

Right to Know Advisory Committee

Wednesday, October 15, 2025

Meeting Materials

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# **RIGHT TO KNOW ADVISORY COMMITTEE**

**Wednesday, October 15, 2025**  
**1 pm**

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. Status of subcommittees
3. Review survey responses re. capacity to respond to FOAA requests
4. Discussion: executive sessions and confidentiality
5. Discussion: access to proceedings and records in juvenile cases
6. Public Comment: focused on executive sessions; access to proceedings and records in juvenile cases; and on issues related to the capacity of public entities to respond to FOAA requests
7. Adjourn

## 2025 RTKAC Subcommittees Membership

### Exceptions Subcommittee

- Cheryl Saniuk-Heinig, chair
- Jon Bolton
- Lynda Clancy
- Julie Finn

### Burdensome Subcommittee

- Kevin Martin, chair
- Julie Finn
- Betsy Fitzgerald
- Rep. Rachel Henderson
- Judy Meyer
- Cheryl Saniuk-Heinig
- Eric Stout

### Public Employee Records Subcommittee

- Rep. Rachel Henderson, chair
- Sen. Anne Carney
- Julie Finn
- Brian MacMaster
- Kevin Martin
- Judy Meyer
- Cheryl Saniuk-Heinig
- Connor Schratz
- Eric Stout

### Technology Subcommittee

- Amy Beveridge, chair
- Jon Bolton
- Lynda Clancy
- Brain MacMaster
- Eric Stout

Roig, Elena

*ME Dept. of Agriculture, Conservation + Forestry  
(DACF)*

**From:** Ayotte, Shannon <Shannon.Ayotte@maine.gov>  
**Sent:** Sunday, June 29, 2025 4:10 PM  
**To:** Laxon, Lindsay  
**Cc:** Horton, Emily K  
**Subject:** DACF Response to Right to Know Advisory Committee  
**Attachments:** State agency FOAA contacts survey.pdf

**This message originates from outside the Maine Legislature.**

Lindsay,

Here are DACF's responses:

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees.  
Maine Department of Agriculture, Conservation and Forestry  
Total # of employees varies as we have seasonal and contract employees. We estimate 450-800, per our Business Operations Manager.

2. Please provide the approximate number of FOAA requests that you have received annually since 2021.

Year # Rec'd

2021 78  
2022 92  
2023 152  
2024 134  
2025 76 so far up to 06/29/25

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 is an extra task that is not specifically accounted for?**

1 Coordinator of FOAAs for the department located in the Commissioner's office, this is not her only task. Each division depending on the topic of the request have their staff work on FOAAs when time allows around regular business.

4. Do you feel your organization has sufficient resources to respond to FOAA requests?

No. Some Divisions receive far more than others and they don't have enough staff to keep up with the regular flow of work timely, much less FOAA requests, specifically Animal Welfare program and Forestry who receive the bulk of our extensive requests.

5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?

AWP could use a part time person that would focus on FOAA and records scanning/organizing/electronic filing. A lot of FOAAs in AWP still require hand searching hard copies at this time.

Best,

Shannon

*Shannon Ayotte*

Office of the Commissioner  
Dept. of Agriculture, Conservation and Forestry  
State House Station #22  
Augusta, ME 04333-0022  
[www.maine.gov/dacf/](http://www.maine.gov/dacf/)

**From:** Laxon, Lindsay <[Lindsay.Laxon@legislature.maine.gov](mailto:Lindsay.Laxon@legislature.maine.gov)>  
**Sent:** Friday, February 7, 2025 4:00 PM  
**To:** Laxon, Lindsay <[lindsay.laxon@legislature.maine.gov](mailto:lindsay.laxon@legislature.maine.gov)>  
**Subject:** Correspondence from the Right to Know Advisory Committee Due July 1st

Dear State Agency FOAA Contacts,

On behalf of the Right to Know Advisory Committee, I am sharing the attached survey regarding resources for responding to Freedom of Access Act requests.

Please reach out to me or my colleague, Colleen McCarthy Reid ([Colleen.McCarthyReid@legislature.maine.gov](mailto:Colleen.McCarthyReid@legislature.maine.gov)), if you have any questions or need additional information.

Thank you for your consideration,

Lindsay

Lindsay J. Laxon, Esq.  
Legislative Analyst  
Office of Policy and Legal Analysis  
Maine State Legislature  
(207) 287-1670

ME Dept. of Labor (DOL)

Roig, Elena

**From:** DOL, FOAA <FOAA.DOL@maine.gov>  
**Sent:** Wednesday, February 19, 2025 3:20 PM  
**To:** Laxon, Lindsay  
**Subject:** RE: Correspondence from the Right to Know Advisory Committee

This message originates from outside the Maine Legislature.

Good afternoon, Lindsay,

For the Maine Department of Labor, I am providing the following information:

1. MDOL is a state agency with approximately 450 employees.
2. MDOL receives about 25 FOAA requests annually.
3. Responding to FOAA requests is a task assigned to a staff member in the Commissioner's Office. Typically, managing the responses does not constitute a measurable component of a FTE (full-time equivalent position).
4. MDOL has sufficient resources for responding.
5. n/a

With regards,  
Kim



Kimberly Smith, Deputy Commissioner  
Maine Department of Labor, 54 State House Station, Augusta, Maine, 04333-0054  
Office: (207) 621-5096; TTY users call Maine Relay 711

**From:** Laxon, Lindsay <Lindsay.Laxon@legislature.maine.gov>  
**Sent:** Friday, February 7, 2025 4:00 PM  
**To:** Laxon, Lindsay <lindsay.laxon@legislature.maine.gov>  
**Subject:** Correspondence from the Right to Know Advisory Committee

Dear State Agency FOAA Contacts,

On behalf of the Right to Know Advisory Committee, I am sharing the attached survey regarding resources for responding to Freedom of Access Act requests.

Please reach out to me or my colleague, Colleen McCarthy Reid ([Colleen.McCarthyReid@legislature.maine.gov](mailto:Colleen.McCarthyReid@legislature.maine.gov)), if you have any questions or need additional information.

Thank you for your consideration,

Lindsay

Lindsay J. Laxon, Esq.  
Legislative Analyst  
Office of Policy and Legal Analysis  
Maine State Legislature  
(207) 287-1670

# Maine Ethics Commission

Roig, Elena

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**From:** Carrier, Martha <Martha.Carrier@maine.gov>  
**Sent:** Thursday, March 27, 2025 11:12 AM  
**To:** Laxon, Lindsay  
**Subject:** Right to Know - FOAA Survey Response

This message originates from outside the Maine Legislature.

Lindsay,

We don't receive many FOAA requests here, however, within the last year we've a couple of large FOAA requests that took up significant time of three staff members, and our AAG. Generally, our FOAA requests are easily responded to and I usually run point on them. Please let me know if you have any other questions as the committee works on this issue.

Martha

MARTHA CURRIER | ASSISTANT DIRECTOR  
MAINE ETHICS COMMISSION  
135 STATE HOUSE STATION | AUGUSTA, ME 04333  
(207) 287-3024 (DIRECT) | (207) 287-4179 (MAIN)  
[martha.currier@maine.gov](mailto:martha.currier@maine.gov) | [www.maine.gov/ethics](http://www.maine.gov/ethics)

1. Please describe your organization – **Maine Ethics Commission**, type of organization (**state**) and total number of employees: **6**.
2. Please provide the approximate number of FOAA requests that you have received annually since 2021: **8**
3. Please provide the number of individuals in your organization responsible for responding to FOAA requests. **1-3** including the Executive Director, Assistant Director, and Commission Assistant  
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? **Yes**
5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs? **n/a**

# ME Historic Preservation Commission

**Roig, Elena**

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**From:** Mohney, Kirk <Kirk.Mohney@maine.gov>  
**Sent:** Tuesday, February 11, 2025 8:59 AM  
**To:** Laxon, Lindsay  
**Subject:** Survey: Resources for responding to Freedom of Access Act requests

**This message originates from outside the Maine Legislature.**

Dear Ms. Laxon,

I am responding to Erin Sheehan's memo dated February 7, 2025 regarding the subject survey.

Question 1:

Independent state agency, 11 employees

Question 2:

3

Question 3:

1, extra task not specifically accounted for

Question 4:

Yes, provided that the current level of requests does not change significantly.

Question 5:

N/A

If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Kirk F. Mohney

Director

Maine Historic Preservation Commission



ME Dept. of Marine Resources (DMR)

Roig, Elena

**From:** Mendelson, Meredith <Meredith.Mendelson@maine.gov>  
**Sent:** Thursday, July 3, 2025 3:24 PM  
**To:** Laxon, Lindsay  
**Cc:** Beringer, Charlene L  
**Subject:** MEDMR FOAA questionnaire responses

**This message originates from outside the Maine Legislature.**

Hello Lindsay,

Apologies for being a bit late on providing these responses. Thank you for providing this opportunity to share information with the Right to Know Committee.

Regards,

Meredith Mendelson

Deputy Commissioner

Maine Department of Marine Resources

**1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees.**

*The Maine Department of Marine Resources is a state agency with approximately 240 employees. The Department of Marine Resources is established to conserve and develop marine and estuarine resources; to conduct and sponsor scientific research; to promote and develop the Maine coastal fishing industries; to advise and cooperate with local, state and federal officials concerning activities in coastal waters; and to implement, administer and enforce the laws and regulations necessary for these enumerated purposes.*

**2. Please provide the approximate number of FOAA requests that you have received annually since 2021.**

*DMR has officially tracked the following number of requests as FOAA requests. However, we do not track all information requests as FOAA requests, because tracking them as such would simply add too much additional time and further burden staff. DMR has directed staff, particularly in the landings and licensing Department, which receive the vast majority of these non-FOAA information requests, to log only requests from non-DMR requestors that require over a half hour of response time as a FOAA request. Non-FOAA requests number approximately 800--1000 annually in the last couple of years.*

*Tracked as FOAA requests:*

2020 - 25

2021 - 44

2022 - 34

2023 - 28 (Staff transition, some records likely lost)

2024 - Received 45, closed 50

2025 - So far this year we have Received 19 and closed 21

**Please provide the number of individuals in your bureau/office 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?**

*Any employee within DMR who may have responsive documents within their possession is currently responsible for responding to a FOAA request. No one in the agency is responsible for FOAA work full time, and only one person has FOAA Coordination specifically listed in their job description as a small portion of their duties, but this is due to lack of any other resource to fulfill this function. Performing this function regularly exceeds the time allotted in their work plan for this role.*

**Do you feel your organization has sufficient resources to respond to FOAA requests?**

*No. Currently, the majority of this work represents a significant portion (30-40%) of two mid-level management positions, and 15% of the Commissioner's administrative assistant's position, but several other mid-level or senior managers regularly commit time to compiling responsive documents. Responding timely to these requests is a significant burden to staff and reviewing responsive documents (to ensure confidentiality is maintained) is an additional burden to senior managers in the agency. In order to minimize disruption to work priorities, sometimes staff time has to be limited to an hour or two per week to work on compiling responsive documents. For large requests, this is both frustrating for requestors (as it leads to long waits for documents) and inefficient for staff. For some database queries, staff need specific training, and for many requests, only one or two employees are currently capable of performing these queries. Providing additional training and time in the work plan to expand that expertise would likely require position reclassification.*

**If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?**

*Ideally, DMR would have a dedicated Public Access Officer position focusing on FOAA and information responses who could be trained to both query landings and licensing data, and also coordinate more complex responses in lieu of the current person assigned to do so (who is overcommitted and increasingly so as these requests become more complex and numerous). Combining this function with records retention responsibilities would help to ensure a more comprehensive and consistent approach to records management is sustained across staff changes within the agency.*

*Additional example-based training and clear procedures for addressing common law-enforcement related FOAA requests would be beneficial to Maine Marine Patrol and ensure consistent responses are provided across law enforcement agencies when appropriate.*

# Roig, Elena Maine State Housing Authority

Roig, Elena

**From:** Ashley Carson <ACarson@mainehousing.org>  
**Sent:** Monday, February 10, 2025 4:29 PM  
**To:** Laxon, Lindsay  
**Subject:** RE: Correspondence from the Right to Know Advisory Committee

**This message originates from outside the Maine Legislature.**

Good afternoon Lindsay –

Please see Maine State Housing Authority’s responses below. Thank you.

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees. MaineHousing is a quasi-governmental agency with approximately 180 employees plus or minus.

2. Please provide the approximate number of FOAA requests that you have received annually since 2021.

- 2021 – 7
- 2022 – 33
- 2023 – 67
- 2024 – 63
- 2025 – 30 as of February 10, 2025

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? One. Myself, the chief counsel and public records officer for the agency. This is an extra task that is not specifically accounted for in the position at the agency. There is one support staff that can assist with redacting documents, but again not an accounted for task within that position and all documents must still be reviewed and compiled by the chief counsel.

4. Do you feel your organization has sufficient resources to respond to FOAA requests? No. There has been an increasing number of FOAA requests over the last several years and the requests keep growing. The requests are so broad and there is no real way to limit them, so it takes a lot of time and resources to respond to these requests.

5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization’s needs? More time, more people, more clarity on the law, and the ability to impose more limitations on requestors or demand greater clarity.

Please let me know if you have any questions. Thank you!

**Ashley Janotta Carson**  
*Chief Counsel*  
Maine State Housing Authority  
26 Edison Drive  
Augusta, ME 04330  
207.624.5728

## Maine Department of Health and Human Services

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.**

State Agency, Department of Health and Human Services.

2. **Please provide the approximate number of FOAA requests that you have received annually since 2021.**

2021: 218 , 2022: 252 ,2023: 459 , 2024: 463. *Total since 2021: 1,392.*

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?**

The Department of Health and Human Services (DHHS) has a Public Access Officer in the Commissioner's office to manage communications and oversee all incoming and outgoing Freedom of Access Act (FOAA) requests. Each office and state hospital is assigned a "FOAA Coordinator" along with a backup to review these requests. In total, there are 23 employees in the Department who are involved in handling FOAA requests. It's important to note that for these 23 employees, FOAA responsibilities are considered an additional task and are not explicitly included in their job descriptions.

4. **Do you feel your organization has sufficient resources to respond to FOAA requests?**

We feel like the Department has made great improvement in our FOAA process over the last few years. In the last two years, the Department has dedicated a total of 1,759.8 hours to handling FOAA requests. The time required for these requests ranges from 0.5 hours to over 20 hours for retrieving the necessary records. Currently, the Department lacks a full-time employee specifically assigned to FOAA, and establishing this position would significantly enhance the Department's efficiency.

5. **If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?**

Given the high volume of requests the Department receives annually, creating a position dedicated solely to the Freedom of Access Act would be advantageous. This addition would allow us to further enhance our response times, which have significantly improved over the past two years thanks to part-time focus on these requests from someone in the Commissioner's office.

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

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.

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

## Office of the State Auditor

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. State of Maine Agency - Office of the State Auditor; 37 budgeted full-time employees.
2. Please provide the approximate number of FOAA requests that you have received annually since 2021. Approximately 2-3 annually (1 in 2025 so far, 2 in 2024, 3 in 2023, 3 in 2022, 1 in 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? 2-3 individuals; FOAA is an extra task not specifically accounted for.
4. Do you feel your organization has sufficient resources to respond to FOAA requests? Yes
5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs? N/A - sufficient resources.

Thank you for your attention to this matter. You may provide your responses by email to [Lindsay.Laxon@legislature.maine.gov](mailto: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.

# ME Workers' Compensation Board

Roig, Elena

**From:** Hewes, Richard <Richard.Hewes@maine.gov>  
**Sent:** Tuesday, February 11, 2025 9:03 AM  
**To:** Laxon, Lindsay  
**Cc:** Rohde, John; Crasnick, Seanna; Lizzotte, Lindsay  
**Subject:** Correspondence from the Right to Know Advisory Committee  
**Attachments:** State agency FOAA contacts survey.pdf

This message originates from outside the Maine Legislature.

Dear Ms. Laxon, in reply to your request for information about the way this agency handles freedom of access requests, I submit the following answers to your questions.

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees.

Workers' Compensation Board – Quasi-public agency; 108 employees

2. Please provide the approximate number of FOAA requests that you have received annually since 2021.

Average of 7 per year

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?

3 employees

4. Do you feel your organization has sufficient resources to respond to FOAA requests?

Yes

5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?

N/A

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**From:** Laxon, Lindsay <[Lindsay.Laxon@legislature.maine.gov](mailto:Lindsay.Laxon@legislature.maine.gov)>  
**Sent:** Friday, February 7, 2025 4:00:23 PM  
**To:** Laxon, Lindsay <[lindsay.laxon@legislature.maine.gov](mailto:lindsay.laxon@legislature.maine.gov)>  
**Subject:** Correspondence from the Right to Know Advisory Committee

Dear State Agency FOAA Contacts,

Albion

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. *2-3*
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? *1 - part time*
4. Do you feel your organization has sufficient resources to respond to FOAA requests? *Yes*
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](mailto: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.

## Albion

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. *2-3*
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? *1 - part time*
4. Do you feel your organization has sufficient resources to respond to FOAA requests? *yes*
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](mailto: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.



Alfred

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. *Local Gov't*
2. Please provide the approximate number of FOAA requests that you have received annually since 2021. *6*
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? *1 - PERSON - F/T*
4. Do you feel your organization has sufficient resources to respond to FOAA requests? *YES*
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](mailto: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.

Biddeford

Roig, Elena

**From:** Lamontagne, Danica <Danica.Lamontagne@Biddefordmaine.org>  
**Sent:** Tuesday, February 11, 2025 2:42 PM  
**To:** Laxon, Lindsay  
**Subject:** FOAA Request Survey

This message originates from outside the Maine Legislature.

Good afternoon,

Please see my responses below to the FOAA survey.

*1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees.*

Municipality with about 250 employees

*2. Please provide the approximate number of FOAA requests that you have received annually since 2021.*  
On average, we have received about 45 requests per year since 2021. Anecdotally, we have noticed that requests come through in batches as opposed to being spread out throughout the year. For example, it is common to get three unrelated requests in a 24-hour period and then go a couple weeks without any new inquiries. Getting a number of requests at one time tends to make the workload feel more burdensome during those particular moments.

*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?*

I serve as the City's public access officer. I am our city's point person for communications, so responding to requests for documents is a relevant aspect of my role in providing information to the community, but it is not the primary purpose of my position. I also get support from various staff members in our individual departments that maintain their own records.

*4. Do you feel your organization has sufficient resources to respond to FOAA requests?*

Overall, I would say that we have sufficient resources to respond to the frequency of requests that we receive. The biggest burden I experience is when we receive a request that includes a search for email correspondence. Even though we ask for criteria to narrow down searches as much as possible (email addresses to search for, dates of the correspondence, specific key words, etc), people don't always know exactly what they are looking for, and we are often running relatively vague searches or multiple searches that bring back thousands of emails in total. When that happens, I have to do quite a lot of manual work to scan through all of the emails, locate what is actually relevant, and exclude confidential or irrelevant information. Parsing through several thousand emails takes *many* hours to complete at the expense of other aspects of my communications work.

Best,

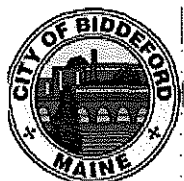
Danica Lamontagne  
City of Biddeford

Asst. to the City Manager  
[danica.lamontagne@biddefordmaine.org](mailto:danica.lamontagne@biddefordmaine.org)  
207-282-8423

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*Please note our Business Hours:*

*Monday & Tuesday: 7 AM – 5 PM, Wednesday & Thursday: 8 AM – 4 PM*



# Bristol

FOAA Survey 2/11/2025

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees.

Municipal government, Town Office of Bristol

2. Please provide the approximate number of FOAA requests that you have received annually since 2021.

1-3 requests annually

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?

Just myself, this is an additional job duty since we get so few requests.

4. Do you feel your organization has sufficient resources to respond to FOAA requests?

Yes, if I need help my town administrator helps out and in the past I have reached out to elections with questions.

5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?

## Cambridge

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. *(Local Municipality - 12 employees)*
2. Please provide the approximate number of FOAA requests that you have received annually since 2021. *~ 200-250*
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? *2 part time employees*
4. Do you feel your organization has sufficient resources to respond to FOAA requests? *Yes*
5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs? *nothing*

Thank you for your attention to this matter. You may provide your responses by email to [Lindsay.Laxon@legislature.maine.gov](mailto: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.

Cape Elizabeth

Roig, Elena

From: Debra Lane <debra.lane@capeelizabeth.org>  
Sent: Tuesday, February 18, 2025 12:59 PM  
To: Laxon, Lindsay  
Cc: Angela S. Frawley  
Subject: FOAA Survey

This message originates from outside the Maine Legislature.

Dear Ms. Laxon,

Please find information for the FOAA survey results which will be provided to the Right to Know Advisory Committee.

If you need additional information, please let me know.

Thank you very much!

Debra

1. Organization: Municipality

Population: 9500+

Full-time Employees Approx. 75 (excluding part-time and seasonal)

2. & 3.

Number of FOAA requests per year: Since every phone call, email, letter, in-person request etc. is considered in the FOAA laws, this is hard to answer. Generally we forward requests to the department which holds the information. We feel it's better customer service that the requestor is in direct contact with the department.

Our Public Access Officer is available to assist departments and facilitate requests.

The requests involving more than one department and more complicated requests may be facilitated through the Public Access Officer. In 2024, there were 27 requests through the PAO. In this category, the annual average 2021-2023 was 12-15. That being said,

more involved requests may have also been handled through departments and not included in these averages. Note: The increased number in 2024 results from interest in local issues.

#### 4. Sufficient resources?

Generally there are sufficient resources to respond to requests within the departments. However the more involved requests present challenges such as time to complete the request, resources and technology.

#### 5. Resources needed to meet the needs of the organization?

Provide flexibility in how long an organization has to answer a request, understanding there could be limited resources.

Review fees, and increase when needed, to ensure there is a recognition of the time involved particularly in the more involved requests.

Continue training so that organizations are comfortable with the laws and are updated with any changes. If necessary, expand the list of employees etc. that are required by law. Require biennial training?

Continue to monitor requests that could be considered frivolous and how to deal with these situations.

Requests for emails can be challenging due to limited technology to easily provide emails and in the format that most can read. Be mindful of these limitations when considering laws and responsibilities of organizations. Provide funding and grants for technology to store emails?

Continue to take into account that organizations have varying ways to hold information e.g. electronic, paper and varying resources e.g. staff and technology. Flexibility in the law to answer requests for information is a must.

## Observations:

Some requestors do not understand the term FOAA. They believe if they use the term and recite the law to us, that they will receive more information then if they hadn't used it.

En masse requests -

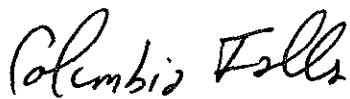
Requests that appear to be sent to every organization can be complicated. We take the time to answer the requests and in many instances without any acknowledgment from the requestor. Did they really need the information?

--

*Debra M. Lane*  
Town of Cape Elizabeth  
Assistant Town Manager  
320 Ocean House Road  
Cape Elizabeth, ME 04107  
(207) 799-7665 Fax (207) 799-7141

Town Hall Hours: Mondays 7:30-5:00, Tuesday - Thursday 7:30-4:30 Closed Fridays





**Roig, Elena**

---

**From:** Admin Assistant <townofcolumbiafalls@gmail.com>  
**Sent:** Tuesday, February 11, 2025 2:58 PM  
**To:** Laxon, Lindsay  
**Subject:** Right to Know Advisory Committee Survey

**This message originates from outside the Maine Legislature.**

Good Afternoon Lindsay:

Here are my answers to the RKAC survey.

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees.

We are a municipality with roughly 25 total employees.

2. Please provide the approximate number of FOAA requests that you have received annually since 2021.

We have received approximately 4 FOAA requests since 2021 and most of them were last year due to the proposed Flagpole project.

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?

I am the main one responsible for FOAA requests but I do rely on Grace Falzarano, the Treasurer, for information as well. I am full-time and she is part-time.

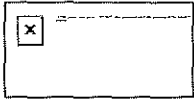
4. Do you feel your organization has sufficient resources to respond to FOAA requests?

Yes, I feel we are able to handle any requests we receive under normal circumstances.

5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?

Please let me know if you need anything further.

Have a great afternoon.  
Missy



Melissa (Missy) Allen-Ramsdell  
Administrative Assistant  
Town of Columbia Falls, Maine  
Phone (207) 483-4067  
Fax (207) 483-3825  
[townofcolumbiafalls@gmail.com](mailto:townofcolumbiafalls@gmail.com)  
[columbiafallsmaine.org](http://columbiafallsmaine.org)

**Note: Under Maine's Freedom of Access ("Right to Know") law, all e-mail and e-mail attachments received or prepared for use in matters concerning Town business or containing information relating to Town business is likely to be regarded as public records which may be inspected by any person upon request, unless otherwise made confidential by law.**

*This message is intended only for the personal and confidential use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return this original message to us at the above address via the U.S. Postal Service. Thank you.*

Dennysville

Roig, Elena

**From:** Town Clerk <dennysvilletownclerk@gmail.com>  
**Sent:** Tuesday, February 11, 2025 5:57 PM  
**To:** Laxon, Lindsay  
**Subject:** FOAA Survey DENNYSVILLE POP. 340

**This message originates from outside the Maine Legislature.**

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.

Dennysville Town Office  
Total # of employees = 2

2. Please provide the approximate number of FOAA requests that you have received annually since 2021.

I am the new Town Clerk and the other employee (Treasurer) has been here 2 years. In our accumulated time we have received ZERO FOAA requests.

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, No one is tasked. I suppose it would fall to the Town Clerk who works 1 day per week. or is FOAA an extra task that is not specifically accounted for?

Probably the above statement is a good reflection of the current status.

4. Do you feel your organization has sufficient resources to respond to FOAA requests?  
Doubtful.

5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?  
Uncertain.

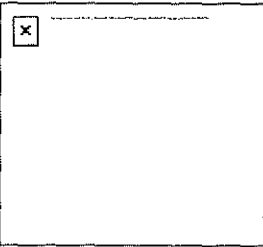
K. A. Tolatovicz "kat"

Town Clerk/ Deputy Treasurer

[dennysvilletownclerk@gmail.com](mailto:dennysvilletownclerk@gmail.com)

O 207-726-5971 F 207-726-4043

PO Box 70, Dennysville ME 04628



Detroit

Roig, Elena

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**From:** Dwayne Young <townofwestonmaine@gmail.com>  
**Sent:** Wednesday, February 12, 2025 10:04 AM  
**To:** Laxon, Lindsay  
**Subject:** Fwd: FOAA Survey

This message originates from outside the Maine Legislature.

----- Forwarded message -----

From: <[townofdetroit@roadrunner.com](mailto:townofdetroit@roadrunner.com)>  
Date: Wed, Feb 12, 2025, 9:03 AM  
Subject: RE: FOAA Survey  
To: Dwayne Young <[townofwestonmaine@gmail.com](mailto:townofwestonmaine@gmail.com)>

The Town of Detroit is a municipal entity with 11 employees.  
We have had one request for FOAA information.  
We have two full time clerks that are responsible for answering questions.  
I feel we have sufficient resources to respond to these request.

Kathy Walston  
Town Clerk

-----  
From: "Dwayne Young"  
To: [MTCCA@LIST.MTCCA.ORG](mailto:MTCCA@LIST.MTCCA.ORG)  
Cc:  
Sent: Tuesday February 11 2025 8:26:42AM  
Subject: FOAA Survey

Good morning all,

Attached is a survey from the Right To Know Advisory Committee, Office of Policy & Legal Analysis. If you could please take a few minutes and answer the survey that is in the letter or if you are not the FOAA person, forward it to them to respond.

If there are questions about the survey, please contact Lindsay Laxon directly at [Lindsay.Laxon@legislature.maine.gov](mailto:Lindsay.Laxon@legislature.maine.gov)

Thank you for your input.

Dwayne Young, CCM  
Administrative Asst. to the Selectboard  
Towns of Weston and Orient  
MTCCA President



**Roig, Elena**

---

**From:** Wendy Rawski <wrawski@eliotme.gov>  
**Sent:** Tuesday, July 8, 2025 4:57 PM  
**To:** Laxon, Lindsay  
**Subject:** FOAA Survey - Town of Eliot

**This message originates from outside the Maine Legislature.**

Good Afternoon,

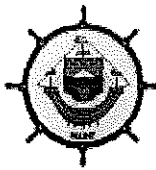
I apologize that my survey response that I originally sent was not received by the deadline of 07/01/2025. I sent it via email on 06/26/2025 prior to leaving for vacation and when I returned today found that I had incorrectly addressed it and it was returned as undeliverable. I though I would send it out again in case the information could still be helpful.

FOAA Survey Response for the Town of Eliot requested by the Right to Know Advisory Committee

Responses to Questions:

1. Municipality of Eliot, population approximately 7,000, we currently employ 44 full time employees as well as 28 part-time or seasonal
2. Since 2021, we have received and responded to forty FOAA requests averaging eight per year.
3. Currently FOAA requests are handled by the Town Clerk as an assigned task.
4. We have been able to accommodate the demand to date, however there are times that it is more difficult due to the other demands of the job.
5. FOAA requests and fulfillment are currently tracked by use of electronic files. A proprietary software created for FOAA tracking would be a beneficial resource.

Thank you,



**Wendy Rawski**  
**Town of Eliot, Maine**  
 Town Clerk | Tax Collector  
 wrawski@eliotme.gov  
 P: 207.439.1817 x 100 | C: 207.977.8723  
 1333 State Road Eliot, ME 03903

Town of Eliot Temporary Town Office :  
 28 Levesque Drive Unit #9 (Eliot Commons)

Under Maine's Freedom of Access ("Right to Know") law, all e-mail and e-mail attachments received or prepared for use in matters concerning Town business or containing information relating to Town business are likely to be regarded as public records which may be inspected by any person upon request, unless otherwise made confidential by law.

## Eustis

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. *Municipal Government*
2. Please provide the approximate number of FOAA requests that you have received annually since 2021. *25 employees*  
*7*
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? *1 person,*  
*An extra task. We don't get many.*
4. Do you feel your organization has sufficient resources to respond to FOAA requests?  
*Yes. to most 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](mailto: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.

# Falmouth

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](mailto: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.

## Answers to the questions:

1. Town
2. We received approximately 5 FOAA requests annually since 2021 that took in excess of one hour to complete each response. We receive hundreds of FOAA requests each year in the form of informal requests for information that are not tracked as formal FOAA requests.
3. Two people are primarily responsible for managing FOAA requests that require more than a few minutes to complete. They are the town manager and management executive assistant.
4. Yes, since 2021. However, in prior years there have been far more requests from a small group of people or individual that consumes more time than available staff resources can provide without substantively impacting other duties. We always manage but it can be a strain on staff.
5. Additional financial resources, particularly in the form of fees from the requester if it is a substantial request, say more than 5 hours to complete. We understand that we need to provide information to the public at a free or reasonable cost to them but for those that request information that can take many hours, they should pay for actual costs of the staff providing the services.

## Garland

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. *Local Municipality*
2. Please provide the approximate number of FOAA requests that you have received annually since 2021. *1*
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? *The office administrator is the FOAA officer and FOAA is part of her duties.*
4. Do you feel your organization has sufficient resources to respond to FOAA requests?  
*Yes*
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](mailto: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.



## Greenwood

### **Survey: Resources for responding to Freedom of Access Act requests**

**02/11/2025 – response from Kim Sparks, Town Manager, Town of Greenwood**

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees.

**Town of Greenwood, local government with 28 Employees.**

2. Please provide the approximate number of FOAA requests that you have received annually since 2021.

**2 per year = 8**

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?

**1 person – full time, this is an added task to my many duties.**

4. Do you feel your organization has sufficient resources to respond to FOAA requests?

**Yes, we currently do. If requests become more frequent then it will be difficult.**

5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?

**At present we have sufficient resources.**

Hampden

RCVD FEB 21 '25

Town of Hampden  
106 Western Avenue  
Hampden, Maine 04444



Phone: (207) 862-3034  
Fax: (207) 862-5067  
Email:  
townmanager@hampdenmaine.gov

February 12, 2025

Re: FOAA Advisory Committee Survey  
C/O Office of Policy and Legal Analysis  
13 State House Station Cross Office Building  
Room 215  
Augusta, Maine. 04333-0013

To Whom It May Concern:

In response to your survey that was received today, I would like to offer the following from the Town of Hampden:

- 1.) Our organization is a municipality with 116 employees combined between full and part time
- 2.) We have received 16 FOAA requests since 2021 which would be an average of over 3 per year
- 3.) There are two primary individuals who handle these requests. The Public Safety Director handles FOAA for Police and Fire and the Town Manager handles FOAA requests for all other departments. In the absence of the manager, the Town Clerk will handle the other FOAA requests
- 4.) At this time the FOAA requests that we receive are time manageable although a resource that can be insufficient is legal review or opinion
- 5.) A resource that we would welcome would be more availability to legal support

Respectfully,

*Paula A. Scott*

Paula A. Scott  
Town Manager

Cc: file



**Roig, Elena**

---

**From:** Kristen Cushman <cushmank@hermonmaine.gov>  
**Sent:** Tuesday, February 11, 2025 10:51 AM  
**To:** Laxon, Lindsay  
**Subject:** Right to Know Advisory Committee - From Town of Hermon

**This message originates from outside the Maine Legislature.**

Greetings,

The Town of Hermon, Maine, is a growing and vibrant community located just west of Bangor in Penobscot County. Known for its strong local economy, excellent schools, and welcoming atmosphere, Hermon offers a blend of rural charm and modern convenience, making it an attractive place to live and work.

Hermon has experienced steady residential and commercial growth, with a focus on maintaining a high quality of life for its residents. The town provides essential services, including public safety, public works, economic development, and recreational programs, ensuring the community's needs are met efficiently and effectively.

The Town of Hermon employs approximately 40 full-time and part-time staff across various departments, including administration, public works, fire and rescue, and recreation, along with additional seasonal employees as needed. The town government is dedicated to fiscal responsibility, community engagement, and forward-thinking initiatives that continue to enhance the town's development and livability.

With its proximity to Bangor, access to key transportation routes, and strong municipal services, Hermon is a dynamic and growing community committed to supporting both residents and businesses.

Since 2021, the Town of Hermon has processed an increasing number of Freedom of Access Act (FOAA) requests, with 4 in 2021, 9 in 2022, 16 in 2023, 10 in 2024, and 3 in 2025.

Currently, a single individual is responsible for handling FOAA requests. As the Town Clerk, I already manage a wide range of responsibilities, including serving as Council Secretary, Motor Vehicle Agent, IF&W Agent, Election Registrar, Tax Collector, Animal Welfare Agent, Vital Records Agent, and Notary Public. FOAA processing is an additional duty rather than a primary role.

While I rely on other departments to gather and submit the requested information via email, the responsibility for compiling, reviewing, and processing these requests ultimately rests with me.

Given our limited resources, responding to FOAA requests is often a significant time commitment. The complexity of a request directly impacts the time required for completion. For instance, a recent FOAA request covering records from 1/1/2007 to 1/27/2025, involving a specific individual's name and two business names, required input from nearly every department in the town. The estimated time to process this request is 53.5 hours, at an approximate cost of \$1,337.50. Below is a breakdown of the time allocation by department:

- IT Department – 4 hours (email data retrieval)
- Animal Control Officer – 0.25 hours
- Assessing – 3 hours
- Clerk – 26 hours

- Code Enforcement – 16 hours
- Economic Development – 2 hours
- Finance – 2 hours
- Recreation – 0.25 hours
- Department Head Meeting – 15 minutes (coordination with 8 department heads)

#### Resource Considerations & Cost Reimbursement

To effectively meet the needs of FOAA compliance, additional staff and time are essential. Given the extensive effort involved in fulfilling these requests, could a reimbursement or funding mechanism be considered to help offset the internal costs? The \$25.00 per hour reimbursement rate does not adequately cover the actual wages and resources expended, particularly for labor-intensive requests like the example above.

I appreciate your time and consideration in addressing this challenge, and I welcome any discussion on how to better support FOAA processing while maintaining the efficiency of municipal operations.

Best regards,

Kristen Cushman  
Town Clerk  
Deputy Tax Collector  
Motor Vehicle Agent  
[CUSHMANK@HERMONMAINE.GOV](mailto:CUSHMANK@HERMONMAINE.GOV)

Town of Hermon  
333 Billings Road  
Hermon, ME 04401  
207-848-1010  
207-848-3316 Fax

Please be advised that email communications sent to or received from Town employees are subject to the Freedom of Access Act and may become part of public record or shared with the media.

*Knox*

Roig, Elena

---

**From:** Knox Town of <townofknox@gmail.com>  
**Sent:** Tuesday, February 11, 2025 10:31 AM  
**To:** Laxon, Lindsay  
**Subject:** FOAA Survey

**This message originates from outside the Maine Legislature.**

- 1 Town of Knox - Municipality
- 2 3, that we are aware of since 2021.
- 3 1 part time
- 4 Yes, we have sufficient resources.
- 5 Non-applicable

Town of Knox

## Lamoine

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees. **Local Government, 7 employees, two full time**
2. Please provide the approximate number of FOAA requests that you have received annually since 2021. **(2 to 5 a year)**
3. Please provide the number of individuals in your organization responsible for responding to FOAA requests. **1** Are these individuals tasked with FOAA work part time or full time, or is FOAA an extra task that is not specifically accounted for? **Full time employee, and FOAA responses are not specifically accounted for**
4. Do you feel your organization has sufficient resources to respond to FOAA requests? **As long as they are not burdensome. Generally, requesters have no idea what they really want!**
5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs? **If we had a large request, we'd need another employee to figure out what exactly is requested.**

Lewiston

**Roig, Elena**

---

**From:** Brian O'Malley <BOMalley@lewistonmaine.gov>  
**Sent:** Thursday, February 13, 2025 4:29 PM  
**To:** Laxon, Lindsay  
**Subject:** FOAA survey

**This message originates from outside the Maine Legislature.**

1. City of Lewiston 360 employees full time, 80 part time employees
2. 2021-50 requests, 2022-67 requests, 2023-74 requests, 2024-153 requests
3. I am the person responsible for FOAA requests this is part of my full time responsibilities.
4. No I do not, due to the large volume of requests this past year we had to pay the City's attorney office to assist in the reviews. At times certain requests can be quite burdensome and other times the requests are simple. However, there is a cost associated with trying to argue that a request is overly burdensome.
5. A part time position dedicated to FOAA requests. When a requests for emails are submitted the emails all have to be reviewed before they can be released which is very time consuming. However, this is not feasible in city government. Depending on what is happening in the city will effect the FOAA request. Last year I had 153 requests but three years prior only 50 requests.

**Brian O'Malley**  
DEPUTY CITY ADMINISTRATOR

Lewiston City Hall  
27 Pine Street, Lewiston, ME 04240  
(207) 513-3121

*Visit us at [LewistonMaine.gov](http://LewistonMaine.gov)*

**LEWISTON**  **ME**

*Limington*  
Roig, Elena

---

**From:** jenna.cote@limingtonmaine.gov  
**Sent:** Wednesday, February 12, 2025 9:22 AM  
**To:** Laxon, Lindsay  
**Subject:** FOAA Survey Town of Limington

**This message originates from outside the Maine Legislature.**

Lindsay,

Here is the Town of Limington's Survey:

02/12/2025

FOAA Survey

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees.

*Town of Limington, 81 Employees*

2. Please provide the approximate number of FOAA requests that you have received annually since 2021.

*8*

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?

*1, part time 15 hours per week*

4. Do you feel your organization has sufficient resources to respond to FOAA requests?

*Yes*

5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?

Thank-You,

Jenna Cote

Town of Limington



Lincoln

**Roig, Elena**

---

**From:** Town Manager <Town.Manager@lincolnmaine.org>  
**Sent:** Tuesday, February 11, 2025 2:14 PM  
**To:** Laxon, Lindsay  
**Cc:** Ann Morrison  
**Subject:** Right to know advisory committee

**This message originates from outside the Maine Legislature.**

2/11/25

Lindsay,

In response to the questions presented by the Right to Know Advisory Committee about FOAA. My answers are:

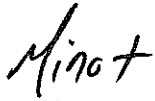
- 1) Town of Lincoln, municipality, 52 full time employees.
- 2) Half a dozen per year.
- 3) FOAA is an extra task for two of us plus the department head the question relates to. All are full time employees but all are simply part time in answering FOAA questions.
- 4) Most of the time we do have sufficient resources however there are some requests that are far too lengthy and require detailed calculations to actually answer. Those are a big struggle and burdensome.
- 5) We do not need more resources. We need the law to have limitations and definitions such that some requests are circumscribed to a single relevant point.

ALSO, there needs to be some way to eliminate the large fishing questions that do not get to any understandable point and eliminate FOAA as a search system for business sales efforts.

Such sales efforts include wide spread information fishing by law firms.

ALSO, Ombudsman should have the ability to learn who the requester is so that the Ombudsman can come to understand who the real abusers of the system are even if the Ombudsman does not reveal who the requester is.

Rick Bronson  
Town Manager  
Lincoln



**Roig, Elena**

---

**From:** Sara Farris <clerk@minotme.org>  
**Sent:** Tuesday, February 11, 2025 8:39 AM  
**To:** Laxon, Lindsay  
**Subject:** FOAA Survey MINOT

**This message originates from outside the Maine Legislature.**

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees.

**Local**

Minot has 10 full time employees and various other part time/ volunteer employees.

All employees that are required to complete FOAA training do.

2. Please provide the approximate number of FOAA requests that you have received annually since 2021.

**Approximately 40 of various different request types.**

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?

**1 person**

I am the FOAA Officer for Minot and it is considered an extra task. If a request does come in I do work with other staff to find the required information depending on the Department. If it is a longer request I could have my Deputies help.

4. Do you feel your organization has sufficient resources to respond to FOAA requests?

**Yes**

I do reach out to the Ombudsman and MMA Legal if I have questions.

5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?

Minot does not receive very many FOAA requests and they are usually small requests that take less than an hour to complete by myself.

--

Sara A. Farris

Town Clerk, Tax Collector, Voter Registrar, Deputy Treasurer, & FOAA Officer  
Town of Minot

329 Woodman Hill Rd.

Minot, ME 04258

Phone: 345-3305 ext: 102

Fax: 346-0924

[minotme.org](http://minotme.org)

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Mon.-Wed. 8-4, Thurs. 10-6, and Fri. 8-1

Closed 12:30-1 Mon. - Thurs. for Lunch

Note: Under Maine's Freedom of Access ("Right to Know") law, all e-mail and e-mail attachments received or prepared for use in matters concerning Town business or containing information relating to Town business is likely to be regarded as public records which may be inspected by any person upon request, unless otherwise made confidential by law.

*Mount Desert*

**Roig, Elena**

---

**From:** Town Clerk <townclerk@mtdesert.org>  
**Sent:** Tuesday, February 11, 2025 11:58 AM  
**To:** Laxon, Lindsay  
**Cc:** Durlin Lunt  
**Subject:** FOAA Survey

**This message originates from outside the Maine Legislature.**

Lindsay,

Below are the responses to the survey questions for the Town of Mount Desert.

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees.  
Local Municipality with 55ish FT employees, PT employees as needed (summer)
2. Please provide the approximate number of FOAA requests that you have received annually since 2021. Less than 3 per year on average (approximately 10 total since 2021) Usually when people come in, we print/copy what they want from a file and just charge them the copy fee. We only use the FOAA/FOIA form for a formal request for information that is more involved than just printing or making a quick copy.
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?  
This depends on the nature of the request (i.e. Assessing, Code Enforcement, Clerk, Financial, IT/email, etc.) These are all full-time staff except the IT which is a contracted consulting position; FOAA are extra tasks that are not specifically accounted for but assigned based on the type of information requested.
4. Do you feel your organization has sufficient resources to respond to FOAA requests?  
So far, yes.
5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?  
N/A

*Claire*

Claire Woolfolk, LLC  
Town Clerk  
Town of Mount Desert  
21 Sea St/PO Box 248  
Northeast Harbor ME 04662  
276-5531 phone, 276-3232 fax  
[townclerk@mtdesert.org](mailto:townclerk@mtdesert.org)

-----FOIA NOTICE-----

Under Maine's Freedom of Access ("Right to Know") law, all e-mail and e-mail attachments received or prepared for use in matters concerning Town business or containing information relating to Town business are likely to be regarded as public records which may be inspected by any person upon request, unless otherwise made confidential by law.

-----PRIVACY NOTICE-----

## Newfield

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.

*Town of Newfield-Municipality- 7 employees (2 of which are full time)*

2. Please provide the approximate number of FOAA requests that you have received annually since 2021.

*15 requests annually*

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?

*One employee responsible for responding to FOAA requests. FOAA is an extra task.*

4. Do you feel your organization has sufficient resources to respond to FOAA requests?

*No*

5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?

*The time it takes to respond to a FOAA request can be immense. With our staff already being stretched thin and wearing numerous "hats" finding the time to respond within the allowed time frames can prove to be burdensome. Ever since COVID, we have seen many duties/functions/audits being passed along to the already overburdened staff at the Town office's. One example of this is the State Valuation. Pre-COVID a representative from MRS would come to the office and preform the audit. Now an email is sent to us and we have to compile and then scan everything to the representative. Another example is the change over in license plates- the towns are taking on more work and not getting anything more in revenue for the added work. Really when will it stop!?*

Thank you for your attention to this matter. You may provide your responses by email to [Lindsay.Laxon@legislature.maine.gov](mailto: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.

## Newry

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. 3 Fulltime 1 parttime--Municipal
2. Please provide the approximate number of FOAA requests that you have received annually since 2021. Maybe 4 not sure I can back in 2022
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?  
1 Full time
4. Do you feel your organization has sufficient resources to respond to FOAA requests?  
so we have been sufficient
5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs? Good so far

Thank you for your attention to this matter. You may provide your responses by email to [Lindsay.Laxon@legislature.maine.gov](mailto: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.

# Old Orchard Beach

**Roig, Elena**

---

**From:** Kim McLaughlin <kmclaughlin@oobmaine.com>  
**Sent:** Tuesday, February 11, 2025 5:09 PM  
**To:** Laxon, Lindsay  
**Subject:** FOAA Survey

**This message originates from outside the Maine Legislature.**

Lindsay,

Below are my responses to the FOAA survey. Let me know if you have any questions.

Thank you.

Kim McLaughlin  
Town Clerk  
Old Orchard Beach

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees.

192 including full-time, per diem, Fire Call Force and Recreation Department

2. Please provide the approximate number of FOAA requests that you have received annually since 2021.

Approximately 80

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?

It is my responsibility, as Town Clerk, to respond to all FOAA requests.

4. Do you feel your organization has sufficient resources to respond to FOAA requests?

No

5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?

It is my responsibility to respond, but I have to gather all that information from department heads who are short-staffed. Some requests are quite lengthy. Residents definitely have the right to request this information; however, businesses from outside the State also use this to gather information they then sell. It would be helpful if we had a 20-hour a week position dedicated to FOAA requests.

Orient/Weston?

Roig, Elena

**From:** Dwayne Young <townofwestonmaine@gmail.com>  
**Sent:** Monday, February 10, 2025 11:43 AM  
**To:** Laxon, Lindsay  
**Subject:** Re: Correspondence from the Right to Know Advisory Committee

**This message originates from outside the Maine Legislature.**

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees. Local Municipal Government
2. Please provide the approximate number of FOAA requests that you have received annually since 2021. 2, but if you include the normal daily requests for tax info and such, at least 1 per day.
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? 1 individual, the FOAA is an extra task that is not specifically accounted for.
4. Do you feel your organization has sufficient resources to respond to FOAA requests? Currently YES
5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?

Dwayne Young, CCM  
Administrative Asst. to the Selectboard  
Towns of Weston and Orient  
MTCCA President

On Fri, Feb 7, 2025 at 3:38 PM Laxon, Lindsay <[Lindsay.Laxon@legislature.maine.gov](mailto:Lindsay.Laxon@legislature.maine.gov)> wrote:

Dear Dwayne Young,

On behalf of the Right to Know Advisory Committee, I am sharing the attached survey regarding resources for responding to Freedom of Access Act requests.

Please reach out to me or my colleague, Colleen McCarthy Reid ([Colleen.McCarthyReid@legislature.maine.gov](mailto:Colleen.McCarthyReid@legislature.maine.gov)), if you have any questions or need additional information.

Thank you for your consideration,

Lindsay



## Passadumkeag

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. Municipality (population 350)
2. Please provide the approximate number of FOAA requests that you have received annually since 2021. 1
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?  
One part time employee for which FOAA is an extra task
4. Do you feel your organization has sufficient resources to respond to FOAA requests?  
Not if we start getting more requests
5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs? More funding for more hours

Thank you for your attention to this matter. You may provide your responses by email to [Lindsay.Laxon@legislature.maine.gov](mailto: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.

## Prospect

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. *Town Municipality, 7 total town employees.*
2. Please provide the approximate number of FOAA requests that you have received annually since 2021. *3*
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? *Two, part-time employees.*
4. Do you feel your organization has sufficient resources to respond to FOAA requests?  
*Yes*
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](mailto: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.

*Smithfield*  
Roig, Elena

---

**From:** Town Clerk <townclerk@smithfieldmaine.us>  
**Sent:** Wednesday, February 19, 2025 11:42 AM  
**To:** Laxon, Lindsay  
**Cc:** Town Office  
**Subject:** FOAA Survey

**This message originates from outside the Maine Legislature.**

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees.

The Municipal Offices of the Town of Smithfield are local. We have 24 employees.

2. Please provide the approximate number of FOAA requests that you have received annually since 2021.

We have NOT received any FOAA requests 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?

There is one individual, Meredyth Tuttle responsible for responding to FOAA requests. As Town Clerk/Registrar of Voters, I am a part time employee of the town of Smithfield with office hours on Mondays, 9am-3pm and Wednesdays 9am-11:45am and Wednesday evenings from 6-8pm.

4. Do you feel your organization has sufficient resources to respond to FOAA requests?

YES

5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?

Not Applicable

If you have any questions, please contact me at your earliest convenience.

Sincerely,

Meredyth W. Tuttle  
Town Clerk & Registrar of Voters  
926 Village Road  
Smithfield, Maine 04978  
[townclerk@smithfieldmaine.us](mailto:townclerk@smithfieldmaine.us)  
Office Phone (207) 362-4772  
Fax (207) 362-5650

*Stoneham*  
Roig, Elena

---

**From:** Town Clerk <stonehamtown@gmail.com>  
**Sent:** Tuesday, February 11, 2025 10:14 AM  
**To:** Laxon, Lindsay  
**Subject:** FOAA survey

**This message originates from outside the Maine Legislature.**

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees. -Local Municipality - 2 employees
2. Please provide the approximate number of FOAA requests that you have received annually since 2021.-0
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?-1 person - it's just an extra task not specifically accounted for.
4. Do you feel your organization has sufficient resources to respond to FOAA requests? yes
5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?

Thank you,  
Megan Hamlin  
Town Clerk/Tax Collector

If you have any questions or concerns about our request, please do not hesitate to reach out

--

Town of Stoneham  
P.O. Box 91  
Stoneham, Me. 04231  
(207) 928-2155

**DISCLAIMER:**

Please note that all e-mails sent from or coming to this address are considered a public document and are subject to the State of Maine Freedom of Access laws.

Temple

**Roig, Elena**

---

**From:** Town of Temple <templetownoffice@yahoo.com>  
**Sent:** Monday, March 17, 2025 1:57 PM  
**To:** Laxon, Lindsay  
**Subject:** Right to Know Survey Town of Temple

This message originates from outside the Maine Legislature.

Hello,

Here is the response to the FOAA survey.

1. Municipality, 2 employees
2. 1
3. 1. FOAA is an extra task not specifically accounted for.
4. Yes.
5. NA

Regards,  
Georgia Exner  
Town Clerk/Registrar of Voters

Town of Temple  
PO Box 549  
258 Temple Road  
Temple, ME 04984  
Tel 207-778-6680  
Fax 207-778-0183  
templetownoffice@yahoo.com

NOTICE: Under Maine's Freedom of Access ("Right-to-Know") law, documents - including e-mail - in the possession of public officials about City business are classified as public records. This means if anyone asks to see it, we are required to provide it. There are very few exceptions. We welcome citizen comments and want to hear from our residents, but please keep in mind that what you write in an e-mail is not private and could show up in the local newspaper.

## Verona Island

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. *Local municipality*
2. Please provide the approximate number of FOAA requests that you have received annually since 2021. *4*
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? *We handle them right at the counter along with all other things*
4. Do you feel your organization has sufficient resources to respond to FOAA requests?  
*Yes*
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](mailto: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.

## Vinalhaven

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. *town - 45 employees*
2. Please provide the approximate number of FOAA requests that you have received annually since 2021. *2 per year*
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? *one person  
extra task*
4. Do you feel your organization has sufficient resources to respond to FOAA requests? *yes*
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](mailto: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.

*Thank you,  
Majoni E. Stratton  
Town Manager  
Vinalhaven*

## Weston

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. *Municipality*
2. Please provide the approximate number of FOAA requests that you have received annually since 2021. *0*
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? *3*
4. Do you feel your organization has sufficient resources to respond to FOAA requests? *Yes*
5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs? *Won't know until a request comes in.*

Thank you for your attention to this matter. You may provide your responses by email to [Lindsay.Laxon@legislature.maine.gov](mailto: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.



Windham



## Town of Windham

Office of the Town Manager  
8 School Road  
Windham, ME 04062

Barry A. Tibbetts, Town Manager  
batibbetts@windhammaine.us

207.892.1907 voice  
207.892.1910 fax

May 7, 2025

(via email to: [Lindsay.Laxon@Legislature.maine.gov](mailto:Lindsay.Laxon@Legislature.maine.gov))

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

The Town of Windham would like to provide a response to your survey questions, numbered below, regarding our responses to public records requests.

**1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees.**

The Town of Windham is a municipal/local government entity with 221 employees, of which 64 are per diem fire personnel.

**2. Please provide the approximate number of FOAA requests that you have received annually since 2021.**

2021 – 187 [175 (PD) + 12 (TM)] \*  
2022 – 322 [272 (PD) + 50 (TM)]  
2023 – 339 [284 (PD) + 55 (TM)]  
2024 – 387 [334 (PD) + 53 (TM)]

*\*Only began logging requests in 2022.*

**3. Please provide the number of individuals in your organization responsible for responding to FOAA requests.**

Officially there are **two** people assigned to respond to FOAA requests. The Administrative Assistant -Dispatch Liaison & Records in the Police Department and the Executive Assistant in the Town Manager's Office.

The Police Department has an employee assigned to respond to FOAA requests for crash reports, PD reports, statistics, etc. Other types of requests move up to the Town Manager's Office for response coordination. Police also use an online form to receive and track their requests. There has been some consideration for a part-time employee at the Police Department to assist with these requests, but it has not been brought forward as a budgeting request.

All other FOAA requests are forwarded to the manager's office so they can be logged. Often the Town Clerk receives the request and forwards them to the Executive Assistant in the Manager's Office. The request is logged, acknowledged, information is gathered and coordinated between departments, and responded to in most instances, centrally by the manager's office.

**Do these individuals tasked with FOAA work part time or full time, or is FOAA an extra task that is not specifically accounted for?**

Both these positions are full-time and FOAA response is an assigned task as part of their duties in support of their respective supervisors or department head.

**4. Do you feel your organization has sufficient resources to respond to FOAA requests?**

Yes, we have sufficient personnel resources.

**5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?**

A better tracking mechanism may be warranted. We may implement an online request form with our next website update which will hopefully centralize requests not pertaining to police business. Our current website provider has the necessary for us to implement that.



# 132nd MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2025

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Legislative Document

No. 1399

H.P. 921

House of Representatives, April 1, 2025

**An Act to Allow Action Against a Person Violating the  
Confidentiality of an Executive Session of a Public Body or Agency**

---

Reference to the Committee on Judiciary suggested and ordered printed.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT

Clerk

Presented by Representative CARLOW of Buxton.

Cosponsored by Representatives: DODGE of Belfast, HAGGAN of Hampden, MURPHY of Scarborough.

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

2 **Sec. 1. 1 MRSA §405, sub-§6, ¶A**, as amended by PL 2009, c. 240, §2, is further  
3 amended by amending subparagraph (1) to read:

4 (1) An executive session may be held only on a matter under subsection 7 or if  
5 public discussion could be reasonably expected to cause damage to the individual's  
6 reputation or the individual's right to privacy would be violated;

7 **Sec. 2. 1 MRSA §405, sub-§7** is enacted to read:

8 **7. Violation of confidentiality of executive session matter.** A member of a body or  
9 agency falling within this subchapter or any other person attending an executive session  
10 may not disclose a matter, including discussion, underlying facts or information regarding  
11 the matter discussed in the executive session under subsection 4 without the approval of a  
12 recorded vote of 3/5 of the members present and voting. If an allegation of a violation of  
13 confidentiality under this subsection or otherwise unauthorized disclosure of a matter  
14 discussed in an executive session is made, the body or agency may conduct the following  
15 procedure:

16 A. By recorded vote of a majority of the members present and voting, initiate an  
17 investigation of the allegation;

18 B. Form an ethics committee composed of members to conduct the investigation, the  
19 underlying facts, discussion and findings of which are confidential;

20 C. Conduct a hearing to adjudicate the allegation, which must be held in executive  
21 session pursuant to subsection 6, paragraph A; and

22 D. If, by a preponderance of the evidence at the hearing under paragraph C, the body  
23 or agency determines that a member or other person present at an executive session  
24 violated the confidentiality provision of this subsection, prohibit, by a recorded vote of  
25 2/3 of the members present and voting, the member or other person found in violation  
26 of this subsection from:

27 (1) Participating in a future executive session;

28 (2) Having access to confidential information; or

29 (3) Having access to information or attending an executive session regarding a  
30 specific matter in which the body or agency determines that the member or other  
31 person has a conflict of interest.

32 A prohibition under this paragraph may be for a definite or indefinite period.

33 The member or other person prohibited from attending an executive session or having  
34 access to information under this paragraph may appeal the decision to the body or  
35 agency immediately after the decision is made and every 30 days thereafter.

36 A decision made by the body or agency under this paragraph may be appealed to the  
37 Superior Court.

38 A decision by the body or agency under this paragraph may be rescinded by a recorded  
39 vote of 2/3 of the members present and voting or upon the expiration of the terms of  
40 2/3 of the members who participated in the vote under this paragraph.

1  
2  
3  
4  
5  
6  
7  
8

**SUMMARY**

This bill allows a body or agency subject to the provisions of the law regarding public records to prohibit a member of the body or agency or other person attending an executive session from attending future executive sessions or having access to confidential or other certain information if that member or other person has been found after a hearing by the body or agency that the member or other person violated the confidentiality of the executive session or otherwise disclosed information regarding an executive session without approval by the body or agency.

**§405. Executive sessions**

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions. [PL 1975, c. 758 (NEW).]

**1. Not to defeat purposes of subchapter.** An executive session may not be used to defeat the purposes of this subchapter as stated in section 401. [PL 2009, c. 240, §2 (AMD).]

**2. Final approval of certain items prohibited.** An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at an executive session. [PL 2009, c. 240, §2 (AMD).]

**3. Procedure for calling of executive session.** An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies. [PL 2009, c. 240, §2 (AMD).]

**4. Motion contents.** A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent. [PL 2003, c. 709, §1 (AMD).]

**5. Matters not contained in motion prohibited.** Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session. [PL 2009, c. 240, §2 (AMD).]

**6. Permitted deliberation.** Deliberations on only the following matters may be conducted during an executive session:

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

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

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

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

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

This paragraph does not apply to discussion of a budget or budget proposal; [PL 2009, c. 240, §2 (AMD).]

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

(1) The student and legal counsel and, if the student is a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire; [PL 2009, c. 240, §2 (AMD).]

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency; [PL 1987, c. 477, §3 (AMD).]

D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions; [PL 1999, c. 144, §1 (RPR).]

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage; [PL 2009, c. 240, §2 (AMD).]

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute; [PL 1999, c. 180, §1 (AMD).]

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and [PL 1999, c. 180, §2 (AMD).]

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter. [PL 1999, c. 180, §3 (NEW).]

[PL 2009, c. 240, §2 (AMD).]

#### SECTION HISTORY

PL 1975, c. 758 (RPR). PL 1979, c. 541, §A3 (AMD). PL 1987, c. 477, §§2,3 (AMD). PL 1987, c. 769, §A1 (AMD). PL 1999, c. 40, §§1,2 (AMD). PL 1999, c. 144, §1 (AMD). PL 1999, c. 180, §§1-3 (AMD). PL 2003, c. 709, §1 (AMD). PL 2009, c. 240, §2 (AMD).

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## TESTIMONY IN SUPPORT OF

L.D. 1399

### AN ACT TO ALLOW ACTION AGAINST A PERSON VIOLATING THE CONFIDENTIALITY OF AN EXECUTIVE SESSION OF A PUBLIC BODY OR AGENCY

April 11, 2025

Senator Carney, Representative Kuhn, and members of the Judiciary Committee, I am Steven Bailey, the Executive Director of the Maine School Management Association, testifying on behalf of the legislative committees of the Maine School Boards Association and Maine School Superintendents Association in support of L.D. 1399.

Our associations thank Rep. Carlow for seeking a solution to this issue, which unfortunately has become more and more common on school boards across our state. When we performed an informal survey of our legislative committees, nearly all members recalled situations in which information from an executive session – which is supposed to remain confidential – was leaked to outside personnel and/or organizations. This is a worrisome trend, and we believe it is part of the reason behind acrimony and distrust in some school boards throughout Maine.

School boards may only consider very specific topics within an executive session:

1. Specific personnel matters (when public discussion could reasonably be expected to cause damage to the individual's reputation or right to privacy);
2. Suspension/expulsion of a student;
3. Condition, acquisition, or use of real or personal property if premature disclosure would prejudice the school unit;
4. Discussion of labor contracts or negotiations;
5. Consultations with legal counsel regarding legal rights, pending litigation, and settlement offers; and
6. Discussions of records that are considered confidential by law.

It is largely self-explanatory why these topics must remain confidential. These issues concern delicate matters: student and staff records, potentially damaging information to an employee's reputation, or confidential legal matters. Any leaks can cause substantial harm to personnel, students, families, or the school district as a whole.

More than nearly any other body, a school board relies on trust, collaboration and unified vision. Without those factors, it is nearly impossible to achieve the goal of improving education for students and the wider community. When one or more board members shares confidential information, that trust breaks down. Board members cannot rely on each other, and the community itself may lose trust in the board and school district as a whole.



Our associations view L.D. 1399 as a reasonable policy that will allow for due process of any potential violations, while also serving as a meaningful deterrent against these leaks in the future. L.D. 1399 would create an investigation and hearing process, and a board member could only be found in violation of executive session by a 2/3 vote of the body – an appropriately high bar. We also appreciate that it would not remove that member from the board but simply bar them from certain future discussions in executive session. We feel this is an appropriate response that would allow the board member to continue to participate in most future discussions, while imposing a penalty in line with their violation.

We also think it is crucial that this process may be used by a board, but it is not required. This simply gives boards another tool, if they wish to use it.

Some board members did express some concerns about this bill. They feel that this process would be too lengthy and drawn-out and ultimately would only create more division amongst board members. Others feel school boards are dealing with far larger challenges at the moment, and the solution to these leaks of executive sessions should be to help board members better understand their oath of office – not to punish them. Other board members also expressed interest in exploring other solutions, such as a simple fine for a violation instead, which they feel could also serve as an effective deterrent.

Nonetheless, we believe L.D. 1399 would be an important step forward that would help improve the effectiveness and operation of school boards throughout our state, and we urge you to support this measure.

Thank you very much for your consideration, and I am happy to take any questions you might have.

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Thank you very much for your consideration, and I am happy to take any questions you might have.

**§405. Executive sessions**

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions. [PL 1975, c. 758 (NEW).]

**1. Not to defeat purposes of subchapter.** An executive session may not be used to defeat the purposes of this subchapter as stated in section 401. [PL 2009, c. 240, §2 (AMD).]

**2. Final approval of certain items prohibited.** An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at an executive session. [PL 2009, c. 240, §2 (AMD).]

**3. Procedure for calling of executive session.** An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies. [PL 2009, c. 240, §2 (AMD).]

**4. Motion contents.** A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent. [PL 2003, c. 709, §1 (AMD).]

**5. Matters not contained in motion prohibited.** Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session. [PL 2009, c. 240, §2 (AMD).]

**6. Permitted deliberation.** Deliberations on only the following matters may be conducted during an executive session:

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

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

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

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

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

This paragraph does not apply to discussion of a budget or budget proposal; [PL 2009, c. 240, §2 (AMD).]

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

(1) The student and legal counsel and, if the student is a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire; [PL 2009, c. 240, §2 (AMD).]

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency; [PL 1987, c. 477, §3 (AMD).]

D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions; [PL 1999, c. 144, §1 (RPR).]

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage; [PL 2009, c. 240, §2 (AMD).]

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute; [PL 1999, c. 180, §1 (AMD).]

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and [PL 1999, c. 180, §2 (AMD).]

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter. [PL 1999, c. 180, §3 (NEW).]

[PL 2009, c. 240, §2 (AMD).]

#### SECTION HISTORY

PL 1975, c. 758 (RPR). PL 1979, c. 541, §A3 (AMD). PL 1987, c. 477, §§2,3 (AMD). PL 1987, c. 769, §A1 (AMD). PL 1999, c. 40, §§1,2 (AMD). PL 1999, c. 144, §1 (AMD). PL 1999, c. 180, §§1-3 (AMD). PL 2003, c. 709, §1 (AMD). PL 2009, c. 240, §2 (AMD).

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## Right to Know Advisory Committee

Meeting #2

October 15, 2025

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The Right to Know Advisory Committee has discussed how FOAA applies to executive sessions. The following Right to Know Advisory Committee Reports summarized the advisory committee's discussion(s) of the topic of executive sessions:

- **Eighth Annual Report (January 2014)**
  - “Public body member participation from remote location, LD 258” (pp. 10-11)
  - LD 258 (2013) attached
- **Twelfth Annual Report (January 2018)**
  - “Recent Court Decisions Related to Freedom of Access Issues” > “*Greif v. Town of Bar Harbor*” (pp. 3-4)
  - “Public Ombudsman Update” (pp. 5-6)
  - “Recommendations” > “Enact legislation to prohibit remote participation in public proceedings by a member of a public body unless the body established a policy for remote participate that meets certain requirements” (pp. 12-15)
  - Proposed language for consideration by the Legislature (Appendix C, pp. 1-2)
    - Action from recommendation in previous year's report in the **Thirteenth Annual Report (January 2019)** (p. 12)
      - LD 1832, “An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Remote Participation” (attached)
        - Majority ONTP report accepted by Legislature
        - Minority OTP-AM (amendment attached)
- **Fourteenth Annual Report (January 2020)**
  - “Recent Court Decisions Related to Freedom of Access Issues” > “*Dubois v. Arundel*” (pp. 3-4)
  - “Recommended Legislation to Address Remote Participation” (Appendix E, pp. 1-6)
    - *Similar to minority OTP-AM report of LD 1832 (2019)*
- **Fifteenth Annual Report (January 2021)**
  - “Subcommittee on Remote Meeting Best Practices” (pp. 5-6)
  - “Recommendations” > “Support the extension of legal authority for public bodies to conduct public processing remotely on a permanent basis as long as openness and transparency remain central principles and as long as the authorization contingent on the public body adopting a written policy addressing certain requirements” (p. 14)

- **Eighteenth Annual Report (January 2024)**
  - “Public Record Process Subcommittee” > “Require body or agency to cite reason for going into executive session” (Pp. 11-12)
  - “Recommendations” > “Reinforce important of following the statutory requirements applicable to public bodies and agencies going into executive session” (p. 20; sample letter from correspondence attached)
  - Action from recommendation in previous year’s report in the **Nineteenth Annual Report (January 2025)** (p. 4)



**STATE OF MAINE  
126<sup>TH</sup> LEGISLATURE  
FIRST REGULAR SESSION**

**Eighth Annual Report  
of the  
RIGHT TO KNOW ADVISORY COMMITTEE**

**January 2014**

**Members:**

**Sen. Linda M. Valentino  
Rep. Kimberly Monaghan-Derrig  
Perry Antone Sr.  
Percy Brown Jr.  
Richard Flewelling  
Suzanne Goucher  
Frederick Hastings  
Mal Leary  
William Logan  
Mary Ann Lynch  
Judy Meyer  
Christopher Parr  
Linda Pistner  
Harry Pringle  
Luke Rossignol**

**Staff:**

**Henry Fouts, Legislative Analyst  
Colleen McCarthy Reid, Legislative Analyst  
Margaret J. Reinsch, Senior Analyst  
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<http://www.maine.gov/legis/opla/righttoknow.htm>**



### Unintended adverse impacts of FOAA

An unintended adverse impact of FOAA results from the modern reluctance of government personnel to keep documents, and to put things in writing, because of the potential that the information will be disclosed pursuant to a FOAA request. This can have a negative impact on historical information, for example, and also takes away an important communicative tool at government's disposal. The Public Policy Subcommittee decided to put this issue aside.

### FOAA for commercial purposes

The Committee has discussed the issue of treating FOAA requests differently based on whether the request is for commercial purposes a number of times and come to the ultimate conclusion that it is too difficult to differentiate between commercial and non-commercial purposes. There are some ways to set aside commercial purposes for specific information but not in the context of the larger FOAA. Sometimes commercial purposes can serve the public good. This also goes to the larger issue of personal privacy versus public right to information. Staff will bring back to the Subcommittee information about the Law Court case dealing with this (MacImage), as well as how the statute relating to commercial use of deeds was worked out.

The Public Policy Subcommittee agreed that further discussions would be conducted jointly with the Legislative Subcommittee.

*See discussion of Advisory Committee's recommendations in Section VI.*

**Joint Meetings; Legislative and Public Policy Subcommittees.** Because of the similarities in the issues being discussed as well as an overlap of members, the Legislative Subcommittee met jointly with the Public Policy Subcommittee on three occasions. The joint discussions of the two Subcommittees are summarized below.

### \* Public body member participation from remote locations, LD 258 \*

The Subcommittee discussed LD 258, *An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies*, and the history of the Advisory Committee's work to address questions about electronic meetings. The Subcommittee had significant discussion about drawing distinctions between elected and appointed officials and on what the public body is doing. It was suggested that the issue be addressed incrementally: use LD 258 as a framework, but do not allow elected officials to meet remotely unless there is an emergency, as yet to be defined. The Subcommittee voted 6-2 in favor of the motion. The Subcommittee decided to review and discuss draft legislation for discussion and also review other state laws.

Staff prepared a summary of the statutory approaches other states have taken with regard to the remote participation in meetings by members of public bodies. Members agreed that the fact that the current statute provides no guidance is an unacceptable state of affairs. Either the State should embrace the technology and provide guidance as to at least minimum requirements or the statute should clearly prohibit such participation. Harry Pringle suggested that a couple of

adjustments be made to LD 258 and then have a discussion in the full Advisory Committee. Fred Hastings noted that the need for travel and the challenging weather in Maine are reasons to support the use of technology, and that there are excellent resources already in existence. He agreed with Mr. Pringle, and endorsed monitoring the use to see what happens. An important aspect is the requirement in the proposed legislation that any public body using the process would first have to adopt a policy that authorizes the use. Mr. Rossignol agreed, stating his belief that the problems and practicalities can be figured out through each body's particular policies.

\* The Subcommittees voted 8-1 (Ms. Meyer dissenting) to recommend LD 258 with two changes: require the policy to address whether remote participation can be used in executive sessions in order to ensure privacy and to exempt the quorum requirement when other statutes specifically address that limitation. \* Senator Valentino, Ms. Pringle and Ms. Pistner all expressed concerns with some aspects, but they all agreed the concept should move forward for discussion. Ms. Meyer supports remote participation until the point of voting; she said the Maine Press Association opposes letting members of a public body who are not in the room cast votes.

\* At the December 17<sup>th</sup> meeting, the Subcommittees voted 5-2 to recommend the draft legislation with two changes: require the policy to address whether remote participation can be used in executive sessions in order to provide the protection of privacy that is intended through the use of executive session, and to exempt the quorum requirement when other statutes specifically address that limitation. \* Joe Brown reiterated his opposition to allowing elected officials to participate remotely; Mr. Parr agreed with Mr. Brown. (In favor: Mr. Flewelling, Mr. Logan, Ms. Pistner, Mr. Pringle, Mr. Rossignol; opposed: Mr. Brown, Mr. Parr.)

#### Relief from overly burdensome FOAA requests

Should there be a limit on a number of requests per person that will be allowed per year? In discussions the Subcommittees acknowledged that FOAA abuse was definitely a problem, for example, people exploiting FOAA for personal gain or as a form of harassment against public agencies, but there was also concern about putting any restrictions on FOAA requests.

Public Access Ombudsman Brenda Kiely noted that it would be difficult to define "abuse" under the current FOAA scheme, but it could be done by placing restrictions on who may make requests, the frequency of those requests, the manner and the scope of the requests. However, such restrictions would change the current FOAA very much.

Jon Storer, superintendent of the Auburn Water District shared his agency's experience with a particular FOAA requestor, and how abuses have put a strain on his agency's resources. He added that if the agency were allowed to charge a fair amount for the actual time spent complying with requests, he would be happy.

It was noted that past attempts by the Advisory Committee to resolve this issue over the years have never ended with a solution that people are comfortable with. A possible solution was introduced, to create a system where a judge would have authority to place limits on requestors under a defined set of circumstances. The Subcommittee asked staff to look at other states'



\* discussed at Right to Know Advisory Committee meetings in 2013.  
see twelfth Annual Report of the Right to Know Advisory Committee (Jan. 2014)



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 258

H.P. 195

House of Representatives, February 5, 2013

### **An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies**

---

Reported by Representative PRIEST of Brunswick for the Joint Standing Committee on  
Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph  
G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint  
Rule 218.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

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

2 PART A

3 Sec. A-1. 1 MRSA §403-A is enacted to read:

4 **§403-A. Public proceedings through other means of communication**

5 This section governs public proceedings, including executive sessions, during which  
6 public or governmental business is discussed or transacted through telephonic, video,  
7 electronic or other similar means of communication.

8 **1. Requirements.** A body subject to this subchapter may conduct a public  
9 proceeding during which a member of the body participates in the discussion or  
10 transaction of public or governmental business through telephonic, video, electronic or  
11 other similar means of communication only if the following requirements are met:

12 A. The body has adopted a policy that authorizes a member of the body who is not  
13 physically present to participate in a public proceeding through telephonic, video,  
14 electronic or other similar means of communication in accordance with this section.  
15 The policy may establish circumstances under which a member may participate when  
16 not physically present;

17 B. Notice of the public proceeding has been given in accordance with section 406;

18 C. Except as provided in subsection 3, a quorum of the body is assembled physically  
19 at the location identified in the notice required by section 406;

20 D. Each member of the body participating in the public proceeding is able to hear all  
21 the other members and speak to all the other members during the public proceeding,  
22 and members of the public attending the public proceeding in the location identified  
23 in the notice required by section 406 are able to hear all members participating from  
24 other locations;

25 E. Each member who is not physically present and who is participating through  
26 telephonic, video, electronic or other similar means of communication identifies the  
27 persons present at the location from which the member is participating;

28 F. All votes taken during the public proceeding are taken by roll call vote; and

29 G. Each member who is not physically present and who is participating through  
30 telephonic, video, electronic or other similar means of communication has received  
31 prior to the public proceeding any documents or other materials that will be discussed  
32 at the public proceeding, with substantially the same content as those documents  
33 actually presented. Documents or other materials made available at the public  
34 proceeding may be transmitted to the member not physically present during the  
35 public proceeding if the transmission technology is available. Failure to comply with  
36 this paragraph does not invalidate the action of a body in a public proceeding.

37 **2. Voting; judicial or quasi-judicial proceeding.** A member of a body who is not  
38 physically present and who is participating in a judicial or quasi-judicial public  
39 proceeding through telephonic, video, electronic or other similar means of

1 communication may not vote on any issue concerning testimony or other evidence  
2 provided during the judicial or quasi-judicial public proceeding.

3 **3. Exception to quorum requirement.** A body may convene a public proceeding  
4 by telephonic, video, electronic or other similar means of communication without a  
5 quorum under subsection 1, paragraph C if:

6 A. An emergency has been declared in accordance with Title 22, section 802,  
7 subsection 2-A or Title 37-B, section 742;

8 B. The public proceeding is necessary to take action to address the emergency; and

9 C. The body otherwise complies with the provisions of this section to the extent  
10 practicable based on the circumstances of the emergency.

11 **4. Annual meeting.** If a body conducts one or more public proceedings pursuant to  
12 this section, it shall also hold at least one public proceeding annually during which  
13 members of the body in attendance are physically assembled at one location and where no  
14 members of the body participate by telephonic, video, electronic or other similar means  
15 of communication from a different location.

## 16 PART B

17 **Sec. B-1. 10 MRSA §384, sub-§5** is enacted to read:

18 **5. Meetings.** The board shall have a physical location for each meeting.  
19 Notwithstanding Title 1, section 403-A, board members may participate in meetings by  
20 teleconference. Board members participating in the meeting by teleconference are not  
21 entitled to vote and are not considered present for the purposes of determining a quorum,  
22 except in cases in which the chair of the board determines that the counting of members  
23 participating by teleconference and the allowance of votes by those members is necessary  
24 to avoid undue hardship to an applicant for an investment.

25 **Sec. B-2. 32 MRSA §88, sub-§1, ¶D**, as amended by PL 2007, c. 274, §19, is  
26 further amended to read:

27 D. A majority of the members appointed and currently serving constitutes a quorum  
28 for all purposes and no decision of the board may be made without a quorum present.  
29 A majority vote of those present and voting is required for board action, except that  
30 for purposes of either granting a waiver of any of its rules or deciding to pursue the  
31 suspension or revocation of a license, the board may take action only if the proposed  
32 waiver, suspension or revocation receives a favorable vote from at least 2/3 of the  
33 members present and voting and from no less than a majority of the appointed and  
34 currently serving members. ~~The Notwithstanding Title 1, section 403-A, the board~~  
35 ~~may use video conferencing and other technologies to conduct its business but is not~~  
36 ~~exempt from Title 1, chapter 13, subchapter 1.~~ Members of the board, its  
37 subcommittees or its staff may participate in a meeting of the board, subcommittees  
38 or staff via video conferencing, conference telephone or similar communications  
39 equipment by means of which all persons participating in the meeting can hear each  
40 other, and participation in a meeting pursuant to this subsection constitutes presence  
41 in person at such meeting.



1           7. Each member who is not physically present and who is participating through  
2 telephonic, video, electronic or other similar means of communication must have  
3 received, prior to the proceeding, any documents or other materials that will be discussed  
4 at the public proceeding, with substantially the same content as those documents actually  
5 presented.

6           8. A member of a body who is not physically present may not vote on any issue  
7 concerning testimony or other evidence provided during the public proceeding if it is a  
8 judicial or quasi-judicial proceeding.

9           9. If a body conducts one or more public proceedings using remote-access  
10 technology, the body must also hold at least one public proceeding annually during which  
11 all members of the body in attendance are physically assembled at one location.

12           Under current law, the following state agencies are authorized to use remote-access  
13 technology to conduct meetings: the Finance Authority of Maine, the Commission on  
14 Governmental Ethics and Election Practices, the Emergency Medical Services' Board and  
15 the Workers' Compensation Board. Part B provides a specific exemption from the new  
16 requirements for the Small Enterprise Growth Board, the Emergency Medical Services'  
17 Board and the Workers' Compensation Board.







**Twelfth Annual Report  
of the  
Right to Know Advisory Committee**

**January 2018**

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Luke Rossignol  
William D. Shorey  
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- ❑ Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the state of Maine's freedom of access laws and the public's access to public proceedings and records;
- ❑ Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;
- ❑ Examining inconsistencies in statutory language and proposing clarifying standard language; and
- ❑ Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

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

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws. The Advisory Committee is pleased to work with the Public Access Ombudsman, Brenda Kielty. Ms. Kielty is a valuable resource to the public and public officials and agencies.

### III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES

By law, the Advisory Committee serves as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know. In carrying out this duty, the Advisory Committee believes it is useful to include in its annual reports a digest of recent developments in case law relating to Maine's freedom of access laws. For its twelfth annual report, the Advisory Committee has identified and summarized the following Maine Supreme Judicial Court decisions related to freedom of access issues.

#### \* **Greif v. Town of Bar Harbor** \*

In *Greif v. Town of Bar Harbor*, 2017 ME 163, 167 A.3d 1272, Greif appealed a Superior Court decision determining that the Town of Bar Harbor acted properly in conducting an executive session for the purpose of consulting with the Town's attorney in response to a complaint about conduct of two town councilors. Greif alleged that the town council violated the Freedom of Access Act (FOAA) when it discussed the substance of his complaint about the two councilors during an executive session closed to the public. The Maine Supreme Judicial Court held that the town did not violate the FOAA when it held an executive session to consult with its attorney concerning the legal rights and duties of the town in response to the complaint (*see* 1 MRSA

\* §405, subsection 6, paragraph E). The Town Council acted appropriately to address the allegations and returned to regular session before taking official action to pass resolution \* providing that allegations in the letter did not warrant further review by council.

### **Dubois v. Department of Environmental Protection**

In *Dubois v. Department of Environmental Protection*, 2017 ME 224, the Law Court considered an appeal from a Superior Court judgment affirming the Department of Environmental Protection's denial of a Freedom of Access Act request for public records related to Dubois Livestock, Inc. Although a large amount of records were provided to Dubois, the Department denied access to two categories of documents: those records developed in anticipation of litigation under the work product privilege and those records identifying complainants based on the informant identity privilege. The Department asserted that the records were protected from disclosure by the exception from the definition of public records in 1 MRSA §402, sub-§3, ¶B for records that would be privileged against discovery or use as evidence in the course of a court proceeding. The Law Court upheld the Department's denial of access to records based on the work product privilege, but remanded the proceeding to the Superior Court for further consideration related to the records identifying complainants.

The Department argued to the Law Court that the identities of those persons who made complaints about odors emitted from the Dubois Livestock property were "informants" and that the informant identity privilege in the Maine Rules of Evidence 509(a) would apply. Although the Department relied on the informant identity privilege in asserting that the identities of complainants were not public records, the Law Court noted that the Freedom of Access Act also makes an exception for records that have been designated confidential by statute. The Law Court pointed out there is an exception provided in the Intelligence and Investigative Record Information Act (16 MRSA §804) that protects from dissemination a record containing intelligence and investigative information if there is a reasonable possibility that the identity of a confidential source would be disclosed. However, since the Department did not assert the applicability of statutory confidentiality for investigate records and the trial court did not consider that issue, the Law Court was not able to address whether the statute protects the identities of complainants as confidential sources. The case was remanded to the trial court to receive additional evidence and to determine whether the records in question are excepted from the definition of public records.

### **IV. RIGHT TO KNOW ADVISORY COMMITTEE SUBCOMMITTEE**

In prior years, the Right to Know Advisory Committee has divided its workload among various subcommittees that have reported recommendations back to the full Advisory Committee for consideration and action. In 2017, the Advisory Committee chose to appoint one subcommittee, the Public Records Exceptions Subcommittee. The Advisory Committee has also recommended the establishment of an additional subcommittee on Freedom of Access Act penalties and enforcement in 2018, see recommendation in Part VII.

The Public Records Exceptions Subcommittee's focus is to review and evaluate public records exceptions as required of the Advisory Committee pursuant to 1 MRSA §433, sub-§2-A. The

guidelines in the law require the Advisory Committee to review all public records exceptions in Titles 1 to 7-A no later than 2019. In accordance with 1 MRSA §433, sub-§2-A, the Advisory Committee is charged with the review of more than 90 exceptions in Titles 1 to 7-A. As a first step, the Subcommittee reached out to state and local bodies for information, comments and suggestions with respect to the relevant public records exceptions administered by that body. The Subcommittee expects to receive those responses within a timeframe that will allow the Subcommittee to begin meeting after adjournment of the Second Regular Session of the 128th Legislature.

Representative Babbidge, Stephanie Grinnell, Paul Nicklas, Christopher Parr, Luke Rossignol and Eric Stout serve as members of the Subcommittee.

## V. COMMITTEE PROCESS

This year, the Right to Know Advisory Committee held five committee meetings. During its meetings, there were several topics discussed by the Advisory Committee that did not result in a recommendation or further action. The discussions of those topics are summarized below.

### Freedom of Access Law Updates

The Advisory Committee reviewed and discussed recent statutory changes made to Maine's Freedom of Access Act through the end of 128th Legislature's First Regular Session. Two statutory changes were made in the First Regular Session: 1) the repeal of a redundant provision related to the confidentiality of social security numbers; and 2) the addition of language in 1 MRSA §408-A, subsection 8, paragraph F that allows an agency or official having custody of a public record to require payment of all costs before the public record is provided to the requestor.

### Formation of Technology Subcommittee

The Advisory Committee discussed the recommendation from last year's report that the Committee establish a Technology Subcommittee. Some members expressed concern that a separate subcommittee singularly focused on technology might distract from the broader issues of public access. Eric Stout, who is the member with technology expertise, did not disagree with these sentiments, but noted there are instances when technology intersects with freedom of access issues and process, and a deeper understanding of how technology relates to these issues is beneficial. Members agreed that there appeared to be no need for a freestanding technology subcommittee, but that the Advisory Committee benefits from having an appointed member with technology expertise and that continued discussions of the impact of technology on public access would be welcomed as part of the Advisory Committee's ongoing discussion of many issues.

### \* Public Access Ombudsman Update

Brenda Kielty, Public Access Ombudsman, updated the Advisory Committee and reviewed the duties of her position. Ms. Kielty noted that she views her position as an intermediary between government agencies and requestors of public records or for access to public proceedings, focusing on informal dispute resolution and education about the Freedom of Access Act. Ms.

Kielty informed the Advisory Committee of the website maintained by the Ombudsman, [www.maine.gov/foaa](http://www.maine.gov/foaa), which includes the Ombudsman's Annual Reports and Frequently Asked Questions. In response to an inquiry from Christopher Parr, Ms. Kielty stated that the number of contacts from the public since 2013 continues to increase annually. Of the contacts made in 2016, 366 inquiries were related to public records and 112 inquiries were related to public proceedings.

\* Mr. Parr also asked about whether a private citizen has standing under FOAA to challenge the validity of a public proceeding. Ms. Kielty responded that she believed 1 MRSA §409, subsection 2 provides authority to challenge the validity of an executive session by any person and may likely provide more general authority. \* She also noted that the Attorney General has only filed one lawsuit pursuant to its authority under §410. Further, Ms. Kielty remarked that, during a presentation to the Joint Standing Committee on Judiciary in the First Regular Session, it was suggested by Rep, Bailey that the Advisory Committee consider whether the current civil penalty (\$500 per violation) for violations of FOAA in §410 is appropriate. Based in part on this discussion, the Advisory Committee agreed to recommend the establishment of a subcommittee on the penalty and enforcement provisions of FOAA in 2018. *See discussion of recommendations in Part VII.*

*Discussion of whether to comment on proposed recommendations of the Maine Judicial Branch Task Force on Transparency and Privacy in Court Records*

At the suggestion of Judy Meyer, the Advisory Committee considered whether to offer comment on the proposed recommendations of the Maine Judicial Branch Task Force on Transparency and Privacy in Court Records. Ms. Meyer stated she felt it would be appropriate for the Advisory Committee to comment on issues affecting public access to court records. In March 2017, the Chief Justice of the Maine Supreme Court established the Judicial Branch Task Force on Transparency and Privacy in Court Records. On September 30, 2017, the Task Force issued its report (the "TAP Report"), which recommended allowing everyone to obtain court-generated information online in non-confidential cases, other than juvenile cases, while parties (except juveniles) and counsel of record would have online access to both court-generated information and other case filings; anyone who is not a party or counsel in a case could access those other non-confidential case filings electronically from any courthouse. The Advisory Committee reviewed the draft Task Force report and recommendations, appendices with concurring and dissenting comments from Task Force members and correspondence to the Task Force and Chief Justice from several public interest organizations and news organizations. The Judicial Branch invited comments on the TAP Report by December 15, 2017.

Some members of the Advisory Committee acknowledged the TAP Report's recommendation to expand availability of court documents beyond the current system, which requires a person to visit a particular courthouse to view the physical records. These members also suggested that complete availability of court records via the Internet may not align with the FOAA's objectives of increasing government transparency when the court records pertain to private litigants. Other members of the Advisory Committee questioned why records that are currently public in physical form would not all be made available online to all members of the public, rather than only to parties and attorneys in the case.

## VII. RECOMMENDATIONS

The Advisory Committee makes the following recommendations.

- Enact legislation to prohibit remote participation in public proceedings by a member of a public body unless the body establishes a policy for remote participation that meets certain requirements**

The Advisory Committee renewed its discussion of proposed legislation to clarify the law relating to remote participation in public proceedings. For several years, the Advisory Committee has discussed the issue and has proposed recommended legislation that has not been enacted. Several members of the Advisory Committee noted their belief that remote participation in public proceedings is occurring at the local level despite the lack of clarity in law. Members expressed concern that there is no uniform understanding of whether remote participation is permitted and under what circumstances and that, without the enactment of legislation, it is the “wild west” due to the lack of a legal framework. Members also expressed concern that the use of messaging and texting may be restricting the transparency of public proceedings and the public’s access to those proceedings.

The Advisory Committee was reminded that the Office of the Attorney General advises state agencies that remote participation is not permitted under current law unless specifically authorized (there are several examples in the law that specifically authorize participation in public proceedings by telephone or other electronic communication). However, it was acknowledged that because FOAA is silent with regard to remote participation generally, there is ambiguity because there has been no litigation or court decision to provide other legal guidance.

The Advisory Committee reviewed past efforts of the Legislature, including amendments developed by the Joint Standing Committee on Judiciary, and the Advisory Committee to amend the Freedom of Access Act to provide additional guidance or requirements around allowing members of public bodies to participate in meetings of those bodies when not physically present: LD 258 (126th Legislature); LD 1809, the Judiciary Committee Amendment to LD 1809 and the Governor’s veto message on LD 1809 (126th Legislature); LD 448 (127th Legislature); LD 1241, the Judiciary Committee Amendment to LD 1241, a Senate Amendment to LD 1241 and the public law of the enacted version of LD 1241 (127th Legislature); and LD 1586 (127th Legislature).

Advisory Committee members discussed the view of the Office of the Attorney General that remote participation is not allowed under the Freedom of Access Act because members of a public body must be present and subject to the public’s eye, which is the position taken in a 1979 Opinion of the Attorney General. Advisory Committee members compared that opinion with the Governor’s veto message on LD 1809, which reflects the Governor’s view that the Freedom of Access Act does not prohibit remote participation as long as the other requirements of the Act are met, such as the notice and recordkeeping requirements. The Advisory Committee expressed some concern that agencies, boards and commissions of state government, including the Public Utilities Commission, appear to be allowing members to participate in meetings remotely

without express statutory authorization or more clarity in the Freedom of Access Act. The Advisory Committee noted that eight public bodies are currently authorized in statute to allow members to participate in meetings remotely.

Advisory Committee members questioned why previous efforts to enact legislation regarding remote participation have failed. Members noted that bodies with urgent needs to meet and make decisions for financial or public safety reasons had been successful at obtaining express authorization for remote participation, but that other attempts to define the circumstances under which remote participation is authorized or the bodies that may allow remote participation had been opposed by bodies whose existing policies would contradict those requirements or who would be excluded from the proposal. The discussion focused on whether elected members should be allowed to participate remotely rather than face their constituents in person and on whether a quorum of the body should be required to be physically present at the meeting.

The Advisory Committee decided to resume discussion of proposed legislative changes with LD 1586 as the starting point. LD 1586 was introduced to the 127th Legislature as a result of the Advisory Committee's discussions in 2015. LD 1586 proposed to allow a body subject to the Freedom of Access Act, except a publicly-elected body, to conduct a public proceeding through telephonic, video, electronic or other similar means of communication only if certain conditions were met. At the outset, members agreed that it is appropriate for statutory clarifications to be made with regard to remote participation. The Advisory Committee's discussion focused on LD 1586 and whether the scope and conditions of LD 1586 should continue to be recommended for remote participation in public proceedings.

Using an outline of the issues raised in previous discussions of remote participation and by LD 1586, the Advisory Committee indicated, by straw vote, their initial opinion on policy questions related to remote participation by members of public bodies at meetings of those bodies. The Advisory Committee also reviewed a comparison of LD 258 from the 126th Legislature and LD 1586 from the 127th Legislature, as well as the provisions in law regarding remote participation in Massachusetts, Connecticut, New Hampshire and Vermont. **The straw votes indicated that a majority of the Advisory Committee supported:** allowing remote participation based on the entity's function; allowing remote participation by elected officials; requiring a physical quorum to be present at the advertised meeting location; allowing voting only by members who are physically present; **prohibiting remote participation in executive sessions;** prohibiting remote participation in adjudicatory matters; and requiring remote participants to be able to access materials available at the meeting. ✖

Rep. Babbidge told the Advisory Committee that he is uncomfortable with remote participation and concerned that it will become the norm or expectation; he felt that requiring a member's physical presence at a meeting should be the expectation. Rep. Babbidge also raised concerns that authorizing remote participation in law lessens a member of a body's accountability for his or her decisions; that members may not have full access to all relevant materials if participating remotely; and that it is inappropriate for executive sessions to be conducted with some members participating remotely.



Upon further discussion, the Advisory Committee refined the details of proposed remote participation requirements. Members agreed that the body must adopt a policy on remote participation, which would govern the use of remote participation by that body to the extent not prescribed by state law. One member felt that the policy should be approved by voters represented by the body. Members further agreed that remote participants should not be allowed to cast a vote in a proceeding that is adjudicatory in nature and that the Legislature should be prohibited from allowing remote participation in its meetings. Staff prepared draft legislation reflecting the initial straw votes of the Advisory Committee.

Members discussed specifically how to address adjudicatory proceedings and executive sessions.

Members agreed to add language to the draft to prohibit remote participation by a member at an adjudicatory hearing. With regard to executive sessions, members discussed whether remote participation should be allowed in executive sessions: some felt that, because no votes may be taken in an executive session, restricting access to those sessions would merely require remote participants to make decisions during a regular session of the body without the benefit of the executive session discussion; others felt that, because executive sessions by nature involve sensitive information, the uncertainty about being overheard, intercepted, or having confidentiality otherwise compromised requires those sessions to occur only in person. Members expressed support for the language in the draft as proposed, which leaves the decision to each body as to whether remote participation is permitted but requires that the policy establish procedures for the privacy of any executive session.

Members also talked about the provision in the draft prohibiting remote participation by the Legislature and whether the draft should further prohibit other elected bodies from allowing remote participation. While previous proposals did contain language distinguishing elected bodies, the Advisory Committee agreed to move forward with the proposal as drafted, which allows bodies with publicly-elected members to adopt policies allowing remote participation. Judy Meyer indicated to the Advisory Committee that the Maine Press Association would not support the draft proposal before the Legislature on this basis.

Members discussed whether other state agencies should be prohibited from allowing remote participation at their meetings, but did not determine which particular agencies would be prohibited or how to define the categories of bodies that would be prohibited. Members considered including whether to include a provision in the draft legislation to sunset the provisions in current law that authorize certain state agencies to conduct meetings through remote participation or whether to recommend separate legislation. Members agreed not to recommend proposed legislation at this time but agreed that the Advisory Committee should first contact each state agency to get more information from these agencies and discuss the current provisions in law.

The Advisory Committee unanimously recommends draft legislation to prohibit remote participation in public proceedings by a member of a public body unless the body establishes a policy for remote participation that meets certain requirements. The draft legislation does the following:

- Reinforces the purposes of the Freedom of Access Act and specifies that the remote

- participation requirements may not be used to defeat the purposes of FOAA;
- Prohibits bodies subject to the Freedom of Access Act to conduct public proceedings through telephonic, video or other electronic means of communication unless the body has adopted a written policy or rule that authorizes remote participation in a manner that allows all members to simultaneously hear and speak to each other during the proceeding and allows members of the public attending the proceeding at the noticed location to hear all members of the body or unless the body is expressly authorized to allow remote participation by law;
- Requires public notice and hearing on the proposal to adopt a written policy or rule on remote participation prior to the policy or rule's adoption;
- Establishes that if the policy or rule allows remote participation in executive sessions, the policy or rule must establish procedures and requirements that ensure the privacy of the executive session;
- Prohibits remote participation in adjudicatory proceedings;
- Requires a quorum of the body to be physically present at the noticed meeting location unless immediate action is imperative and physical presence of a quorum is not reasonably practical within the period of time requiring action;
- Clarifies that, if a body conducts a proceeding without a physical quorum present, that the body may take action at that proceeding only on the matters for which immediate action is imperative;
- Requires each member participating remotely to identify for the record all persons present at the remote location, that all votes are taken by roll call and that remote participants receive documents or other materials presented or discussed at the proceeding in advance or when made available at the meeting, if the technology is available;
- Prohibits the Legislature from allowing participation of legislators through telephonic, video or other electronic means of communication; and
- Adds specific references to state agencies that are authorized to use remote-access technology to conduct meetings exempting those agencies from the new remote participation requirements.

~~See recommended legislation in Appendix C.~~

- ~~Amend 1 MRSA §412 to require municipal officials to complete Freedom of Access Act training when appointed to offices for which training is required if elected to those offices~~

~~Under current law, 1 MRSA §412 requires officials elected to certain public offices to complete training on the Freedom of Access Act. The law requires public access officers and the following elected officials to be trained: the Governor; the Attorney General, Secretary of State, Treasurer of State and State Auditor; members of the Legislature elected after November 1, 2008; commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments; municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments; officials of school administrative units; and officials of a regional or other political subdivision who, as part~~

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

Sec. 1. 1 MRSA §403-A is enacted to read:

**§403-A. Remote participation in public proceedings**

This section governs participation in a proceeding of a body subject to this subchapter by a member of that body when the member is not physically present. It is the intent of the Legislature that actions of those bodies be taken openly and their deliberations be conducted openly. Remote participation through telephonic, video or other electronic means may not be used to defeat the purposes of this subchapter as stated in section 401.

Except as provided in subsection 7, a body subject to this subchapter may not allow a member of the body to participate in any of its public proceedings through telephonic, video or other electronic means of communication unless in accordance with this subchapter and only when the requirements of this section are met. The Legislature may not allow its members to participate in public proceedings of the Legislature through telephonic, video or other electronic means of communication.

1. **Policy adopted.** After notice and public hearing, the body has adopted a written policy or rule that authorizes a member of the body who is not physically present to participate in a proceeding of that body in a manner that allows all members to simultaneously hear and speak to each other during the proceeding and allows members of the public attending the proceeding at the location identified in the notice required by section 406 to hear all members of the body. **If the policy allows remote participation in executive sessions, the policy must establish procedures and requirements that ensure the privacy of the executive session.** \*

2. **Quorum.** A quorum must be physically present at the location identified in the notice required by section 406, unless immediate action is imperative and physical presence of a quorum is not reasonably practical within the period of time in which action must be taken. The determination that a quorum is not required under this paragraph must be made by the presiding officer of the public body and the facts supporting that determination must be included in the record of the meeting. A body may not consider matters other than those requiring immediate action in a proceeding held pursuant to this subsection when a quorum is not physically present.

3. **Disclosure.** Each member who is participating in the proceeding remotely must identify for the record all persons present at the location from which the member is participating. This is a continuing obligation throughout the meeting.

4. **Voting.** All votes taken during the proceeding must be taken by roll call.

5. **Adjudicatory proceedings.** A member who is not physically present at the location identified in the notice required by section 406 may not participate and may not vote in an adjudicatory proceeding.

6. Access to materials. Each member who is participating in the proceeding remotely must receive any documents or other materials presented or discussed at the proceeding in advance or when made available at the proceeding if the transmission technology is available. Failure to comply with this subsection does not invalidate an action of the body.

7. Exceptions. A member of the following bodies may participate in a public proceeding of the body when not physically present:

A. The Finance Authority of Maine, as provided in Title 10, section 971;

B. The Commission on Governmental Ethics and Election Practices, as provided in Title 21-A, section 1002, subsection 2;

C. The Maine Health and Higher Education Facilities Authority, as provided in Title 22, section 2054, subsection 4;

D. The Maine State Housing Authority, as provided in Title 30-A, section 4723, subsection 2, paragraph B;

E. The Maine Municipal Bond Bank, as provided in Title 30-A, section 5951, subsection 4;

F. The Emergency Medical Services Board, as provided in Title 32, section 88, subsection 1, paragraph D; and

G. The Workers' Compensation Board, as provided in Title 39-A, section 151, subsection 5.

## SUMMARY

This bill implements the recommendation of the Right to Know Advisory Committee to clarify when members of public bodies may participate remotely in proceedings of those bodies. The bill prohibits a body subject to the Freedom of Access Act from allowing its members to participate in its public proceedings through telephonic, video or other electronic means of communication unless the body has adopted a written policy that authorizes remote participation in a manner that allows all members to simultaneously hear and speak to each other during the proceeding and allows members of the public attending the proceeding at the noticed location to hear all members of the body. **If the policy allows remote participation in executive sessions, the policy must establish procedures and requirements that ensure the privacy of the executive session.** The bill requires a quorum of the body to be physically present at the noticed meeting location unless immediate action is imperative and physical presence of a quorum is not reasonably practical within the period of time requiring action. The bill requires each member participating remotely to identify all persons present at the remote location, that all votes are taken by roll call, and that remote participants receive documents or other materials presented or discussed at the proceeding in advance or when made available at the meeting, if the technology is available. The bill prohibits members who are not physically present at the meeting location from participating and voting in adjudicatory proceedings.





**STATE OF MAINE  
129TH LEGISLATURE  
FIRST REGULAR SESSION**

**Thirteenth Annual Report  
of the  
Right to Know Advisory Committee**

**January 2019**

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Richard LaHaye  
Mary-Anne LaMarre  
Judy Meyer  
Paul Nicklas  
Christopher Parr  
Linda Pistner  
Luke Rossignol  
William D. Shorey  
Eric Stout**

**VI. ACTIONS RELATED TO COMMITTEE RECOMMENDATIONS CONTAINED IN TWELFTH ANNUAL REPORT**

The Right to Know Advisory Committee made the following recommendations in its Twelfth Annual Report. The legislative actions taken in 2018 as a result of those recommendations are summarized below.

<p><b>Recommendation:</b></p> <p>Enact legislation to prohibit remote participation in public proceedings by a member of a public body unless the body establishes a policy for remote participation that meets certain requirements</p>	<p><b>Action:</b></p> <p>The Joint Standing Committee on Judiciary directed that two bills be printed, one to carry out the recommendation of the Right to Know Advisory Committee (<b>LD 1832, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation</b>) and the other (LD 1831, An Act Concerning Remote Participation in Public Proceedings) to prohibit remote participating and phase out authorization of remote participation by the seven specific bodies that are currently statutorily authorized to conduct proceedings with one or more members participating from a remote location.</p> <p>LD 1832 was reported out of committee with a majority Ought Not To Pass report, and a <b>minority report of Ought To Pass As Amended</b>. The amendment included the prohibition on executive sessions being conducted with remote participation, giving public <b>bodies of three or fewer members more flexibility and requiring the approval of a remote participation policy by the constituents of a public body before remote participation could be used</b>. The Senate and House of Representatives accepted the Ought Not To Pass report.</p> <p>LD 1831 was reported out of committee with a majority Ought Not To Pass report, and a minority report of Ought To Pass. The Senate and the House of Representatives accepted the Ought Not To Pass report.</p>
<p><b>Recommendation:</b></p> <p>Enact legislation to amend 1 MRSA §412 to require municipal officials to complete Freedom of Access Act training when appointed to offices for which training is required if</p>	<p><b>Action:</b></p> <p>The Judiciary Committee directed that a bill be printed to carry out the recommendations of the Right to Know Advisory Committee. LD 1821, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Freedom of Access Training for Public Officials, was reported out with a majority Ought To Pass As Amended report, the amendment adding a Mandate Preamble to exempt the requirement that the State fund a local government mandate, identified for this bill as “insignificant costs” on a statewide basis. The minority report was Ought Not To</p>

(minority OTP-AM report)

\* language recommended by the Right to Know Advisory Committee  
see twelfth Annual Report of the Right to Know Advisory Committee (January 2018)

VOTED: ONTP (majority report)  
OTP-AM (minority report)



# 128th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2018

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Legislative Document

No. 1832

H.P. 1274

House of Representatives, February 8, 2018

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**An Act To Implement Recommendations of the Right To Know  
Advisory Committee Concerning Remote Participation**

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Reported by Representative MOONEN of Portland for the Joint Standing Committee on  
Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph  
G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint  
Rule 218.

*Robert B. Hunt*

ROBERT B. HUNT  
Clerk



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

2 **Sec. 1. 1 MRSA §403-A** is enacted to read:

3 **§403-A. Remote participation in public proceedings**

4 It is the intent of the Legislature that actions of bodies subject to this subchapter be  
5 taken openly and their deliberations be conducted openly. This section governs  
6 participation in a public proceeding of such a body by a member of that body when the  
7 member is not physically present. Remote participation, which means participation  
8 through telephonic, video, electronic or other similar means of communication may not  
9 be used to defeat the purposes of this subchapter as stated in section 401. The Legislature  
10 may not allow its members to participate remotely in public proceedings of the  
11 Legislature.

12 **1. Remote participation; requirements.** Except as provided in subsection 2, a  
13 body subject to this subchapter may not allow a member of the body to participate  
14 remotely in any of its public proceedings unless the participation is in accordance with  
15 this subchapter and:

16 A. After notice and public hearing, the body has adopted a written policy or rule that  
17 authorizes a member of the body who is not physically present to participate in a  
18 public proceeding of that body in a manner that allows all members to simultaneously  
19 hear and speak to each other during the public proceeding and allows members of the  
20 public attending the public proceeding at the location identified in the notice required  
21 by section 406 to hear all members of the body. If the policy allows remote  
22 participation in executive sessions, the policy must establish procedures and  
23 requirements that ensure the privacy of the executive session;

24 B. A quorum is physically present at the location identified in the notice required by  
25 section 406, unless immediate action is imperative and physical presence of a quorum  
26 is not reasonably practicable within the period of time in which action must be taken.  
27 The determination that a quorum is not required under this paragraph must be made  
28 by the presiding officer of the body and the facts supporting that determination must  
29 be included in the record of the meeting. A body may not consider matters other than  
30 those requiring immediate action in a public proceeding held pursuant to this  
31 subsection when a quorum is not physically present;

32 C. Each member of the body who is participating in the public proceeding remotely  
33 identifies for the record all persons present at the location from which the member is  
34 participating. The member shall note for the record when any person enters or leaves  
35 the location throughout the course of the public proceeding;

36 D. All votes taken during the public proceeding are taken by roll call;

37 E. A member of the body who is not physically present at the location identified in  
38 the notice required by section 406 does not participate and does not vote in an  
39 adjudicatory proceeding; and

40 F. Each member of the body who is participating in the public proceeding remotely  
41 receives any documents or other materials presented or discussed at the public

1 proceeding in advance or when made available at the public proceeding if the  
2 transmission technology is available. Failure to comply with this subsection does not  
3 invalidate an action of the body.

4 **2. Exceptions.** The following bodies are exempt from the provisions of this section  
5 and a member of the following bodies may participate in a public proceeding of the body  
6 when the member is not physically present:

7 A. The Finance Authority of Maine, as provided in Title 10, section 971;

8 B. The Commission on Governmental Ethics and Election Practices, as provided in  
9 Title 21-A, section 1002, subsection 2;

10 C. The Maine Health and Higher Educational Facilities Authority, as provided in  
11 Title 22, section 2054, subsection 4;

12 D. The Maine State Housing Authority, as provided in Title 30-A, section 4723,  
13 subsection 2, paragraph B;

14 E. The Maine Municipal Bond Bank, as provided in Title 30-A, section 5951,  
15 subsection 4;

16 F. The Emergency Medical Services' Board, as provided in Title 32, section 88,  
17 subsection 1, paragraph D; and

18 G. The Workers' Compensation Board, as provided in Title 39-A, section 151,  
19 subsection 5.

## 20 SUMMARY

21 This bill implements the recommendation of the Right To Know Advisory  
22 Committee to clarify when members of public bodies may participate remotely in public  
23 proceedings of those bodies. The bill prohibits a body subject to the Freedom of Access  
24 Act from allowing its members to participate in its public proceedings through  
25 telephonic, video, electronic or other similar means of communication unless the body  
26 has adopted a written policy that authorizes remote participation in a manner that allows  
27 all members to simultaneously hear and speak to each other during the public proceeding  
28 and allows members of the public attending the public proceeding at the location  
29 identified in the meeting notice to hear all members of the body. **If the policy allows**  
30 **remote participation in executive sessions, the policy must establish procedures and**  
31 **requirements that ensure the privacy of the executive session.** The bill requires a quorum  
32 of the body to be physically present at the location identified in the meeting notice unless  
33 immediate action is imperative and physical presence of a quorum is not reasonably  
34 practicable within the period of time requiring action. The bill requires that each member  
35 participating remotely identify all persons present at the remote location, that all votes be  
36 taken by roll call and that members participating remotely receive documents or other  
37 materials presented or discussed at the public proceeding in advance or when made  
38 available at the meeting, if the technology is available. The bill prohibits members who  
39 are not physically present at the meeting location from participating and voting in  
40 adjudicatory proceedings.

1           The bill prohibits the Legislature from allowing its members to participate in its  
2 public proceedings through telephonic, video, electronic or other similar means of  
3 communication, but allows the Finance Authority of Maine, the Commission on  
4 Governmental Ethics and Election Practices, the Maine Health and Higher Educational  
5 Facilities Authority, the Maine State Housing Authority, the Maine Municipal Bond  
6 Bank, the Emergency Medical Services' Board and the Workers' Compensation Board to  
7 continue allowing remote participation at their public proceedings as currently authorized  
8 in law.

\* minority amendment to LD1832, "An Act to Implement Recommendations of the Right to Know Advisory Committee Concerning Remote Participation"

\* MINORITY OTP-AM REPORT\* (majority DNTP)

1 L.D. 1832

2 Date: (Filing No. H- )

3 JUDICIARY

4 Reproduced and distributed under the direction of the Clerk of the House.

5 STATE OF MAINE  
6 HOUSE OF REPRESENTATIVES  
7 128TH LEGISLATURE  
8 SECOND REGULAR SESSION

9 COMMITTEE AMENDMENT " " to H.P. 1274, L.D. 1832, Bill, "An Act To  
10 Implement Recommendations of the Right To Know Advisory Committee Concerning  
11 Remote Participation"

12 Amend the bill by striking out everything after the enacting clause and before the  
13 summary and inserting the following:

14 **PART A**

15 **Sec. A-1. 1 MRSA §403-A** is enacted to read:

16 **§403-A. Remote participation in public proceedings**

17 It is the intent of the Legislature that actions of public bodies subject to this  
18 subchapter be taken openly and their deliberations be conducted openly. This section  
19 governs participation in a public proceeding of such a public body by a member of that  
20 public body when the member is not physically present. Remote participation, which  
21 means participation through telephonic, video, electronic or other similar means of  
22 communication may not be used to defeat the purposes of this subchapter as stated in  
23 section 401. The Legislature may not allow its members to participate remotely in public  
24 proceedings of the Legislature.

25 **1. Remote participation; requirements.** Except as provided in subsection 5, a  
26 public body subject to this subchapter may not allow a member of the public body to  
27 participate remotely in any of its public proceedings unless the participation is in  
28 accordance with this subchapter and:

29 A. After notice and public hearing, the public body has adopted a written policy or  
30 rule that authorizes a member of the public body who is not physically present to  
31 participate in a public proceeding of that public body in a manner that allows all  
32 members to simultaneously hear and speak to each other during the public proceeding  
33 and allows members of the public attending the public proceeding at the location  
34 identified in the notice required by section 406 to hear all members of the public  
35 body. The policy may not allow remote participation in executive sessions. The \*

1 policy must prohibit a member who is participating remotely from voting on an issue  
2 that was discussed in an executive session if the executive session immediately  
3 precedes the proceeding in which the vote is taken;

4 B. For public bodies consisting of 3 or fewer members, at least one member is  
5 physically present at the location identified in the notice required by section 406; and,  
6 for public bodies of more than 3 members, a quorum is physically present at the  
7 location identified in the notice required by section 406, unless immediate action is  
8 imperative and physical presence of a quorum is not reasonably practicable within the  
9 period of time in which action must be taken. The determination that a quorum is not  
10 required under this paragraph must be made by the presiding officer of the public  
11 body and the facts supporting that determination must be included in the record of the  
12 meeting. A public body of 3 or more members may not consider matters other than  
13 those requiring immediate action in a public proceeding held pursuant to this  
14 subsection when a quorum is not physically present. Every member must be  
15 physically present for at least one proceeding each year;

16 C. Each member of the public body who is participating in the public proceeding  
17 remotely identifies for the record all persons present at the location from which the  
18 member is participating. The member shall note for the record when any person  
19 enters or leaves the location throughout the course of the public proceeding;

20 D. All votes taken during the public proceeding are taken by roll call;

21 E. A member of the public body who is not physically present at the location  
22 identified in the notice required by section 406 does not participate and does not vote  
23 in an adjudicatory proceeding; and

24 F. Each member of the public body who is participating in the public proceeding  
25 remotely receives any documents or other materials presented or discussed at the  
26 public proceeding in advance or when made available at the public proceeding if the  
27 transmission technology is available. Failure to comply with this subsection does not  
28 invalidate an action of the body.

29 **2. State public bodies.** The policy under subsection 1 applicable to a state public  
30 body must be adopted by the public body as a major substantive rule under the Maine  
31 Administrative Procedure Act.

32 **3. County and municipal public bodies.** A county or municipality may by  
33 ordinance require stricter requirements than those set out in this section and may prohibit  
34 remote participation by any public body under its jurisdiction.

35 **4. Elected public bodies.** A public body consisting of elected members may adopt a  
36 policy under subsection 1 only after the constituents of the public body have voted to  
37 authorize the public body to adopt the remote participation policy. The public body must  
38 provide notice and hold a separate hearing before adopting the remote participation  
39 policy.

40 **5. Exceptions.** The following public bodies are exempt from the provisions of this  
41 section and a member of the following bodies may participate in a public proceeding of  
42 the public body when the member is not physically present:

43 A. The Finance Authority of Maine, as provided in Title 10, section 971;

- 1 B. The Commission on Governmental Ethics and Election Practices, as provided in  
2 Title 21-A, section 1002, subsection 2;
- 3 C. The Maine Health and Higher Educational Facilities Authority, as provided in  
4 Title 22, section 2054, subsection 4;
- 5 D. The Maine State Housing Authority, as provided in Title 30-A, section 4723,  
6 subsection 2, paragraph B;
- 7 E. The Maine Municipal Bond Bank, as provided in Title 30-A, section 5951,  
8 subsection 4;
- 9 F. The Emergency Medical Services' Board, as provided in Title 32, section 88,  
10 subsection 1, paragraph D; and
- 11 G. The Workers' Compensation Board, as provided in Title 39-A, section 151,  
12 subsection 5.

13 This subsection is repealed July 1, 2022.

14 **PART B**

15 **Sec. B-1. 10 MRSA §971**, as amended by PL 1995, c. 117, Pt. C, §1, is repealed.

16 **Sec. B-2. 10 MRSA §971-A** is enacted to read:

17 **§971-A. Actions of the members**

18 **1. Quorum required.** Seven members of the authority constitute a quorum of the  
19 members. The affirmative vote of the greater of 5 members, present and voting, or a  
20 majority of those members present and voting is necessary for any action taken by the  
21 members. A vacancy in the membership of the authority does not impair the right of the  
22 quorum to exercise all powers and perform all duties of the members.

23 **2. Emergency meeting.** Notwithstanding any other provision of law, in a situation  
24 determined by the chief executive officer to be an emergency requiring action of the  
25 members on not more than 3 days' oral notice, an emergency meeting of the members  
26 may be conducted by telephone in accordance with the following.

27 A. A conference call to the members must be placed by ordinary commercial means  
28 at an appointed time.

29 B. The authority shall arrange for recordation of the conference call when  
30 appropriate and prepare minutes of the emergency meeting.

31 C. Public notice of the emergency meeting must be given in accordance with Title 1,  
32 section 406 and that public notice must include the time of the meeting and the  
33 location of a telephone with a speakerphone attachment that enables all persons  
34 participating in the telephone meeting to be heard and understood and that is  
35 available for members of the public to hear the business conducted at the telephone  
36 meeting.

37 This subsection is repealed July 1, 2022.

1           **Sec. B-3. 21-A MRSA §1002, sub-§2**, as amended by PL 2011, c. 389, §2, is  
2 further amended to read:

3           **2. Telephone meetings.** The commission may hold meetings over the telephone if  
4 necessary, as long as the commission provides notice to all affected parties in accordance  
5 with the rules of the commission and the commission's office remains open for attendance  
6 by complainants, witnesses, the press and other members of the public. Notwithstanding  
7 Title 1, chapter 13, telephone meetings of the commission are permitted:

8           A. During the 28 days prior to an election when the commission is required to meet  
9 within 2 business days of the filing of any complaint with the commission; or

10           B. To address procedural or logistical issues before a monthly meeting, such as the  
11 scheduling of meetings, deadlines for parties' submission of written materials, setting  
12 of meeting agenda, requests to postpone or reschedule agenda items, issuing  
13 subpoenas for documents or witnesses and recusal of commission members.

14           This subsection is repealed July 1, 2022.

15           **Sec. B-4. 22 MRSA §2054, sub-§4**, as amended by PL 2015, c. 449, §2, is  
16 further amended to read:

17           **4. Powers of authority.** The powers of the authority are vested in its members, and  
18 5 members of the authority constitute a quorum at any meeting of the authority. A  
19 vacancy in the membership of the authority does not impair the right of a quorum to  
20 exercise all the rights and perform all the duties of the authority. An action taken by the  
21 authority under this chapter may be authorized by resolution approved by a majority of  
22 the members present at any regular or special meeting, which resolution takes effect  
23 immediately, or an action taken by the authority may be authorized by a resolution  
24 circularized or sent to each member of the authority, which resolution takes effect at such  
25 time as a majority of the members have signed an assent to such resolution. Resolutions  
26 of the authority need not be published or posted. The authority may delegate by  
27 resolution to one or more of its members or its executive director such powers and duties  
28 as it considers proper.

29           ~~The authority may meet by telephonic, video, electronic or other similar means of~~  
30 ~~communication with less than a quorum assembled physically at the location of a public~~  
31 ~~proceeding identified in the notice required by Title 1, section 406 only if:~~

32           ~~A. Each member can hear all other members, speak to all other members and, to the~~  
33 ~~extent reasonably practicable, see all other members by videoconferencing or other~~  
34 ~~similar means of communication during the public proceeding, and members of the~~  
35 ~~public attending the public proceeding at the location identified in the notice required~~  
36 ~~by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see~~  
37 ~~all members participating from other locations by videoconferencing or other similar~~  
38 ~~means of communication;~~

39           ~~B. Each member who is not physically present at the location of the public~~  
40 ~~proceeding and who is participating through telephonic, video, electronic or other~~  
41 ~~similar means of communication identifies all persons present at the location from~~  
42 ~~which the member is participating;~~

**SUMMARY**

1  
2 This amendment is the minority report of the Joint Standing Committee on Judiciary.  
3 This amendment makes the following changes to the bill.

4 1. It prohibits remote participation in executive session. It also prohibits a member  
\* 5 who is participating remotely in a proceeding from voting on an issue that was discussed \*  
6 in executive session that immediately preceded the vote in the public proceeding.

7 2. It changes, for public bodies that consist of 3 or fewer members, the requirement  
8 that a quorum be physically present. It requires at least one member of the public body of  
9 3 or fewer members to be physically present at the location identified in the meeting  
10 notice.

11 3. It requires that each member of a public body subject to the Freedom of Access  
12 Act be physically present in at least one public proceeding each year.

13 4. It requires that a state public body adopt its remote participation policy as a major  
14 substantive rule under the Maine Administrative Procedure Act.

15 5. It authorizes municipalities and counties to impose stricter requirements than are  
16 provided in this amendment and allows municipalities and counties to prohibit the use of  
17 remote participation by any public body under their jurisdictions. The stricter  
18 requirements or the prohibition must be imposed through the adoption of an ordinance by  
19 the municipality or the county.

20 6. It provides that an elected public body may adopt a remote participation policy  
21 only after the constituency of the elected public body has voted to authorize the body to  
22 adopt the policy.

23 7. It provides, in Parts A and B, that the exemptions for the 7 entities whose statutes  
24 currently provide for remote participation expire on July 1, 2022. Those entities will  
25 need to adopt policies that comply with the law to continue any remote participation.

26 8. It amends, in Part C, the Freedom of Access Act to require the joint standing  
27 committee of the Legislature having jurisdiction over judiciary matters to conduct a  
28 review of any proposed statutory authorization of remote participation or change in  
29 accessibility with respect to public proceedings.





# 128th MAINE LEGISLATURE

LD 1832

LR 2890(02)

## An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Judiciary

Fiscal Note Required: Yes

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### Fiscal Note

Minor cost increase - General Fund

#### Fiscal Detail and Notes

Any additional costs to affected departments or agencies are assumed to be minor and can be absorbed within existing budgeted resources.



State of Maine  
129th Legislature, First Regular Session

**Fourteenth Annual Report  
of the  
Right to Know Advisory  
Committee**

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**January 2020**

Office of Policy and Legal Analysis

- ❑ Serving as a resource to support training and education about Maine's freedom of access laws;
- ❑ Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the state of Maine's freedom of access laws and the public's access to public proceedings and records;
- ❑ Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;
- ❑ Examining inconsistencies in statutory language and proposing clarifying standard language; and
- ❑ Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

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

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws. The Advisory Committee is pleased to work with the Public Access Ombudsman, Brenda Kielty. Ms. Kielty is a valuable resource to the public and public officials and agencies.

### III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES

#### *Dubois v. Arundel*, 2019 ME 21

Dubois Livestock submitted an application to the Town of Arundel Planning Board to renew a conditional use permit. Neither Marcel Dubois nor Sol Fedder were listed as the applicants for the renewal permit, as the property owners or as authorized agents for Dubois Livestock. The Planning Board denied the application during a public hearing that was not attended by any representative of Dubois Livestock, and Dubois and Fedder did not participate in the public hearing in any capacity. Dubois and Fedder subsequently filed a complaint against the Town of Arundel, individual members of the Planning Board and the Arundel Town Planner, alleging that a memorandum drafted by the town planner and distributed to the members of the planning board led to one or more illegal executive sessions. Following submission of briefs pursuant to a Rule 80B Notice and Briefing Schedule, the Town of Arundel moved to dismiss the complaint

\* on several grounds, including for failure to state a claim. The Superior Court granted the motion and awarded the town reasonable attorney's fees and expenses. Dubois and Fedder appealed.

The Law Court held that Rule 80B is not the proper mechanism to assert a FOAA claim, Dubois and Fedder lacked standing to pursue a Rule 80B complaint and the complaint failed to state a claim upon which relief can be granted under the FOAA. ✓

The Law Court found that Dubois and Fedder failed to allege that any action was taken during the alleged executive session or sessions which would entitle them to relief under the appeals section of the Freedom of Access Act, Title 1 section 409, subsection 2. Rather, their complaint alleged only that the Planning Board members received a memo from the town planner that led to an executive session or sessions and the Planning Board subsequently held a public hearing where the Planning Board denied Dubois Livestock's application. They failed to allege that any action was taken during the alleged executive session or sessions which would entitle them to relief.

The Law Court had ruled in 2018 that Rule 80C is not the appropriate vehicle to bring FOAA claims. The Law Court upheld the dismissal of the complaint, but remanded the case to the Superior Court on the issues of fees and expenses.

#### **IV. RIGHT TO KNOW ADVISORY COMMITTEE SUBCOMMITTEES**

##### **Public Records Exceptions Subcommittee**

The focus of the Public Records Exceptions Subcommittee is to review and evaluate public records exceptions as required of the Advisory Committee pursuant to 1 MRSA §433, sub-§2-A. The guidelines in the law require the Advisory Committee to review all public records exceptions in Titles 1 to 7-A no later than 2019. In accordance with 1 MRSA §433, sub-§2-A, the Advisory Committee is charged with the review of more than 90 exceptions in Titles 1 to 7-A. As a first step, the subcommittee reached out to state and local bodies for information, comments and suggestions with respect to the relevant public records exceptions administered by that body. The subcommittee met three times in 2019 to review the responses, discuss whether each public record exception was appropriate or should be amended or repealed and submitted all its recommendations to the Advisory Committee at the December 18, 2019 meeting.

Lynda Clancy, Julie Finn, Paul Nicklas and Christopher Parr serve as members of the subcommittee, and Christopher Parr serves as subcommittee Chair.

The public records exceptions changes recommended by the Advisory Committee in its 13th Annual Report presented in January 2019 were printed as LD 1511 as a Joint Standing Committee on Judiciary (referred hereafter as the "Judiciary Committee") bill considered during the First Regular Session of the 129th Legislature. Although the Judiciary Committee unanimously supported the contents of the original bill, a majority of the committee supported the remote participation language added to the bill in Committee Amendment "A" and the bill as amended died in nonconcurrence between the House and the Senate. The subcommittee is

## RECOMMENDED LEGISLATION TO ADDRESS REMOTE PARTICIPATION

**Whereas**, the Freedom of Access Act makes clear that public proceedings exist to aid in the conduct of the people's business, and that government actions are to be taken openly and that deliberations be conducted openly;

**Whereas**, the Freedom of Access Act expresses Legislative intent that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of Act;

**Whereas**, the Freedom of Access Act explicitly states that the Act is to be liberally construed and applied to promote its underlying purposes and policies;

**Whereas**, because the Freedom of Access Act does not specifically mention whether remote participation in a public proceeding by members of a public body supports the underlying purposes and policies of government transparency;

**Whereas**, there are multiple opportunities for abuse of remote participation but there are situations in which participation by a member of a public body in a public proceeding from a remote location is appropriate, beneficial and effective;

**Whereas**, the Freedom of Access Act was enacted years before technology supporting effective remote participation was created, and that technology has improved the ability for expansive access, and continues to advance;

**Whereas**, many in the private sector have embraced remote participation technology to improve participation in meetings and discussions that would not otherwise be as effective because of geographic diversity and other reasons for which the ability to be physically present is limited, as well as to improve efficiency and reduce costs;

**Whereas**, without clear guidance in the statute, remote participation can be misused in circumstances in which it should not be employed, and not used out of caution in situations in which the participation of the member remotely would benefit the public proceeding while still ensuring complete openness of the proceeding to the public;

**Whereas**, enactment of the legislation provides clear guidance, and will ensure that if municipal, county and State public bodies engage in remote participation, these reasonable limitations will apply to ensure public access to the whole of each public proceeding;

**Whereas**, the use of remote participation by public bodies at the State level should be governed by statute and major substantive rules;

**Whereas**, the use of remote participation by municipalities, counties, school boards and other non-state public bodies should be governed by the constituents the public bodies serve,

**Whereas**, this legislation establishes a process to approve or reject the use of remote participation by members of public bodies which must be followed if remote participation is exercised, unless the statute provides an alternative process,

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

## PART A

**Sec. A-1.** 1 MRSA §403-A is enacted to read:

### **§403-A. Remote participation in public proceedings**

It is the intent of the Legislature that actions of public bodies subject to this subchapter be taken openly and their deliberations be conducted openly. This section governs participation in a public proceeding of such a public body by a member of that public body when the member is not physically present. Remote participation, which means participation through telephonic, video, electronic or other similar means of communication may not be used to defeat the purposes of this subchapter as stated in section 401. The Legislature may not allow its members to participate remotely in public proceedings of the Legislature.

**1. Remote participation; requirements.** Except as provided in subsection 5, a public body subject to this subchapter may not allow a member of the public body to participate remotely in any of its public proceedings unless the participation is in accordance with this subchapter and:

A. After notice and public hearing, the public body has adopted a written policy or rule that authorizes a member of the public body who is not physically present to participate in a public proceeding of that public body in a manner that allows all members to simultaneously hear and speak to each other during the public proceeding and allows members of the public attending the public proceeding at the location identified in the notice required by section 406 to hear all members of the public body. The policy may not allow remote participation in executive sessions. **The policy must prohibit a member who is participating remotely from voting on an issue that was discussed in an executive session if the executive session immediately precedes the proceeding in which the vote is taken;**

B. For public bodies consisting of 3 or fewer members, at least one member is physically present at the location identified in the notice required by section 406; and, for public bodies of more than 3 members, a quorum is physically present at the location identified in the notice required by section 406, unless immediate action is imperative and physical presence of a quorum is not reasonably practicable

within the period of time in which action must be taken. The determination that a quorum is not required under this paragraph must be made by the presiding officer of the public body and the facts supporting that determination must be included in the record of the meeting. A public body of 3 or more members may not consider matters other than those requiring immediate action in a public proceeding held pursuant to this subsection when a quorum is not physically present. Every member must be physically present for at least one proceeding each year;

C. Each member of the public body who is participating in the public proceeding remotely identifies for the record all persons present at the location from which the member is participating. The member shall note for the record when any person enters or leaves the location throughout the course of the public proceeding;

D. All votes taken during the public proceeding are taken by roll call;

E. A member of the public body who is not physically present at the location identified in the notice required by section 406 does not participate and does not vote in an adjudicatory proceeding; and

F. Each member of the public body who is participating in the public proceeding remotely receives any documents or other materials presented or discussed at the public proceeding in advance or when made available at the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate an action of the body.

**2. State public bodies.** The policy under subsection 1 applicable to a state public body must be adopted by the public body as a major substantive rule under the Maine Administrative Procedure Act.

**3. County and municipal public bodies.** A county or municipality may by ordinance require stricter requirements than those set out in this section and may prohibit remote participation by any public body under its jurisdiction.

**4. Elected public bodies.** A public body consisting of elected members may adopt a policy under subsection 1 only after the constituents of the public body have voted to authorize the public body to adopt the remote participation policy. The public body must provide notice and hold a hearing before adopting the remote participation policy.

**5. Exceptions.** The following public bodies are exempt from the provisions of this section and a member of the following bodies may participate in a public proceeding of the public body when the member is not physically present:

A. The Finance Authority of Maine, as provided in Title 10, section 971;

B. The Commission on Governmental Ethics and Election Practices, as provided in Title 21-A, section 1002, subsection 2;

C. The Maine Health and Higher Educational Facilities Authority, as provided in Title 22, section 2054, subsection 4;

D. The Maine State Housing Authority, as provided in Title 30-A, section 4723, subsection 2, paragraph B;

E. The Maine Municipal Bond Bank, as provided in Title 30-A, section 5951, subsection 4;

F. The Emergency Medical Services' Board, as provided in Title 32, section 88, subsection 1, paragraph D; and

G. The Workers' Compensation Board, as provided in Title 39-A, section 151, subsection 5.

## **PART B**

**Sec. B-1. 1 MRSA §431, sub-§4** is enacted to read:

**4. Remote participation.** "Remote participation" means participation in a public proceeding by a member of the body that is holding or conducting the public proceeding while the member is not physically present at the location of the public proceeding identified in the notice required by section 406.

**Sec. B-2. 1 MRSA §435** is enacted to read:

### **§435. Review of proposed remote participation authorization**

**1. Procedures before legislative committees.** Whenever a legislative measure containing a new remote participation authorization or a change that affects the accessibility of a public proceeding is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed remote participation authorization or proposed change that affects the accessibility of a public proceeding may not be enacted into law unless review and evaluation pursuant to subsection 2 have been completed.

**2. Review and evaluation.** Upon referral of a proposed remote participation authorization or proposed limitation on accessibility from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct



a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed remote participation authorization should be enacted:

A. Geographic distribution of members;

B. Demonstrated need based on emergency nature of action;

C. Demonstrated need based on exigent circumstances, such as a natural disaster or an emergency declaration by the Governor directly related to the activities of the body; and

D. Any other criteria that assist the review committee in determining the value of the proposed remote participation authorization as compared to the public's interest in all members participating.

**3. Report.** The review committee shall report its findings and recommendations on whether the proposed remote participation authorization or proposed limitation on accessibility to public proceedings should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.

## SUMMARY

This bill clarifies when members of public bodies may participate remotely in public proceedings of those bodies. It prohibits a body subject to the Freedom of Access Act from allowing its members to participate in its public proceedings through telephonic, video, electronic or other similar means of communication unless the body has adopted a written policy that authorizes remote participation in a manner that allows all members to simultaneously hear and speak to each other during the public proceeding and allows members of the public attending the public proceeding at the location identified in the meeting notice to hear all members of the body.

\* It prohibits remote participation in executive session. It also prohibits a member who is participating remotely in a proceeding from voting on an issue that was discussed in executive session that immediately preceded the vote in the public proceeding. \*

It requires a quorum of the body to be physically present at the location identified in the meeting notice unless immediate action is imperative and physical presence of a quorum is not reasonably practicable within the period of time requiring action, or, for public bodies that consist of 3 or fewer members, at least one member of the public body must be physically present at the location identified in the meeting notice.

It requires that each member of a public body subject to the Freedom of Access Act be physically present in at least one public proceeding each year.

It requires that each member participating remotely identify all persons present at the remote location, that all votes be taken by roll call and that members participating remotely receive documents or other materials presented or discussed at the public proceeding in advance or when made available at the meeting, if the technology is

available. The bill prohibits members who are not physically present at the meeting location from participating and voting in adjudicatory proceedings.

It requires that a state public body adopt its remote participation policy as a major substantive rule under the Maine Administrative Procedure Act.

It authorizes municipalities and counties to impose stricter requirements than are provided in this bill and allows municipalities and counties to prohibit the use of remote participation by any public body under their jurisdictions. The stricter requirements or the prohibition must be imposed through the adoption of an ordinance by the municipality or the county.

It provides that an elected public body may adopt a remote participation policy only after the constituency of the elected public body has voted to authorize the body to adopt the policy.

It prohibits the Legislature from allowing its members to participate in its public proceedings through telephonic, video, electronic or other similar means of communication, but allows the Finance Authority of Maine, the Commission on Governmental Ethics and Election Practices, the Maine Health and Higher Educational Facilities Authority, the Maine State Housing Authority, the Maine Municipal Bond Bank, the Emergency Medical Services' Board and the Workers' Compensation Board to continue allowing remote participation at their public proceedings as currently authorized in law.

Part B of the bill amends law to require the joint standing committee of the Legislature having jurisdiction over judiciary matters to conduct a review of any proposed statutory authorization of remote participation or change in accessibility with respect to public proceedings.





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~~the exceptions in Titles 13 to 21-A. All of the subcommittee's recommendations with regard to the exceptions that were reviewed were submitted to the Advisory Committee at the December 4, 2020 meeting.~~

### **Subcommittee on Remote Meetings Best Practices**

The Subcommittee on Remote Meetings Best Practices was established by the Advisory Committee at its November 20th meeting to assist in the development of best practices recommendations for public bodies when the public is remote rather than physically present. The subcommittee met on December 4th and Rep. Thom Harnett agreed to chair the subcommittee. Amy Beveridge, Lynda Clancy, Julie Finn, Judy Meyer and Eric Stout participated as members of the subcommittee.

At the outset of its discussion, the subcommittee welcomed Kate Dufour and Neal Goldberg from the Maine Municipal Association (MMA) to present a report of MMA's survey of data collected from municipal officials concerning recent experiences with remote proceedings. Ms. Dufour described the remote participation experience as a silver lining in the dark pandemic, as municipalities have found it to be an incredible tool. Municipalities have been able to continue government operations without missing a beat, still providing services to their constituents even though many offices have been closed. It was noted that electronic meetings are not embraced by everyone and some needs are specialized and do not fit perfectly into the remote participation mode.

Municipalities noted that public participation has increased significantly with the use of remote participation tools. More participation means more people are learning about how their government is working. It also shows that participating can be a positive experience, and may encourage more participation at all levels of government. It may also help generate the next wave of volunteers, a group very important to the functioning of local governments.

Also noted, however, were the limitations presented by the fact that high-speed internet is not universally available throughout the State. Improving state-wide broadband availability is necessary to fully support the successful implementation of remote participation.

The authority to conduct proceedings through remote participation is a tool that municipalities would like to have even after the pandemic is over.

Mr. Goldberg added that municipalities expressed satisfaction with electronic meetings, and generally were able to adapt quickly to the new process modes. There are several good reasons for continuing the use of remote participation, including the year-round involvement of people who live in Maine only part of the year, the ability to hold meetings without worrying about hazardous travel in inclement weather and, when available, providing the public with an additional method of providing public comments. He mentioned the downsides of "Zoom-bombing" and the fact that broadband is not universally available.

Mr. Goldberg expressed the desire of municipalities to continue to be able to use remote participation methods, mainly to supplement in-person proceedings, even after the pandemic.

There is general support to require in-person attendance of members of the public body, but allow remote participation if the member cannot be there.

Although the larger municipalities did not respond to the MMA survey, Ms. Dufour said she understands that Portland is using electronic meetings very effectively. Although technology can create an age-based digital divide, because the pandemic has eliminated in-person activities across the board, there is not as much difference in who is participating as would be expected.

Advisory Committee member Eric Stout shared a document on Zoom security that has been posted on the RTKAC website.

The issue of accessibility to people with disabilities was raised in an email to the Advisory Committee, and Julie Flynn noted that the Judicial Branch chose to use the Zoom platform because closed captioning is available. The question of accessibility is a question that falls under the Americans with Disabilities Act, and must be addressed to ensure that everyone can participate fully in the government process. After the meeting, Ms. Finn shared comments from the Accessibility Coordinator for the Judicial Branch on how the Zoom platform can be used to provide accessibility.

Amy Beveridge and Judy Meyer both recognized that electronic meetings facilitate the ability of the press/media to monitor multiple meetings simultaneously without added travel or staff costs. The ability to engage in the legislative process without having to take a day off to travel to Augusta will be a great benefit, as well. A downside to not being able to be physically present means the press/media loses the opportunity to follow up or question individual policy makers directly after a meeting.

Ms. Meyer said she is more concerned about the ability of the public to participate. All subcommittee members recognized that attendance is not the same as participation. The administrative burden in running electronic meetings must be considerable. Brenda Kielty, the Public Access Ombudsman, expressed her continuing concern about the quality of participation. Ms. Dufour noted that MMA partnered with the law firm Bernstein Shur to develop procedures on "Zoom etiquette." Most municipalities have a good system of support, in that their peers are always willing to share tips and practices. Hybrid, rather than purely remote, meetings will present additional challenges.

\* Executive sessions can be conducted remotely: the Zoom platform allows the administrator to move whoever is not intended to be in the executive session into a "waiting room." When the executive session is over, whoever is still in the waiting room can be connected back into the meeting. \*

The subcommittee agreed to continue working, and Representative Harnett worked with staff to formalize specific recommendations. The Maine Municipal Association also informed the subcommittee that they will propose legislation to continue the authority to conduct electronic meetings post-pandemic. Everyone agreed that statewide high-speed internet is necessary to make remote participation effective and efficient, and should be supported.

**Support funding to accelerate access to broadband statewide and to invest in technology for local governments to facilitate public access to public proceedings conducted remotely**

The Advisory Committee recognizes that up to 20% of the State's population does not have access to high speed internet. The Advisory Committee recommends that the State dedicate the necessary funding to accelerate broadband access statewide and to provide investments in technology for governments to facilitate public access to public proceedings conducted remotely.

**Support the extension of legal authority for public bodies to conduct public proceedings remotely on a permanent basis as long as openness and transparency remain central principles and as long as the authorization is contingent on the public body adopting a written policy addressing certain requirements**

The Advisory Committee supports the extension of legal authority for public bodies to conduct public proceedings remotely on a permanent basis as long as openness and transparency remain central principles. During the civil public health emergency, public bodies were granted legislative authority to conduct proceedings remotely in accordance with Public Law 2019, chapter 617, Part G. Public bodies, including municipalities, have been able to use remote meetings effectively to continue government operations when circumstances have prohibited or restricted in-person meetings. In many situations, public attendance and participation have increased with the ability to tune in and connect from home or other locations.

Because the authorization of remote participation in PL 2019, chapter 617, Part G is repealed 30 days after the termination of the state of emergency, legislation will be necessary to allow remote participation by members of public bodies to continue post-pandemic. The Legislature should take this opportunity to establish appropriate standards and provide guidance to all public entities that choose to make use of technology to conduct public proceedings. The Advisory Committee therefore recommends that the Legislature adopt enabling legislation, tied to best practices and based on the adoption by each public body of a written policy that meets not only statutory minimum requirements but closely addresses the need of the individual public body and its constituents and stakeholders.

\* The Advisory Committee recommends that the Legislature adopt remote proceedings authorization that is contingent on the public entity adopting a written policy that addresses, at a minimum, the following: \*

- Provides for an open and transparent process;
- Complies with Freedom of Access Act (FOAA), including notice and maintenance of meeting records;
- Establishes requirements for participation by members of the public body, including but not limited to how "present" for a meeting is defined, how a quorum is established, ensuring access to all of the same materials, conduct of executive session, and ensuring transparent and accurate recording of votes by all members of the public body;
- Establishes requirements for public access to the proceedings; and



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~~will be provided by Maine taxpayers, the members believed that the public interest in the information provided to support an application for assistance outweighs any proprietary business interest in maintaining the confidentiality of that information.~~

~~The Subcommittee members agreed to not recommend legislation to enact a public records exception for these financial records.~~

### \* **Public Records Process Subcommittee** \*

The Public Records Process Subcommittee was chaired by Victoria Wallack. Representative Sheehan, Julie Finn, Judy Meyer, Kevin Martin and Eric Stout served as members of the Subcommittee. The Subcommittee met three times: on October 23, November 6 and December 4. On December 4, the Subcommittee made its report and recommendations to the Advisory Committee.

The Subcommittee was formed to consider 7 specific topics associated with the process requirements of FOAA described and discussed below. Several of the topics were suggested for Advisory Committee review in a June 29, 2023 letter sent to the RTKAC from the Joint Standing Committee on Judiciary; these topics related to proposals considered by the Judiciary Committee in the First Regular and First Special Sessions of the 131<sup>st</sup> Legislature. A copy of this letter is included in **Appendix C**. The Subcommittee also considered additional topics suggested by Advisory Committee members at the first Advisory Committee meeting.

#### \* **Require body or agency to cite the reason for going into executive session** \*

This topic was raised for consideration by Rep. Sheehan at the first Advisory Committee meeting based on concerns shared with her by a member of the public regarding **the appropriateness of a public body going into executive session**. The Subcommittee started its discussion by reviewing the relevant statute, 1 MRSA §405, which requires, among other things, that a motion to go into executive session include the precise nature of the business of the executive session and a citation of one or more sources of statutory or other authority that permits an executive session for that business. Subcommittee members noted that they have seen situations in which motions for executive session are incomplete, and they discussed the remedies available to a member of the public if they believe the public body or agency does not have authority to move into executive session, including appealing to superior court, raising their concerns during a public comment period or submitting a letter to the body or agency. Brenda Kielty, the Public Access Ombudsman, added that it is also the responsibility of the members of a public body or agency to object to the motion if the reasons for the executive session are not sufficiently clear. Ms. Kielty noted that there is tension between needing to provide sufficient detail in the motion to go into executive session while maintaining the confidentiality of the matters that are to be discussed. The members discussed the origin of the language in section 405, subsection 4, and several commented that, in their recent experience, public bodies are including a citation in the motion to go into executive session, but failing to include the “precise nature of the business.” The members specifically considered two of the permitted reasons for an executive session: section 405, subsection 6, paragraph C, related to real and personal property, and section 405, subsection

\* 6, paragraph E, related to the presence of the attorney for the body or agency. Ms. Kielty provided some examples of the types of business a public body might be discussing in which paragraph C could be appropriately used for an executive session, but noted that much more information would be necessary to evaluate the propriety of a specific situation. The members considered whether additional guidance or education related to the appropriate use of executive sessions is necessary, and Ms. Kielty reviewed the current guidance provided in three of the frequently asked questions posted on the Maine Freedom of Access Act website, <https://www.maine.gov/foaa/>. \*

The members agreed to recommend that the Advisory Committee send a letter providing an overview of the Subcommittee's discussions regarding public bodies and agencies going into executive session and asking the recipients to remind their members of the importance of including in the motion both the precise nature of the business of the executive session and a citation of one or more sources of statutory or other authority that permits an executive session for that business. The letter would be distributed to the state agency FOAA contacts, the Maine School Management Association, Maine Municipal Association, Maine County Commissioner's Association, the Maine Town and City Manager Association and the Maine Town and City Clerks' Association as well as the RTKAC interested parties list. The members also agreed to recommend that the Public Access Ombudsman update the frequently asked questions on the Maine Freedom of Access Act website to include more guidance regarding FOAA's requirements for executive sessions, with particular focus on the need to identify the precise nature of the business of the executive session.

The Advisory Committee unanimously approved these recommendations, which are discussed in Part VI of this report.

- *Use of a standard form for FOAA requests*

~~This topic was suggested to the Advisory Committee by the Judiciary Committee, as a proposal for a form for submission of public records requests was included in LD 1649. The Subcommittee identified two contexts in which the use of a standard form could be implemented: a form used by a requestor to access public records and a form used internally by a responding entity to facilitate a FOAA response. Although it was noted that a form for use by a requestor could be useful for ensuring that a public records request is complete and may make providing records easier for responders, some members expressed concern that a form could create a barrier to members of the public seeking public records, especially for those with lower reading abilities. Several members also described the importance of the conversations and negotiations that are involved in refining a FOAA request that could be negatively impacted by the use of a standard form. At the request of the Subcommittee, Ms. Kielty prepared and shared with the members an example of a form that could be provided by requestors when making a request under FOAA for public records. In discussing the form example, the Subcommittee members noted that FOAA does not require a request for public records to be made in writing and, in fact, public records requests may be made anonymously, so a form would need to be carefully drafted to ensure readability and to not create the impression that a form is required or that all fields must be filled out. The Subcommittee learned that schools have been receiving broad public records requests and a requestor form, such as that proposed in LD 1649, was a possible~~

- Title 22, section 5409, subsections 1 and 2, relating to records held by the Maine Health Insurance Marketplace;
- Title 22, section 3294, subsection 3, relating to confidential information provided to professional and occupational licensing boards; and
- Title 22, section 2454-A, subsection 12, relating to applications and supporting information submitted by patients, caregivers and providers under the Maine Medical Use of Marijuana Act. [Note: this recommendation is to amend the existing public records exception with specific language to be developed by the Judiciary Committee or during the committee process.]  
(Vote: 15 - 0, 1 abstention)

*See recommended legislation in Appendix E and a list of public records exceptions for which no amendments are recommended in Appendix F.*

- Provide an explanation to the Blue Ribbon Commission to Study Emergency Medical Services in the State of why the RTKAC did not recommend amending Title 32, section 98, to establish a public records exception for financial information provided by applicants for Emergency Medical Services Stabilization and Sustainability Program grants**

The Advisory Committee recommends sending a letter to the Blue Ribbon Commission to Study Emergency Medical Services providing an explanation for why it did not recommend creating a public records exception for financial information provided by applicants for Emergency Medical Services Stabilization and Sustainability Program grants.

*See correspondence in Appendix D.*

- \*  **Reinforce the importance of following the statutory requirements applicable to public bodies and agencies going into executive session**

The Advisory Committee recommends sending a letter to the state agency FOAA contacts, the Maine School Management Association, Maine Municipal Association, Maine County Commissioner's Association, the Maine Town and City Manager Association and the Maine Town and City Clerks' Association as well as the RTKAC interested parties list explaining that the Advisory Committee discussed concerns surrounding public bodies and agencies going into executive session and asking the recipients to remind their members of the importance of including in the motion both the precise nature of the business of the executive session and a citation of one or more sources of statutory or other authority that permits an executive session for that business.

*See correspondence in Appendix D.*

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and the press but also for families of victims and were concerned with the timing of the Chief Medical Examiner's Office request to amend the statute.

Representative Erin Sheehan, Chair  
Senator Anne Carney  
Amy Beveridge  
Jonathan Bolton  
Hon. Justin Chenette  
Lynda Clancy  
Linda Cohen  
Chief Michael Gahagan



Julia Finn  
Betsy Fitzgerald  
Kevin Martin  
Judy Meyer  
Hon. Kimberly Monaghan  
Tim Moore  
Cheryl Saniuk-Heinig  
Eric Stout  
Victoria Wallack

STATE OF MAINE

RIGHT TO KNOW ADVISORY COMMITTEE

December XX, 2023

Re: Requirements for executive sessions pursuant to 1 M.R.S. §405(4)

[name of entity, if applicable]

Dear [name of entity/State Freedom of Access Contact/Right to Know Advisory Committee interested party]:

I am writing on behalf of the Right to Know Advisory Committee regarding a matter that was discussed by the Advisory Committee this year after a member of the public shared concerns about the circumstances in which a public body may go into executive session. During discussions of this issue, several Advisory Committee members noted that, in their experience, motions to go into executive sessions are sometimes incomplete. Pursuant to 1 M.R.S. §405(4), fully quoted below, a motion to go into executive session must include both the precise nature of the business of the executive session and a citation of one or more sources of statutory or other authority that permits an executive session for that business.

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

The Advisory Committee is sending this letter as a reminder to public bodies and agencies that utilize executive sessions of the importance of including both statutory elements in a motion to go into executive session. [We ask that you share this letter with your members, as well.] If you have questions regarding the statutory requirements applicable to executive sessions or other aspects of the Freedom of Access Act, you may wish to visit the Maine Freedom of Access Act website, [www.maine.gov/foaa](http://www.maine.gov/foaa), or contact the Public Access Ombudsman.

Thank you for your consideration of these comments.

Sincerely,

Representative Erin Sheehan, Chair  
Right to Know Advisory Committee





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general public” in the Town of Ogunquit as required by Title 1, section 406 of the Maine Revised Statutes. The plaintiff also alleged that the Town had violated FOAA by failing to produce documents responsive to several records requests the plaintiff had submitted to the Town. The Superior Court noted that the plaintiff’s requests were processed in a timely manner by the Town, and the plaintiff was advised that the town did not have any responsive documents. The Superior Court found no evidence to support the plaintiff’s argument that the Town was withholding responsive documents. Although the plaintiff’s appeal of the denial of records was outside of the 30-day appeal period established by FOAA, the Superior Court held that the Town did not refuse, deny or fail to respond to the plaintiff’s requests and, therefore, there was no FOAA violation. The plaintiff appealed from the judgement of the Superior Court to the Maine Supreme Judicial Court, which affirmed the Superior Court’s decision.<sup>2</sup>

#### IV. ACTIONS RELATED TO COMMITTEE RECOMMENDATIONS CONTAINED IN EIGHTEENTH ANNUAL REPORT

The RTKAC made the following recommendations in its Eighteenth Annual Report. The legislative actions taken in 2024 as a result of those recommendations are summarized below.

<p><b>Recommendation:</b> Amend certain provisions of law in Title 22 relating to previously enacted public records exceptions</p>	<p><b>Action:</b> <i>LD 2215, An Act to Implement the Recommendations of the Right to Know Advisory Committee Regarding Public Records Exceptions</i> was enacted as Public Law 2023, ch. 637.</p>
<p><b>Recommendation:</b> Provide an explanation to the Blue Ribbon Commission to Study Emergency Medical Services in the State of why the RTKAC did not recommend amending Title 32, section 98, to establish a public records exception for financial information provided by applicants for Emergency Medical Services Stabilization and Sustainability Program grants</p>	<p><b>Action:</b> Staff sent a letter on behalf of the Advisory Committee to the chairs of the Blue Ribbon Commission providing this explanation.</p>
<p><b>Recommendation:</b> Reinforce the importance of following the statutory requirements applicable to public bodies and agencies going into executive session</p>	<p><b>Action:</b> Staff sent a letter on behalf of the Advisory Committee sharing this recommendation to the state FOAA contacts, the Maine School Management Association, Maine Municipal Association, Maine County Commissioners Association, the Maine Town and City Clerks’ Association as well as the RTKAC interested parties list.</p>

<sup>2</sup> *Patience P. Sundaresan v. Town of Ogunquit*, Mem-24-87 (July 11, 2024).

**§3308-A. Dissemination of juvenile intelligence and investigative record information by a Maine criminal justice agency**

The following provisions apply to the dissemination of juvenile intelligence and investigative record information collected by or at the direction of or kept in the custody of any Maine criminal justice agency. [PL 2013, c. 267, Pt. D, §1 (NEW).]

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

A. [PL 2021, c. 365, §12 (RP); PL 2021, c. 365, §37 (AFF).]

B. "Criminal justice agency" has the same meaning as in Title 16, section 803, subsection 4. [PL 2013, c. 267, Pt. D, §1 (NEW).]

C. [PL 2019, c. 525, §18 (RP).]

C-1. "Dissemination" has the same meaning as in Title 16, section 703, subsection 6. [PL 2021, c. 365, §13 (NEW); PL 2021, c. 365, §37 (AFF).]

D. "Executive order" has the same meaning as in Title 16, section 803, subsection 6. [PL 2013, c. 267, Pt. D, §1 (NEW).]

E. "Juvenile intelligence and investigative record information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency or kept in the custody of a criminal justice agency while performing the administration of juvenile justice. "Juvenile intelligence and investigative record information" includes information of record concerning investigative techniques and procedures and security plans and procedures prepared or collected by a criminal justice agency or another agency. "Juvenile intelligence and investigative record information" does not include criminal history record information as defined in Title 16, section 703, subsection 3 or intelligence and investigative record information as defined in Title 16, section 803, subsection 7. [PL 2013, c. 267, Pt. D, §1 (NEW).]

F. "State" has the same meaning as in Title 16, section 803, subsection 8. [PL 2013, c. 267, Pt. D, §1 (NEW).]

G. "Statute" has the same meaning as in Title 16, section 803, subsection 9. [PL 2013, c. 267, Pt. D, §1 (NEW).]

[PL 2021, c. 365, §§12, 13 (AMD); PL 2021, c. 365, §37 (AFF).]

**2. Information part of juvenile case records.** To the extent juvenile intelligence and investigative record information has been made part of the juvenile case records, dissemination of that juvenile intelligence and investigative record information by the court having actual custody of the juvenile case records must be as provided by section 3308-C, subsection 4. [PL 2021, c. 365, §14 (AMD); PL 2021, c. 365, §37 (AFF).]

**3. Limited dissemination.** Except as otherwise provided in subsection 2, juvenile intelligence and investigative record information is confidential and may be disseminated by a Maine criminal justice agency only to:

A. Another criminal justice agency; [PL 2013, c. 267, Pt. D, §1 (NEW).]

B. A person or public or private entity as part of performing the administration of juvenile justice; [PL 2013, c. 267, Pt. D, §1 (NEW).]

B-1. A health care provider. "Health care provider" has the same meaning as in 45 Code of Federal Regulations, Section 160.103; [PL 2019, c. 525, §20 (NEW).]

B-2. A governmental agency or subunit of a governmental agency in this State or another state that pursuant to statute is responsible for investigating abuse, neglect or exploitation of children or a



governmental agency in this State or another state responsible for the licensing of child care facilities, family child care providers or children's camp programs or their employees; [PL 2021, c. 365, §15 (NEW); PL 2021, c. 365, §37 (AFF).]

C. A juvenile accused of a juvenile crime or that juvenile's agent or attorney for adjudicatory or dispositional purposes if authorized by:

- (1) The responsible prosecutorial office or prosecutor; or
- (2) A court rule or court order of this State or of the United States.

As used in this paragraph, "agent" means a licensed professional investigator, an expert witness or the juvenile's parents, guardian or legal custodian; [PL 2013, c. 267, Pt. D, §1 (NEW).]

D. A juvenile crime victim or that victim's agent or attorney if authorized by:

- (1) Statute; or
- (2) A court order pursuant to section 3307 or 3308-C.

As used in this paragraph, "agent" means a licensed professional investigator or an immediate family member if, due to death, age, physical or mental disease, disorder or intellectual disability or autism, the victim cannot realistically act on the victim's own behalf; [PL 2021, c. 365, §16 (AMD); PL 2021, c. 365, §37 (AFF).]

E. A federal court, the District Court, including when it is exercising the jurisdiction conferred by section 3101, the Superior Court or the Supreme Judicial Court and an equivalent court in another state; and [PL 2013, c. 267, Pt. D, §1 (NEW).]

F. A person or public or private entity expressly authorized to receive the juvenile intelligence and investigative record information by statute, executive order, court rule, court decision or court order. "Express authorization" means language in the statute, executive order, court rule, court decision or court order that specifically speaks to intelligence or investigative record information or specifically refers to a type of intelligence or investigative record. [PL 2013, c. 267, Pt. D, §1 (NEW).]

[PL 2021, c. 365, §§15, 16 (AMD); PL 2021, c. 365, §37 (AFF).]

**4. Dissemination of juvenile intelligence and investigative record information subject to reasonable limitations.** The dissemination of juvenile intelligence and investigative record information by a criminal justice agency pursuant to subsection 3, paragraphs B, B-1, B-2 and D is subject to limitations to reasonably ensure that dissemination of the information will not:

- A. Interfere with law enforcement proceedings relating to crimes; [PL 2019, c. 525, §22 (NEW).]
- B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury; [PL 2019, c. 525, §22 (NEW).]
- C. Constitute an unwarranted invasion of personal privacy, including, but not limited to, the personal privacy of juveniles and victims; [PL 2019, c. 525, §22 (NEW).]
- D. Disclose the identity of a confidential source; [PL 2019, c. 525, §22 (NEW).]
- E. Disclose confidential information furnished only by a confidential source; [PL 2019, c. 525, §22 (NEW).]
- F. Disclose investigative techniques and procedures or security plans and procedures not known by the general public; [PL 2019, c. 525, §22 (NEW).]
- G. Endanger the life or physical safety of any individual, including law enforcement personnel; [PL 2019, c. 525, §22 (NEW).]

H. Disclose information designated confidential by statute; and [PL 2019, c. 525, §22 (NEW).]

I. Interfere with proceedings relating to civil violations, civil enforcement proceedings and other civil proceedings conducted by the Department of the Attorney General or by a district attorney's office. [PL 2019, c. 525, §22 (NEW).]

To comply with this subsection a criminal justice agency may deny access in whole or in part to records that contain or constitute juvenile intelligence and investigative record information. A criminal justice agency also may prepare and provide redacted copies of such records to a person or public or private entity authorized to receive the information under this section.

[PL 2021, c. 365, §17 (AMD); PL 2021, c. 365, §37 (AFF).]

**5. Secondary dissemination of confidential juvenile intelligence and investigative record information restricted.** A person or public or private entity authorized to receive juvenile intelligence and investigative record information under this section may not further disseminate such information unless expressly authorized to do so by statute, court decision or court order. "Express authorization" means language in the statute, court decision or court order that specifically speaks of juvenile intelligence and investigative record information or specifically refers to a type of juvenile intelligence or investigative record.

[PL 2019, c. 525, §22 (NEW).]

**6. Confirming existence or nonexistence of confidential juvenile intelligence and investigative record information prohibited.** A criminal justice agency may not confirm the existence or nonexistence of juvenile intelligence and investigative record information that is confidential under this section to any person or public or private entity that is not eligible to know of or receive the information itself.

[PL 2019, c. 525, §22 (NEW).]

**7. Unlawful dissemination of confidential juvenile intelligence and investigative record information.** Any person who intentionally disseminates confidential juvenile intelligence and investigative record information knowing it to be in violation of any provision of this chapter commits a civil violation for which a fine of not more than \$1,000 may be adjudged. The District Court has jurisdiction over violations under this subsection.

[PL 2021, c. 365, §18 (NEW); PL 2021, c. 365, §37 (AFF).]

#### SECTION HISTORY

PL 2013, c. 267, Pt. D, §1 (NEW). PL 2019, c. 525, §§18-22 (AMD). PL 2021, c. 365, §§12-18 (AMD). PL 2021, c. 365, §37 (AFF).

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**All juvenile case records and hearings are CONFIDENTIAL  
unless specifically authorized by law or court order.**

<b>15 M.R.S. § 3308-C CONFIDENTIALITY OF JUVENILE CASE RECORDS</b>		
<b>Charge petitioned</b>	<b>Juveniles age 13 and Older (at d.o.jc.)</b>	<b>Juveniles under age 13 (at d.o.jc.)</b>
Murder, Felony Murder, Manslaughter	Always OPEN to the public	Open to the public on court order only
Class A crimes	Presumptively open – may be confidential by court order	Presumptively closed – may be open to the public by court order
Class B and C crimes	Presumptively confidential – may be open to the public by court order	Presumptively confidential – may be open to the public by court order
Class D and E crimes	Always CONFIDENTIAL	Always CONFIDENTIAL
Civil Violations	Always CONFIDENTIAL	Always CONFIDENTIAL
Competence determination pending regardless of charge	Always CONFIDENTIAL	Always CONFIDENTIAL
Bind-over hearings	Always OPEN to the public	Always OPEN to the public

**Highest classification** of crime petitioned determines whether a petition is confidential or open to public inspection. [§ 3308-C (2)(D)]

Juvenile petitions that are deemed “open to public inspection” may be **INSPECTED** by any member of the public **at the courthouse**. [§ 3308-C (1)]

Juvenile case records may **NEVER be disseminated** by the court electronically or in paper form except as authorized by statute or court order. [§ 3308-C (1)]

When a request is made by any person to have a **presumptively open** petition be made confidential, or a **presumptively confidential** petition be open to public inspection, a **hearing** must be held where the court considers:

- The purposes of the Maine Juvenile Code
- The juvenile’s interest in privacy
- The alleged victim’s interest in privacy
- The nature of the juvenile crime alleged [as outlined in the bind-over statute]
- Characteristics of the juvenile [as outlined in the bind-over statute]
- Public safety concerns [as outlined in the bind-over statute]

The court must determine whether the “general public’s right to information substantially outweighs the juvenile’s interest in privacy or the alleged victim’s interest in privacy” [§§3308-C (2)(B) and 3308-C (2)(C)(3)]

If a juvenile **petition** is open to public inspection, the public may attend any juvenile **court hearing** on the petition and may inspect the **order of adjudication**. [§ 3308-D (2)]

Unless proceedings are suspended for a competence determination, **Victims** may be present at hearings or inspect orders of adjudication even if the general public is prohibited. [§ 3308-D (4)]

**PERMISSIVE Sharing of Juvenile Case Record Information:**

**Criminal justice agencies** may share any information in juvenile case records for purpose of administering juvenile or criminal justice [§ 3308-C (4)(B)]

Following adjudication of a juvenile crime, any information contained in juvenile case records may be disseminated to persons who **directly supervise** or report on the health, behavior or progress of the juvenile, school superintendents, criminal justice agencies or agencies such as DOC or DHHS if relevant to and disseminated for purpose of creating or maintain **individualized plan for rehabilitation or reintegration into a school** [§ 3308-C (4)(C)]

Juvenile case record information in the possession of DOC may be disseminated to anyone with **informed written consent** of the juvenile/guardian [§ 3308-C (4)(D)]

**Juvenile intelligence investigative record information, JCCO records** and all other reports of **social or clinical studies** contained in JCR may be inspected, disclosed or disseminated pursuant to a **court order** but names of victims and minors must be **redacted** [§ 3308-C (4)(E)]

**Before ordering** disclosure, dissemination or inspection of confidential juvenile case records, there must be: Notice and opportunity to be heard to the juvenile, parent/guardian, juvenile's attorney, prosecuting attorney and any agency given legal custody of the juvenile

At the hearing the court shall consider:

Purposes of the Juvenile Code

The reasons for the request

The court may restrict further disclosure, dissemination

**With consent of the court** and subject to reasonable limitations, **redacted** records may be made available to "persons having a legitimate interest in the proceedings" or "conducting pertinent research" [§ 3308-C (6)]

Following a determination that juvenile case records may be shared, the **Court must issue an order** specifying which juvenile case records may be inspected, disclosed or disseminated and to whom [§ 3308-C (7)]

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**MANDATORY Sharing of Juvenile Case Record Information**

If a juvenile is adjudicated of GSA involving a child under age 13 or involving compulsion and is committed or placed on probation, DOC SHALL disseminate a copy of the judgment and commitment to DHHS, law enforcement agencies where the juvenile resides, works or attends school, to the Superintendent of any school where the juvenile is enrolled, all licensed day care facilities in the municipality where the juvenile resides, works or attends school. [§ 3308-C (4)(F)]

This section also permits dissemination (DOC MAY) of such a judgment and commitment to any other agency or person that the DOC determines is appropriate to ensure public safety.

Juvenile case records MUST be open to inspection and upon request be disseminated to:

The juvenile

The juvenile's parent(s), guardian or legal custodian

The juvenile's attorney

The prosecuting attorney

Any agency to which legal custody of the juvenile was transferred

DHHS prior to adjudication if commitment to their custody is a possible disposition

An abstract must be sent to the Secretary of State following adjudication for juvenile crime involving operation of a motor vehicle or when the juvenile's right to operate is ordered suspended [§ 3308-C (8)]

A copy of the commitment order, order of adjudication, social studies and clinical or educational reports and "information pertinent to the care and treatment of the juvenile" must be transmitted to DOC and/or DHHS when committed to their custody [§ 3308-C (9)]



**STATE OF MAINE  
131st LEGISLATURE  
FIRST REGULAR AND FIRST SPECIAL SESSION**

**Criminal Records Review Committee  
January 2024**

**Members:**

**Sen. Donna Bailey, Chair**  
**Spkr. Rachel Talbot Ross, Chair**  
**Sen. Eric Brakey**  
**Rep. David Boyer**  
**Rep. Erin Sheehan**  
**Foster Bates**  
**Dan MacLeod**  
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**Courtney Gary-Allen**  
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**Melissa Martin**  
**Jill Ward**  
**Pedro Vasquez**  
**Tim Moore**  
**Michael Kebede**  
**Laura Yustak**  
**John Feeney**  
**Amy McCollett**  
**Sam Prawer**  
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**Maeghan Maloney**  
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## I. INTRODUCTION

The Criminal Records Review Committee (the “Committee”) was established during the 131st Maine Legislature as a two-year study, pursuant to Resolve 2023, chapter 103. The resolve is included as Appendix A. The Committee has 29 members representing various government agencies and public interests, serving in both official and personal capacities. The membership list is included as Appendix B.

The Committee is tasked with the following duties:

1. Review activities in other states that address the expungement, sealing, vacating of and otherwise limiting public access to criminal records;
2. Consider so-called clean slate legislation options;
3. Consider whether the following convictions should be subject to different treatment:
  - A. Convictions for conduct that has been decriminalized in this State over the last 10 years and conduct that is currently under consideration for decriminalization;
  - B. Convictions for conduct that is nonviolent or involves the use of marijuana; and
  - C. Convictions for conduct that was committed by victims and survivors of sexual exploitation and sex trafficking;
4. Consider whether there is a time limit after which some or all criminal records should not be publicly available;
5. Invite comments and suggestions from interested parties, including but not limited to victim advocates and prison and correctional reform organizations;
6. Review existing information about the harms and benefits of making criminal records confidential, including the use and dissemination of those records;
7. Invite comments and suggestions concerning the procedures to limit public accessibility of criminal records;
8. Consider who, if anyone, should continue to have access to criminal records that are not publicly available;
9. Develop options to manage criminal records; and
10. Review and consider criminal records expungement legislation referred to the Joint Standing Committee on Judiciary during the 131st Legislature, including, but not limited to, L.D.s 848, 1550, 1646 and 1789.

The resolve requires the Committee to provide two reports to the Joint Standing Committee on Judiciary. The first interim report, due December 6, 2023,<sup>1</sup> is to include the Committee's findings and recommendations, including suggested legislation, regarding the expungement, sealing, vacating of and otherwise limiting public access to criminal records related to convictions for conduct that is nonviolent or involves the use of marijuana. The second and final report, due November 6, 2024, is to include the Committee's findings and recommendations not included in the interim report.

The Committee was authorized to meet a total of eight times over the two-year period. The chairs determined that the Committee would plan to meet three times in the first interim and five times during the second interim. Meetings for the first interim were held on November 13, 2023, November 22, 2023, and December 11, 2023. Materials from each of the meetings is available at the committee's website at <https://legislature.maine.gov/criminal-records-review-committee-131st-legislature>. Archived videos of the meetings are also available on the Maine Legislature's website. Meeting agendas are included in Appendix C.

The Committee would like to note that throughout this report, the terms "marijuana" and "cannabis" are used to refer to the same substance. During both referendums and prior to 2021, the term "marijuana" was used exclusively to refer to the substance. However, in 2021 the Legislature enacted P.L. 2021, ch. 669, "An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Reducing Restrictions Related to Convictions for Drug Offenses and To Replace the Term 'Marijuana' with the Term 'Cannabis' in the Maine Revised Statutes". This law replaced the term "marijuana" with the term "cannabis" in all Maine law except for the Maine Criminal Code. Thus, this report will use the term "cannabis", except when referring to a criminal act, in which case it will use the term "marijuana".

## II. BACKGROUND INFORMATION

### *A. Previous iteration of Criminal Records Review Committee*

The 130th Legislature established the previous iteration of the Criminal Records Review Committee pursuant to Resolve 2021, chapter 121. The previous committee was structured similarly to this current Committee with substantial overlap of membership and duties. The previous committee met five times during the 2021 interim and submitted a report to the Legislature. The final report from the previous committee is available on the Maine Legislature's website at <https://legislature.maine.gov/criminal-records-review-committee>. The report also includes minority reports and opinions from certain members of the committee.

This Committee began its work by reviewing the findings and recommendations from the 2021 Criminal Records Review Committee. The recommendations and outcomes from those recommendations are as follows:

*Recommendation 1: Reestablish the Criminal Records Review Committee.* A majority of the previous committee recommended supporting LD 1818 from the 130th Legislature, "Resolve, To Reestablish and Continue the Work of the Criminal Records Review Committee." This bill was

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<sup>1</sup> This deadline was extended to December 15, 2023, with permission of the Presiding Officers.

passed by the House and Senate, but died on adjournment after not being enacted off the Study Table. This recommendation was eventually supported by the 131st Legislature with the creation of this two-year Committee.

*Recommendation 2: Consider options to address the Separation of Powers doctrine limitation on legislative authority to enact record clearing legislation.* The previous committee discussed at length whether actions of the Legislature in sealing and therefore limiting public access to criminal records would encroach on the Governor's plenary pardon and commutation authority under the Maine Constitution and render those actions unconstitutional. The committee recommended that the Judiciary Committee review options and report out legislation to address this issue.

*Recommendation 3: Consider proposals for petition-based records sealing as proposed by LD 1459, An Act Regarding a Post-judgment Motion by a Person Seeking to Satisfy the Prerequisites for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record Information for Certain Criminal Convictions, and associated suggestions.* This bill would have made permanent Title 15, chapter 310, which established a court process for obtaining special restrictions on the dissemination and use of public criminal history record information. While LD 1459 was reported out Ought Not to Pass, the 130th Legislature enacted Public Law 2021, chapter 674, using LD 1310 as a vehicle, which established the current criminal history record information sealing process discussed throughout this report.<sup>2</sup>

#### ***B. Proposed legislation tabled to consider recommendations from this report***

The duties in the 2023 resolve establishing the Committee are similar to those in Resolve 2021, chapter 121. However, section 5 of the resolve establishes an additional duty in subsection 10 requiring the Committee to review four specific bills from the First Regular/Special Session of the 131st Legislature. Two of these bills were carried over into the Second Regular Session of the 131st Legislature. Committee members noted that two bills were voted Ought Not to Pass by the Judiciary Committee with the understanding that this Committee would be able to recommend legislation containing similar policy options in its report.

The following is a list of the four bills plus a brief summary:

##### *LD 848, An Act to Expunge Certain Nonviolent Drug Crimes*

This bill would have allowed a person convicted of violating Title 17-A, section 1107-A (unlawful possession of scheduled drugs) to petition the court where the person was convicted to expunge all records of the crime five years after the completion of the person's sentence. Expungement would not be available for persons who have subsequent convictions or pending criminal charges. Expungement would require the State Bureau of Identification to arrange with the Federal Bureau of Investigation to have all references to the expunged crime deleted from FBI records. This bill was voted unanimously Ought Not to Pass by the Judiciary Committee.

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<sup>2</sup> See 15 M.R.S.A. §§ 2261 to 69; P.L. 2021, ch. 674.

*LD 1550, An Act to Authorize the Expungement of Records of Nonviolent Crimes*

This bill would allow a person convicted of a Class E, Class D or Class C crime to petition the court where the person was convicted to expunge all records of the crime five years after the completion of the person's sentence. Expungement would not be available for persons who have subsequent convictions or pending criminal charges, for crimes involving violence or domestic violence or sex offenses, for crimes involving bribery or corrupt practices, or for crimes that had as an element of the offense victims who were minors or were 65 years of age or older. Expungement would require the State Bureau of Identification to arrange with the Federal Bureau of Investigation to have all references to the expunged crime deleted from FBI records. This bill was carried over to the Second Regular Session by the Judiciary Committee.

*LD 1646, An Act to Vacate or Adjust Sentences and Expunge Arrests, Convictions and Adjudications for Cannabis-related Offenses*

This bill would have provided that all arrests, convictions and adjudications for crimes or civil violations for possession of cannabis are vacated and require the records of those arrests, convictions and adjudications to be expunged (permanently deleted) in accordance with a process established in the bill. This bill also would have allowed for an individual who has been convicted of a cannabis-related offense and who is still serving a sentence, including incarceration or supervised release, probation or administrative release, for that crime to petition the original sentencing court to resentence that individual. This bill was voted unanimously Ought Not to Pass by the Judiciary Committee.

*LD 1789, An Act to Remove All Marijuana-related Provisions from the Maine Criminal Code and Expunge All Convictions Involving Marijuana*

This bill would remove marijuana from the Maine Criminal Code by doing the following: removing marijuana being listed as a scheduled drug; eliminating the crime of unlawful trafficking in marijuana; eliminating the crime of aggravated trafficking of marijuana; eliminating the crime of aggravated cultivating of marijuana; removing the permissible inference under the Maine Rules of Evidence, Rule 303 that a person who intentionally or knowingly possesses a certain quantity, state or concentration of marijuana is unlawfully furnishing marijuana; eliminating the crime of unlawful possession of marijuana; removing drug paraphernalia related to marijuana from the definition of "drug paraphernalia"; eliminating the crime of cultivating marijuana; and eliminating any mandatory minimum term of imprisonment for marijuana-related drug offenses. The bill also directs the Department of Public Safety to review all criminal records possessed by any state criminal justice or law enforcement agency and to expunge all records that relate to criminal convictions and civil violations for conduct involving marijuana or that are otherwise authorized under

Maine's adult use cannabis laws. This bill was initially referred to the Judiciary committee but was re-referred to the Criminal Justice and Public Safety Committee, which carried the bill over to the Second Regular Session.

The subject matter and proposals in these bills were considered during the Committee's three meetings, and are discussed in this report.

### *C. Separation of powers*

A significant amount of discussion in the previous iteration of the Criminal Records Review Committee, as well as in this Committee, revolved around how the separation of powers doctrine enshrined in the Maine Constitution impacts the Legislature's ability to enact laws affecting a persons' criminal sentence. The relevant provisions of the Maine Constitution are as follows:

#### **Article III**

**Section 1. Powers distributed.** The powers of this government shall be divided into three distinct departments, the legislative, executive and judicial.

**Section 2. To be kept separate.** No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.

#### **Article V, Part First**

**Section 11. Power to pardon and remit penalties, etc.; conditions.** The Governor shall have power to remit after conviction all forfeitures and penalties, and to grant reprieves, commutations and pardons, except in cases of impeachment, upon such conditions, and with such restrictions and limitations as may be deemed proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons. Such power to grant reprieves, commutations and pardons shall include offenses of juvenile delinquency.

The Maine Supreme Judicial Court has interpreted the separation of powers doctrine in three separate cases relevant to the Committee's discussion. In *State v. Hunter*, the court struck down a statute that permitted courts to resentence a person based on that person's "progress towards a noncriminal way of life," holding that it was an unconstitutional attempt to invest the judiciary with the power to commute sentences, which power is granted expressly to the Governor under the Maine Constitution.<sup>3</sup> In *Bossie v. State*, the court held that a statute which increased "good-time" reductions available to prisoners that was expressly applicable to persons in the custody of the Department of Corrections prior to its effective date has the effect of commuting the lengths of existing sentences, an infringement on the Governor's express commutation authority under the Maine Constitution.<sup>4</sup> And similarly in *Gilbert v. State*, the court held that a law allowing the parole board to grant a full discharge to a prisoner if he successfully completed 10 years of

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<sup>3</sup> *State v. Hunter*, 447 A.2d 797 (Me. 1982).

<sup>4</sup> *Bossie v. State*, 488 A.2d 477 (Me. 1985).

parole could not be applied to a person required to serve a full life sentence, because it effectively commuted that person's sentence.<sup>5</sup>

It is not clear whether any statute expunging or permanently deleting criminal history record information would be held unconstitutional. It is also unclear whether it's possible to be done through statute alone or if it would require a constitutional amendment.

#### ***D. Criminal History Record Information and the State Bureau of Identification***

The Committee's primary focus during this interim's three meetings was how criminal record history record information is maintained and made available to the public, including what information is confidential, and what might be recommended for change especially with respect to convictions for marijuana possession and cultivation, as required in Section 7 of the Resolve. The State Bureau of Identification ("SBI"), housed within the Department of Public Safety, Bureau of State Police,<sup>6</sup> functions as the central repository of criminal history record information and tracks a person's progress through the justice system. SBI is responsible for maintaining criminal history record information and disseminating that information to law enforcement agencies, the Federal Bureau of Investigation, and the public.

##### *The Criminal History Record Information Act and "public" vs. "confidential" information*

The Committee had a presentation from Committee members Laura Yustak, representing the Office of the Attorney General, and Amy McCollett from SBI to provide an overview of the Criminal History Record Information Act, explain the differences between "public" and "confidential" criminal history record information, and describe how criminal history information is maintained and used within Maine's criminal justice system. Slides from the presentation are available at Appendix D.

The Criminal History Record Information Act, Title 16, chapter 7 of the Maine Revised Statutes,<sup>7</sup> concerns the dissemination of criminal history record information by Maine criminal justice agencies. Criminal history record information is defined, generally, as a summary of information regarding an identifiable person's passage of incident through the criminal justice system. This summary begins typically when a prosecutor decides to move forward with criminal charges. This information includes only criminal history, and does not include police reports, civil violations, protection orders, warrants, bail conditions, mental health orders, and weapons restrictions orders. The information is tracked using the SBI's arrest tracking system, which assigns a unique number to an event that follows that event from start to finish.

Criminal history is placed into two categories, "public" and "confidential." Confidential criminal history record information includes, for example, information for which a grand jury chose not to indict, information disclosing that a prosecutor elected not to initiate or approve criminal proceedings, and information on a case that a law enforcement agency elected not to refer to the prosecutor. Pardons and the relevant portions of conditional pardons are also treated

<sup>5</sup> *Gilbert v. State*, 505 A.2d 1326 (Me. 1986).

<sup>6</sup> <https://www.maine.gov/dps/msp/about/sbi>

<sup>7</sup> 16 M.R.S.A. §§ 701 to 10 (appended in Appendix E).

as confidential criminal history record information. Confidential criminal history information also includes records that have been sealed pursuant to a motion to seal criminal history record information, discussed in further detail below. Confidential information is not available to the public and can only be disseminated to authorized people and organizations.

Public criminal history information is all information that is not otherwise deemed confidential. When a person who is not authorized to receive confidential criminal history information contacts SBI to request a person's criminal record, they receive that person's public criminal history record information, but no information that is, or has been made, confidential. Public information includes pending charges that are still active for a 12-month period from date of arrest, convictions, certain dismissals that are part of a plea agreement, and sentences. Public information is maintained and made available when a person's criminal history is requested as a part of an employment application, license application, protection from abuse order, yellow flag indication, rental application, or other request from the general public for self-use.

#### *Process for sealing criminal history record information*

In certain circumstances, a person may petition the court to have their criminal history record information sealed or made confidential. This process is established in Title 15, chapter 310-A of the Maine Revised Statutes.<sup>8</sup> It was enacted by the Legislature in 2022 in response to a recommendation from the prior Criminal Records Review Committee. Prior to the enactment of chapter 310-A, a similar process existed for four years from 2015-2019. That law, which was repealed pursuant to a sunset provision included in the law, applied only to certain individuals with certain criminal convictions who had been 18-21 years of age at the time they committed the crime.<sup>9</sup>

Chapter 310-A allows a person to petition the court to seal their criminal record history if the following prerequisites are met: (1) the person has been convicted of an "eligible criminal conviction," which is any Class E crime except for those related to sexual assault; (2) four years have passed since the person fully satisfied each of the sentencing alternatives for the eligible criminal conviction; (3) the person has not been convicted of another crime in Maine or had a criminal charge dismissed as the result of a deferred disposition; (4) the person has not been convicted of a crime in another jurisdiction; (5) the person does not have any presently pending criminal charges; and (6) the person was aged 18 through 27 at the time they committed the crime. The law was further amended in 2023 to allow a person convicted of engaging in prostitution under Title 17-A, former section 853-A, to file a petition to have their criminal history record information sealed after one year has passed since all sentencing alternatives were satisfied and the person has not been convicted of a crime involving substantially similar conduct.

To file the petition, the person must complete the Maine Judicial Branch's form CR-218, motion to seal criminal history, included in this report in Appendix G, and submit it to the court of the underlying jurisdiction. The court then schedules the motion for a hearing. At the hearing, the applicant may submit testimony, affidavits, and reliable hearsay and also may be represented by

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<sup>8</sup> 15 M.R.S.A. §§ 2261-69 (appended in Appendix F).

<sup>9</sup> See the 2021 Criminal Records Review Committee report for statistics on the number of petitions filed 2015-2019.

counsel. The applicant carries the burden of establishing, by a preponderance of the evidence, that they have met the requirements in the law. If the court determines that the applicant has met the burden, the court submits a written order to seal that person's criminal history record information for the eligible criminal conviction that was the subject of the motion, and notifies the SBI to have the record made "confidential." If the court denies the motion, it must support that denial with written findings of fact supporting its decision.

Even after a person has had a conviction made confidential, if that person is convicted of another crime in Maine or another jurisdiction, the criminal history record information related to the conviction is unsealed. In this instance, the person must promptly file a written notice in the underlying criminal proceeding of the person's disqualification from eligibility. If a person fails to file written notice and the court becomes aware of a new criminal conviction, the court must offer the person an opportunity to request a hearing to contest the facts of the new conviction. If the person chooses to request a hearing, the person must show by clear and convincing evidence that they have not been convicted of another crime. If the person fails to request a hearing, the court must submit an order unsealing the original conviction and inform SBI to unseal the record.

Committee member Amanda Doherty representing the Maine Judicial Branch, provided data on the numbers of petitions filed since the current statute went into effect on August 8, 2022. As of Friday, November 17, 2023, there had been ten motions filed statewide—six of them were granted, two were denied, and two were pending. Members of the Committee expressed concern that this number is extremely low, given the length of time the statute has been in effect and the benefits to a person to having the record be made confidential. There was a significant amount of Committee discussion concerning ways to expand eligibility for the record sealing process and ways to increase outreach to inform people of their ability to petition to have their record sealed.

The Committee discussed options for expanding eligibility under the petition process. Suggestions included: (1) removing the age restriction on when the crime was committed; (2) expanding the list of eligible crimes, or categorizing certain crimes rather than designating them by their class; and (3) expanding to all eligible marijuana convictions for activities that are now legal. Regarding the third suggestion, the Committee spent a significant amount of time discussing sealing criminal records for marijuana. Citizen initiated referenda legalized cannabis for medical use in 2016.<sup>10</sup> There appears to be some consensus among members that at least some prior marijuana-related convictions should be sealed.

When determining which crimes should be eligible under the expanded process, the Committee focused primarily on convictions concerning the cultivation and possession of marijuana. Because Maine has legalized medical and adult recreational use of cannabis, members speaking about the issue generally agreed that, if the State were to institute an automated process for sealing criminal history record information, persons with prior criminal convictions involving marijuana should be made eligible to have their records sealed. Members also generally agreed that were the list of current eligible criminal convictions expanded, it should include convictions for act involving marijuana. Committee member Amy McCollett from SBI cautioned that

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<sup>10</sup> See 22 M.R.S.A. §§ 2421 to 30-N (Maine Medical Use of Cannabis Act); 28-B M.R.S.A. §§ 101 to 1102 (Cannabis Legalization Act; 28-A M.R.S.A. §§ 1501 to 04 (Personal Adult Use of Cannabis Products; Home Cultivation of Cannabis for Personal Adult Use).



determining exactly which criminal histories contained convictions for marijuana related crimes would be challenging. In the Maine Criminal Code, drugs are divided into categories called schedules, designated as schedules W, X, Y, Z. In most cases these schedules are used to identify the level of the penalty of crime for which a person is charged or convicted, rather than identifying the drug itself. Marijuana, a schedule Z drug, is logged similarly in SBI files. Thus, there is no easy way to determine whether a conviction involving a schedule Z drug was a conviction for a marijuana related offense or another schedule Z drug. During the course of Committee meetings, SBI identified in their records 2,610 convictions listing marijuana, and more than 8,000 listing schedule Z drug only. In addition, Committee members noted that, while medical and adult use recreational cannabis are now legal in Maine, there are still crimes involving marijuana on the books, and thus not every conviction involving a schedule Z drug or marijuana in SBI records is for an act that is now legal.

#### ***E. Juvenile criminal history record information***

Committee members Jill Ward, professor and Director of the Center for Youth Policy at the University of Maine School of Law and Laura Yustak, representing Office of the Attorney General, provided a brief overview of the similarities and differences between criminal history record information for adults and criminal history record information for juveniles, referred to as “juvenile history record information.”<sup>11</sup> Slides from Jill Ward’s presentation are available in Appendix H.

Juvenile records are maintained by the Maine Judicial Branch. Similar to adult records, juvenile history record information is deemed either “open for public inspection” or “confidential.” For adult records, records are confidential if the records were sealed; all others are public. For juvenile records, however, confidentiality is based on the most serious crime petitioned. There are also distinctions based on the age of the juvenile at the date of the crime, with some differences for Class A crimes, and murder, felony murder and manslaughter records for juveniles under the age of 13 years being more likely to be confidential. In addition, juvenile records, including public records, may not be disseminated by the court electronically or in paper form unless authorized by statute or court order. Public juvenile records may be inspected by a member of the public only at the courthouse.

Like adult records, there is a petition process for sealing some juvenile crimes. The list of eligible crimes is broader than for adults. Juveniles adjudicated of a juvenile crime that, if committed by an adult would be considered murder, a Class A, Class B, or Class C crime, or operating under the influence, may petition the juvenile court that handled the case to seal their record if they meet certain conditions. The conditions for qualifying are: (1) that at least three years have passed since the person’s discharge from the disposition ordered for the juvenile crime; (2) the person has not been adjudicated as committing a juvenile crime or been convicted of committing a crime since the date of the disposition; and (3) there are no current adjudicatory proceedings pending for the juvenile. If these conditions are met, the juvenile court may grant the sealing petition unless the court finds that the general public’s right to information substantially outweighs the juvenile’s interest in privacy. Notice of the court’s order certifying

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<sup>11</sup> See 15 M.R.S.A. §§ 3308-C to 08-D.

its granting of the juvenile's petition is provided to the SBI. There is an appeals process if the court denies the juvenile's petition to seal the juvenile's criminal history record information. Unlike the adult system which is based on motions to seal criminal history record information, the juvenile system has a process for automatically sealing certain juvenile records. For Class D and Class E crimes (with the exception of operating under the influence) juvenile records may be sealed from public inspection once the juvenile has been discharged from the disposition imposed for the crime. The court, upon receipt of a notice of discharge, must enter an order sealing all of the juvenile's records from public inspection within five business days. Notice of discharge may be provided by the Department of Corrections if the juvenile's disposition involved placement in Department of Corrections custody; by the prosecuting attorney if the disposition included restitution, community service, or a restorative justice event; or by the juvenile or their attorney.

## *F. "Clean slate" laws*

### *Overview*

The Committee continued conversations that began with the 2021 Criminal Records Review Committee concerning "clean slate" laws and the prospects of instituting a process for automatically sealing certain criminal history record information, including the idea of "expungement" and removing the records altogether. It became clear that "expungement" may not have a single clear meaning and involve a complex analysis, and the Committee plans to spend time delving into policy and legal definitions and the intent behind those definitions in 2024. Further, as noted earlier, discussions around expungement also need to carefully account for separation of powers issues around gubernatorial pardon power and legislative authority.

A summary of clean slate laws in different states is provided in Appendix I. The summary focuses on the general policy considerations that are necessary when enacting this type of law, such as who becomes eligible for automatic sealing and when. Legislatures in other states have generally considered the following in establishing clean slate laws: (1) the types of crimes eligible for sealing or expungement; (2) whether a person is required to have satisfied all elements of their sentence in order to become eligible; (3) the length of time after conviction or completion of sentence a person must wait before they become eligible; and (4) whether a person can become disqualified due to post sealing or expungement acts, such as being convicted of a new crime.

In addition to determining grounds for eligibility, legislatures must also create a mechanism and process to actually seal or delete the records. In most states, this is done through an executive agency, and prosecutors are often provided the opportunity to contest automatic sealing or expungement on certain grounds. California, for example, requires its Department of Justice to review criminal records in statewide databases, and every month it grants relief to eligible persons and notifies the courts of the granting of that relief. Prosecutors in California may file a petition to prohibit automatic relief based on showing that such relief would pose a substantial threat to public safety. If filed, a hearing is scheduled to determine whether sealing or expungement should be granted. In addition, if denied automatic sealing, a person may still petition to have their record sealed. New York, on the other hand, puts the onus on its

**APPENDIX H**

**Presentation on Juvenile Case Records**

## Juvenile Case Records

15 M.R.S. § 3308

All records contained within an individual Juvenile Court case file, maintained by the Maine Judicial Branch. Such records may also contain Juvenile Intelligence & Investigative Record Information (JIIRI) and Juvenile History Record Information (JHRI).

## Accessibility of Juvenile Case Records

Records are either “open for public inspection” or “confidential.” Determination of whether Juvenile Case Records are “open for public inspection” or “confidential” will depend on the most serious juvenile crime petitioned.

Juvenile Case Records (regardless of classification) **may never be disseminated by the court electronically or in paper form** except as authorized by statute or court order.

See 15 M.R.S. §§ 3308-C(1) and (2).

### *Policy Rationale:*

This statute is designed to balance juvenile and victim privacy and the rehabilitative purposes of the Juvenile Code with public safety concerns and the public's right to know.

## Classification of Juvenile Case Records

Charge Petitioned	Juveniles age 13 or older (at date of juvenile crime)	Juveniles under age 13 (at date of juvenile crime)
<b>Murder</b> <b>Felony Murder</b> <b>Manslaughter</b>	Always OPEN to the public	Presumptively CONFIDENTIAL – may be OPEN to the public by court order
<b>Class A crimes</b>	Presumptively OPEN – may be CONFIDENTIAL by court order	Presumptively CONFIDENTIAL – may be OPEN to the public by court order
<b>Class B and C crimes</b>	Presumptively CONFIDENTIAL – may be OPEN to the public by court order	Presumptively CONFIDENTIAL - may be OPEN to the public by court order
<b>Class D and E crimes</b>	Always CONFIDENTIAL	Always CONFIDENTIAL
<b>Civil Violations</b>	Always CONFIDENTIAL	Always CONFIDENTIAL
<b>Competence determination pending (regardless of charge)</b>	Always CONFIDENTIAL	Always CONFIDENTIAL
<b>Bind-over hearings</b>	Always OPEN to the public	Always OPEN to the public

## “Public” Juvenile Case Records

Juvenile petitions that are deemed “open to public inspection” may be **inspected** by any member of the public at the courthouse.

**See 15 M.R.S. § 3308-C (1)**

The public may also attend any Juvenile Court hearing on a petition that is open to public inspection unless Juvenile Court proceedings have been suspended pending a competency determination (see slides 6-10).

**See 15 M.R.S. § 3308-D (2)**

If the court is required to make a determination on the accessibility of juvenile case records, the Juvenile Court shall:

- Enter an order specifying which juvenile case records may be inspected, disclosed, or disseminated; and
- Identify the individual or agency granted access to those juvenile case records.

**See 15 M.R.S. § 3308-C (7)**

## Requests to Open or Close Juvenile Case Records

Whenever a written request is made to prohibit or allow the public to inspect a juvenile petition, **the court must determine whether “the general public’s right to information substantially outweighs the juvenile’s interest in privacy or the alleged victim’s interests in privacy.”**

**See 15 M.R.S. § 3308-C (2)(B)**

In order to make this determination, the Court must hold a hearing and must consider the following factors:

- The purposes of the Maine Juvenile Code;
- The juvenile’s interest in privacy;
- The alleged victim’s interest in privacy;
- The nature of the juvenile crime alleged, as outlined in the bind-over statute 15 M.R.S. § 3101 (4)(D);
- Characteristics of the juvenile, as outlined in the bind-over statute 15 M.R.S. § 3101 (4)(D); and
- Public safety concerns, as outlined in the bind-over statute 15 M.R.S. § 3101 (4)(D).

**See 15 M.R.S. § 3308-C (3)**



## Sealing of Juvenile Case Records

15 M.R.S. § 3308-C (10)

Juveniles adjudicated of a juvenile crime that would constitute murder or a Class A, B, or C crime if the juvenile adjudicated were an adult or operating under the influence can petition the Juvenile Court that handled the case to seal the juvenile's record if they meet certain conditions.

The Court must automatically seal records of all other crimes once the juvenile is discharged from disposition.

## Petition for Juvenile Case Record Sealing Requirements

A person adjudicated as having committed a juvenile crime that, if the juvenile were an adult, would constitute murder or a Class A, B or C crime or operating under the influence as defined in 29-A M.R.S. § 2411, may petition the Juvenile Court to seal from public inspection all juvenile case records pertaining to the crime and its disposition and any prior juvenile case records and their dispositions if:

1. At least three years have passed since the person's discharge from the disposition ordered for the juvenile crime;
2. Since the date of the disposition, the person has not been adjudicated as having committed a juvenile crime and has not been convicted of committing a crime; and
3. There are no current adjudicatory proceedings pending for a juvenile or other crime.

**See 15 M.R.S. § 3308-C (10)(A)**

If the requirements are satisfied, the Juvenile Court *may* grant the petition *unless* the court finds that the general public's right to information substantially outweighs the juvenile's interest in privacy.

The juvenile has a right to appeal the Court's denial of the juvenile's petition to seal as provided in chapter 509. 15 M.R.S. §§ 3401-3405.

**See 15 M.R.S. § 3308-C (10)(B)**

## Automatic Sealing of Juvenile Case Records\*

At the time a person adjudicated as having committed a juvenile crime (other than a crime that, were a juvenile were an adult, would constitute murder or a Class A, B or C crime or operating under the influence) is finally discharged from the disposition imposed for that juvenile crime, the court, upon receipt of appropriate **notice of the discharge** shall, within five business days, enter an order sealing from public inspection all records pertaining to the juvenile crime and its disposition.

**See 15 M.R.S. § 3308-C (10)(C)**

*\*This section takes effect on January 1, 2022.*

# Notice For Automatic Sealing of Juvenile Case Records

To automatically seal a juvenile case record, appropriate notice that the juvenile is discharged from the disposition **must** be provided to the Court:

- By the Department of Corrections if the juvenile's disposition involved either commitment to custody of the Department of Corrections or a juvenile correction facility for less than 30 days or any suspended disposition with a period of probation.
- By the Office of the prosecuting attorney if disposition included restitution, community service, or a restorative justice event and the Court ordered that proof of completion of the obligation be so provided.

Appropriate notice **may** be provided to the Court by the juvenile or the juvenile's attorney, who shall serve a copy of the notice on the office of the prosecuting attorney before the court may enter the order sealing the juvenile case record.

In juvenile cases adjudicated after January 1, 2000, but before January 1, 2022, the Juvenile Court may grant the request of the juvenile or the juvenile's attorney for automatic sealing of all juvenile case records pertaining to the juvenile crime and its disposition when notice is provided to the court and the prosecuting attorney pursuant to this subparagraph.

**See 15 M.R.S. § 3308-C (10)(C)**

## Access to Sealed Juvenile Case Records

If the court orders the sealing of juvenile case records, only the following persons have access to the sealed records:

- The courts and criminal justice agencies; and
- The person whose juvenile case records are sealed or that person's designee.

**See 15 M.R.S. § 3308-C (10)(D)**

Notice of the court's order certifying its granting of the juvenile's petition to seal juvenile case records must be provided to:

- The Department of Public Safety; and
- The State Bureau of Identification.

The State Bureau of Identification or the appropriate agency upon receipt of the order shall promptly update its records relating to each of the juvenile adjudications included in the order.

**See 15 M.R.S. § 3308-C (10)(E)**

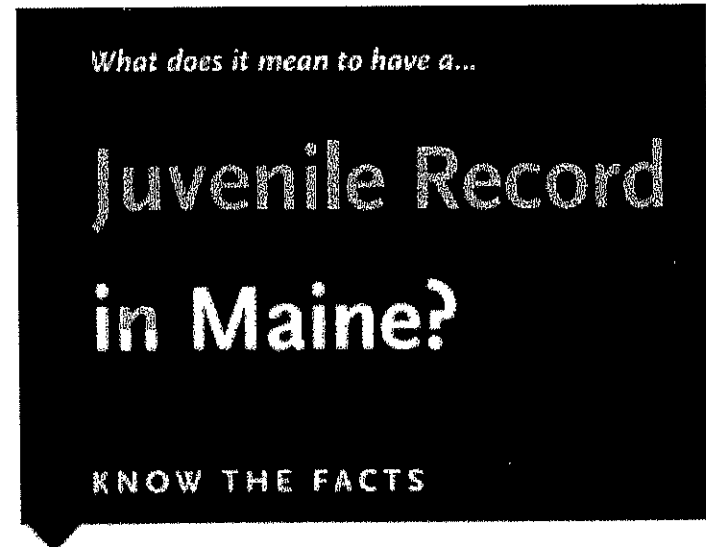
## Response to Inquiries after a Juvenile Case Record is Sealed

With the exception of inquiries from the Courts and criminal justice agencies, a person whose juvenile case records are sealed may respond to inquiries regarding their juvenile crimes as if the juvenile crimes had never occurred, without being subject to any sanctions.

**See M.R.S. § 3308-C (10)(F)**

## Information and Resources on Juvenile Records

- **Juvenile Record Information Brochure**
  - Updated in January 2022
- **2021-2022 Changes to the Maine Juvenile Code**
  - [Plenary Presentation](#) (October 2021)
  - [Slide Deck](#) (December 2021)
  - Download at:  
<https://mainelaw.maine.edu/academics/clinics-and-centers/maine-center-juvenile-policy-law/>
- **Youth Justice Clinic Templates**
  - [Petition to Seal Juvenile Records](#)
  - [Order to Seal Juvenile Records](#)
  - Download at:  
<https://mainelaw.maine.edu/academics/clinics-and-centers/clac/juvenile-justice/>



Download “Know the Facts: What does it mean to have a Juvenile Record in Maine?” at:  
<https://mainelaw.maine.edu/academics/clinics-and-centers/maine-center-juvenile-policy-law/>

