

## **LEGISLATIVE COUNCIL POLICY ON CONFIDENTIALITY**

Maine's Freedom of Access Law (1 MRSA §401 et seq.), requires information defined under the law as "public records" to be open to public inspection and copying. Among other exceptions, however, the law provides an exception to the disclosure requirement for public records for the following legislative documents:

Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over (1 MRSA, §402, sub-§3, ¶C).

While the Legislative Council supports public access to information concerning the legislative process, the Legislative Council must balance that access with the need to protect certain oral and written communications that, if disclosed, would hinder the legislative process. The Legislative Council has, therefore, adopted the following policies and procedures to govern disclosure of records that are excepted from the definition of "public records", information contained in those records and disclosure of certain oral communications.

### **1. Policies and Procedures**

Confidentiality is a responsibility shared by both legislators and legislative employees. Legislative employees must treat the following documents and communications as privileged communications and, therefore, confidential unless the Legislator or other authorized person has given express permission to do otherwise. Legislative employees shall exercise diligence in protecting the confidentiality of these documents and communications, which includes taking appropriate steps to reasonably assure the security of these materials. Confidential information may be shared among other nonpartisan legislative employees when necessary to carry out legislative functions, in accordance with procedures established by the executive director.

### **2. Bill Drafts and Committee Reports and Amendments**

Pursuant to 1 MRSA, §402 sub-§3, ¶C, legislative papers, reports, drafts and interoffice and intraoffice memoranda that relate directly to a specific request for drafting of a bill, order or amendment are not public records during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over and, therefore, are not subject to public disclosure during the legislative session(s).

Only the sponsor, committee or other requesting entity permitted by law or rule to file legislation may request that a nonpartisan legislative employee prepare or revise any draft of a bill, order or amendment. During the course of their legislative work, nonpartisan legislative employees may seek necessary drafting-related information of the requestor, the requestor's designee, or other knowledgeable persons without divulging the specific request.

Nonpartisan legislative employees may release drafts of bills, orders, amendments, or other records, working papers and interoffice and intra-office memoranda only to the sponsor or requesting entity unless that person or entity specifically authorizes the release to other persons in person, in writing or orally.

Bill drafts, orders, amendments or other related information are no longer considered confidential once that information has been presented or distributed to a committee in a public hearing or work session or printed and distributed to the House or the Senate for reference or other action.

### 3. Requests for Assistance or Information

Under Legislative Council policy, a legislator's request for assistance, advice, or information is regarded as confidential. No information concerning these requests may be divulged by nonpartisan legislative employees unless the Legislator or other authorized requestor specifically authorizes release to another person in writing or orally. During the course of their legislative work, nonpartisan legislative employees may seek necessary information of the requestor, the requestor's designee, or other knowledgeable persons without divulging the specific request.

### 4. Release of Certain Information Authorized

Following the cloture date for submission of bill requests, Legislative Council offices shall make public the titles of bills, names of primary sponsors and the policy area to which the bills may relate, at the direction of the Legislative Council.

Upon the specific request of a presiding officer, the Secretary of the Senate or the Clerk of the House, the executive director or office director shall release to the presiding officer information on the number and status of bills, amendments and orders not yet released, as requested by the presiding officer. Prior to the first regular session of the 124th Legislature and notwithstanding the confidentiality provisions, each Leader, the Secretary of the Senate and the Clerk of the House only must be given sufficient access to the amendment tracking system for the limited purpose of generating summary reports showing the number of unreleased floor amendments filed by legislators that relate to impending action on bills in the House and the Senate, their House or Senate designation and the bills to which they relate. The summary reports must exclude any floor amendment for which the sponsor has indicated to the Revisor of Statutes that is to remain confidential until the sponsor specifically authorizes its release. Furthermore, the summary reports must exclude amendments relating to bills for which the total number of unreleased floor amendments is less than five. All information provided under this paragraph must be aggregated and reported in a manner that precludes disclosure of the sponsor, drafter, the date requested or drafted or any substantive aspects of a bill, amendment or order.

Legislative employees should consult with their office director or the executive director for guidance if they have any questions regarding the application or implementation of this policy.

Adopted September 1, 2011.