

RIGHT TO KNOW ADVISORY COMMITTEE

PROPOSED AGENDA

July 24, 2013

9:00 a.m.

Room 438, State House, Augusta

Convene

1. Welcome and Introductions
2. Election of Chair (1 MRSA § 411, sub-§4)
3. Public Access Ombudsman, Brenda Kielty – update
4. Summary of First Regular Session, 126th Legislature’s FOA actions in 2013
 - A. RTK AC recommendations
 - LD 217, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Access to Records Relating to Public-private Partnerships
 - LD 258, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions
 - LD 420, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies
 - B. LD 1493, An Act To Revise the Laws Concerning Criminal History Record Information and Intelligence and Investigative Information, PL 2013, c. 267
 - C. Enacted amendments to FOAA, Ombudsman statute (LD 104, LD 1216, LD 1511)
 - D. Other public records changes
 - Enacted (LD 345, LD 576, LD 619, LD 973)
 - Not enacted (LD 19, LD 135, LD 495, LD 684, LD 1118)
 - E. Proposed public records exceptions reviewed by Judiciary Committee
5. Existing exceptions review process
 - A. Title 22, section 8754, reporting of sentinel events, tabled in 2012
 - B. Titles 26 – 39-A, recommendations due January 2014
6. Prior issues
 - A. Encryption of emergency communications – see letter from Maine Criminal Justice Academy
 - B. Confidentiality of email addresses (see LD 104, above)
7. Law School Externship – update
8. Discussion: topics and projects for 2013
9. Subcommittees: chairs, members, duties
10. Scheduling future meetings, subcommittee meetings
11. Other

Adjourn

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
Annotations updated 9/2012

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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TITLE 1 GENERAL PROVISIONS

CHAPTER 13 PUBLIC RECORDS AND PROCEEDINGS

SUBCHAPTER 1 FREEDOM OF ACCESS

§ 400. Short title

This subchapter may be known and cited as "the Freedom of Access Act."

- New 2012

§401. Declaration of public policy; rules of construction

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

Declaration of public policy

- Reason for public proceedings is to aid in the people's business
- Actions be taken openly
- Records open
- Deliberations open
- Clandestine meetings on private property without notice not be used to defeat purposes

- Party alleging violation of FOA has burden of producing evidence that Act violated¹
- The Act's underlying purposes and policies favor disclosure²

This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter.

- New 2011

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

Liberally construe and apply to promote underlying purposes and policies

- Interpretation of the Freedom of Access laws is a matter of law that the Supreme Judicial Court reviews de novo³

§402. Definitions

1. Conditional approval. Approval of

¹ Chase et al. v. Town of Machiasport et al., 1998 ME 260, 721 A.2d 636.

² Bangor Historic Track, Inc. v. Department of Agriculture, 2003 ME 140, 837 A.2d 129.

³ Dow v. Caribou Chamber of Commerce and Industry, 2005 ME 113, 884 A.2d 667.

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
Annotations updated 9/2012

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
<p>an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.</p>		
<p>1-A. Legislative subcommittee. “Legislative subcommittee” means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.</p>	<p><i>Legislative subcommittee</i> must consist of at least 3 members and be appointed for the purpose of conducting legislative business on behalf of the committee</p>	
<p>2. Public proceedings. The term “public proceedings” as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:</p>	<p><i>Public proceeding:</i> transactions of any functions affecting any or all citizens of the State by listed entities</p>	
<p>A. The Legislature of Maine and its committees and subcommittees;</p>	<ul style="list-style-type: none"> • Legislature and committees and subcommittees 	
<p>B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Technical College System and any of its committees and subcommittees;</p>	<ul style="list-style-type: none"> • Any board or commission of any state agency or authority • Boards of trustees of state educational institutions and their committees and subcommittees 	<ul style="list-style-type: none"> • Hospital Administrative District subject to FOA laws⁴ • “Special civil service study committee” of municipality subject to FOA laws⁵ • Court considers four factors when evaluating whether an entity is subject to the Freedom of Access laws: (1) whether the entity is performing a governmental function; (2) whether the funding of an entity is governmental; (3) the extent of governmental involvement or control; and (4) whether the entity was created by private or legislative action⁶

⁴ Town of Burlington v. Hospital Administrative District No. 1 et al., 2001 ME 59, 769 A.2d 857.

⁵ Lewiston Daily Sun, Inc. v. City of Auburn, 544 A.2d 335 (ME 1988).

⁶ Dow v. Caribou Chamber of Commerce and Industry, 2005 ME 113, 884 A.2d 667.

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C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;	<ul style="list-style-type: none">• Board, commission agency, authority of political or administrative subdivision	<ul style="list-style-type: none">• Local school boards subject to FOA laws⁷• Indian tribes when acting in their municipal capacities are subject state laws affecting municipal governments, including FOA laws⁸• A tribal reservation was acting in its business capacity, rather than its municipal capacity when it entered into lease of tribal land with developer of liquefied natural gas facility. The tribe has more autonomy than a town in light of provisions of Act to Implement Maine Indian Claims Settlement.⁹
D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;	<ul style="list-style-type: none">• Full membership meetings of associations of political or administrative subdivisions	
E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees;	<ul style="list-style-type: none">• Maine Public Broadcasting Corporation	
F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order	<ul style="list-style-type: none">• Advisory/study commissions set up by Legislature or by Executive Order UNLESS the law, resolve or EO specifically exempts from FOA laws	

⁷ Marxsen v. Board of Directors, M.S.A.D. No. 5, 591 A.2d 867 (ME 1991).

⁸ Great Northern Paper, Inc. v. Penobscot Nation, 2001 ME 68, 770 A.2d 574, cert. denied 534 U.S. 1019.

⁹ Winifred B. French Corp. v. Pleasant Point Passamaquoddy Reservation, 2006 ME 53, 896 A.2d 950.

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<p>establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and</p> <p>G. The committee meetings, subcommittee meetings and full membership meetings of any association that:</p> <p>(1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and</p> <p>(2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.</p> <p>This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach.</p>	<ul style="list-style-type: none"> • Statewide interscholastic organizations that receive funding from public or private schools and are meeting in regard to interscholastic activities. • It does not apply to such meetings in which the subject is limited to personnel issues, allegations of interscholastic athletic rule violations, or student athlete or coach eligibility. 	
<p>3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:</p>	<p>Public records defined</p> <ul style="list-style-type: none"> • Written, printed, graphic, mechanical or electronic • In possession or custody of agency, official or association • Received or prepared for use in connection with the transaction of public or governmental business OR contains info relating to the transaction of public or 	<ul style="list-style-type: none"> • Corollary to FOA laws liberal construction is necessarily strict construction of any exceptions to public disclosure¹⁰ • The records of an uncompensated, advisory group created by State officials and acting without legislative mandate to review alleged improprieties are not public records. Courts look at the function the entity performs in evaluating whether an entity or

¹⁰ Guy Gannett Publishing Co. v. University of Maine et al., 555 A.2d 470 (ME 1989).

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	<p>governmental business</p> <ul style="list-style-type: none"> EXCEPTIONS: 	<p>individual, individually or collectively, qualifies as “an agency or public official.”¹¹</p>
<p>A. Records that have been designated confidential by statute;</p>	<ul style="list-style-type: none"> Designated confidential by statute (see other statutes) 	<ul style="list-style-type: none"> The plain language of the corporation statute does not provide that specific document is confidential, nor does the statute implicitly require salary information supplied to the Superintendent of Insurance to be confidential¹² The location of a municipal employee personnel record has no bearing on its protected status under statute (30-A MRSA §2702(1)(B)(5)).¹³
<p>B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding;</p>	<ul style="list-style-type: none"> Within scope of a privilege against discovery or use in civil or criminal trials 	<ul style="list-style-type: none"> Compensation records of hospital district’s management employees not “trade secrets”¹⁴ “Work product” Privilege against self-incrimination Record subject to a court-issued protective order¹⁵ Compensation records of insurer’s board of directors and senior management not “trade secrets”¹⁶
<p>C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and</p>	<ul style="list-style-type: none"> Legislative papers during the legislative session until signed and publicly distributed 	<ul style="list-style-type: none"> The attorney-client privilege does not protect communications in litigation between adverse

¹¹ Moore v. Abbott, 2008 ME 100, 952 A.2d 980.

¹² Medical Mutual Insurance Co. of Maine v. Bureau of Insurance, 2005 ME 12.

¹³ S. Portland Police Patrol Ass’n v. City of S. Portland, 2006 ME 55, 896 A.2d 960.

¹⁴ Town of Burlington v. Hospital Administrative District No. 1 et al., 2001 ME 59, 769 A.2d 857.

¹⁵ Bangor Publishing Co. v. Town of Bucksport, 682 A.2d 227 (ME 1996).

¹⁶ Medical Mutual Insurance Co. of Maine v. Bureau of Insurance, 2005 ME 12.

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<p>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;</p> <p>C-1. Information contained in a communication between a constituent and an elected official if the information:</p> <p>(1) Is of a personal nature, consisting of:</p> <p>(a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;</p> <p>(b) Credit or financial information;</p> <p>(c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;</p> <p>(d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or</p> <p>(e) An individual's social security number; or</p> <p>(2) Would be confidential if it were in the possession of another public agency or official;</p> <p>D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in</p>	<ul style="list-style-type: none"> • Working papers of legislators and staff for the session or sessions 	<p>parties on opposite sides of the bargaining table. The parties did not have a common interest merely because they are willing to negotiate a settlement.¹⁷</p> <ul style="list-style-type: none"> • New 2011
<p>D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in</p>	<ul style="list-style-type: none"> • Public employer labor negotiation materials 	

¹⁷ Citizens Communications Co. v. Attorney General, 2007 ME 114, 931 A.2d 503.

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<p>collective bargaining with its employees and their designated representatives;</p>		
<p>E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Technical College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B;</p>	<ul style="list-style-type: none">• Faculty and administrative records of state educational institutions, other than boards of trustees	
<p>F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;</p>	<ul style="list-style-type: none">• Otherwise confidential but in the hands of association	
<p>G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;</p>	<ul style="list-style-type: none">• Materials related to legislative positions or insurance in the hands of association of political or administrative subdivisions of the State	
<p>H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct;</p>	<ul style="list-style-type: none">• Medical records and reports of municipal rescue and emergency medical services, except available to law enforcement in criminal investigations	
<p>I. Juvenile records and reports of municipal fire departments regarding the</p>	<ul style="list-style-type: none">• Juvenile fire starter records	

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<p>investigation and family background of a juvenile fire setter;</p> <p>J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization;</p> <p>K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A;</p> <p>L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial</p>	<ul style="list-style-type: none"> • Advisory/study commission working papers • Personally identifying information concerning minors collected/maintained by municipality for recreational and nonmandatory educational services and programs IF ordinance adopted • Security plans, security procedures, risk assessments to prepare/prevent terrorism if expected to jeopardize physical safety of public personnel. Available to Legislature or municipal officials if further protect from disclosure 	<ul style="list-style-type: none"> • Sections of an independent report of a school employment controversy must be redacted if they touch upon the personal history, general character or conduct of an employee or an employee's immediate family (20-A MRSA §6101(2)(B)(5)).¹⁸

¹⁸ Cyr v. Madawaska School Dept., 2007 ME 26, 916 A.2d 967.

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<p>physical damage sufficient to disrupt the normal functioning of a critical infrastructure;</p>		
<p>M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure, systems and software. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;</p>	<ul style="list-style-type: none"> • Information technology infrastructure information 	<ul style="list-style-type: none"> • New 2012
<p>N. Social security numbers;</p>	<ul style="list-style-type: none"> • Social Security Numbers 	<ul style="list-style-type: none"> • Amended 2011 - see also new ¶R (was limited to SSNs in possession of IF&W)
<p>O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:</p> <p style="margin-left: 40px;">(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and</p> <p style="margin-left: 40px;">(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials;</p>	<ul style="list-style-type: none"> • Personal contact information for certain public employees 	
<p>P. Geographical information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner</p>	<ul style="list-style-type: none"> • Geographical information of recreational trails located on private land, unless landowner authorizes release 	

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<p>authorizes the release of the information;</p> <p>Q. Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials, the Department of Corrections or members of the State Board of Corrections under conditions that protect the information from further disclosure; <u>and</u></p> <p>R. Social security numbers in the possession of the Secretary of State; <u>and</u></p> <p>S. <u>E-mail addresses obtained by a political subdivision of the State for the sole purpose of disseminating noninteractive notifications, updates and cancellations that are issued from the political subdivision or its elected officers to an individual or individuals that request or regularly accept these noninteractive communications.</u></p> <p>3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:</p> <p>A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, <u>conviction data public criminal history record information, as defined in Title 16, section 703, subsection 8,</u> address of furlough and dates of furlough;</p> <p>B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or</p>	<ul style="list-style-type: none"> • Department of Corrections or county jail security plans, staffing plans, security procedures or risk assessments prepared for emergency events if the records would endanger one's life or safety. Information in these security plans and procedures can be disclosed to state and county officials if necessary to carry out duties. 	<ul style="list-style-type: none"> • New 2011 - see ¶N • Amended 2013 • New 2013
<p>• More public records:</p>	<ul style="list-style-type: none"> • Public 	<ul style="list-style-type: none"> • Amended 2013
<ul style="list-style-type: none"> • Public 	<ul style="list-style-type: none"> • Public 	<ul style="list-style-type: none"> • Amended 2013

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<p>parolee's identity, conviction data public criminal history record information, as defined in Title 16, section 703, subsection 8, address of residence and dates of supervision; and</p> <p>C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, conviction data public criminal history record information, as defined in Title 16, section 703, subsection 8, and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information.</p> <p>4. Public records of interscholastic athletic organizations. Any records or minutes of meetings under subsection 2, paragraph G are public records.</p> <p>5. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.</p> <p>6. Reasonable office hours. "Reasonable office hours" includes all regular office hours of an agency or official.</p> <p>§402-A. Public records defined (REPEALED)</p> <p>§403. Meetings to be open to public; record of meetings</p> <p>1. Proceedings open to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.</p> <p>2. Record of public proceedings. Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceeding and must be open to public</p>	<p>• Not public: Prisoner's, adult probationer's or parolee's info when Commissioner of Corrections determines detrimental to welfare of a client to disclose</p> <p>(now part of §402)</p> <p>Public proceedings open to public unless</p> <ul style="list-style-type: none"> • Otherwise provided by statute • Authorized executive session pursuant to §405 <p>Required record/minutes open to public inspection</p>	<ul style="list-style-type: none"> • Amended 2013 • New 2012 • New 2011

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<p>inspection. At a minimum, the record must include:</p> <p>A. The date, time and place of the public proceeding;</p> <p>B. The members of the body holding the public proceeding recorded as either present or absent; and</p> <p>C. All motions and votes taken, by individual member, if there is a roll call.</p>		
<p>3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.</p>		<ul style="list-style-type: none">• New 2011
<p>4. Maintenance of record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.</p>		<ul style="list-style-type: none">• New 2011
<p>5. Validity of action. The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.</p>		<ul style="list-style-type: none">• New 2011
<p>6. Advisory bodies exempt from record requirements. Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.</p>		<ul style="list-style-type: none">• New 2011
<p>§404. Recorded or live broadcasts authorized</p>		
<p>In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The body or agency holding the public proceedings may make reasonable rules and regulations governing these</p>	<p>Writing, taping, filming, live broadcasts authorized if does not interfere with orderly conduct of proceedings</p>	<ul style="list-style-type: none">• Unemployment Insurance Commission proceedings not open to the public so no right to independently record proceeding¹⁹

¹⁹ Martin v. Unemployment Insurance Commission, 1998 ME 271, 723 A.2d 412.

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<p>activities, so long as these rules or regulations do not defeat the purpose of this subchapter.</p>		
<p>§404-A. Decisions (REPEALED)</p>	(see now §407)	
<p>§405. Executive sessions</p> <p>Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions.</p>	<p>Executive sessions may be held subject to the following:</p>	
<p>1. Not to defeat purposes of subchapter. These sessions may not be used to defeat the purposes of this subchapter as stated in section 401.</p>	<ul style="list-style-type: none"> • Not to defeat purposes of FOA 	
<p>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 executive session.</p>	<ul style="list-style-type: none"> • Not to finally approve an ordinance, order, rule, resolution, regulation, contract, appointment or other official action 	<ul style="list-style-type: none"> • Employee whose contract was not renewed by school committee was not entitled to relief on ground that committee discussed the nonrenewal in executive sessions where the vote to refuse to extend or renew the contract was made in public meeting attended by employee and her counsel²⁰
<p>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.</p>	<ul style="list-style-type: none"> • Must have 3/5s of the vote of the members present and voting 	
<p>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</p>	<ul style="list-style-type: none"> • The precise nature of the business to be conducted in executive session must be part of the motion 	<ul style="list-style-type: none"> • Record clearly established that Board of Selectmen, before going into executive session to discuss pending litigation, stated that the session was for purposes of receiving from the town's attorney updated status on that litigation, thereby complying with law²¹

²⁰ Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

²¹ Vella v. Town of Camden, 677 A.2d 1051 (ME 1996).

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executive session exists and the failure to cite the valid authority was inadvertent.		
<p>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.</p>	<ul style="list-style-type: none"> Motions not contained in the motion are prohibited 	
<p>6. Permitted deliberation. Deliberations on only the following matters may be conducted during an executive session:</p> <p>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 person or persons subject to the following conditions:</p> <p>(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy would be violated;</p> <p>(2) Any person charged or investigated shall be permitted to be present at an executive session if he so desires;</p> <p>(3) Any person charged or</p>	<p>Only the following deliberations may be conducted during an executive session:</p> <ul style="list-style-type: none"> Discussion of employment issues, subject to the following limitations Only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy The individual can choose to be present If the individual 	<ul style="list-style-type: none"> Public body charged with violating FOA laws during executive session has burden of proving that its actions during executive session complied with FOA laws²² Any statutory exceptions to the requirement that deliberations be public must be narrowly construed²³ The time for a "reasonable" expectation of damage to the reputation of an employee to be determined is before the executive session is conducted.²⁴

²² Underwood v. City of Presque Isle et al., 715 A.2d 148 (ME 1998).

²³ Underwood v. City of Presque Isle, 715 A.2d 148 (ME 1998).

²⁴ Blethen Maine Newspapers, Inc. v. Portland School Committee, 2008 Me 69, 947 A.2d 479.

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<p>investigated may request in writing that the investigation or hearing of charges or complaints against him be conducted in open session. A request, if made to the agency, must be honored; and</p> <p>(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.</p>	<p>requests in writing that the proceeding be open to the public, the agency must open the proceeding; and</p> <ul style="list-style-type: none"> • The person filing the complaint may choose to be present 	
<p>This paragraph does not apply to discussion of a budget or budget proposal;</p>	<ul style="list-style-type: none"> • This paragraph cannot be used to discuss budget issues in executive session. 	<ul style="list-style-type: none"> • Questions asked of employees about fiscal matters during executive session do not amount to discussions of the budget or budget deliberations.²⁵
<p>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:</p> <p>(1) The student and legal counsel and, if the student be 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.</p>	<p>A school board's discussion of the suspension or expulsion of a student, with the following restriction</p> <ul style="list-style-type: none"> • The student, parents/guardians, legal counsel may choose to be present 	
<p>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;</p>	<p>Discussion of property issues that would prejudice the competitive or bargaining position of the public body</p>	
<p>D. Discussion of labor contracts and</p>	<p>Negotiations between a public</p>	

²⁵ Blethen Maine Newspapers, Inc. v. Portland School Committee, 2008 Me 69, 947 A.2d 479.

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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;	employer and public employees	
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.	Consultations between a public body and its attorney concerning pending or contemplated litigation, matters that are confidential under the Maine Code of Professional Responsibility, or matters that would clearly place the public body at a substantial disadvantage	<ul style="list-style-type: none"> The mere presence of an attorney cannot be used to circumvent the open meeting requirement by invocation of attorney consultation exception²⁶
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;	Discussion of records made confidential by statute	
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	Discussions of professional licensing decisions	
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.	Discussions with municipal officers and code enforcement officer about enforcement of land use laws and municipal ordinances when the CEO is representing the municipality in court. Similar to attorney-client provision in paragraph E	

²⁶ Underwood v. City of Presque Isle, 715 A.2d 148 (ME 1998).

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	without the requirement that CEO be an attorney	
<p>§405-A. Recorded or live broadcasts authorized (REPEALED)</p>	(see now §404)	
<p>§405-B. Appeals (REPEALED)</p>	(see now §409)	
<p>§ 405-C. Appeals from actions (REPEALED)</p>	(see now §409)	
<p>§406. Public notice</p> <p>Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.</p>	<ul style="list-style-type: none"> • Notice required if agency or body consists of at least 3 persons • Timing: ample time to allow public attendance • Manner: reasonably calculated to notify the general public in the jurisdiction served by the public body • Emergency meeting: notify representatives of local media whenever practical. By same or faster means 	<ul style="list-style-type: none"> • One day notice of planning board's additional meeting sufficient under the circumstances²⁷
<p>§407. Decisions</p> <p>1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to apprise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by</p>	<ul style="list-style-type: none"> • Written record of conditional approval or denial <ul style="list-style-type: none"> • Reason/reasons • Findings of fact 	<ul style="list-style-type: none"> • FOA laws require agency to set out its findings with a level of specificity that is sufficient to apprise the applicant and any interested member of the public of the basis of the decision²⁸ • When local agency

²⁷ Crispin et al. v. Town of Scarborough et al., 1999 ME 112, 736 A.2d 241.

²⁸ Yusem v. Town of Raymond, 2001 ME 61, 769 A.2d 865.

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<p>the agency and made available to any interested member of the public who may wish to review it.</p>		<p>conditionally approves or denies a permit, the agency must make findings of fact adequate to indicate the basis for the decision and to allow meaningful judicial review²⁹</p>
<p>2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.</p>	<ul style="list-style-type: none"> • Written record of dismissal or refusal to renew a contract of official, employee, appointee <ul style="list-style-type: none"> • Reason/reasons • Findings of fact 	<ul style="list-style-type: none"> • The Personnel Committee of a municipality is not required to vote as to each individual reason for termination of an employee as long as the decision included specific findings of fact and conclusions.³⁰
<p>§408. Public records available for public inspection and copying</p> <p style="text-align: center;">(REPEALED)</p>	<p>(See now 408-A)</p>	
<p>§ 408-A. Public records available for inspection and copying</p> <p>Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record.</p> <p>1. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee</p>	<p>New 2012, replaces § 408</p> <ul style="list-style-type: none"> • Every person • Right to inspect and copy • Within a reasonable period of time after request • Inspection during reasonable office hours. • No fee for inspection unless record converted or compiled 	<ul style="list-style-type: none"> • When person requests information that falls within FOA laws' disclosure requirements, and governmental entity knows that it has particular records containing that information, entity must at least inform requesting party that material is available and that the requesting party may come in and "inspect and copy"

²⁹ Carroll v. Town of Rockport, 2003 ME 135, 837 A.2d 148.

³⁰ Quintal v. City of Hallowell, 2008 ME 155, 956 A.2d 88.

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as provided in subsection 8.		the information sought ³¹
<p>2. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 8.</p> <p>A. A request need not be made in person or in writing.</p> <p>B. The agency or official shall mail the copy upon request.</p> <p>3. Acknowledgment; clarification; time estimate; cost estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within a reasonable period of time, <u>5 working days of receiving the request</u> and may request clarification concerning which public record or public records are being requested. <u>The</u> <u>Within a reasonable time of receiving the request</u> <u>the</u> agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request, <u>as well as a cost estimate as provided in subsection 9.</u> The agency or official shall make a good faith effort to fully respond to the request within the estimated time.</p>	<ul style="list-style-type: none"> • During reasonable office hours • Cost of copying paid by requestor (see sub-§8) • Copy request need not be in person • Mail copies upon request • Must acknowledge request for record within 5 working days of receiving the request • Estimate of time to comply with request and cost to be provided with a reasonable time 	<ul style="list-style-type: none"> • Amended 2013
<p>4. Refusals; denials. If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide written notice of the denial, stating the reason for the denial, within 5 working days of <u>the receipt of the request for inspection or copying.</u> <u>Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.</u></p>	<ul style="list-style-type: none"> • Written notice of request denial within 5 working days of request • Failure to comply is subject to appeal under section 409 	<ul style="list-style-type: none"> • Amended 2013
<p>5. Schedule. Inspection, conversion pursuant to subsection 7 and copying of a public record subject to a request under this section may</p>	<ul style="list-style-type: none"> • May schedule compliance with record request so not to delay 	

³¹ Bangor Publishing Co. v. City of Bangor, 544 A.2d 733 (ME 1988).

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<p>be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody or control of the public record requested. If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.</p>	<p>or inconvenience the agency's or official's regular activities</p>	
<p>6. No requirement to create new record. An agency or official is not required to create a record that does not exist.</p>	<ul style="list-style-type: none"> No requirement to create a record 	
<p>7. Electronically stored public records. An agency or official having custody or control of a public record subject to a request under this section shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.</p>	<ul style="list-style-type: none"> State must provide access to electronic record as printed a document or in the medium it is stored at discretion of the requestor unless it would result in the disclosure of confidential information 	
<p>A. If in order to provide access to an electronically stored public record the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the agency or official may charge a fee to cover the cost of conversion as provided in subsection 8.</p>		
<p>B. This subsection does not require an agency or official to provide a requester with access to a computer terminal.</p>	<ul style="list-style-type: none"> Does not require agency or official to provide access to computer terminal 	
<p>8. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.</p>		

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<p>A. The agency or official may charge a reasonable fee to cover the cost of copying.</p>	<ul style="list-style-type: none"> • May charge a reasonable copying fee 	
<p>B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.</p>	<ul style="list-style-type: none"> • May charge for actual conversion costs and a fee to cover cost of searching for, retrieving and compiling the record of not more than \$15 per hour after the first hour of staff time per request 	
<p>C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format.</p>		
<p>D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies.</p>	<ul style="list-style-type: none"> • No charge for inspection unless record must be compiled or converted 	
<p>E. The agency or official may charge for the actual mailing costs to mail a copy of a record.</p>	<ul style="list-style-type: none"> • May charge actual mailing 	
<p>9. Estimate. The agency or official having custody or control of a public record subject to a request under this section shall provide to the requester an estimate of the time necessary to complete the request and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than \$30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 10 applies.</p>	<ul style="list-style-type: none"> • Estimate of compliance time and costs 	
<p>10. Payment in advance. The agency or official having custody or control of a public record subject to a request under this section may require a requester to pay all or a portion of the estimated costs to complete the request prior to the search, retrieval, compiling, conversion and copying of the public record if:</p>	<ul style="list-style-type: none"> • May require payment in advance if estimated cost exceeds \$100 or requestor has previously failed to pay a fee 	
<p>A. The estimated total cost exceeds \$100; or</p>		
<p>B. The requester has previously failed to pay a properly assessed fee under this</p>		

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chapter in a timely manner.

11. Waivers. The agency or official having custody or control of a public record subject to a request under this section may waive part or all of the total fee charged pursuant to subsection 8 if:

A. The requester is indigent; or

B. The agency or official considers release of the public record requested to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

- Waiver of fees if requestor indigent or release of record is in the public interest

§409. Appeals

~~**1. Records.** Any person aggrieved by a refusal or denial to inspect or copy a record under section 408-A may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.~~

1. Records. Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may appeal the refusal, denial or failure within 30 calendar days of the receipt of the written notice of refusal, denial or failure to any Superior Court within the State as a trial de novo. The agency or official shall file an answer within 14 calendar days. If a court, after a trial de novo, determines such refusal, denial or failure was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so

- Refusal of inspection or copying must be
 - In writing
 - Within 5 working days of request
- Appeal from denial within 5 working days of denial to Superior Court
- Court may issue order of disclosure
- Expedited
- Failure of governmental body to respond to request for records in the time established by statute is deemed a denial of the request³²
- Amended 2012 see also 408-A
- ~~Repealed and replaced 2013~~
- In its review, superior court is the forum of origin for a determination of both facts and law with respect to the alleged violation and does not function in an appellate capacity, and thus, procedures for taking additional evidence on judicial review are inapplicable (overruling Marxsen v. Board of Directors, 591 A.2d 867).³³

³² Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

³³ Underwood v. City of Presque Isle, 1998 ME 166, 715 A.2d 148.

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<p><u>require.</u></p> <p>2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.</p> <p>3. Proceedings not exclusive. The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.</p> <p>4. Attorney's fees. In an appeal under subsection 1 or 2, the court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.</p> <p>This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.</p> <p>§410. Violations</p> <p>For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than</p>	<ul style="list-style-type: none"> • Approval of official action in executive session is illegal; officials subject to penalties • Superior Court shall declare action null and void if action taken illegally • Expedited • Other civil remedies available • Reasonable attorney's fees and litigation expenses maybe awarded to the prevailing plaintiff who appealed if the court determines that the refusal or illegal action was committed in bad faith 	<ul style="list-style-type: none"> • Freedom of Access claim must be filed within 30 days of discovering a possible violation (MRCivP, Rule 80B)³⁴ • Burden of proof on agency to establish "just and proper cause" for denial of a FOA request³⁵ • Amended 2012 • Supreme Judicial Court, sitting as the Law Court, could not create settlement negotiation privilege against disclosure under FOA; Court could only create new privileges pursuant to its rulemaking powers.³⁶
	<ul style="list-style-type: none"> • Willful = intentional or knowing • Agency or entity liable for civil violation; fine 	<ul style="list-style-type: none"> • Penalties for official actions taken in executive session in violation of FOA laws may only be sought

³⁴ Palmer v. Portland School Committee et al., 652 A.2d 86 (ME 1995).

³⁵ Springfield Terminal Railway Company v. Department of Transportation, 2000 ME 126, 754 A.2d 353.

³⁶ Citizens Communications Co. v. Attorney General, 2007 ME 114, 931 A.2d 503.

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\$500 may be adjudged.	of up to \$500	by the Attorney General or AG's representative ³⁷ <ul style="list-style-type: none">• Only Attorney General or AG's representative may enforce FOA laws by seeking imposition of fine³⁸• If a requesting party has undertaken successful appeal of denial, that party is entitled to costs³⁹

§411. Right To Know Advisory Committee

1. Advisory committee established.

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

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

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

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

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

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

³⁷ Lewiston Daily Sun v. School Administrative District No. 43, 1999 ME 143, 738 A.2d 1239.

³⁸ Scola v. Town of Sanford, 1987 ME 119, 695 A.2d 1194.

³⁹ Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

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E. One representative of school interests, appointed by the Governor;		
F. One representative of law enforcement interests, appointed by the President of the Senate;		
G. One representative of the interests of State Government, appointed by the Governor;		
H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House;		
I. One representative of newspaper and other press interests, appointed by the President of the Senate;		
J. One representative of newspaper publishers, appointed by the Speaker of the House;		
K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House;		
L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; and		
M. The Attorney General or the Attorney General's designee.		

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

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

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

B. Members who are Legislators are

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<p>appointed for the duration of the legislative terms of office in which they were appointed.</p>		
<p>C. Members may serve beyond their designated terms until their successors are appointed.</p>		
<p>4. First meeting; chair. The Executive Director of the Legislative Council shall call the first meeting of the advisory committee as soon as funding permits. At the first meeting, the advisory committee shall select a chair from among its members and may select a new chair annually.</p>		
<p>5. Meetings. The advisory committee may meet as often as necessary but not fewer than 4 times a year. A meeting may be called by the chair or by any 4 members.</p>		
<p>6. Duties and powers. The advisory committee:</p>		
<p>A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws;</p>		
<p>B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for agencies and public officials. The advisory committee shall also provide general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries;</p>		
<p>C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that</p>		

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	<p>provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as whom to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws;</p>	
	<p>D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section 412, subsection 3 and for making the information publicly available;</p>	
	<p>E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation;</p>	
	<p>F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released;</p>	
	<p>G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing</p>	

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<p>the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations;</p> <p>H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered;</p> <p>I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records;</p> <p>J. Shall review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public; and</p> <p>K. May undertake other activities consistent with its listed responsibilities.</p>		
<p>7. Outside funding for advisory committee activities. The advisory committee may seek outside funds to fund the cost of public hearings, conferences, workshops, other meetings, other activities of the advisory committee and educational and training materials. Contributions to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution shall certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the advisory committee's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting</p>		

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
Annotations updated 9/2012

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory committee.

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

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

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

§412 Public records and proceedings training for certain elected officials

1. Training required. A public access officer and an elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or public access officer shall complete the training not later than the 120th day after the date the elected

- Amended 2012

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
Annotations updated 9/2012

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
<p>official takes the oath of office to assume the person's duties as an elected official or the person is designated as a public access officer pursuant to section 413, subsection 1.</p>		
<p>2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:</p>		<ul style="list-style-type: none">• Amended 2012
<p>A. The general legal requirements of this chapter regarding public records and public proceedings;</p>		
<p>B. Procedures and requirements regarding complying with this chapter;</p>		
<p>C. Penalties and other consequences for failure to comply with this chapter.</p>		
<p>An elected official or a public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.</p>		
<p>3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official or a public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected. A public access officer shall file the record with the agency or official that designated the public access officer.</p>		<ul style="list-style-type: none">• Amended 2012
<p>4. Application. This section applies to a public access officer and the following elected officials:</p>		<ul style="list-style-type: none">• Amended 2012

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)

Annotations updated 9/2012

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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A. The Governor;

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

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

D. Deleted. Laws 2007, c. 576, §2.

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

G. Officials of school administrative units; and

H. Officials of regional or other political subdivisions who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

§ 413. Public access officer

- New 2012

1. Designation; responsibility. Each agency, county, municipality, school administrative unit and regional or other political subdivision shall designate an existing employee as its public access officer to serve as the contact person for that agency, county, municipality,

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
Annotations updated 9/2012

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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school administrative unit and regional or other political subdivision with regard to requests for public records under this subchapter. The public access officer is responsible for ensuring that each public record request is acknowledged within a reasonable period of time and that a good faith estimate of when the response to the request will be complete is provided according to section 408-A. The public access officer shall serve as a resource within the agency, county, municipality, school administrative unit and regional or other political subdivision concerning freedom of access questions and compliance.

2. Acknowledgment and response required. An agency, county, municipality, school administrative unit and regional or other political subdivision that receives a request to inspect or copy a public record shall acknowledge and respond to the request regardless of whether the request was delivered to or directed to the public access officer.

3. No delay based on unavailability. The unavailability of a public access officer may not delay a response to a request.

4. Training. A public access officer shall complete a course of training on the requirements of this chapter relating to public records and proceedings as described in section 412.

§ 414. Public records; information technology

An agency shall consider, in the purchase of and contracting for computer software and other information technology resources, the extent to which the software or technology will:

1. Maximize public access. Maximize public access to public records; and

2. Maximize exportability; protect confidential information. Maximize the exportability of public records while protecting confidential information that may be part of public records.

SUBCHAPTER 1-A

(headnote revised 2011)

PUBLIC RECORDS EXCEPTIONS AND

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
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ACCESSIBILITY

§431. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Public records exception.

"Public records exception" or "exception" means a provision in a statute or a proposed statute that declares a record or a category of records to be confidential or otherwise not a public record for purposes of subchapter 1.

2. Review committee.

"Review committee" means the joint standing committee of the Legislature having jurisdiction over judiciary matters.

3. Advisory committee.

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

§432. Exceptions to public records; review

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

- Amended 2011

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

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each exception scheduled for review should be repealed, modified or remain unchanged:

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

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

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

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

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

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

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

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

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

2-A. Accountability review of agency

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

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

2-C. Accessibility of public records. The advisory committee may include in its evaluation of public records statutes the consideration of any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

- New 2011

3. Assistance from committees of jurisdiction. The advisory committee may seek assistance in evaluating public records exceptions from the joint standing committees of the Legislature having jurisdiction over the subject matter related to the exceptions being reviewed. The advisory committee may hold public hearings after notice to the appropriate committees of jurisdiction.

§433. Schedule for review of exceptions to public records

1. Scheduling guidelines. (repealed)

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

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

- (1) Title 1;

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(2) Title 2;		
(3) Title 3;		
(4) Title 4;		
(5) Title 5;		
(6) Title 6;		
(7) Title 7;		
(8) Title 8;		
(9) Title 9-A; and		
(10) Title 9-B.		

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

- (1) Title 10;
- (2) Title 11;
- (3) Title 12;
- (4) Title 13;
- (5) Title 13-B;
- (6) Title 13-C;
- (7) Title 14;
- (8) Title 15;
- (9) Title 16;
- (10) Title 17;
- (11) Title 17-A;
- (12) Title 18-A;
- (13) Title 18-B;
- (14) Title 19-A;
- (15) Title 20-A; and

FOA section by section

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(16) Title 21-A.

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

- (1) Title 22;
- (2) Title 23;
- (3) Title 24;
- (4) Title 24-A; and
- (5) Title 25.

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

- (1) Title 26;
- (2) Title 27;
- (3) Title 28-A;
- (4) Title 29-A;
- (5) Title 30;
- (6) Title 30-A;
- (7) Title 31;
- (8) Title 32;
- (9) Title 33;
- (10) Title 34-A;
- (11) Title 34-B;
- (12) Title 35-A;
- (13) Title 36;
- (14) Title 37-B;
- (15) Title 38; and
- (16) Title 39-A.

FOA section by section

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

§434. Review of proposed exceptions to public records

1. Procedures before legislative committees. Whenever a legislative measure containing a new public records exception is proposed or a change that affects the accessibility of a public record 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 exception or proposed change that affects the accessibility of a public record may not be enacted into law unless review and evaluation pursuant to subsections 2 and 2-B have been completed.

- Amended 2011

2. Review and evaluation. Upon referral of a proposed public records exception 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 exception should be enacted:

- A. Whether a record protected by the proposed exception needs to be collected and maintained;
- B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;
- C. Whether federal law requires a record covered by the proposed

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
Annotations updated 9/2012

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
	<p>exception to be confidential;</p> <p>D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;</p> <p>E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;</p> <p>F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;</p> <p>G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;</p> <p>H. Whether the proposed exception is as narrowly tailored as possible; and</p> <p>I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.</p>	
<p>2-A. Accountability review of agency or official. In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.</p>		

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
Annotations updated 9/2012

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<p>2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.</p>		<ul style="list-style-type: none">• New 2011
<p>3. Report. The review committee shall report its findings and recommendations on whether the proposed exception or proposed limitation on accessibility should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.</p>		<ul style="list-style-type: none">• Amended 2011

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**Public Access Ombudsman
Current law**

Updated 7/2013 (changes effective 10/9/13)

**TITLE 5
ADMINISTRATIVE PROCEDURES AND SERVICES**

**PART 1
STATE DEPARTMENTS**

**CHAPTER 9
ATTORNEY GENERAL**

§200-I. Public Access Division; Public Access Ombudsman

1. Public Access Division; Public Access Ombudsman. There is created within the Department of the Attorney General the Public Access Division to assist in compliance with the State's freedom of access laws, Title 1, chapter 13. The Attorney General shall appoint the Public Access Ombudsman, referred to in this section as "the ombudsman," to administer the division.

2. Duties. The ombudsman shall:

A. Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right To Know Advisory Committee established in Title 1, section 411;

B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws;

C. Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws;

D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved; ~~and~~

E. Make recommendations concerning ways to improve public access to public records and proceedings; and

F. Coordinate with the state agency public access officers the compilation of data through the development of a uniform log to facilitate record keeping and annual reporting of the number of requests for information, the average response time and the costs of processing requests.

3. Assistance. The ombudsman may request from any public agency or official such assistance, services and information as will enable the ombudsman to effectively carry out the responsibilities of this section.

Public Access Ombudsman
Current law

Updated 7/2013 (changes effective 10/9/13)

4. Confidentiality. The ombudsman may access records that a public agency or official believes are confidential in order to make a recommendation concerning whether the public agency or official may release the records to the public. The ombudsman's recommendation is not binding on the public agency or official. The ombudsman shall maintain the confidentiality of records and information provided to the ombudsman by a public agency or official under this subsection and shall return the records to the public agency or official when the ombudsman's review is complete.

5. Report. The ombudsman shall submit a report not later than March 15th of each year to the Legislature and the Right To Know Advisory Committee established in Title 1, section 411 concerning the activities of the ombudsman for the previous year. The report must include:

- A. The total number of inquiries and complaints received;
- B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials;
- C. The number of complaints received concerning respectively public records and public meetings;
- D. The number of complaints received concerning respectively:
 - (1) State agencies;
 - (2) County agencies;
 - (3) Regional agencies;
 - (4) Municipal agencies;
 - (5) School administrative units; and
 - (6) Other public entities;
- E. The number of inquiries and complaints that were resolved;
- F. The total number of written advisory opinions issued and pending; and
- G. Recommendations concerning ways to improve public access to public records and proceedings.

UNALLOCATED, PL 2013, chapter 229:

Sec. 3. Development of centralized methods for public record requests; report. The Department of the Attorney General, with input from the Department of Administrative and Financial Services, Office of Information Technology and state agency public access officers as defined in the Maine Revised Statutes, Title 1, section 402, subsection 5, shall:

**Public Access Ombudsman
Current law**

Updated 7/2013 (changes effective 10/9/13)

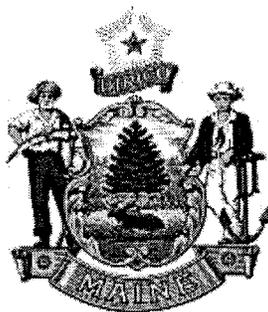
1. Review the current system used by state agencies for receiving and responding to requests for public records in accordance with Title 1, chapter 13, subchapter 1; and
2. Review the feasibility of developing a centralized system for coordinating the receipt of and response to requests to state agencies for public records in accordance with Title 1, chapter 13, subchapter 1.

A centralized system developed by the Department of the Attorney General must include a single website address, a single e-mail address and a directory for the public to use to make requests for public records of all state agencies. By January 5, 2014, the Department of the Attorney General shall submit to the Joint Standing Committee on Judiciary a report relating to the reviews under this section, including findings and recommendations and suggested statutory changes needed to implement the recommendations. The Joint Standing Committee on Judiciary may report out a bill relating to the subject matter of the report to the Second Regular Session of the 126th Legislature.

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**STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL**

Janet T. Mills, Attorney General



**PUBLIC ACCESS OMBUDSMAN REPORT
Brenda L. Kielty, Esq., Ombudsman**

March 2013

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 5 M.R.S. § 200-I

MESSAGE FROM ATTORNEY GENERAL JANET T. MILLS

“Government ought to be all outside and no inside. . . . Everybody knows that corruption thrives in secret places, and avoids public places, and we believe it a fair presumption that secrecy means impropriety.”

- Woodrow Wilson

Thirty years ago, if you said you wanted to “FOA” somebody, you might have been arrested for threatening to commit a crime. Today, the word “FOA”—as a noun, as a verb—has become an integral part of our vocabulary, particularly for people who work in government and in the news media. For some the term represents a threat; for others, a nuisance, the basis for a news story, the start of a lawsuit, a glimpse into a decision or into the purpose of a meeting.

Since 1967 citizens have enjoyed the right to acquire information from the federal government by statute. Other countries, even non-democratic regimes, have followed suit. Since 1975 Maine has provided a statutory right of access to governmental information and governmental meetings. We have become accustomed to participation. We resent stalling. We expect full access.

After all, what would our government be like if it operated in secret—without access, without public participation or public knowledge? Many believe that nothing is more fundamental to our democracy than transparency in government, in its documents, its actions and its deliberations.

This right is not absolute, of course. Our statutes still shield matters of personal privacy, trade secrets, investigative information, personnel records, and the like. When you file a form with the government containing personal information, do you expect that others outside that agency will see the information, even if you had no choice about filing that form with the government, that your name might be listed in the newspaper or on a social network as holding a particular license from the government?

The balancing of public access with legitimate privacy interests is what our laws strive to achieve. It is the reason we have a “Right to Know Advisory Committee,” made up of news people, lawmakers and regular citizens. It is the reason we require the Legislature’s Judiciary Committee to review the myriad confidentiality statutes on the books each year to see if they still make sense. It is the reason we now have a fulltime “Public Access Ombudsman” in the Office of the Attorney General.

This first report of the Ombudsman covers a period of her first four months on the job. We hope this report sheds light not only on the volume and type of work performed already but also on the challenges of achieving that important balance between competing interests of personal privacy and transparency, each of equal importance to the citizens of this state. While government may never be “all outside, no inside,” we are determined to make our government more “outside” than ever before, while protecting the legitimate “inside” for which citizens have every right to expect protection.

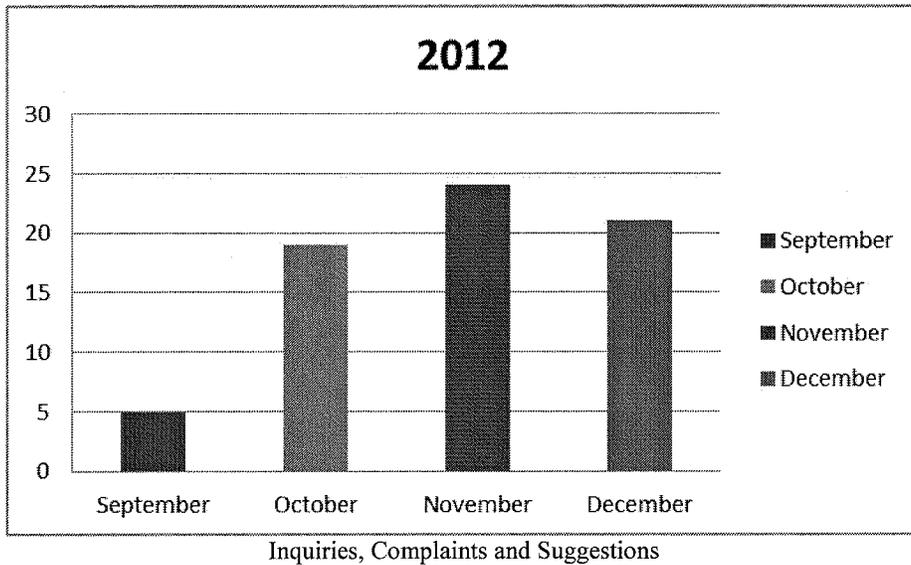
EXECUTIVE SUMMARY

The mission of the public access ombudsman is simple – to serve as a resource concerning the FOAA process and to solve disputes between requesters and public agencies. The ombudsman serves both FOAA requesters and agencies. The ombudsman advocates for adherence to the law. Located in the Office of the Attorney General, the position is independent of the executive branch.

Beginning in the last quarter of 2012, requesters and agencies asked for assistance with everything from filing requests to dealing with difficult requesters to resolving disputes. From September 11, 2012 to December 31, 2012 there were 50 inquiries, 17 complaints and two suggestions. Most of the persons seeking assistance were private citizens and most of the questions or complaints related to municipal government.

During the first few months, the ombudsman conducted outreach and training, updated the website, designed a case management system, and responded to inquiries and complaints. Much remains to be done. One focus for 2013 will be working with the public access officers who are appointed as the contact person for their agency to develop training, support and best practice resources.

Brenda L. Kielty, Public Access Ombudsman



ESTABLISHING THE OMBUDSMAN PROGRAM

The State FOAA website, [Your Right to Know: Maine's Freedom of Access Act](#), provides contact information for the ombudsman and links to a variety of resources including a Frequently Asked Questions page that serves as a self-administered training for public officials. The ombudsman has assumed responsibility for updating and maintaining the website to reflect changes in the law.

In the first three months, the ombudsman:

- Created a database to meet the dual purposes of tracking contacts and measuring results. The case management system will require enhancements as the volume of contacts continues to grow.
- Created an intake and review process for determining the needs of a requester or agency and the appropriate action or referral to address that need.
- Publicized the new program through interviews with local and regional media outlets. Speaking at the annual fall conferences for the Maine Press Association, the Maine School Board Association and the Association of Conservation Districts provided visibility, an opportunity to get input from interested parties, and a forum to share the mission of the program.
- Attended the Right to Know Advisory Committee meetings, met with citizen activists and counsel for State and municipal agencies, and researched what ombudsman offices in other states are doing. Connecting with both requester and agency communities provided valuable information and will help gauge priorities and goals for the program.
- In December, the ombudsman presented the FOAA training to the incoming 126th Legislature required by 1 M.R.S. § 412.

ANSWERING INQUIRIES & RESOLVING DISPUTES

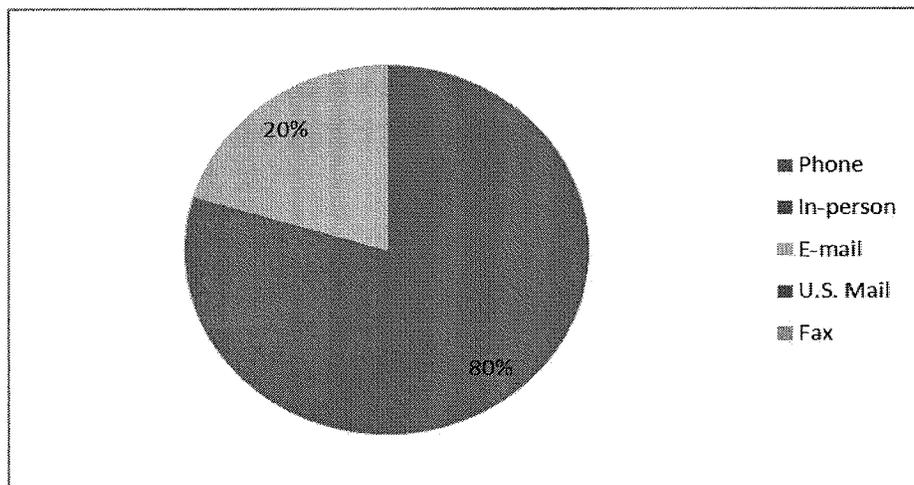
“The ombudsman shall respond to informal inquiries made by the public and public agencies and officials concerning the State’s freedom of access laws; and respond to and work to resolve complaints made by the public and public agencies and officials concerning the State’s freedom of access laws.” 5 M.R.S. § 200-I(2)(A) and (B).

The ombudsman may request assistance, services and information from any public agency or official to effectively carry out the functions of the office. The ombudsman can access confidential records in order to make a recommendation concerning the release of records to the public and will give confidential information received from an agency the same degree of protection as provided by the agency. Any recommendations issued by the ombudsman are non-binding. 5 M.R.S. § 200-I(4).

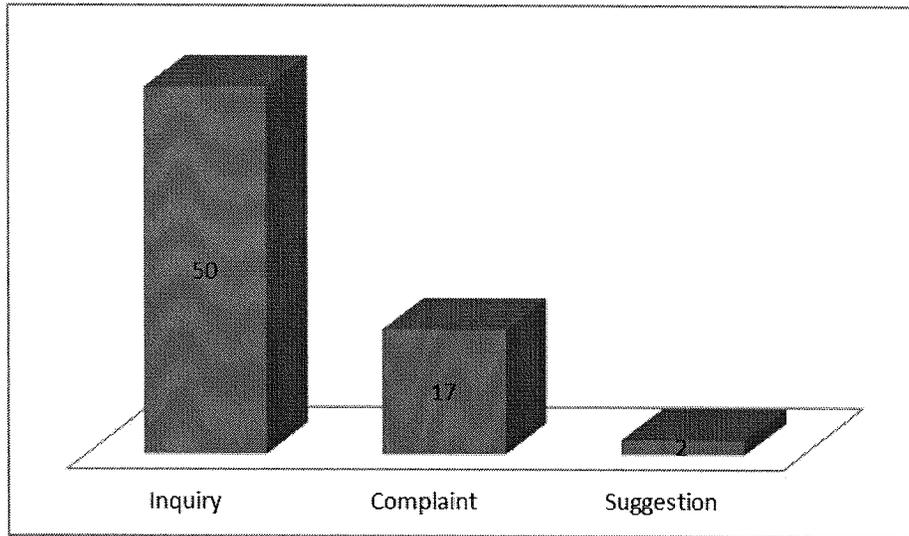
The ombudsman did not issue any advisory opinions in 2012 or the first three months of 2013.

From early September until the end of 2012, there were 69 inquiries, complaints and suggestions. Requests for help ranged from questions about how to file a FOAA request to more difficult inquiries regarding situations in which the FOAA issues were only part of a larger dispute.

The bulk of initial contact was by telephone (55) and the remainder by email (14).



The 69 contacts included general inquiries (50), complaints (17) and suggestions (2).



Of the contacts concerning public records (52), the most common questions concerned:

- Reasonable response times and delay
- Fees
- Confidentiality exceptions
- Basis for a denial
- Requesting an electronic document in digital format

Of the contacts concerning public meetings (17), most questions concerned:

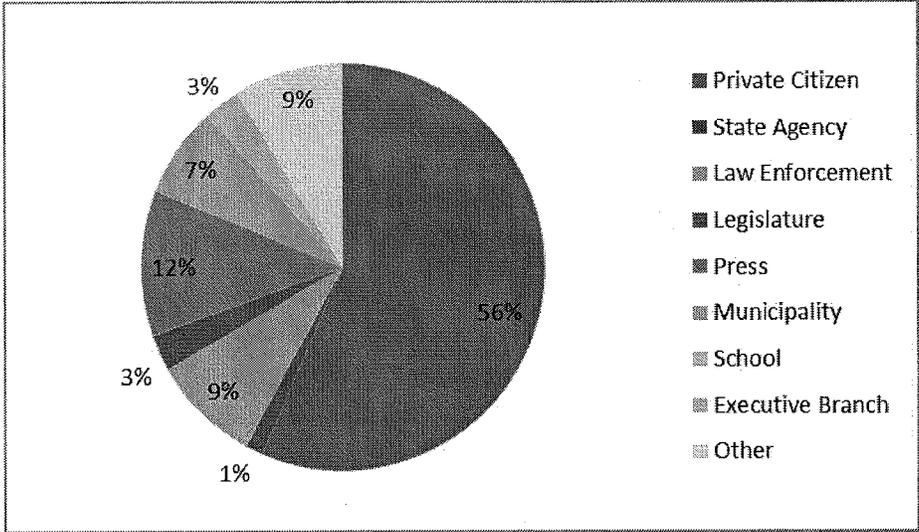
- Notice
- Use of executive session

A citizen complaint about a local board's meeting notice or use of executive session is often part of a complex situation involving other issues such as municipal governance and long-standing disputes for which there may be an inadequate remedy. Resolution of the FOAA complaint may not garner the accountability and change that the citizen could only obtain through the political process. Local officials may see the use of the FOAA as harassing.

The estimated fee and time needed for a response to a FOAA request is frequently challenged as excessive. The requester may suspect that government officials are dragging their feet and should be able to provide the records easily with modern technology. Especially for a broad request involving both paper and electronic documents from multiple departments, the official may have difficulty scheduling the search for responsive records and redaction of confidential information without impacting regular work duties.

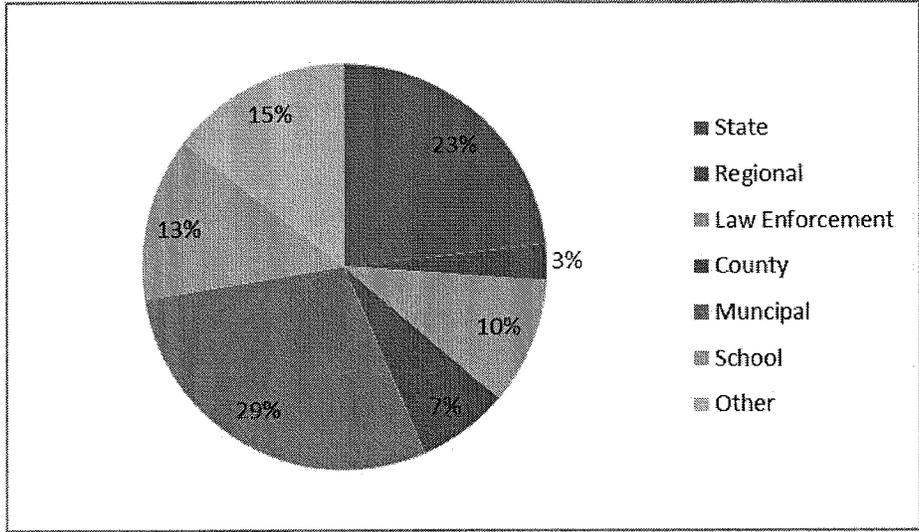
The actual conversion costs of providing an electronic record in the format in which it is stored can exceed what requesters expect. The staff who are responding to the request rely on available technological resources and their current skill level. From a part-time town office to a State agency, the discrepancy between what the requester expects and the response time and cost causes disputes.

Of the 69 inquiries, complaints and suggestions, 39 came from private citizens, 1 from a state agency, 6 from law enforcement agencies, 2 from legislators, 8 from members of the media, 5 from municipal officials, 2 from school officials, and 6 from others including attorneys and commercial requesters.



Source of Inquiries, Complaints and Suggestions

Most of the inquiries and complaints concerned municipalities (20) and State agencies (16). The remainder concerned school administrative units (9), County agencies (5), regional agencies (2), and law enforcement agencies (7). Others (10) concerned court, medical, bank or unspecified records.



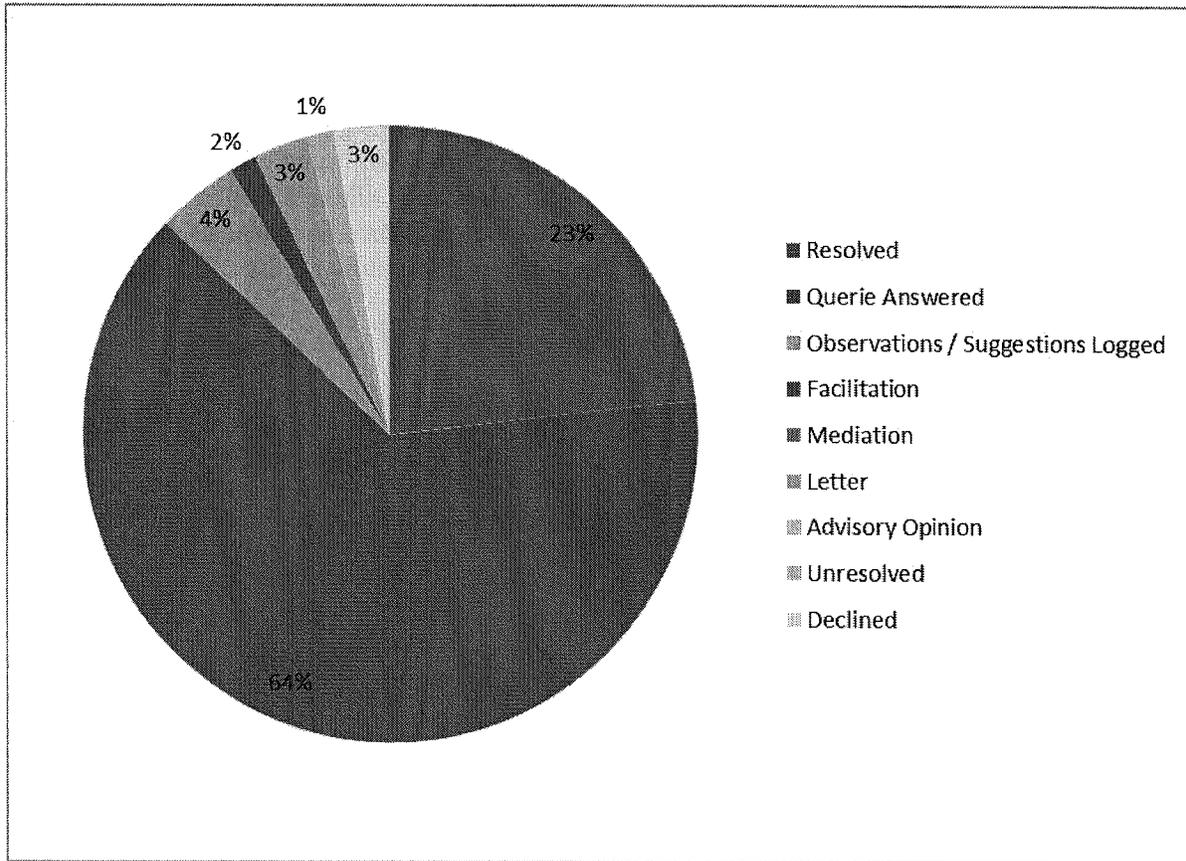
Agencies

A contact may be logged as “resolved” for the following reasons:

- Complaint was deemed unsubstantiated
- Informal discussions or facilitation resulted in an agreement on how to proceed
- Agency offered an acceptable remedy
- Complaint was withdrawn
- Complainant failed to produce requested information
- Ombudsman determined there is other good cause not to proceed

A contact may be logged as “declined” if the subject of the dispute was outside the scope of authority of the ombudsman or related to a matter that was the subject of an administrative or judicial proceeding.

Many of the inquiries (44) were answered either immediately or within a matter of days. Sixteen of the contacts were logged as resolved, three suggestions were taken, one case involved a successful facilitation, two letters were written, one case was unresolved as of the date of this report and two cases were declined.



Outcomes

RECOMMENDATION

The ombudsman is in a unique position to suggest improvements to the FOAA process and is mandated by statute to make recommendations concerning ways to improve public access to public records and proceedings. This report encompasses only the last quarter of 2012 during which time the focus was to identify and build on what was already in place. The following recommendation highlights an area in the law that could be more effectively utilized to promote public access:

The Public Access Officers

The FOAA was amended in 2012 to require each State agency, county, municipality, school administrative unit and regional or other political subdivision to designate an employee to serve as the contact person and resource for freedom of access questions and compliance. The public access officers must participate in the same Freedom of Access training as elected officials. 1 M.R.S. § 412(1). This provision has the potential to create a state-wide network of informed FOAA officials who can share their knowledge within their distinct organizations.

These public access officers could develop more comprehensive data collection to track FOAA requests and responses by agency without imposing costs on local units.

Standardized reporting by agencies would generate the consistent, high-quality data needed to conduct state-wide assessments. Current, reliable and comparable information regarding how the FOAA is being administered would be useful in assessing Maine's progress with open government objectives. One way to ensure that the challenges faced by agencies in processing FOAA requests can be addressed is to expand the duties of the public access officers to include the collection and reporting of this type of data.

Appendix

Maine Revised Statutes

☑ [§200-I PDF](#)

☑ [§200-I WORD/RTF](#)

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§200-H

Title 5:

§201

ADMINISTRATIVE PROCEDURES AND SERVICES

Part 1: STATE DEPARTMENTS Chapter 9: ATTORNEY GENERAL

§200-I. Public Access Division; Public Access Ombudsman

1. Public Access Division; Public Access Ombudsman. There is created within the Department of the Attorney General the Public Access Division to assist in compliance with the State's freedom of access laws, Title 1, chapter 13. The Attorney General shall appoint the Public Access Ombudsman, referred to in this section as "the ombudsman," to administer the division.

[2007, c. 603, §1 (NEW) .]

2. Duties. The ombudsman shall:

A. Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right To Know Advisory Committee established in Title 1, section 411; [2007, c. 603, §1 (NEW) .]

B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws; [2007, c. 603, §1 (NEW) .]

C. Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws; [2007, c. 603, §1 (NEW) .]

D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved; and [2007, c. 603, §1 (NEW) .]

E. Make recommendations concerning ways to improve public access to public records and proceedings. [2007, c. 603, §1 (NEW) .]

[2007, c. 603, §1 (NEW) .]

3. Assistance. The ombudsman may request from any public agency or official such assistance, services and information as will

enable the ombudsman to effectively carry out the responsibilities of this section.

[2007, c. 603, §1 (NEW) .]

4. Confidentiality. The ombudsman may access records that a public agency or official believes are confidential in order to make a recommendation concerning whether the public agency or official may release the records to the public. The ombudsman's recommendation is not binding on the public agency or official. The ombudsman shall maintain the confidentiality of records and information provided to the ombudsman by a public agency or official under this subsection and shall return the records to the public agency or official when the ombudsman's review is complete.

[2007, c. 603, §1 (NEW) .]

5. Report. The ombudsman shall submit a report not later than March 15th of each year to the Legislature and the Right To Know Advisory Committee established in Title 1, section 411 concerning the activities of the ombudsman for the previous year. The report must include:

A. The total number of inquiries and complaints received; [2007, c. 603, §1 (NEW) .]

B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials; [2007, c. 603, §1 (NEW) .]

C. The number of complaints received concerning respectively public records and public meetings; [2007, c. 603, §1 (NEW) .]

D. The number of complaints received concerning respectively:

(1) State agencies;

(2) County agencies;

(3) Regional agencies;

(4) Municipal agencies;

(5) School administrative units; and

(6) Other public entities; [2007, c. 603, §1 (NEW) .]

E. The number of inquiries and complaints that were resolved; [2007, c. 603, §1 (NEW) .]

F. The total number of written advisory opinions issued and pending; and [2007, c. 603, §1 (NEW) .]

G. Recommendations concerning ways to improve public access to public records and proceedings. [2007, c. 603, §1 (NEW) .]

[2007, c. 603, §1 (NEW) .]

6. Repeal.

[2009, c. 240, §7 (RP) .]

SECTION HISTORY

2007, c. 603, §1 (NEW). 2009, c. 240, §7 (AMD).

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**The Revisor's Office cannot provide legal advice or
interpretation of Maine law to the public.
If you need legal advice, please consult a qualified attorney.**

Office of the Revisor of Statutes

**7 State House Station
State House Room 108
Augusta, Maine 04333-0007**

4

Judiciary Committee
Freedom of Access, Confidentiality and Privacy Legislation
First Regular Session, 126th Legislature

LD#	Sponsor	Title	Committee report	Disposition
19	Sen. Craven, Margaret	An Act To Facilitate Access to Information by Legislators	ONTP	ONTP
104	Rep. Nelson, Mary	An Act To Amend the Laws Governing Public Records	OTPA/OTP/ONTP	Public Law 2013, c. 339
135	Rep. Brooks, Joseph	An Act To Require All Government Documents To Be Posted on the Internet	ONTP	ONTP
217	Right to Know Advisory Committee	An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Access to Records Relating to Public-private Partnerships	ONTP	ONTP
236	Sen. Patrick, John	An Act to Protect the Privacy of Citizens from Domestic Unmanned Aerial Vehicle Use	OTPA/OTPA	Vetoed
258	Right to Know Advisory Committee	An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies	ONTP	ONTP
309	Rep. Russell, Diane	Resolve, Directing the Attorney General To Implement a Child Identity Protection Program To Safeguard the Personal Information of Minors and Prevent Identity Theft	ONTP	ONTP
313	Rep. Russell, Diane	An Act To Create the Maine Online Privacy Protection Act	ONTP/OTPA	ONTP
345	Rep. Wilson, Corey	An Act To Ensure the Confidentiality of Concealed Weapons Permit Holder Information (EMERGENCY)	OTPA/OTPA	Public Law 2013, c. 54
415	Sen. Katz, Roger	An Act To Require a Warrant To Obtain the Location Information of a Cell Phone or Other Electronic Device	ONTP/OTPA	Public Law 2013, c. 409
420	Right to Know Advisory Committee	An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions	ONTP	ONTP
495	Senator Burns, David	An Act Regarding the Law Pertaining to the Confidentiality of Enhanced 9-1-1 System Information and Records	ONTP/OTPA	ONTP
576	Senator Jackson, Troy	<i>Resolve, To Protect Concealed Handgun Permit Information on a Temporary Basis" (Emergency) (Governor's Bill)</i>		<i>Resolve 2013, c. 1</i>
619	Rep. Guerin, Stacey	An Act To Prohibit the Sharing of Personal Information by State Agencies	OTPA	Public Law 2013, c. 283
684	Rep. MacDonald, W.	An Act To Make Bylaws and Minutes of Board Meetings of Publicly Funded Hospitals Subject to the Freedom of Access Act	ONTP	ONTP
900		An Act Regarding the Disclosure of Certain Records in Criminal Matters	OTP	Public Law 2013, c. 201

Judiciary Committee
Freedom of Access, Confidentiality and Privacy Legislation
First Regular Session, 126th Legislature

LD#	Sponsor	Title	Committee report	Disposition
973	Rep. Briggs, Sheryl	An Act To Make Veterans' Property Tax Exemption Applications Confidential	OTP	Public Law 2013, c. 222 Emergency
1040	Sen. Thomas, Douglas	An Act To Prohibit the Placement of Cameras and Electronic Surveillance Equipment on Private Property without the Written Permission of the Landowner	OTPA	Public Law 2013, c. 382
1091	Sen. Thomas, Douglas	An Act To Require Nonprofit Corporations To Disclose the Salaries of Their Employees	ONTP	ONTP
1118	Rep. Priest, Charles	An Act To Amend Public Access Laws To Improve Accountability for Public Funds by Making Public the Board Meetings of Hospitals Receiving Significant State Funding	ONTP/OTPA	ONTP
1194	Rep. McClellan, Michael	An Act To Protect Social Media Privacy in School and the Workplace	Carryover requested	Carryover approved
1216	Rep. Carey, Michael	An Act To Amend the Freedom of Access Act	OTPA	Public Law 2013, c. 350
1377	Sen. Katz, Roger	An Act To Protect Cellular Telephone Privacy	OTPA/OTPA	Public Law 2013, c. 402
1401	Rep. Kent, Peter	An Act To Make Birth Certificates Public Records	ONTP	ONTP
1511	Sen. Cain, Emily	An Act Regarding Coordinated Access to Public Records of State Agencies	OTP	Public Law 2013, c. 229

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ONTP
see LD 721,
PL C. 208



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 217

H.P. 178

House of Representatives, February 5, 2013

**An Act To Implement the Recommendations of the Right To Know
Advisory Committee Concerning Public Access to Records Relating
to Public-private Partnerships**

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

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

H.P. 493 - L.D. 721

**An Act To Provide Transparency in Public-private Partnerships for
Transportation Projects**

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

Sec. 1. 23 MRSA §4251, sub-§4, ¶L, as enacted by PL 2009, c. 648, Pt. A, §1, is repealed.

Sec. 2. 23 MRSA §4251, sub-§10, as enacted by PL 2009, c. 648, Pt. A, §1, is repealed and the following enacted in its place:

10. Information in public record. Except as provided in subsection 10-A, information obtained by the department under this subchapter is a public record pursuant to Title 1, chapter 13, subchapter 1.

Sec. 3. 23 MRSA §4251, sub-§10-A is enacted to read:

10-A. Confidential information. Information submitted to the department relating to a public-private partnership proposal under this subchapter is confidential and not a public record under Title 1, chapter 13, subchapter 1 if the private entity submitting the information designates the information as being only for the confidential use of the department and if:

A. The information is a trade secret as defined in Title 10, section 1542, subsection 4; or

B. Disclosure of the information would result in a business or competitive disadvantage, loss of business, invasion of privacy or other significant detriment to the private entity to whom the record belongs or pertains.

If legal action is filed to gain access to the information designated as confidential under this subsection, the private entity must defend its designation and the department shall release the information in accordance with the order of the reviewing court. Failure to defend the designation under this subsection constitutes a waiver of confidentiality by the private entity and the department shall release the information.



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

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

4.A.5

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.

A.A.B

SENATE

LINDA M. VALENTINO, District 5, Chair
JOHN L. TUTTLE, JR., District 3
DAVID C. BURNS, District 29

MARGARET J. REINSCH, Legislative Analyst
SUSAN Z. JOHANNESMAN, Legislative Analyst
SUSAN M. PINETTE, Committee Clerk



HOUSE

CHARLES R. PRIEST, Brunswick, Chair
KIM MONAGHAN-DERRIG, Cape Elizabeth
JENNIFER DECHANT, Bath
MATTHEW W. MOONEN, Portland
STEPHEN W. MORIARTY, Cumberland
LISA R. VILLA, Harrison
JARROD S. CROCKETT, Bethel
MICHAEL G. BEAULIEU, Auburn
ANITA PEAVEY HASKELL, Milford
STACEY K. GUERIN, Glenburn
WAYNE T. MITCHELL, Penobscot Nation

State of Maine
ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE
COMMITTEE ON JUDICIARY

June 27, 2013

TO: Right to Know Advisory Committee

FROM: Senator Linda M. Valentino, Senate Chair *L.M.V.*
Representative Charles R. Priest, House Chair *C.R.P.*
Joint Standing Committee on Judiciary

Re: LD 258, An Act To Implement the Recommendations of the Right To Know
Advisory Committee Concerning Meetings of Public Bodies

Thank you for your continued work on the questions surrounding the meeting of public bodies while allowing members to participate remotely. We understand that different public bodies have interpreted the silence in the Freedom of Access Act in different ways: Some entities believe that the lack of permission in the statute therefore prohibits voting when not physically present; others find the lack of prohibition to be instructive, and therefore do allow members to participate and vote via telephone or other electronic connection.

After discussion with those who would be affected by the bill, the Judiciary Committee decided that the proposal could benefit from more input from entities not already specifically authorized to meet via telephone or other technology. For example, the Public Utilities Committee has developed their own process for adjudicatory and other meetings which is not consistent with the statutory exceptions or the proposed bill. We recommend that the Advisory Committee seek more input from public bodies at all levels of government, if you choose to pursue this topic.

There was also some concern voiced in the committee discussions that connecting by telephone alone may not be sufficient to provide full public access to the public proceeding. We hope that your review will include more exploration of what is entailed in the public's right to attend public proceedings.

Again, thank you for your hard work. We look forward to your recommendations.



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 420

H.P. 292

House of Representatives, February 14, 2013

An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions

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 **Sec. 1. 22 MRSA §1696-D**, as amended by PL 1999, c. 57, Pt. B, §3, is further
3 amended to read:

4 **§1696-D. Response to requests**

5 When requested under this subchapter, the director shall provide, ~~at a minimum, the~~
6 ~~identity of~~ information about chemical substances in use or present at a specific location;
7 ~~unless the substance is a trade secret. For purposes of this section, "trade secret" means~~
8 ~~any confidential formula, pattern, process, device, information or compilation of~~
9 ~~information, including chemical name, that is used in any employer's business that gives~~
10 ~~the employer an opportunity to obtain any advantage over competitors who do not know~~
11 ~~or use it. The director may provide information on~~ must include the identity of the
12 chemical substance, the chronic and acute health hazards posed by the substance,
13 potential routes of exposure, emergency procedures and other subjects as appropriate.
14 The director shall report in writing annually by January 1st to the joint standing
15 committee of the Legislature having jurisdiction over human resources on the number and
16 type of requests received and on the director's response to these requests.

17 ~~In the case of a request for information from a municipality or individual concerning~~
18 ~~chemicals in use or present at a specific site, the director shall be required to provide~~
19 ~~information pursuant to this Act only if the specific site is within a 50-mile radius of the~~
20 ~~municipality or within a 50-mile radius of a residence of the individual requesting the~~
21 ~~information.~~

22 **Sec. 2. 22 MRSA §1696-E**, as enacted by PL 1985, c. 494, §2, is amended to
23 read:

24 **§1696-E. Cooperation with state agencies**

25 The director may obtain, upon request, information from and the assistance of the
26 Bureau of Labor Standards, Department of Environmental Protection, Bureau of
27 Pesticides Control and other state agencies as appropriate in the conduct of investigations
28 under this chapter. ~~Information obtained under this section shall be subject to the trade~~
29 ~~secret provisions governing the agencies supplying the information.~~

30 **Sec. 3. 22 MRSA §1696-F**, as amended by PL 1999, c. 57, Pt. B, §4, is further
31 amended to read:

32 **§1696-F. Provision of information**

33 ~~A person may withhold the identity of a specific toxic or hazardous substance, if the~~
34 ~~substance is a trade secret. For purposes of this section, "trade secret" means any~~
35 ~~confidential formula, pattern, process, device, information or compilation of information,~~
36 ~~including chemical name, that is used in any employer's business that gives the employer~~
37 ~~an opportunity to obtain any advantage over competitors who do not know or use it. All~~
38 ~~other information about a toxic or hazardous substance, including its identity, routes of~~
39 ~~exposure, effects of exposure, type and degree of hazard and emergency treatment and~~

1 response procedures, must be provided if requested by the Director of the Bureau of
2 Health and is considered a public record. All information about a toxic or hazardous
3 substance is a public record.

4 **Sec. 4. 26 MRSA §3**, as amended by PL 2011, c. 655, Pt. DD, §10 and affected by
5 §24, is repealed and the following enacted in its place:

6 **§3. Confidentiality of records**

7 **1. Confidential records.** Except as provided in subsections 2 and 3, all information
8 and reports received by the director or the director's authorized agents under this Title are
9 confidential for purposes of Title 1, section 402, subsection 3, paragraph A.

10 **2. Exceptions.** Information and reports pertaining to final bureau action taken under
11 the authority of this Title are public records for the purposes of Title 1, chapter 13,
12 subchapter 1.

13 **3. Authorized disclosure.** The director shall make or authorize any disclosure of
14 information of the following types or under the following circumstances with the
15 understanding that the confidentiality of the information will be maintained:

16 A. Information and reports to other government agencies if the director believes that
17 the information will serve to further the protection of the public or assist in the
18 enforcement of local, state and federal laws; and

19 B. Information and records pertaining to the workforce, employment patterns, wage
20 rates, poverty and low-income patterns, economically distressed communities and
21 regions and other similar information and data to the Department of Economic and
22 Community Development and to the Governor's Office of Policy and Management
23 for the purposes of analysis and evaluation, measuring and monitoring poverty and
24 economic and social conditions throughout the State and promoting economic
25 development.

26 **Sec. 5. 26 MRSA §934, last ¶**, as enacted by PL 1985, c. 294, §§2 and 3, is
27 amended to read:

28 The board shall hear all interested persons who come before it, advise the respective
29 parties what ought to be done by either or both to adjust the controversy; and ~~shall~~ make a
30 confidential written report to the Governor and the Executive Director of the Maine
31 Labor Relations Board. The Governor or executive director ~~may~~ shall make the report
32 public if, after 15 days from the date of its receipt, the parties have not resolved the
33 controversy and the public interest would be served by publication. In addition, either the
34 Governor or the executive director may refer the report and recommendations of the
35 board to the Attorney General or other department for appropriate action when it appears
36 that any of the laws of this State may have been violated.

37 **Sec. 6. 29-A MRSA §152, sub-§3**, as enacted by PL 1993, c. 683, Pt. A, §2 and
38 affected by Pt. B, §5, is amended to read:

1 **3. Central computer system.** Notwithstanding any other provisions of law,
2 purchase and maintain a central computer system for purposes of administering this Title
3 and conducting departmental operations.—~~All other uses must be approved by the~~
4 ~~Secretary of State. The Secretary of State shall adopt rules regarding the maintenance~~
5 ~~and use of data processing information files required to be kept confidential and shall~~
6 ~~distinguish those files from files available to the public;~~

7 **Sec. 7. 29-A MRSA §257**, as enacted by PL 2003, c. 434, §6 and affected by §37,
8 is repealed.

9 **Sec. 8. 29-A MRSA §517, sub-§4**, as enacted by PL 1993, c. 683, Pt. A, §2 and
10 affected by Pt. B, §5, is amended to read:

11 **4. Unmarked law enforcement vehicles.** An unmarked motor vehicle used
12 primarily for law enforcement purposes, when authorized by the Secretary of State and
13 upon approval from the appropriate requesting authority, is exempt from displaying a
14 special registration plate. Records for all unmarked vehicle registrations are confidential.

15 ~~Upon receipt of a written request by an appropriate criminal justice official showing~~
16 ~~cause that it is in the best interest of public safety, the Secretary of State may determine~~
17 ~~that records of a nongovernment vehicle may be held confidential for a specific period of~~
18 ~~time, which may not exceed the expiration of the current registration.~~

19 **Sec. 9. 38 MRSA §585-B, sub-§6**, as amended by PL 2009, c. 535, §2, is further
20 amended to read:

21 **6. Mercury reduction plans.** An air emission source emitting mercury in excess of
22 10 pounds per year after January 1, 2007 must develop a mercury reduction plan. Except
23 as provided in subsection 7, the mercury reduction plan must be submitted to the
24 department no later than September 1, 2008. The mercury reduction plan must contain:

- 25 A. Identification, characterization and accounting of the mercury used or released at
26 the emission source; and
- 27 B. Identification, analysis and evaluation of any appropriate technologies,
28 procedures, processes, equipment or production changes that may be utilized by the
29 emission source to reduce the amount of mercury used or released by that emission
30 source, including a financial analysis of the costs and benefits of reducing the amount
31 of mercury used or released.

32 ~~The department may keep information submitted to the department under this subsection~~
33 ~~confidential as provided under section 1310-B.~~

34 The department shall submit a report to the joint standing committee of the Legislature
35 having jurisdiction over natural resources matters no later than March 1, 2009
36 summarizing the mercury emissions and mercury reduction potential from those emission
37 sources subject to this subsection. In addition, the department shall include an evaluation
38 of the appropriateness of the 25-pound mercury standard established in subsection 5. The
39 evaluation must address, but is not limited to, the technological feasibility, cost and
40 schedule of achieving the standards established in subsection 5. The department shall
41 submit an updated report to the committee by March 1, 2013. The joint standing

4.A.13

1 committee of the Legislature having jurisdiction over natural resources matters is
2 authorized to report out to the 126th Legislature a bill relating to the evaluation and the
3 updated report.

4 **Sec. 10. 38 MRSA §585-C, sub-§2, ¶D**, as affected by PL 1989, c. 890, Pt. A,
5 §40 and amended by Pt. B, §160, is repealed.

6 **Sec. 11. 38 MRSA §1310-B, sub-§2**, as repealed and replaced by PL 2011, c.
7 420, Pt. A, §35 and amended by c. 657, Pt. W, §5, is further amended to read:

8 **2. Hazardous waste information and information on mercury-added products**
9 **and electronic devices and mercury reduction plans; chemicals.** Information relating
10 to hazardous waste submitted to the department under this subchapter, information
11 relating to mercury-added products submitted to the department under chapter 16-B,
12 information relating to electronic devices submitted to the department under section 1610,
13 subsection 6-A, ~~information relating to mercury reduction plans submitted to the~~
14 ~~department under section 585-B, subsection 6~~; information related to priority toxic
15 chemicals submitted to the department under chapter 27 or information related to
16 products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to
17 the department under section 1609 may be designated by the person submitting it as being
18 only for the confidential use of the department, its agents and employees, the Department
19 of Agriculture, Conservation and Forestry and the Department of Health and Human
20 Services and their agents and employees, other agencies of State Government, as
21 authorized by the Governor, employees of the United States Environmental Protection
22 Agency and the Attorney General and, for waste information, employees of the
23 municipality in which the waste is located. The designation must be clearly indicated on
24 each page or other portion of information. The commissioner shall establish procedures
25 to ensure that information so designated is segregated from public records of the
26 department. The department's public records must include the indication that information
27 so designated has been submitted to the department, giving the name of the person
28 submitting the information and the general nature of the information. Upon a request for
29 information, the scope of which includes information so designated, the commissioner
30 shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall
31 demonstrate to the satisfaction of the department that the designated information should
32 not be disclosed because the information is a trade secret or production, commercial or
33 financial information, the disclosure of which would impair the competitive position of
34 the submitter and would make available information not otherwise publicly available.
35 Unless such a demonstration is made, the information must be disclosed and becomes a
36 public record. The department may grant or deny disclosure for the whole or any part of
37 the designated information requested and within 15 days shall give written notice of the
38 decision to the submitter and the person requesting the designated information. A person
39 aggrieved by a decision of the department may appeal only to the Superior Court in
40 accordance with the provisions of section 346. All information provided by the
41 department to the municipality under this subsection is confidential and not a public
42 record under Title 1, chapter 13. In the event a request for such information is submitted
43 to the municipality, the municipality shall submit that request to the commissioner to be
44 processed by the department as provided in this subsection.

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SUMMARY

This bill implements the recommendations of the Right To Know Advisory Committee relating to existing public records exceptions in the Maine Revised Statutes, Titles 22, 26, 29-A and 38. The bill does the following.

It clarifies that all the information provided upon request to the Director of the Bureau of Health within the Department of Health and Human Services about toxic or hazardous substances in use or present at a specific location is public. It requires the director to release the information that is public upon request to any requester, and it repeals the requirement that the requester reside within 50 miles of the specific location.

It makes clear that reports of final bureau action of the Bureau of Labor Standards within the Department of Labor are public records, removing the language in current law that gives the Director of the Bureau of Labor Standards the discretion to release reports.

It requires that a report of the State Board of Arbitration and Conciliation in a labor dispute must be released 15 days after its receipt by the Governor and the Executive Director of the Maine Labor Relations Board if the conciliation process is not successful.

It repeals language authorizing the Secretary of State to adopt rules relating to maintenance and use of data processing files concerning motor vehicles as the confidentiality of personal information is already protected under federal law.

It repeals a provision relating to the Secretary of State's motor vehicle information technology system because the confidentiality of the system is already addressed in another provision of law.

It removes language regarding confidentiality of records for unmarked law enforcement vehicles that is redundant with another section of law.

It repeals language making mercury reduction plans for air emission sources emitting mercury confidential.

It repeals language making hazardous air pollutant emissions inventory reports confidential.

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

H.P. 1070 - L.D. 1493

**An Act To Revise the Laws Concerning Criminal History Record
Information and Intelligence and Investigative Information**

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

PART A

Sec. A-1. 16 MRSA c. 3, sub-c. 8, as amended, is repealed.

Sec. A-2. 16 MRSA c. 7 is enacted to read:

CHAPTER 7

CRIMINAL HISTORY RECORD INFORMATION ACT

§701. Short title

This chapter may be known and cited as "the Criminal History Record Information Act."

§702. Scope; application

This chapter governs the dissemination of criminal history record information by a Maine criminal justice agency. This chapter establishes 2 distinct categories of criminal history record information and provides for the dissemination of each:

1. **Public criminal history record information.** Public criminal history record information, the dissemination of which is governed by section 704; and

2. **Confidential criminal history record information.** Confidential criminal history record information, the dissemination of which is governed by section 705.

§703. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Administration of criminal justice. "Administration of criminal justice" means activities relating to the apprehension or summoning, detention, pretrial release, post-trial release, prosecution, adjudication, sentencing, correctional custody and supervision or rehabilitation of accused persons or convicted criminal offenders. "Administration of criminal justice" includes the collection, storage and dissemination of criminal history record information.

2. Confidential criminal history record information. "Confidential criminal history record information" means criminal history record information of the following types:

A. Unless the person remains a fugitive from justice, summons and arrest information without disposition if an interval of more than one year has elapsed since the date the person was summonsed or arrested and no active prosecution of a criminal charge stemming from the summons or arrest is pending;

B. Information disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor;

C. Information disclosing that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings;

D. Information disclosing that a grand jury has determined that there is insufficient evidence to warrant the return of a formal charge;

E. Information disclosing that a criminal proceeding has been indefinitely postponed or dismissed because the person charged is found by the court to be mentally incompetent to stand trial or to be sentenced;

F. Information disclosing that a criminal charge has been filed, if the filing period is indefinite or for more than one year;

G. Information disclosing that a criminal charge has been dismissed by a court with prejudice or dismissed with finality by a prosecutor other than as part of a plea agreement;

H. Information disclosing that a person has been acquitted of a criminal charge. A verdict or accepted plea of not criminally responsible by reason of insanity, or its equivalent, is not an acquittal of the criminal charge;

I. Information disclosing that a criminal proceeding has terminated in a mistrial with prejudice;

J. Information disclosing that a criminal proceeding has terminated based on lack of subject matter jurisdiction;

K. Information disclosing that a criminal proceeding has been terminated because the court lacked jurisdiction over the defendant; and

L. Information disclosing that a person has been granted a full and free pardon or amnesty.

3. Criminal history record information. "Criminal history 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 that connects a specific, identifiable person, including a juvenile treated by statute as an adult for criminal prosecution purposes, with formal involvement in the criminal justice system either as an accused or as a convicted criminal offender. "Criminal history record information" includes, but is not limited to, identifiable descriptions or notations of: summonses and arrests; detention; bail; formal criminal charges such as complaints, informations and indictments; any disposition stemming from such charges; post-plea or post-adjudication sentencing; involuntary commitment; execution of and completion of any sentencing alternatives imposed; release and discharge from involuntary commitment; any related pretrial and post-trial appeals, collateral attacks and petitions; and petitions for and warrants of pardons, commutations, reprieves and amnesties. "Criminal history record information" does not include: identification information such as fingerprints, palmprints, footprints or photographic records to the extent that the information does not indicate formal involvement of the specific individual in the criminal justice system; information of record of civil proceedings, including traffic infractions and other civil violations; intelligence and investigative record information as defined in section 803; or information of record of juvenile crime proceedings or their equivalent. Specific information regarding a juvenile crime proceeding is not criminal history record information notwithstanding that a juvenile has been bound over and treated as an adult or that by statute specific information regarding a juvenile crime proceeding is usable in a subsequent adult criminal proceeding. "Formal involvement in the criminal justice system either as an accused or as a convicted criminal offender" means being within the jurisdiction of the criminal justice system commencing with arrest, summons or initiation of formal criminal charges and concluding with the completion of every sentencing alternative imposed as punishment or final discharge from an involuntary commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent.

4. Criminal justice agency. "Criminal justice agency" means a federal, state or State of Maine government agency or any subunit of a government agency at any governmental level that performs the administration of criminal justice pursuant to a statute or executive order. "Criminal justice agency" includes federal courts, Maine courts, courts in any other state, the Department of the Attorney General, district attorneys' offices and the equivalent departments or offices in any federal or state jurisdiction. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government and the government of any federally recognized Indian tribe.

5. Disposition. "Disposition" means information of record disclosing that a criminal proceeding has been concluded, although not necessarily finalized, and the specific nature of the concluding event. "Disposition" includes, but is not limited to: an acquittal; a dismissal, with or without prejudice; the filing of a charge by agreement of the parties or by a court; the determination that a defendant is currently a fugitive from justice; a conviction, including the acceptance by a court of a plea of guilty or nolo contendere; a deferred disposition; a proceeding indefinitely continued or dismissed due to a defendant's incompetence; a finding of not criminally responsible by reason of insanity or its equivalent; a mistrial, with or without prejudice; a new trial ordered; an arrest of judgment; a sentence imposition; a resentencing ordered; an execution of and completion of any sentence alternatives imposed, including but not limited to fines, restitution,

correctional custody and supervision, and administrative release; a release or discharge from a commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent; the death of the defendant; any related pretrial and post-trial appeals, collateral attacks and petitions; a pardon, commutation, reprieve or amnesty; and extradition. "Disposition" also includes information of record disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor, that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings or that a grand jury has determined that there is insufficient evidence to warrant the return of a formal charge.

6. Dissemination. "Dissemination" means the transmission of information by any means, including but not limited to orally, in writing or electronically, by or to anyone outside the criminal justice agency that maintains the information.

7. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access.

8. Public criminal history record information. "Public criminal history record information" means criminal history record information that is not confidential criminal history record information, including information recorded pursuant to section 706.

9. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam and American Samoa. "State" also includes the federal government of Canada and any provincial government of Canada and the government of any federally recognized Indian tribe.

10. Statute. "Statute" means an Act of Congress or an act of a state legislature or a provision of the Constitution of the United States or the constitution of a state.

§704. Dissemination of public criminal history record information

1. Generally. Public criminal history record information is public for purposes of Title 1, chapter 13. Public criminal history record information may be disseminated by a Maine criminal justice agency to any person or public or private entity for any purpose. Public criminal history record information is public whether it relates to a crime for which a person is currently within the jurisdiction of the criminal justice system or it relates to a crime for which a person is no longer within that jurisdiction. There is no time limitation on dissemination of public criminal history record information.

2. Required inquiry to State Bureau of Identification. A Maine criminal justice agency, other than a court, shall query the Department of Public Safety, State Bureau of Identification before disseminating any public criminal history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. "Noncriminal justice purpose" means a purpose other than for the administration of criminal justice or criminal justice agency employment.

§705. Dissemination of confidential criminal history record information

1. Generally. A Maine criminal justice agency, whether directly or through any intermediary, may disseminate confidential criminal history record information only to:

A. Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;

B. Any person for any purpose when expressly authorized by a statute, executive order, court rule, court decision or court order containing language specifically referring to confidential criminal history record information or one or more of the types of confidential criminal history record information;

C. Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement must specifically authorize access to data, limit the use of the data to purposes for which given, ensure security and confidentiality of the data consistent with this chapter and provide sanctions for any violations;

D. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement must specifically authorize access to confidential criminal history record information, limit the use of the information to research, evaluation or statistical purposes, ensure the confidentiality and security of the information consistent with this chapter and provide sanctions for any violations;

E. Any person who makes a specific inquiry to the criminal justice agency as to whether a named individual was summonsed, arrested or detained or had formal criminal charges initiated on a specific date;

F. The public for the purpose of announcing the fact of a specific disposition that is confidential criminal history record information, other than that described in section 703, subsection 2, paragraph A, within 30 days of the date of occurrence of that disposition or at any point in time if the person to whom the disposition relates specifically authorizes that it be made public; and

G. A public entity for purposes of international travel, such as issuing visas and granting of citizenship.

2. Confirming existence or nonexistence of information. A Maine criminal justice agency may not confirm the existence or nonexistence of confidential criminal history record information to any person or public or private entity that would not be eligible to receive the information itself.

3. Required inquiry to State Bureau of Identification. A Maine criminal justice agency, other than a court, shall query the Department of Public Safety, State Bureau of Identification before disseminating any confidential criminal history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. "Noncriminal justice purpose" means a purpose other than for the administration of criminal justice or criminal justice agency use.

§706. Public information about persons detained following arrest

1. Requirement of record. A Maine criminal justice agency that maintains a holding facility, as defined in Title 34-A, section 1001, subsection 9, or other facility for pretrial detention shall record the following information concerning each person delivered to it for pretrial detention for any period of time:

- A. The identity of the arrested person, including the person's name, year of birth, residence and occupation, if any;
- B. The statutory or customary description of the crime or crimes for which the person was arrested including the date and geographic location where the crime is alleged to have occurred;
- C. The date, time and place of the arrest; and
- D. The circumstances of the arrest including, when applicable, the physical force used in making the arrest, the resistance made to the arrest, what weapons were involved, the arrested person's refusal to submit and the pursuit by the arresting officers.

2. Time and method of recording. A Maine criminal justice agency shall record the information under subsection 1 immediately upon delivery of an arrested person to the criminal justice agency for detention. The criminal justice agency shall record and maintain the information in chronological order and keep the information in a suitable, permanent record. The information required by this section may be combined by a sheriff with the record required by Title 30-A, section 1505.

3. Information public. The information required to be recorded and maintained by this section is public criminal history record information.

§707. Unlawful dissemination of confidential criminal history record information

1. Offense. A person is guilty of unlawful dissemination of confidential criminal history record information if the person intentionally disseminates confidential criminal history record information knowing it to be in violation of any of the provisions of this chapter.

2. Classification. Unlawful dissemination of confidential criminal history record information is a Class E crime.

§708. Inapplicability of this chapter to criminal history record information contained in certain records

This chapter does not apply to criminal history record information contained in:

1. Posters, announcements, lists. Posters, announcements or lists used for identifying or apprehending fugitives from justice or wanted persons;

2. Records of entry. Records of entry, such as calls for service, formerly known as "police blotters," that are maintained by criminal justice agencies, that are compiled and

organized chronologically and that are required by law or long-standing custom to be made public:

3. Records of public judicial proceedings. Records of public judicial proceedings:

A. Retained at or by the District Court, Superior Court or Supreme Judicial Court. Public access to and dissemination of such records for inspection and copying are as provided by rule or administrative order of the Supreme Judicial Court; and

B. From federal courts and courts of other states:

4. Published opinions. Published court or administrative opinions not impounded or otherwise declared confidential:

5. Records of public proceedings. Records of public administrative or legislative proceedings:

6. Records of traffic crimes. Records of traffic crimes maintained by the Secretary of State or by a state department of transportation or motor vehicles or the equivalent thereof for the purposes of regulating the issuance, suspension, revocation or renewal of a driver's, pilot's or other operator's license; and

7. Pardons, commutations, reprieves and amnesties. Petitions for and warrants of pardons, commutations, reprieves and amnesties.

§709. Right to access and review

1. Inspection. If a Maine criminal justice agency maintains criminal history record information about a person, the person or the person's attorney may inspect the criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary to ensure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The criminal justice agency shall supply the person or the person's attorney with a copy of the criminal history record information pertaining to the person on request and payment of a reasonable fee.

2. Review. A person or the person's attorney may request amendment or correction of criminal history record information concerning the person by addressing, either in person or in writing, the request to the criminal justice agency in which the information is maintained. The request must indicate the particular record involved, the nature of the amendment or correction sought and the justification for the amendment or correction.

On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned criminal history record information is accurate and complete. If investigation reveals that the questioned criminal history record information is inaccurate or incomplete, the criminal justice agency shall immediately correct the error or deficiency.

Not later than 15 days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the criminal justice agency shall notify the requesting person in writing either that the criminal justice agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal must include the reasons for the refusal, the procedure established by the criminal justice agency for requesting a review by the head of the criminal justice agency of that refusal and the name and business address of that official.

3. Administrative appeal. If there is a request for review, the head of the criminal justice agency shall, not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the review and either make the requested amendment or correction or refuse to do so. If the head of the criminal justice agency refuses to make the requested amendment or correction, the head of the criminal justice agency shall permit the requesting person to file with the criminal justice agency a concise statement setting forth the reasons for the disagreement with the refusal. The head of the criminal justice agency shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4.

Disputed criminal history record information disseminated by the criminal justice agency with which the requesting person has filed a statement of disagreement must clearly reflect notice of the dispute after the filing of such a statement. A copy of the statement must be included, along with, if the criminal justice agency determines it appropriate, a copy of a concise statement of the criminal justice agency's reasons for not making the amendment or correction requested.

4. Judicial review. If an administrative appeal brought pursuant to subsection 3 is denied by the head of the criminal justice agency, that decision is final agency action subject to appeal to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

5. Notification. When a criminal justice agency has amended or corrected a person's criminal history record information in response to a written request as provided in subsection 2 or a court order, the criminal justice agency shall, within 30 days thereof, advise all prior recipients who have received that information within the year prior to the amendment or correction that the amendment or correction has been made. The criminal justice agency shall also notify the person who is the subject of the amended or corrected criminal history record information of compliance with this subsection and the prior recipients notified.

6. Right of access and review of court records. This section does not apply to the right of access and review by a person or the person's attorney of criminal history record information about that person retained at or by the District Court, Superior Court or Supreme Judicial Court. Access and review of court records retained by the District Court, Superior Court or Supreme Judicial Court are as provided by rule or administrative order of the Supreme Judicial Court.

§710. Application to prior Maine criminal history record information

The provisions of this chapter apply to criminal history record information in existence before July 29, 1976, including that which has been previously expunged under

any other provision of Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter.

Sec. A-3. 16 MRSA c. 9 is enacted to read:

CHAPTER 9

INTELLIGENCE AND INVESTIGATIVE RECORD INFORMATION ACT

§801. Short title

This chapter may be known and cited as "the Intelligence and Investigative Record Information Act."

§802. Application

This chapter applies to a record that is or contains intelligence and investigative record information and that is collected by or prepared at the direction of or kept in the custody of any Maine criminal justice agency.

§803. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Administration of civil justice. "Administration of civil justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known, suspected or possible civil violations and prospective and pending civil actions. It includes the collection, storage and dissemination of intelligence and investigative record information relating to the administration of civil justice. "Administration of civil justice" does not include known, suspected or possible traffic infractions.

2. Administration of criminal justice. "Administration of criminal justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known, suspected or possible crimes. It includes the collection, storage and dissemination of intelligence and investigative record information relating to the administration of criminal justice.

3. Administration of juvenile justice. "Administration of juvenile justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known, suspected or possible juvenile crimes. "Administration of juvenile justice" includes the collection, storage and dissemination of intelligence and investigative information relating to the administration of juvenile justice.

4. Criminal justice agency. "Criminal justice agency" means a federal, state or State of Maine government agency or any subunit of a government agency at any governmental level that performs the administration of criminal justice pursuant to a statute or executive order. "Criminal justice agency" includes the Department of the Attorney General, district attorneys' offices and the equivalent departments or offices in any federal or state jurisdiction. "Criminal justice agency" also includes any equivalent

agency at any level of Canadian government and the government of any federally recognized Indian tribe.

5. Dissemination. "Dissemination" means the transmission of information by any means, including but not limited to orally, in writing or electronically, by or to anyone outside the criminal justice agency that maintains the information.

6. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access.

7. Intelligence and investigative record information. "Intelligence and investigative record information" means information of record collected by or prepared by or at the direction of a criminal justice agency or kept in the custody of a criminal justice agency while performing the administration of criminal justice or, exclusively for the Department of the Attorney General and district attorneys' offices, the administration of civil justice. "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 other agency. "Intelligence and investigative record information" does not include criminal history record information as defined in section 703, subsection 3 and does not include information of record collected or kept while performing the administration of juvenile justice.

8. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam and American Samoa. "State" also includes the federal government of Canada and any provincial government of Canada and the government of any federally recognized Indian tribe.

9. Statute. "Statute" means an Act of Congress or an act of a state legislature or a provision of the Constitution of the United States or the constitution of a state.

§804. Limitation on dissemination of intelligence and investigative record information

Except as provided in sections 805 and 806, a record that contains intelligence and investigative record information is confidential and may not be disseminated by a criminal justice agency to any person or public or private entity if there is a reasonable possibility that public release or inspection of the record would:

1. Interfere with criminal law enforcement proceedings. Interfere with law enforcement proceedings relating to crimes;

2. Result in dissemination of prejudicial information. 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;

3. Constitute an invasion of privacy. Constitute an unwarranted invasion of personal privacy;

4. Disclose confidential source. Disclose the identity of a confidential source;

5. Disclose confidential information. Disclose confidential information furnished only by a confidential source;

6. Disclose trade secrets or other confidential commercial or financial information. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information, by the Department of the Attorney General or by a district attorney's office;

7. Disclose investigative techniques or security plans. Disclose investigative techniques and procedures or security plans and procedures not known by the general public;

8. Endanger law enforcement or others. Endanger the life or physical safety of any individual, including law enforcement personnel;

9. Disclose statutorily designated confidential information. Disclose information designated confidential by statute;

10. Interfere with civil proceedings. 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;

11. Disclose arbitration or mediation information. Disclose conduct of or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General; or

12. Identify source of consumer or antitrust complaints. Identify the source of a complaint made to the Department of the Attorney General regarding a violation of consumer or antitrust laws.

§805. Exceptions

This chapter does not preclude dissemination of intelligence and investigative record information that is confidential under section 804 by a Maine criminal justice agency to:

1. Another criminal justice agency. Another criminal justice agency;

2. A person or entity for purposes of intelligence gathering or ongoing investigation. A person or public or private entity as part of the criminal justice agency's administration of criminal justice or the administration of civil justice by the Department of the Attorney General or a district attorney's office;

3. An accused person or that person's agent or attorney. A person accused of a crime or that person's agent or attorney for trial and sentencing purposes if authorized by:

A. The responsible prosecutorial office or prosecutor; or

B. A court rule or court order of this State or of the United States.

As used in this subsection, "agent" means a licensed professional investigator, an expert witness or a parent, foster parent or guardian if the accused person has not attained 18 years of age;

4. Court. A federal court, the District Court, Superior Court or Supreme Judicial Court or an equivalent court in another state;

5. An authorized person or entity. A person or public or private entity expressly authorized to receive the 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 of intelligence and investigative record information or specifically refers to a type of intelligence or investigative record; or

6. Secretary of State. The Secretary of State for use in the determination and issuance of a driver's license suspension.

§806. Exceptions subject to reasonable limitations

Subject to reasonable limitations imposed by a Maine criminal justice agency to protect against the harms described in section 804, this chapter does not preclude dissemination of intelligence and investigative record information confidential under section 804 by a Maine criminal justice agency to:

1. A government agency responsible for investigating child or adult abuse, neglect or exploitation. A government agency or subunit of a government agency in this State or another state that pursuant to statute is responsible for investigating abuse, neglect or exploitation of children or incapacitated or dependent adults if the intelligence and investigative record information is used in the investigation of suspected abuse, neglect or exploitation;

2. A crime victim or that victim's agent or attorney. A crime victim or that victim's agent or attorney. As used in this subsection, "agent" means a licensed professional investigator or an immediate family member if due to death, age or physical or mental disease, disorder or defect the victim cannot realistically act on the victim's own behalf; or

3. A counselor or advocate. A sexual assault counselor, as defined in section 53-A, subsection 1, paragraph B, or an advocate, as defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice agency. An agreement between a criminal justice agency and a sexual assault counselor or an advocate must, at a minimum, include provisions that:

A. Permit the sexual assault counselor or advocate to use a report or record that contains intelligence and investigative record information if the intelligence and investigative record information is used in planning for the safety of a victim named in the report or record;

B. Prohibit the sexual assault counselor or advocate from further disseminating a report or record that contains intelligence and investigative record information;

C. Require the sexual assault counselor or advocate to ensure that a report or record that contains intelligence and investigative record information remain secure and confidential;

D. Require the sexual assault counselor or advocate to destroy a report or record that contains intelligence and investigative record information within 30 days after the sexual assault counselor's or advocate's receiving the report or record;

E. Permit the criminal justice agency to perform reasonable and appropriate audits in order to ensure that a report or record containing intelligence and investigative record information that are obtained by and that are in the custody of the sexual assault counselor or advocate are maintained in accordance with the requirements of this subsection;

F. Require the sexual assault counselor or advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative record information;

G. Permit a criminal justice agency to immediately and unilaterally revoke an agreement made under this subsection; and

H. Provide sanctions for any violations of this subsection.

The Commissioner of Public Safety may adopt a model agreement pursuant to this subsection for use by criminal justice agencies, sexual assault counselors and advocates.

§807. Confirming existence or nonexistence of confidential intelligence and investigative record information

A criminal justice agency may not confirm the existence or nonexistence of intelligence and investigative record information confidential under section 804 to any person or public or private entity that is not eligible to receive the information itself.

§808. No right to access or review

A person who is the subject of intelligence and investigative record information maintained by a criminal justice agency has no right to inspect or review that information for accuracy or completeness.

§809. Unlawful dissemination of intelligence and investigative record information

1. **Offense.** A person is guilty of unlawful dissemination of intelligence and investigative record information if the person intentionally disseminates intelligence and investigative record information knowing it to be in violation of any of the provisions of this chapter.

2. **Classification.** Unlawful dissemination of intelligence and investigative record information is a Class E crime.

PART B

Sec. B-1. 1 MRSA §402, sub-§3-A, as amended by PL 2001, c. 477, §1, is further amended to read:

3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:

- A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, ~~conviction data~~ public criminal history record information, as defined in Title 16, section 703, subsection 8, address of furlough and dates of furlough;
- B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, ~~conviction data~~ public criminal history record information, as defined in Title 16, section 703, subsection 8, address of residence and dates of supervision; and
- C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, ~~conviction data~~ public criminal history record information, as defined in Title 16, section 703, subsection 8, and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information.

Sec. B-2. 5 MRSA §19506, sub-§1, as amended by PL 2001, c. 357, §13, is further amended to read:

1. Records. Agency personnel must be granted access to all records, reports and supporting information, other than records, reports and supporting information created in the course of an ongoing criminal investigation by the Attorney General, a district attorney's office or a law enforcement agency or records, reports and supporting information designated as confidential by Title 16, section ~~614~~ 804, that:

- A. Pertain to a person who is a client of the agency, if the person or the person's legal guardian or other legal representative has authorized the agency to have that access;
- C. Describe incidents of abuse, exploitation, neglect or injury, and the steps taken to investigate those incidents, prepared by any staff person of any facility serving persons with disabilities or by any agency charged with investigating allegations of abuse, exploitation, neglect and injury occurring at facilities that serve persons with disabilities; or
- D. Pertain to an individual who is or was a person with a disability and who is the subject of a complaint received by the agency or who, as a result of monitoring or other activities resulting from a complaint or other evidence, the agency has probable cause to believe has been or is being abused, exploited or neglected and who:
 - (1) By reason of a mental or physical condition is unable to authorize the agency to have access and is either under public guardianship or without a legal guardian or other representative who may authorize the agency to have access;
 - (2) Has a legal guardian, conservator or other legal representative who has been contacted by the agency upon receipt of the name and address of the guardian,

conservator or representative, and the agency has offered assistance to that person to resolve the situation, and that person has failed or refused to act on behalf of the individual; or

(3) Is deceased or whose whereabouts are unknown.

Agency personnel must be given access to the records of a person with a disability and other records relevant to conducting an investigation within 3 business days of the agency making a written request. When the agency determines there is probable cause to believe that the health or safety of the person is in serious or immediate jeopardy or in event of the death of a person with a disability, the agency must be given access to records within 24 hours of the agency making a written request.

Sec. B-3. 9-A MRSA §13-115, sub-§1, ¶A, as enacted by PL 2009, c. 362, Pt. B, §1, is amended to read:

A. Criminal, civil and administrative information, including ~~nonconviction data~~ confidential criminal history record information as defined in Title 16, section ~~614 703~~, subsection ~~9 2~~;

Sec. B-4. 10 MRSA §8003-B, sub-§3, as amended by PL 1993, c. 719, §4 and affected by §12, is further amended to read:

3. Attorney General records. The provision or disclosure of investigative records of the Department of the Attorney General to a departmental employee designated by the commissioner or to a complaint officer of a board or commission does not constitute a waiver of the confidentiality of those records for any other purposes. Further disclosure of those investigative records is subject to Title 16, section ~~614 804~~ and the discretion of the Attorney General.

Sec. B-5. 15 MRSA §709, sub-§1-A, as enacted by PL 1987, c. 680, §1, is amended to read:

1-A. Administration of criminal justice. "Administration of criminal justice" has the same meaning as in Title 16, section ~~614 703~~, subsection 1.

Sec. B-6. 15 MRSA §3308, sub-§7, ¶A, as enacted by PL 1985, c. 426, is amended to read:

A. For purposes of this subsection the following terms have the following meanings.

(1) "Administration of criminal justice" has the same meaning as found in Title 16, section ~~614 703~~, subsection 1.

(2) "Administration of juvenile criminal justice" means ~~detection,~~ activities related to the apprehension or summoning, detention, conditional or unconditional release, informal adjustment, initial appearance, bind over, adjudication ~~or~~, disposition, custody and supervision or rehabilitation of accused juveniles or adjudicated juvenile criminal offenders. It includes ~~juvenile crime identification activities and~~ the collection, storage and dissemination of juvenile crime information.

(3) "Criminal justice agency" has the same meaning as found in Title 16, section ~~611~~ 703, subsection 4.

(4) "Dissemination" has the same meaning as found in Title 16, section ~~611~~ 703, subsection 6.

Sec. B-7. 16 MRSA §614, sub-§3, ¶D, as amended by PL 2009, c. 181, §2, is further amended to read:

D. A victim or victim's agent or attorney, subject to reasonable limitations to protect the interest described in subsection 1; ~~or~~

Sec. B-8. 16 MRSA §614, sub-§3, ¶E, as enacted by PL 2009, c. 181, §3, is amended to read:

E. An advocate, as defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice agency and subject to reasonable limitations to protect the interests described in subsection 1. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:

- (1) Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;
- (2) Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;
- (3) Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;
- (4) Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;
- (5) Permit the criminal justice agency to perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this paragraph;
- (6) Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;
- (7) Permit the criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this paragraph; and
- (8) Provide sanctions for any violations of this paragraph.

The Commissioner of Public Safety may adopt a model policy to standardize the provisions contemplated in this paragraph; ~~or~~ or

Sec. B-9. 16 MRSA §614, sub-§3, ¶F is enacted to read:

F. The Secretary of State for use in the determination and issuance of a driver's license suspension.

Sec. B-10. 16 MRSA §632, as enacted by PL 1993, c. 346, §1, is amended to read:

§632. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Administration of criminal justice. "Administration of criminal justice" has the same meaning as defined in section ~~611~~ 703, subsection 1.

~~**2. Conviction data.** "Conviction data" has the same meaning as defined in section 611, subsection 2.~~

2-A. Confidential criminal history record information. "Confidential criminal history record information" has the same meaning as defined in section 703, subsection 2.

3. Criminal history record information. "Criminal history record information" has the same meaning as defined in section ~~611~~ 703, subsection 3.

4. Criminal justice agency. "Criminal justice agency" has the same meaning as defined in section ~~611~~ 703, subsection 4.

5. Criminal record information system. "Criminal record information system" means a system including equipment, facilities, procedures and agreements for the collection, processing, preservation and dissemination of criminal record information including criminal history record information.

6. Disposition. "Disposition" has the same meaning as defined in section ~~611~~ 703, subsection 5.

7. Executive order. "Executive order" has the same meaning as defined in section ~~611~~ 703, subsection 7.

~~**8. Nonconviction data.** "Nonconviction data" has the same meaning as defined in section 611, subsection 9.~~

9. Offender. "Offender" means an individual, juvenile or adult, accused or convicted of a criminal offense under the laws of this State or federal law.

10. Offender-based tracking information. "Offender-based tracking information" means information collected during the administration of criminal justice by criminal justice agencies related to an identifiable person who has been determined to be an offender.

~~**11. Person.** "Person" has the same meaning as defined in section 611, subsection 10.~~

11-A. Public criminal history record information. "Public criminal history record information" has the same meaning as defined in section 703, subsection 8.

12. State. "State" has the same meaning as defined in section ~~611~~ 703, subsection ~~11~~ 9.

13. Statute. "Statute" has the same meaning as defined in section ~~611~~ 703, subsection ~~12~~ 10.

Sec. B-11. 17 MRSA §1023, sub-§3, as enacted by PL 2001, c. 422, §13, is amended to read:

3. Cooperation between agencies. For the purposes of this section, law enforcement officers, the commissioner or the commissioner's designee, humane agents, a state veterinarian and certified animal control officers may exchange information and reports pertaining to an investigation of cruelty to animals pursuant to ~~Title 16, chapter 3, subchapter VIII~~ subsection 4 and Title 7, section 3909, subsection 6.

Sec. B-12. 18-A MRSA §9-304, sub-§(a-1), ¶(2), as corrected by RR 2001, c. 1, §21, is amended to read:

(2). The court shall request a background check for each prospective adoptive parent who is not the biological parent of the child. The background check must include a screening for child abuse cases in the records of the department and criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

(i) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of ~~Maine conviction data~~ public criminal history record information as defined in Title 16, section 703, subsection 8.

(ii) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.

(iii) Each prospective parent who is not the biological parent of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the court for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

(iv) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section ~~620~~ 709.

(v) State and federal criminal history record information may be used by the court for the purpose of screening prospective adoptive parents in determining whether the adoption is in the best interests of the child.

(vi) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the court are for official use only and may not be disseminated outside the court except as required under Title 22, section 4011-A.

(vii) The expense of obtaining the information required by this paragraph is incorporated in the adoption filing fee established in section 9-301. The Probate Court shall collect the total fee and transfer the appropriate funds to the Department of Public Safety and the department.

Sec. B-13. 18-A MRS §9-304, sub-§(a-2), ¶(1), as enacted by PL 2003, c. 575, §2, is amended to read:

(1). The department may request a background check for each prospective adoptive parent who is not the biological parent of the child. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

(i) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of ~~Maine conviction data~~ public criminal history record information as defined in Title 16, section 703, subsection 8.

(ii) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.

(iii) Each prospective parent who is not the biological parent of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the department for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

(iv) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section ~~620~~ 709.

(v) State and federal criminal history record information may be used by the department for the purpose of screening prospective adoptive parents in determining whether the adoption is in the best interests of the child.

(vi) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the department are for official use only and may not be disseminated outside the department except to a court considering an adoption petition under subsection (a-1).

Sec. B-14. 20-A MRSA §6103, sub-§1, as amended by PL 1997, c. 452, §3, is further amended to read:

1. Criminal history record information obtained; reliance. The commissioner shall obtain criminal history record information containing a record of ~~conviction data~~ confidential criminal history record information as defined in Title 16, section 703, subsection 2 from the Maine Criminal Justice Information System for any person applying for certification, authorization, approval or renewal. The commissioner may rely on information provided by the Maine Criminal Justice Information System within 24 months prior to the issuance of a certificate, authorization, approval or renewal.

Sec. B-15. 20-A MRSA §6103, sub-§8, as enacted by PL 1997, c. 452, §3, is amended to read:

8. Applicant's access to criminal history record check. The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of a criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal record check may inspect and review criminal record information pursuant to Title 16, section ~~620~~ 709.

Sec. B-16. 22 MRSA §3022, sub-§14, as enacted by PL 2001, c. 221, §5, is amended to read:

14. Access to report documents. Report documents, as defined in section 3035, subsection 2, in the possession or custody of a medical examiner or the Office of the Chief Medical Examiner constitute investigative information. Release and inspection are governed by Title 16, section ~~614~~ 804. Release and inspection are also contingent upon the person's request specifying a specific decedent or decedents and the payment of any required fee under section 3035.

Sec. B-17. 22 MRSA §3480, sub-§1, ¶B, as corrected by RR 2009, c. 2, §56, is amended to read:

B. Obtain ~~nonconviction data~~ confidential criminal history record information and other criminal history record information under Title 16, section ~~611~~ 703, which the commissioner, the commissioner's delegate or the legal counsel for the department ~~deems~~ considers relevant to a case of alleged abuse, neglect or exploitation.

Sec. B-18. 22 MRSA §4007, sub-§1-A, ¶D, as enacted by PL 2007, c. 351, §2, is amended to read:

D. Records that are required to be maintained by the court as confidential under this subsection may be disclosed to:

- (1) A state agency if necessary to carry out the statutory function of that agency;
- (2) A guardian ad litem appointed to the case; or
- (3) A criminal justice agency, as defined by Title 16, section ~~611~~ 703, subsection 4, if necessary to carry out the administration of criminal justice or the administration of juvenile justice, and such disclosure is otherwise permitted pursuant to section 4008.

In making such disclosure, the court shall order the party receiving the information to maintain the information as confidential.

Sec. B-19. 22 MRSA §4021, sub-§1, ¶B, as amended by PL 2007, c. 586, §15, is further amended to read:

B. Obtain ~~nonconviction data~~ confidential criminal history record information and other criminal history record information under Title 16, chapter ~~3, subchapter 8~~ 7 that the commissioner, the commissioner's delegate or the legal counsel for the department considers relevant to an abuse or neglect case or the investigation of a suspicious child death.

Sec. B-20. 22 MRSA §4038-E, sub-§7, ¶A, as enacted by PL 2011, c. 402, §15, is amended to read:

A. The department may, pursuant to rules adopted pursuant to Title 18-A, section 9-304, subsection (a-2), request a background check for each permanency guardian. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

- (1) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of ~~Maine conviction data~~ public criminal history record information as defined in Title 16, section 703, subsection 8.
- (2) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.
- (3) Each permanency guardian of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the department for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

(4) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section ~~620~~ 709.

(5) State and federal criminal history record information may be used by the department for the purpose of screening each permanency guardian in determining whether the adoption is in the best interests of the child.

(6) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the department are for official use only and may not be disseminated outside the department except to a court considering an adoption petition under this section.

Sec. B-21. 25 MRSA §1541, sub-§3, ¶B, as enacted by PL 2001, c. 372, §1, is amended to read:

B. Notwithstanding chapter 199, the fingerprints and descriptive information of any person that have been submitted to the Federal Bureau of Investigation for the purpose of conducting a criminal history record check for noncriminal justice purposes through the interstate identification index system, as defined in section 1703, subsection 12, are not a criminal history record, as defined by section 1703, subsection 5, or criminal history record information, as defined by Title 16, section ~~611~~ 703, subsection 3, and such submittal is not an activity related to criminal justice, as defined by section 1703, subsection 6, or the administration of criminal justice, as defined by Title 16, section ~~611~~ 703, subsection 1.

Sec. B-22. 25 MRSA §1541, sub-§6, as amended by PL 2007, c. 539, Pt. PPP, §1, is further amended to read:

6. Establishment of fees. The State Bureau of Identification may charge a fee to individuals, nongovernmental organizations, governmental organizations that are engaged in licensing and governmental organizations that are not a governmental entity of the State, a county of the State or a municipality of the State for each criminal history record check requested for noncriminal justice purposes pursuant to Title 16, chapter ~~3~~, ~~subchapter 8~~ 7. The requestor shall provide a name and date of birth for each record being requested. A request made pursuant to 5 United States Code, Section 9101 must be accompanied by fingerprints. A governmental organization that is engaged in licensing may charge an applicant for the cost of the criminal history record check. The commissioner shall establish a schedule of fees that covers the cost of providing these services. One dollar of each fee generated under this subsection must be deposited to the Other Special Revenue account within the Bureau of State Police to offset the cost of maintenance and replacement of both hardware and software associated with the criminal history record check system. The remaining revenues generated from these fees must be credited to the General Fund.

Sec. B-23. 29-A MRSA §2117-A, sub-§5, as enacted by PL 2009, c. 605, §1, is amended to read:

5. Data retention. Data collected or retained through the use of an automated license plate recognition system in accordance with subsection 3 that are not considered intelligence and investigative record information as defined by Title 16, section ~~611~~ 803, subsection 8 7, or data collected for the purposes of commercial motor vehicle screening, may not be stored for more than 21 days.

Sec. B-24. 29-A MRSA §2251, sub-§7-A, ¶B, as amended by PL 2011, c. 654, §8, is further amended to read:

B. Except as provided in paragraph B-1 and Title 16, section 805, subsection 6, the Department of Public Safety, Bureau of State Police may not publicly disseminate personally identifying accident report data that are contained in an accident report database maintained, administered or contributed to by the Bureau of State Police. Such data are not public records for the purposes of Title 1, chapter 13.

Sec. B-25. 32 MRSA §85, sub-§3, as amended by PL 2011, c. 271, §8, is further amended to read:

3. Minimum requirements for licensing. In setting rules for the licensure of emergency medical services persons, the board shall ensure that a person is not licensed to care for patients unless that person's qualifications are at least those specified in this subsection. Any person who meets these conditions is considered to have the credentials and skill demonstrations necessary for licensure to provide emergency medical treatment.

A. The person must have completed successfully the training specified in rules adopted by the board pursuant to the Maine Administrative Procedure Act.

C. The person must have successfully completed a state cognitive test for basic emergency medical treatment and a board-approved practical evaluation of emergency medical treatment skills.

The board shall obtain criminal history record information containing a record of ~~conviction data~~ public criminal history record information as defined in Title 16, section 703, subsection 9 for an applicant seeking licensure under this subsection. Information obtained pursuant to this subsection is confidential and may be used only to determine suitability for issuance of a license to provide emergency medical services. The results of criminal history record checks received by the board are for official use only and may not be disseminated outside the board. The applicant for licensure shall pay the expense of obtaining the information required by this subsection.

Sec. B-26. 34-A MRSA §1001, sub-§§19 and 20, as enacted by PL 1987, c. 633, §1, are amended to read:

19. Administration of criminal justice. "Administration of criminal justice" has the same meaning as in Title 16, section ~~611~~ 703, subsection 1.

20. Criminal justice agency. "Criminal justice agency" has the same meaning as in Title 16, section ~~611~~ 703, subsection 4.

Sec. B-27. 34-A MRSA §1216, sub-§1, as amended by PL 2011, c. 515, §2 and c. 662, §22, is repealed and the following enacted in its place:

1. Limited disclosure. All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any person receiving services from the department must be kept confidential and may not be disclosed by any person, except that public records must be disclosed in accordance with Title 1, section 408-A; criminal history record information may be disseminated in accordance with Title 16, chapter 7; and documents other than those documents pertaining to information obtained by the department for the purpose of evaluating a client's ability to participate in a community-based program or from informants in a correctional or detention facility for the purpose of determining whether facility rules have been violated or pertaining to a victim's request for notice of release may, and must upon request, be disclosed:

A. To any person if the person receiving services, that person's legal guardian, if any, and, if that person is a minor, that person's parent or legal guardian give informed written consent to the disclosure of the documents referred to in this subsection after being given the opportunity to review the documents sought to be disclosed;

B. To any state agency if necessary to carry out the statutory functions of that agency;

C. If ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503;

D. To any criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile criminal justice or for criminal justice agency employment;

E. To persons engaged in research if:

(1) The research plan is first submitted to and approved by the commissioner;

(2) The disclosure is approved by the commissioner; and

(3) Neither original records nor identifying data are removed from the facility or office that prepared the records.

The commissioner and the person doing the research shall preserve the anonymity of the person receiving services from the department and may not disseminate data that refer to that person by name or number or in any other way that might lead to the person's identification;

F. To persons who directly supervise or report on the health, behavior or progress of a juvenile, to the superintendent of a juvenile's school and the superintendent's designees and to agencies that are or might become responsible for the health or welfare of a juvenile if the information is relevant to and disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation, including reintegration into the school; or

G. To any state agency engaged in statistical analysis for the purpose of improving the delivery of services to persons who are or might become mutual clients if:

(1) The plan for the statistical analysis is first submitted to and approved by the commissioner; and

(2) The disclosure is approved by the commissioner.

The commissioner and the state agency requesting the information shall preserve the anonymity of the persons receiving services from the department and may not disseminate data that refer to any person by name or number or that in any other way might lead to a person's identification.

Notwithstanding any other provision of law, the department may release the names, dates of birth and social security numbers of persons receiving services from the department and, if applicable, eligibility numbers and the dates on which those persons received services to any state or federal agency for the sole purpose of determining eligibility and billing for services and payments under federally funded programs administered by the agency. The department may also release to the agency information required for and to be used solely for audit or research purposes, consistent with federal law, for those services provided by or through the department. Agency personnel shall treat this information as confidential in accordance with federal and state law and shall return the records when their purpose has been served.

Sec. B-28. 34-A MRSA §11221, sub-§8, as enacted by PL 2003, c. 371, §7, is amended to read:

8. Criminal justice agency access to information. The bureau shall provide access to the information described in subsection 1 to criminal justice agencies. For purposes of this subsection, "criminal justice agency" has the same meaning as in Title 16, section ~~611~~ 703, subsection 4.

Sec. B-29. 34-A MRSA §11221, sub-§10, as amended by PL 2011, c. 299, §2, is further amended to read:

10. Registrant access to information. The bureau shall provide all information described in subsection 1, paragraphs A to F to a registrant who requests that person's own information. The process for access and review of that information is governed by Title 16, section ~~620~~ 709.

Sec. B-30. 34-A MRSA §11281, sub-§6, as enacted by PL 2011, c. 663, §3, is amended to read:

6. Criminal justice agency access to information. The bureau shall provide access to the information described in subsection 1 to criminal justice agencies. For purposes of this subsection, "criminal justice agency" has the same meaning as in Title 16, section ~~611~~ 703, subsection 4.

PART C

Sec. C-1. 7 MRSA §3909, sub-§6 is enacted to read:

6. Confidential information. The names of and other identifying information about persons providing information pertaining to criminal or civil cruelty to animals to the department are confidential information and may not be released.

Sec. C-2. 17 MRSA §1023, sub-§4 is enacted to read:

4. Confidential information. The names of and other identifying information about persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Conservation and Forestry are confidential information and may not be released.

PART D

Sec. D-1. 15 MRSA §3308-A is enacted to read:

§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.

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

A. "Administration of juvenile justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known, suspected or possible juvenile crimes. "Administration of juvenile justice" includes the collection, storage and dissemination of juvenile intelligence and investigative record information relating to the administration of juvenile justice.

B. "Criminal justice agency" has the same meaning as in Title 16, section 803, subsection 4.

C. "Dissemination" has the same meaning as in Title 16, section 803, subsection 5.

D. "Executive order" has the same meaning as in Title 16, section 803, subsection 6.

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.

F. "State" has the same meaning as in Title 16, section 803, subsection 8.

G. "Statute" has the same meaning as in Title 16, section 803, subsection 9.

2. Information part of proceeding. To the extent the juvenile intelligence and investigative record information has been made part of the court records of a juvenile proceeding, dissemination of that juvenile intelligence and investigative record

information by a Maine criminal justice agency must be as provided by section 3307 and section 3308.

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;

B. A person or public or private entity as part of performing the administration of juvenile justice;

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;

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

(1) Statute; or

(2) A court order.

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;

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

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.

