinary action would become public record, and public employees would only receive such discipline after repeated incidents of misconduct.
- A tiered system also balances important considerations of recruitment, retention, and employee privacy. It may, however, cause issues with retention once misconduct has occurred and employees are worried about their missteps being made public. A tiered system would help protect against that.

Other Considerations

- The State Police and Maine Education Association (MEA) were particularly concerned about issues of due process and privacy.
- The group briefly discussed whether the amount of time a record is available to the public should mirror the retention schedule. One attendee noted that Brady-Giglio protocols require law enforcement to retain certain materials forever for prosecutorial purposes, though such records may not be available to the public for as long.
- The group concluded that there is no strong argument in favor of retaining non-Brady-Giglio records that are no longer available to the public. Moreover, retaining non-Brady-Giglio records longer than they are subject to FOA seems to conflict with the general record retention schedule.

RECOMMENDATIONS

Further Consideration of Tiered System

While the workgroup did not explicitly endorse a two-tiered retention metric, consensus began to form around a system similar to the following:

- Tier 1: When there are sustained findings relating to higher levels of discipline, including but not limited to suspension, demotion and termination, records will be considered public in perpetuity.
- Tier 2: When there are sustained findings relating to any form of discipline outside the scope of Tier 1, records will be considered public for five years.
- Prior to a sustained finding for Tier 1 and Tier 2 offenses, records will not be public pursuant to FOAA.
One significant concern regarding this model is the inability of the public to access documents related to reports of employee of misconduct that do not result in a sustained finding.

Development of Consistent Guidelines

- It is of critical importance to clearly and consistently define key terms, such as “discipline,” “suspension,” and “final agency action.”

Better Guidance on CBA Implications

- It is also important to note that a tiered retention system may conflict with collective bargaining agreements (CBAs), as some negotiated retention schedules are shorter than either of the proposed tiers. Accordingly, the proposed system must be explicit in addressing possible conflicts with CBAs.

Proposed New Public Records Exception Reviews ~ Judiciary Committee
132nd Legislature, First Regular & First Special Sessions

LD	Policy Committee	Subject	Statute	Request Date	Review Date	JUD Recommendation	Report Date	Final Disposition
95	IFW	Location data possessed by Department of Inland Fisheries and Wildlife regarding species of special concern	12 M.R.S. §12804(5)	5/23/25	6/3/25	A majority of JUD committee members voting agreed the proposed exception was not narrowly tailored; however, members could not agree on how best to narrowly tailor the exception. <i>Note: IFW did not make any changes in response.</i>	6/4/25	Enacted: P.L. 2025, ch. 333
251	JUD	Specific information related to an individual customer of a public utility — e.g., name, address, telephone number, utility usage, payment and credit history, financial or medical condition—to the extent such information would be confidential under PUC rules if the utility is a private entity.	1 M.R.S. §402(3)(W) & §402(3)(X)	n/a	3/19/25	Approved	n/a	Enacted: P.L. 2025, ch. 99
379	ACF	Emergency plans of action formulated by the Department of Agriculture, Conservation and Forestry to the extent those plans contain personal contact information, information on gaining access to gates or roads, landowner proprietary information or emergency response information for forest fire preparedness.	12 M.R.S. §8904(1)	4/15/25	4/30/25	Approved	4/30/25	Enacted: P.L. 2025, ch. 72
404	VLA	Identity of a lottery winner who either wins a prize of \$100,000 or more or who is a participant in the Address Confidentiality Program.	8 M.R.S. §378-B	4/23/25	4/30/25	Approved	4/30/25	Enacted: P.L. 2025, ch. 74
419	CJPS	Identity of person who submits a good faith complaint about the Maine Information and Analysis Center (MIAC) or the Auditor of the MIAC	25 M.R.S. §1802(3)(C)	6/2/25	Discussed 6/4/25	<i>* This review ultimately was not conducted because the proposed exception was not supported by a majority of the CJPS committee (the final CJPS vote was: 6 OTPA – 6 ONTP).</i>	n/a *	Carried on Approps. Table

Proposed New Public Records Exception Reviews ~ Judiciary Committee
132nd Legislature, First Regular & First Special Sessions

LD	Policy Committee	Subject	Statute	Request Date	Review Date	JUD Recommendation	Report Date	Final Disposition
549 & 1816	JUD	Confidentiality of statewide tracking system for sexual assault forensic examination kits	25 M.R.S. §2915-A(6)	n/a	5/21/25	Approved	n/a	Carried on Approps. Table (both bills)
767	HHS	Information identifying an individual who files a complaint in connection with the Department of Health and Human Services' public health activities and licensing and regulatory functions	22 M.R.S. §2504	5/28/25	6/9/25	Approved	6/10/25	Enacted: P.L. 2025, ch. 339
882	CJPS	All proceedings, communication and records related to the provision of critical incident stress management or peer support services to providers of emergency care or response services.	25 M.R.S. §4203(2) * * <i>CJPS had supported an amendment that would have added a new subsection 2</i>	6/2/25	6/4/25 6/9/25	Recommended more narrow tailoring of proposed exception, specifically allowing de-identified statistical information to be released for research purposes and to retain exception to confidentiality in current law mandating the reporting of an admission of a crime.	6/10/25	Carried over by CJPS Committee
1164	VLA	(1) Criminal history information, including fingerprint-based, of internet gaming license applicants; (2) Abnormal wagering activity information disclosed to director of Gambling Control Unit; and (3) Information obtained by DHHS/child support registry operator about outstanding liquidated child support debts and information from an internet gaming operator about winning patrons	8 M.R.S. §1404(3)(H); §1413(3); and §1415(10).	5/28/25	5/29/25	Approved	5/30/25	Held by Governor

Proposed New Public Records Exception Reviews ~ Judiciary Committee
132nd Legislature, First Regular & First Special Sessions

LD	Policy Committee	Subject	Statute	Request Date	Review Date	JUD Recommendation	Report Date	Final Disposition
1270	EUT	Competitive solicitation proposals and contract negotiation materials possessed by a new agency, the Department of Energy Resources.	35-A M.R.S. §10313(9)	5/30/25	6/3/25	Recommended more narrow tailoring; specifically, at the end of the competitive bidding process, the content of bid proposals should become public, except that trade secrets and other proprietary information may remain confidential. <i>Note: EUT did not make any changes in response.</i>	6/4/25	Enacted: P.L. 2025, ch. 475
1519	ENR	Proprietary information submitted to the Department of Environmental Protection as part of the electronic smoking device stewardship program.	38 M.R.S. §1617(11)	5/8/25	5/16/25	Approved	5/16/25	Carried on Approps. Table
1640	VLA	Data (including personal, military service and health information) collected by the Maine Bureau of Veterans' Services regarding individuals who choose to be included in a registry of state residents who trained at the military support base in Gagetown, New Brunswick, Canada	37-B M.R.S. § 518(4)	5/23/25	5/29/25	Approved	5.30/25	Carried on Approps. Table
1784	CJPS	Intelligence and investigative record information confidential under Title 16, Section 804 if it is contained within a law enforcement agency's published policies and procedures.	25 M.R.S. §2808-B(4)	6/2/25	Discussed 6/4/25	<i>* Although CJPS submitted a review request, JUD concluded the proposal did not include a new public records exception and, thus, no review was needed.</i>	n/a *	Held by Governor
1801	JUD	Materials acquired by the Maine Commission on Public Defense Services for training assigned counsel, employed counsel, public defenders or contract counsel.	4 M.R.S. §1806(2)(G)	n/a	5/16/25	Approved, after more narrowly tailoring the proposed exception through a committee amendment.	n/a	Enacted: P.L. 2025, ch. 415

Proposed New Public Records Exception Reviews ~ Judiciary Committee
132nd Legislature, First Regular & First Special Sessions

LD	Policy Committee	Subject	Statute	Request Date	Review Date	JUD Recommendation	Report Date	Final Disposition
1826	JUD	Personally identifiable information (name, address, DOB, e-mail and IP address, and other info. permitting identity of an individual to be known or reasonably inferred) collected as part of research duties of the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations.	5 M.R.S. §25012	n/a	5/5/25	Approved, after adopting a committee amendment extending to 100 years the time the affected records remain confidential for purposes of the archives law.	n/a	Enacted: P.L. 2025, ch. 188
1837	HCIFS	Information related to independent dispute resolution between insurer and insured related to a surprise bill for emergency medical services or out-of-network services	24-A M.R.S. §4303-E(5)	5/27/25	5/29/25	Approved	5.30/25	Enacted: P.L. 2025, ch. 348
1854	HCIFS	Fingerprint-based criminal history record information — held by the Board of Occupational Therapy Practice; Board of Osteopathic Licensure; Board of Licensure in Medicine; State Board of Social Worker Licensure; Board of Counseling Professionals Licensure; Board of Speech, Audiology and Hearing; and Board of Dental Practice — of applicants for multistate licensure	32 M.R.S. §2279-A(1)(F); §2594-G(1)(F); §3270-H(1)(F); §7052-A(1)(F); §13858-A(1)(F); §17301-A(1)(F); and §18341-A(1)(F)	5/27/25	5/29/25	Approved	5.30/25	Enacted: P.L. 2025, ch. 366

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STATE OF MAINE ONE HUNDRED AND THIRTY-SECOND LEGISLATURE COMMITTEE ON JUDICIARY

June 18, 2025

Dear Right to Know Advisory Committee,

We are writing to respectfully request that the Right to Know Advisory Committee (RTKAC) examine issues related to the Freedom of Access Act (FOAA) that were brought to our attention through several items of proposed legislation this year.

Public Records Requests

❖ LD 1484, *An Act Related to Public Access of Records of Certain Disciplinary Actions of Public Employees*, addressed a complicated issue that the RTKAC and the Judiciary Committee have each spent several years tackling: public access to public employee disciplinary records. As you know, under current law, complaints and accusations of misconduct involving state, county and municipal employees are confidential unless and until discipline is imposed, at which time the final written decision becomes a public record. 5 M.R.S. §7070(2)(E); 30-A M.R.S. §503(1)(B), §2702(1)(B). LD 1484 would have provided that a final written decision imposing discipline would only be publicly accessible if the discipline “is of a nature that imposes or results in financial disadvantage, including, but not limited to, termination, demotion or suspension without pay.”

At the public hearing, the bill’s proponents echoed concerns raised to the RTKAC’s 2024 Subcommittee on Public Employee Disciplinary Records—*i.e.*, the current lack of a statutory definition of “discipline” for which a written record must be available to the public has led to inconsistency across government agencies regarding whether, for example, corrective memos and reprimands must be publicly accessible; the knowledge that minor performance issues may be publicly disclosed exacerbates public employee recruitment and retention issues; and the concern that disclosing less serious disciplinary matters to members of the public may enable those who wish to harass and embarrass public employees, particularly law enforcement officers and school personnel. By contrast, the bill’s opponents emphasized that LD 1484 would dramatically narrow the disclosure of public employee disciplinary records in a way that not only limits government transparency and accountability but also prevents future employers, including other public agencies, from learning about certain types of misconduct before making employment decisions. Moreover, the Maine Association of Criminal Defense Lawyers

observed that even discipline that does not involve a financial penalty may, if it implicates the credibility of a law enforcement officer, need to be disclosed to defense counsel for purposes of impeaching the officer's credibility as a matter of state and federal constitutional law.

Given these complex, competing considerations, the Judiciary Committee voted that LD 1484 ought not to pass and to request that the RTKAC consider the bill's proposal as it continues to examine the issues surrounding public access to public employee disciplinary records this year.

❖ LD 1788, *An Act to Strengthen the Freedom of Access Act by Categorizing Commercial Requesters*, proposed to require every person submitting a request for public records under FOAA to certify, on a form to be developed by each public agency or official, whether the request is a commercial request or a noncommercial request and whether the information received in response to the request "is likely to be produced pursuant to an ongoing judicial proceeding." Based on its assessment of the requester's intended use of the public record, the public body, agency or official would then be required to independently determine whether the request is "commercial" or "noncommercial" in nature. The new definitions proposed in the bill clarify that a request made "solely for the purpose of conducting scientific research" or by certain "representative[s] of news media" generally should not be considered commercial in nature. If it concludes that a request is commercial, the public body, agency or official would be authorized by LD 1788 both to charge a fee for the first two hours of staff time required to respond to the request and to establish a fee structure that exceeds the current statutory maximum fee of \$25 per hour.

According to the sponsor LD 1788 is designed, in part, to mirror the federal Freedom of Information Act by requiring entities who seek access to public records for commercial purposes to pay more than members of the public who seek public records for noncommercial purposes. In addition, the sponsor designed the bill to deter an increasingly common but troubling practice by attorneys and pro se litigants who file FOAA requests as an alternative method of obtaining information that would be available during the discovery process as part of a civil or criminal proceeding. While the committee certainly understands the importance of these considerations, numerous questions remain, including: whether it is appropriate to categorize public records requests based on the intent of the person making the request or whether the Legislature should instead categorize certain types of requests — for example, a request to a registry of deeds for a list of all properties subject to a tax lien — as presumptively commercial; if the intent of the requester should be determinative, whether the language of the bill provides appropriate guidance regarding the types of requests that should be considered commercial; whether to limit the types of additional information that a public agency or official may seek on its certification form regarding the intent of the request; whether a person who requests a public record before deciding whether to initiate litigation should be required to disclose the potential for a future lawsuit when making the request; whether the Legislature should establish any parameters for the increased fees that a public entity may charge a commercial requester; and whether the Legislature should consider authorizing public entities to prioritize the processing of noncommercial public records requests over commercial public records requests.

Ultimately, the committee agreed with the Maine Press Association that these issues surrounding for-profit and litigation-related public records should be referred to the RTKAC for further examination as part of its ongoing work to address burdensome public records requests.

New Public Record Exception

❖ LD 1824, *An Act to Prohibit the Public Release of Information Regarding a Railroad Fatality*, proposed to exclude from the definition of “public record” a report of a law enforcement agency regarding an accident resulting in a fatality involving a railroad or railroad line and all records of communication between the law enforcement agency and a railroad company employee involved in that accident. The exclusion would apply only during the course of an investigation of the accident. The bill further proposed certain exceptions to the confidentiality of these reports and records.

At the work session on LD 1824, the committee determined that it was unclear whether the bill as drafted would be sufficiently narrowly tailored or whether it would pass the statutory balancing test set forth in 1 M.R.S. §434 that the Judiciary Committee uses when reviewing new public record exceptions.

Ultimately, the committee voted that LD 1824 ought not to pass and to request that the RTKAC examine and make recommendations regarding whether a new exception to the definition of “public record” is necessary for records related to an accident involving a railroad or railroad line that results in a fatality.

Executive Sessions


❖ LD 1399, *An Act to Allow Action Against a Person Violating the Confidentiality of an Executive Session of a Public Body or Agency*, proposed to prohibit any person who attends an executive session of a public body or agency from disclosing the substance of any matter discussed or any underlying facts or information related to the matter discussed during the executive session unless 3/5 of the members of the public body present and voting approve of the disclosure. The bill would have also established a process for investigating violations, which could result in a decision barring the person found to have violated the confidentiality of the executive session from participating in future executive sessions, having access to confidentiality information or having access to information or attending an executive session regarding a matter for which the person is determined to have a conflict of interest.

At the work session on LD 1399, the committee was surprised to learn that FOAA does not currently explicitly provide that discussions during executive sessions are confidential or delineate the parameters of that confidentiality. Nevertheless, the committee had numerous concerns regarding LD 1399’s proposal for describing the scope of the confidentiality and the appropriate penalties for violating of that confidentiality, including: whether it is advisable to restrict a member of the public body who has disclosed sensitive information in the past from participating in future executive sessions, even though the member retains the authority to vote on issues discussed during the executive session; whether the same penalties should apply to a member of a public body who discloses information learned during an executive session and another person who is present at the executive session and who may have independent knowledge of the facts underlying the issue being discussed (for example, the parent of a student facing an expulsion hearing); and whether investigative proceedings involving violating the confidentiality of executive sessions should themselves be conducted in investigative sessions.

Ultimately, the committee voted that LD 1399 ought not to pass and to request that the RTKAC examine and make recommendations regarding the best way to ensure that the information members of a public body learn during an executive session remains confidential to the extent that confidentiality is appropriate.

Thank you very much for your dedication to freedom of access issues in the State. We look forward to your recommendations related to these issues when we receive the RTKAC annual report this coming January.

Sincerely,



Sen. Anne M. Carney
Senate Chair



Rep. Amy D. Kuhn
House Chair

c: Joint Standing Committee on the Judiciary

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

H.P. 66 - L.D. 101

**Resolve, to Convene a Working Group to Examine the Classification of and
Access to Public Records Maintained by Certain State Agencies**

Sec. 1. Definitions. Resolved: That, as used in this resolve, unless the context otherwise indicates, the following terms have the following meanings.

1. "Department" means the Department of Inland Fisheries and Wildlife.
2. "Right to Know Advisory Committee" means the Right to Know Advisory Committee established under the Maine Revised Statutes, Title 1, section 411.

Sec. 2. Working group established. Resolved: That the department, in consultation with the Right to Know Advisory Committee, shall convene a working group to examine the classification and accessibility of public records maintained by the state agencies identified in section 3 and the associated fees that may be charged for those public records, referred to in this resolve as "the working group." The department shall provide administrative support to the working group as needed.

Sec. 3. Working group members. Resolved: That the working group consists of the following members:

1. One member from the department, appointed by the Commissioner of Inland Fisheries and Wildlife, who serves as chair;
2. Two members from the Right to Know Advisory Committee who are not Legislators, one of whom must be the member appointed to represent law enforcement interests pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 2, paragraph F, appointed by the chair of the Right to Know Advisory Committee;
3. One member from the office of the Secretary of State, appointed by the Secretary of State;
4. One member from the Department of Marine Resources, appointed by the Commissioner of Marine Resources; and
5. One member from the Department of Public Safety, appointed by the Commissioner of Public Safety.

The chair of the working group may appoint additional members as determined necessary by a majority of the working group's members. The working group shall consult with a representative from the Office of the Attorney General, designated by the Attorney General, to assist the working group in its deliberations as needed.

Sec. 4. Selection of members. Resolved: That, no later than 30 days following the effective date of this resolve, the Right to Know Advisory Committee and the state agencies identified in section 3 shall notify the department of the member or members selected for participation in the working group.

Sec. 5. Duties. Resolved: That the working group shall:

1. Determine the classification and accessibility of public records by:
 - A. Reviewing the current provisions of the Freedom of Access Act;
 - B. Determining which records in the possession of the state agencies identified in section 3 are subject to disclosure under the Freedom of Access Act and which records are not; and
 - C. Identifying categories of information that the state agencies identified in section 3 should have the ability to designate as confidential and not subject to public disclosure;
2. Evaluate fees for public records requests by:
 - A. Examining and recommending appropriate fees for processing large-scale requests for public records; and
 - B. Considering a reasonable cost structure that balances public access with administrative burdens; and
3. Consider additional areas for review by identifying any other issues related to public records management, retention and disclosure as appropriate.

Sec. 6. Report. Resolved: That, no later than January 14, 2026, the working group shall submit a report that includes the working group's findings and recommendations, including suggested legislation, to the Joint Standing Committee on Judiciary; the Joint Standing Committee on Inland Fisheries and Wildlife; the Joint Standing Committee on Marine Resources; and the Joint Standing Committee on Criminal Justice and Public Safety. Each committee that receives a report may report out a bill related to the report to the Second Regular Session of the 132nd Legislature.