

#1.

**Maine Revised Statutes**  
**Title 1: GENERAL PROVISIONS**  
**Chapter 13: PUBLIC RECORDS AND PROCEEDINGS**

**§402. DEFINITIONS**

...

**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:

- A. The Legislature of Maine and its committees and subcommittees; [1975, c. 758, (NEW) .]
  - 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 Community College System and any of its committees and subcommittees; [1989, c. 358, §1 (AMD); 1989, c. 443, §1 (AMD); 1989, c. 878, Pt. A, §1 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]
  - C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; [1991, c. 848, §1 (AMD) .]
  - 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; [1995, c. 608, §1 (AMD) .]
  - 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; [2009, c. 334, §1 (AMD) .]
  - 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 establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and [2009, c. 334, §2 (AMD) .]
  - G. The committee meetings, subcommittee meetings and full membership meetings of any association that:
    - (1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and
    - (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.
- 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. [2009, c. 334, §3 (NEW) .]

[ 2009, c. 334, §§1-3 (AMD) .]



**STATUTE:** 1 M.R.S. §402, Sub-§3, ¶C-1

**AGENCY:** Legislative Council, Executive Director

**CONTACT PERSON:** Grant Pennoyer

**CONTACT PERSON'S EMAIL ADDRESS:** Grant.Pennoyer@legislature.maine.gov

## QUESTIONS

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

My experience in administering or applying this public records exception for certain constituent correspondence is very limited. I was able to seek some input from some partisan staff that have helped Legislators with constituent requests. They indicated that constituents often send confidential personal data or agency case files including this confidential data when seeking a Legislator's assistance with an issue before a state agency.

However, the staff also indicated that there were not aware of an instance when a Legislator applied this exception in denying a FOA request for a constituent request record. It seems highly unlikely that a constituent request would be captured in a FOA request unless it later became a public controversy. If that were the case and the press or someone requested a copy of the constituent's request, the confidential data could be redacted from the copy provided.

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

It makes sense to continue this public records exception given the high probability that future constituents requests will contain confidential data either intentional by the constituent or naively and unaware that most correspondence with Legislators is public information.

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

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

I am not aware of problem with the application of this exception. The language is pretty straightforward in terms of what is covered by the exception.

4. Does your agency recommend changes to this exception?

I am not aware of recommended changes that would improve this exception or its application.

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

I reached out by an email to the Chiefs of Staff of the partisan offices as their staff would be most likely help a Legislator respond to a constituent request and potentially possess the file with the confidential information. I did not reach out or survey individual Legislators for their input as the direct stakeholders for this exception.

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

As I noted earlier, I have virtually no direct experience with constituent requests to Legislators. The generalizations provided above are all that I can provide.

**Maine Revised Statutes**  
**Title 1: GENERAL PROVISIONS**  
**Chapter 13: PUBLIC RECORDS AND PROCEEDINGS**

**§402. DEFINITIONS**

**1. Conditional approval.** Approval of 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.

[ 1975, c. 758, (NEW) .]

**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.

[ 1991, c. 773, §1 (NEW) .]

**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:

A. The Legislature of Maine and its committees and subcommittees; [1975, c. 758, (NEW) .]

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 Community College System and any of its committees and subcommittees; [1989, c. 358, §1 (AMD); 1989, c. 443, §1 (AMD); 1989, c. 878, Pt. A, §1 (RPR); 2003, c. 20, Pt. 00, §2 (AMD); 2003, c. 20, Pt. 00, §4 (AFF) .]

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; [1991, c. 848, §1 (AMD) .]

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; [1995, c. 608, §1 (AMD) .]

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; [2009, c. 334, §1 (AMD) .]

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 establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and [2009, c. 334, §2 (AMD) .]

G. The committee meetings, subcommittee meetings and full membership meetings of any association that:

(1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and

(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.

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. [2009, c. 334, §3 (NEW).]

[ 2009, c. 334, §§1-3 (AMD) .]

**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:

A. Records that have been designated confidential by statute; [1975, c. 758, (NEW) .]

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; [1975, c. 758, (NEW) .]

C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over; [1991, c. 773, §2 (AMD) .]

C-1. Information contained in a communication between a constituent and an elected official if the information:

(1) Is of a personal nature, consisting of:

- (a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
- (b) Credit or financial information;
- (c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;
- (d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or
- (e) An individual's social security number; or

(2) Would be confidential if it were in the possession of another public agency or official; [2011, c. 264, §1 (NEW) .]

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 collective bargaining with its employees and their designated representatives; [1989, c. 358, §4 (AMD) .]

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community 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; [1989, c. 358, §4 (AMD); 1989, c. 443, §2 (AMD); 1989, c. 878, Pt. A, §2 (RPR); 2003, c. 20, Pt. 00, §2 (AMD); 2003, c. 20, Pt. 00, §4 (AFF) .]

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; [1991, c. 448, §1 (AMD) .]

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; [1991, c. 448, §1 (AMD) .]

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; [1995, c. 608, §4 (AMD) .]

I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter; [1999, c. 96, §1 (AMD) .]

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; [2001, c. 675, §1 (AMD) .]

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; [2003, c. 392, §1 (AMD) .]

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 physical damage sufficient to disrupt the normal functioning of a critical infrastructure; [2003, c. 614, §1 (AMD) .]

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; [2011, c. 662, §2 (AMD) .]

N. Social security numbers; [2011, c. 320, Pt. E, §1 (AMD) .]

O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:

(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

(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials; [2009, c. 1, §1 (COR) .]

P. Geographic 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 authorizes the release of the information; [2011, c. 149, §1 (AMD) .]

*(Paragraph P as enacted by PL 2009, c. 339, §3 is REALLOCATED TO TITLE 1, SECTION 402, SUBSECTION 3, PARAGRAPH Q)*

Q. (REALLOCATED FROM T. 1, §402, sub-§3, ¶P) 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 general 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 or the Department of Corrections under conditions that protect the information from further disclosure; [2015, c. 335, §1 (AMD) .]

R. Social security numbers in the possession of the Secretary of State; [2013, c. 518, §1 (AMD) .]

S. 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; [2015, c. 161, §1 (AMD) .]

T. Records describing research for the development of processing techniques for fisheries, aquaculture and seafood processing or the design and operation of a depuration plant in the possession of the Department of Marine Resources; and [2015, c. 161, §2 (AMD) .]

U. Records provided by a railroad company describing hazardous materials transported by the railroad company in this State, the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes that are in the possession of a state or local emergency management entity or law enforcement agency, a fire department or other first responder. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5. [2015, c. 161, §3 (NEW) .]

[ 2015, c. 161, §§1-3 (AMD); 2015, c. 335, §1 (AMD) .]

**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, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of furlough and dates of furlough; [2013, c. 267, Pt. B, §1 (AMD) .]

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, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of residence and dates of supervision; and [2013, c. 267, Pt. B, §1 (AMD) .]

C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, 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. [2013, c. 267, Pt. B, §1 (AMD) .]

[ 2013, c. 267, Pt. B, §1 (AMD) .]



**4. Public records of interscholastic athletic organizations.** Any records or minutes of meetings under subsection 2, paragraph G are public records.

[ 2009, c. 334, §4 (NEW) .]

**5. Public access officer.** "Public access officer" means the person designated pursuant to section 413, subsection 1.

[ 2011, c. 662, §3 (NEW) .]

**6. Reasonable office hours.** "Reasonable office hours" includes all regular office hours of an agency or official.

[ 2011, c. 662, §3 (NEW) .]

#### SECTION HISTORY

1973, c. 433, §1 (AMD). 1975, c. 243, (RPR). 1975, c. 483, §2 (AMD). 1975, c. 758, (RPR). 1977, c. 164, §§1,2 (AMD). 1977, c. 696, §9 (AMD). 1985, c. 695, §§1,2 (AMD). 1985, c. 779, §§1,2 (AMD). 1987, c. 20, §1 (AMD). 1987, c. 402, §A1 (AMD). 1987, c. 477, §1 (AMD). 1989, c. 358, §§1-4 (AMD). 1989, c. 443, §§1,2 (AMD). 1989, c. 878, §§A1,2 (AMD). 1991, c. 448, §§1,2 (AMD). 1991, c. 773, §§1,2 (AMD). 1991, c. 848, §1 (AMD). 1995, c. 608, §§1-5 (AMD). 1997, c. 714, §1 (AMD). 1999, c. 96, §§1-3 (AMD). 2001, c. 477, §1 (AMD). 2001, c. 675, §§1-3 (AMD). 2003, c. 20, §002 (AMD). 2003, c. 20, §004 (AFF). 2003, c. 392, §§1-3 (AMD). 2003, c. 614, §§1-3 (AMD). 2005, c. 381, §§1-3 (AMD). 2007, c. 597, §1 (AMD). RR 2009, c. 1, §§1-3 (COR). 2009, c. 176, §§1-3 (AMD). 2009, c. 334, §§1-4 (AMD). 2009, c. 339, §§1-3 (AMD). 2011, c. 149, §§1-3 (AMD). 2011, c. 264, §1 (AMD). 2011, c. 320, Pt. E, §1 (AMD). 2011, c. 662, §§2, 3 (AMD). 2013, c. 267, Pt. B, §1 (AMD). 2013, c. 339, §§1-3 (AMD). 2013, c. 518, §§1-3 (AMD). 2015, c. 161, §§1-3 (AMD). 2015, c. 335, §1 (AMD).

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STATUTE: 17-A M.R.S. § 1176, sub-§ 1

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- The agency administers/applies this exception on a routine basis, and denial of access to the records/data covered by the exception can occur in the context of FOAA requests, administrative proceedings, criminal prosecutions, and private civil litigation.
- The records (or, more accurately, data) to which the exception applies are those described in the exception.

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

- The agency supports the continuation of the exception so as to ensure for the safety and well-being of victims of crimes, as well as their family members, when applicable.

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

- The agency has not had any problems applying this exception.
- The type of records and data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records/data covered.

4. Does your agency recommend changes to this exception?

- The only change the agency might recommend is that the statute be amended to explicitly state in the exception that records/data covered by the exception are confidential and not "public records" for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not "public records" for the purpose of the FOAA. *See* 1 M.R.S. § 402(3)(A)).
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include victim/witness advocates at district attorney's offices and at the Office of the Attorney General, the Maine Coalition Against Sexual Assault, the Maine Coalition to End Domestic Violence, and prosecuting authorities (such as district attorney's offices and the Office of the Attorney General).
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
- The agency does not have any further information to provide at this time.

**STATUTE:** 17-A MRSA § 1176, sub-§5

**AGENCY:** Dept. of Corrections

**CONTACT PERSON:** Jody Breton

**CONTACT PERSON'S EMAIL ADDRESS:** jody.l.breton@maine.gov

### QUESTIONS

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

Answer: The records covered are the requests of a victim to be notified when the prisoner who offended against him or her is released into the community. These requests are kept strictly confidential and even within the DOC are only accessible to employees who work directly with crime victims. The exception is rarely cited in denying a request for production of records as it seems to be widely understood that these records are and should be confidential.

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

Answer: DOC supports continuation of this exception as it protects the crime victim who is fearful enough for his or her safety to request notification of the offender's release and prevents the offender from learning this and from learning the victim's contact information.

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

Answer: There have been no problems as this exception is very clear.

4. Does your agency recommend changes to this exception?

Answer: No.

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

Answer: Groups that promote the rights of victims.

Maine Coalition Against Sexual Assault  
Maine Coalition to End Domestic Violence  
Domestic Violence & Sexual Assault Commotions  
DOC's Victims Advisory Board  
Homicide Review Panel  
Parents of Murdered Children  
Criminal Law Advisory Commission

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

**Maine Revised Statutes**  
**Title 17-A: MAINE CRIMINAL CODE**

**Chapter 48: VICTIMS' RIGHTS HEADING: PL 1995, c. 680, §5 (new)**

**§1176. CONFIDENTIALITY OF VICTIM RECORDS**

**1. General rule of confidentiality.** Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined must be kept confidential, subject to disclosure only as authorized in this section.

[ 2007, c. 475, §13 (NEW) .]

**2. Disclosure to law enforcement or victim services agencies.** Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined may be disclosed only to:

A. A state agency if necessary to carry out the statutory duties of that agency; [2007, c. 475, §13 (NEW) .]

B. A criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile justice; [2007, c. 475, §13 (NEW) .]

C. A victims' service agency with a written agreement with a criminal justice agency to provide services as a victim advocate; or [2007, c. 475, §13 (NEW) .]

D. A person or agency upon request of the victim. [2007, c. 475, §13 (NEW) .]

[ 2007, c. 475, §13 (NEW) .]

**3. Limited disclosure as part of court order or bail condition.** A bail commissioner, judge, justice, court clerk, law enforcement officer or attorney for the State may disclose a victim's current address or location to the defendant or accused person, or the attorney or authorized agent of the defendant or accused person, as part of a bail condition or court order restricting contact with the victim, only when it is clear that the defendant already knows the victim's current address or location, or when the victim requests that such bail condition or court order be issued and the victim requests that the current address or location be specified.

[ 2007, c. 475, §13 (NEW) .]

**4. Limited disclosure pursuant to discovery.** Notwithstanding the provisions of the Maine Rules of Criminal Procedure, Rule 16, an attorney for the State may withhold the current address or location of a victim from a defendant, or the attorney or authorized agent of the defendant, if the attorney for the State has a good faith belief that such disclosure may compromise the safety of the victim.

[ 2007, c. 475, §13 (NEW) .]

**5. Disclosure of victim's request for notice prohibited.** In no case may a victim's request for notice of release of a defendant be disclosed except to those employees of the agency to which the defendant is committed and the office of the attorney for the State with which the request was filed in order for those employees to perform their official duties.

[ 2007, c. 475, §13 (NEW) .]

SECTION HISTORY

2005, c. 389, §1 (NEW). 2007, c. 475, §13 (RPR) .

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Ref # 43

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STATE OF MAINE  
ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE  
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS

March 1, 2016

Sen. David C. Burns, Chair  
Right to Know Advisory Committee  
127th Maine Legislature  
Second Regular Session

**RE: Review of Public Records Exception Affecting the Department of Education**

Dear Sen. Burns:

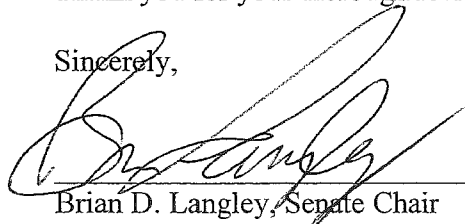
By letter dated January 6, 2016, the Right to Know Advisory Committee requested that the Education and Cultural Affairs Committee review a public records exception affecting the ability of the Department of Education to share certain education certification information with other states. We reviewed the exception at 20-A MRSA §13004(2-A)(A)&(B), and determined that no amendment to statute is necessary at this time.

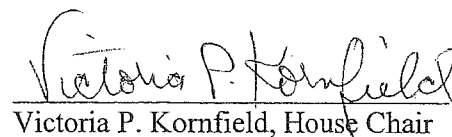
We agree with the Right to Know Advisory Committee that section 13004 does prohibit the disclosure of information that is designated confidential under Title 20-A, sections 6101 and 6103. However, when the Department of Education provided further information regarding the interstate exchange in which it participates, we concluded that the prohibitions in section 13004 are not currently affecting the Department's ability to participate in that exchange. The exchange – the National Association of State Directors of Teacher Education and Certification – relies on information derived from final determinations in certification actions (i.e. certification denial, revocation or suspension). In Maine, this information is within the definition of a “public record” under Title 20-A, section 6101(2)(C) and section 13004(2-A)(D), and can therefore be shared freely.

The Department has indicated that it may seek an amendment to section 13004 to clarify its language, and we welcome a proposal in the future.

Thank you for your thorough review and for bringing this potential issue to our attention.

Sincerely,

  
Brian D. Langley, Senate Chair

  
Victoria P. Kornfield, House Chair

cc: Members, Joint Standing Committee on Education and Cultural Affairs



#50

**Maine Revised Statutes**  
**Title 22: HEALTH AND WELFARE**  
**Chapter 401: GENERAL PROVISIONS**

**§1711-C. CONFIDENTIALITY OF HEALTH CARE INFORMATION**

...

**18. Participation in a state-designated statewide health information exchange.** The following provisions apply to participation in a state-designated statewide health information exchange.

A. A health care practitioner may not deny a patient health care treatment and a health insurer may not deny a patient a health insurance benefit based solely on the provider's or patient's decision not to participate in a state-designated statewide health information exchange. Except when otherwise required by federal law, a payor of health care benefits may not require participation in a state-designated statewide health information exchange as a condition of participating in the payor's provider network. [2011, c. 691, Pt. A, §20 (RPR).]

B. Recovery for professional negligence is not allowed against any health care practitioner or health care facility on the grounds of a health care practitioner's or a health care facility's nonparticipation in a state-designated statewide health information exchange arising out of or in connection with the provision of or failure to provide health care services. In any civil action for professional negligence or in any proceeding related to such a civil action or in any arbitration, proof of a health care practitioner's, a health care facility's or a patient's participation or nonparticipation in a state-designated statewide health information exchange is inadmissible as evidence of liability or nonliability arising out of or in connection with the provision of or failure to provide health care services. This paragraph does not prohibit recovery or the admission of evidence of reliance on information in a state-designated statewide electronic health information exchange when there was participation by both the patient and the patient's health care practitioner. [2011, c. 691, Pt. A, §20 (RPR).]

C. A state-designated statewide health information exchange to which health care information is disclosed under this section shall provide an individual protection mechanism by which an individual may opt out from participation to prohibit the state-designated statewide health information exchange from disclosing the individual's health care information to a health care practitioner or health care facility. [2011, c. 691, Pt. A, §20 (RPR).]

D. At point of initial contact, a health care practitioner, health care facility or other entity participating in a state-designated statewide health information exchange shall provide to each patient, on a separate form, at minimum:

- (1) Information about the state-designated statewide health information exchange, including a description of benefits and risks of participation in the state-designated statewide health information exchange;
- (2) A description of how and where to obtain more information about or contact the state-designated statewide health information exchange;
- (3) An opportunity for the patient to decline participation in the state-designated statewide health information exchange; and
- (4) A declaration that a health care practitioner, health care facility or other entity may not deny a patient health care treatment based solely on the provider's or patient's decision not to participate in a state-designated statewide health information exchange.

The state-designated statewide health information exchange shall develop the form for use under this paragraph, with input from consumers and providers. The form must be approved by the office of the

state coordinator for health information technology within the Governor's office of health policy and finance. [2011, c. 691, Pt. A, §20 (RPR).]

E. A health care practitioner, health care facility or other entity participating in a state-designated statewide health information exchange shall communicate to the exchange the decision of each patient who has declined participation and shall do so within a reasonable time frame, but not more than 2 business days following the receipt of a signed form, as described in paragraph D, from the patient, or shall establish a mechanism by which the patient may decline participation in the state-designated statewide health information exchange at no cost to the patient. [2011, c. 691, Pt. A, §20 (RPR).]

F. A state-designated statewide health information exchange shall process the request of a patient who has decided not to participate in the state-designated statewide health information exchange within 2 business days of receiving the patient's decision to decline, unless additional time is needed to verify the identity of the patient. A signed authorization from the patient is required before a patient is newly entered or reentered into the system if the patient chooses to begin participation at a later date.

Except as otherwise required by applicable law, regulation or rule or state or federal contract, or when the state-designated statewide health information exchange is acting as the agent of a health care practitioner, health care facility or other entity, the state-designated statewide health information exchange shall remove health information of individuals who have declined participation in the exchange. In no event may health information retained in the state-designated statewide health information exchange as set forth in this paragraph be made available to health care practitioners, health care facilities or other entities except as otherwise required by applicable law, regulation or rule or state or federal contract, or when the health care practitioner, health care facility or other entity is the originator of the information. [2011, c. 691, Pt. A, §20 (RPR).]

G. A state-designated statewide health information exchange shall establish a secure website accessible to patients. This website must:

- (1) Permit a patient to request a report of who has accessed that patient's records and when the access occurred. This report must be delivered to the patient within 2 business days upon verification of the patient's identity by the state-designated statewide health information exchange;
- (2) Provide a mechanism for a patient to decline participation in the state-designated statewide health information exchange; and
- (3) Provide a mechanism for the patient to consent to participation in the state-designated statewide health information exchange if the patient had previously declined participation. [2011, c. 691, Pt. A, §20 (RPR).]

H. A state-designated statewide health information exchange shall establish for patients an alternate procedure to that provided for in paragraph F that does not require Internet access. A health care practitioner, health care facility or other entity participating in the state-designated statewide health information exchange shall provide information about this alternate procedure to all patients. The information must be included on the form identified in paragraph D. [2011, c. 691, Pt. A, §20 (RPR).]

I. A state-designated statewide health information exchange shall maintain records regarding all disclosures of health care information by and through the state-designated statewide health information exchange, including the requesting party and the dates and times of the requests and disclosures. [2011, c. 691, Pt. A, §20 (RPR).]


J. A state-designated statewide health information exchange may not charge a patient or an authorized representative of a patient any fee for access or communication as provided in this subsection. [2011, c. 691, Pt. A, §20 (RPR).]

K. Notwithstanding any provision of this subsection to the contrary, a health care practitioner, health care facility or other entity shall provide the form and communication required by paragraphs D and F to all existing patients following the effective date of this subsection. [2011, c. 691, Pt. A, §20 (RPR).]

L. A state-designated statewide health information exchange shall meet or exceed all applicable federal laws and regulations pertaining to privacy, security and breach notification regarding personally identifiable protected health information, as defined in 45 Code of Federal Regulations, Part 160. If a breach occurs, the state-designated statewide health information exchange shall arrange with its participants for notification of each individual whose protected health information has been, or is reasonably believed by the exchange to have been, breached. For purposes of this paragraph, "breach" has the same meaning as in 45 Code of Federal Regulations, Part 164, as amended. [2011, c. 691, Pt. A, §20 (RPR).]

M. The state-designated statewide health information exchange shall develop a quality management plan, including auditing mechanisms, in consultation with the office of the state coordinator for health information technology within the department, who shall review the plan and results. [2011, c. 691, Pt. A, §20 (RPR).]

[ 2011, c. 691, Pt. A, §20 (RPR) .]

 **20. Exemption from freedom of access laws.** Except as provided in this section, the names and other identifying information of individuals in a state-designated statewide health information exchange are confidential and are exempt from the provisions of Title 1, chapter 13.

[ 2011, c. 373, §4 (NEW) .]

#### SECTION HISTORY

RR 1997, c. 2, §44 (COR). 1997, c. 793, §A8 (NEW). 1997, c. 793, §A10 (AFF). 1999, c. 3, §§1,2 (AMD). 1999, c. 3, §§3,5 (AFF). 1999, c. 512, §A5 (AMD). 1999, c. 512, §A6, 7 (AFF). 1999, c. 790, §§A58,60 (AFF). RR 2001, c. 1, §26 (COR). 2001, c. 346, §1 (AMD). 2009, c. 211, Pt. B, §17 (AMD). 2009, c. 292, §3 (AMD). 2009, c. 292, §6 (AFF). 2009, c. 387, §§1, 2 (AMD). 2011, c. 347, §§6-8 (AMD). 2011, c. 373, §§1-4 (AMD). 2011, c. 572, §1 (AMD). 2011, c. 691, Pt. A, §20 (AMD). 2013, c. 289, §§1, 2 (AMD). 2013, c. 326, §1 (AMD). 2013, c. 528, §1 (AMD). 2013, c. 528, §12 (AFF). RR 2015, c. 1, §17 (COR). 2015, c. 218, §1 (AMD). 2015, c. 370, §§4, 5 (AMD).

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STATUTE: 25 M.R.S. § 4202

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- Since the exception was enacted into law, the agency has not had occasion to administer or apply the exception.
- The records (or, more accurately, data) to which the exception applies are those described in the exception.

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

- The agency supports the continuation of the exception so as to ensure that law enforcement personnel who are involved in or respond to traumatic incidents can seek in confidence the emotional and mental-health support that critical incident stress management teams provide.

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

- The agency has not had any problems in applying this exception.
- The type of records/data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records/data covered.

4. Does your agency recommend changes to this exception?

- The only change the agency might recommend is that the statute be amended to explicitly state in the exception that records/data covered by the exception are confidential and not “public records” for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not “public records” for the purpose of the FOAA. *See* 1 M.R.S. § 402(3)(A)).
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include other law enforcement agencies that have critical incident stress management teams, and first responder agencies.
6. Please provide any further information that you believe is relevant to the Advisory Committee’s review.
- The agency does not have any further information to provide at this time.



## Maine Revised Statutes

### Title 25: INTERNAL SECURITY AND PUBLIC SAFETY

#### Chapter 501: CRITICAL INCIDENT STRESS MANAGEMENT TEAMS

##### §4202. CRITICAL INCIDENT STRESS MANAGEMENT TEAMS

**1. Information confidential.** Except as provided in subsection 2, all proceedings, communications and records, including, but not limited to, information concerning the identity of a person seeking or being furnished assistance, connected in any way with the work of a critical incident stress management team are confidential and are not subject to compulsory legal process or otherwise discoverable or admissible in evidence in any civil action unless the confidentiality is waived by the affected person. Statistical data not identifying a person seeking the assistance of a critical incident stress management team must be made available for statistical evaluation and may not be made available for any other purpose.

[ 2009, c. 289, §1 (NEW) . ]

**2. Mandatory disclosure of information.** Unless protected by a privilege of law recognized by this State, a member of a critical incident stress management team must disclose to appropriate federal, state or local government agencies or law enforcement agencies the following types of information:

A. An admission by a person seeking the assistance of the critical incident stress management team that the person has committed a crime; [2009, c. 289, §1 (NEW) . ]

B. A disclosure of information by a person seeking the assistance of a critical incident stress management team that must be reported pursuant to any applicable law; or [2009, c. 289, §1 (NEW) . ]

C. A disclosure of information by a person seeking the assistance of a critical incident stress management team that would lead one to reasonably think that the person seeking assistance is a danger to that person or to another person. [2009, c. 289, §1 (NEW) . ]

Information disclosed under this subsection is no longer confidential unless it is otherwise designated confidential by statute.

[ 2009, c. 289, §1 (NEW) . ]

##### SECTION HISTORY

2009, c. 289, §1 (NEW) .

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STATUTE: 29-A MRSA § 2251, sub-§ 7-A

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- Since the exception was enacted into law, the agency perhaps has had only two or so occasions to apply the exception.
- The records (or, more accurately, data) to which the exception applies are those described in the exception.

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

- The agency supports the continuation of the exception to ensure that personally identifying information of residents and non-residents of Maine is protected and not publicly disseminated in bulk.

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

- The agency has not had any problems in applying this exception.
- The type of data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records covered.

4. Does your agency recommend changes to this exception?

- The agency does not recommend any changes to the exception at this time.
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include the Maine Department of Transportation, Maine Office of the Secretary of State, the Maine Turnpike Authority, and the National Highway Traffic Safety Administration.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
- The agency does not have any further information to provide at this time.

Maine Revised Statutes

Title 29-A: MOTOR VEHICLES AND TRAFFIC HEADING:  
PL 1993, c. 683, Pt. A, §2 (new); Pt. B, §5 (aff)

Chapter 19: OPERATION HEADING: PL  
1993, c. 683, Pt. A, §2 (new); Pt. B, §5 (aff)

§2251. ACCIDENT REPORTS

**1. Definition.** As used in this section, "reportable accident" means an accident on a public way or a place where public traffic may reasonably be anticipated, resulting in bodily injury or death to a person or apparent property damage of \$1,000 or more. Apparent property damage under this subsection must be based upon the market value of the necessary repairs and may not be limited to the current value of the vehicle or property.

[ 2007, c. 348, §23 (AMD) .]

**2. Report required.** A reportable accident must be reported immediately by the quickest means of communication to a state police officer, or to the nearest state police field office, or to the sheriff's office, or to a deputy sheriff, within the county in which the accident occurred, or to the office of the police department, or to an officer, of the municipality in which the accident occurred. The accident must be reported by:

A. The operator of an involved vehicle; [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]

B. A person acting for the operator; or [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]

C. If the operator is unknown, the owner of an involved vehicle having knowledge of the accident. [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]

[ 1995, c. 2, §71 (COR) .]

**3. Form.** The Chief of the State Police:

A. Shall prepare and supply forms and approve the format for electronic submission for reports that require sufficiently detailed information to disclose the cause, conditions, persons and vehicles involved, including information to permit the Secretary of State to determine whether the requirement for proof of financial responsibility is inapplicable; [2003, c. 688, Pt. A, §35 (RPR).]

B. Shall receive, tabulate and analyze accident reports; [2003, c. 434, §23 (AMD); 2003, c. 434, §37 (AFF).]

B-1. Shall send all accident reports to the Secretary of State; and [2003, c. 434, §23 (NEW); 2003, c. 434, §37 (AFF).]

C. May publish statistical information on the number, cause and location of accidents. [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]

[ 2003, c. 688, Pt. A, §35 (AMD) .]

**4. Investigation.** A law enforcement officer who investigates a reportable accident shall:

A. Interview participants and witnesses; and [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]

B. Within 5 days from the time of notification of the accident, transmit an electronic report or the original written report containing all available information to the Chief of the State Police. [2003, c. 688, Pt. A, §36 (RPR) .]

Every reported accident must be promptly investigated.

If the accident results in serious bodily injury or death of any person, the investigation must be conducted by an officer who has met the training standards of a full-time law enforcement officer. A law enforcement officer who investigates an accident involving a bus or truck with a gross vehicle weight rating or a registered weight in excess of 10,000 pounds that results in the death of any person shall request a certified accident reconstructionist and the Bureau of State Police Commercial Vehicle Enforcement Unit to assist in the investigation of the accident. The Attorney General shall designate an assistant attorney general familiar with federal commercial vehicle laws and regulations to serve as a resource to any district attorney who initiates a prosecution arising from an accident involving a bus or truck with a gross vehicle weight rating or a registered weight in excess of 10,000 pounds that results in the death of any person.

[ 2003, c. 688, Pt. A, §36 (AMD) .]

#### **5. Forty-eight-hour report.**

[ 2003, c. 434, §37 (AFF); 2003, c. 434, §25 (RP) .]

**6. Financial responsibility information.** The owner or operator of a vehicle involved in an accident shall furnish additional relevant information as the Secretary of State requires to determine the applicability of the requirement of proof of financial responsibility.

The Secretary of State may rely on the accuracy of the information until there is reason to believe that the information is erroneous.

[ 2003, c. 434, §37 (AFF); 2003, c. 434, §26 (RPR) .]

**7. Report information.** An accident report made by an investigating officer or a report made by an operator as required by subsection 2 is for the purposes of statistical analysis and accident prevention.

A report or statement contained in the accident report, or a report as required by subsection 2, a statement made or testimony taken at a hearing before the Secretary of State held under section 2483, or a decision made as a result of that report, statement or testimony may not be admitted in evidence in any trial, civil or criminal, arising out of the accident.

A report may be admissible in evidence solely to prove compliance with this section.

Notwithstanding subsection 7-A, the Chief of the State Police may disclose the date, time and location of the accident and the names and addresses of operators, owners, injured persons, witnesses and the investigating officer. On written request, the chief may furnish a photocopy of the investigating officer's report at the expense of the person making the request. The cost of furnishing a copy of the report is not subject to the limitations of Title 1, section 408-A.

[ 2011, c. 662, §18 (AMD) .]

**7-A. Accident report database; public dissemination of accident report data.** Data contained in an accident report database maintained, administered or contributed to by the Department of Public Safety, Bureau of State Police must be treated as follows.

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

(1) "Data" means information existing in an electronic medium and contained in an accident report database.

(2) "Nonpersonally identifying accident report data" means any data in an accident report that are not personally identifying accident report data.

## (3) "Personally identifying accident report data" means:

- (a) An individual's name, residential and post office box mailing address, social security number, date of birth and driver's license number;
- (b) A vehicle registration plate number;
- (c) An insurance policy number;
- (d) Information contained in any free text data field of an accident report; and
- (e) Any other information contained in a data field of an accident report that may be used to identify a person. [2011, c. 654, §8 (AMD).]

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. [2013, c. 267, Pt. B, §24 (AMD).]

B-1. The Department of Public Safety, Bureau of State Police may disseminate a vehicle registration plate number contained in an accident report database maintained, administered or contributed to by the Bureau of State Police to a person only if that person provides the Bureau of State Police an affidavit stating that the person will not:

- (1) Use a vehicle registration plate number to identify or contact a person; or
- (2) Disseminate a vehicle registration plate number to another person. [2011, c. 654, §8 (NEW) .]

C. The Department of Public Safety, Bureau of State Police may publicly disseminate nonpersonally identifying accident report data that are contained in an accident report database maintained, administered or contributed to by the Bureau of State Police. The cost of furnishing a copy of such data is not subject to the limitations of Title 1, section 408-A. [2011, c. 662, §19 (AMD).]

[ 2013, c. 267, Pt. B, §24 (AMD) .]

**8. Violation.** A person commits a Class E crime if that person:

- A. Is required to make an oral or written report and knowingly fails to do so within the time required; [2001, c. 360, §15 (AMD).]
- B. Is an operator involved in a reportable accident and knowingly fails to give a correct name and address when requested by an officer at the scene; [2011, c. 654, §9 (AMD) .]
- C. Is the operator involved in a reportable accident or the owner of a vehicle involved in a reportable accident and knowingly fails to produce the vehicle or, if the vehicle is operational, return it to the scene when requested by the investigating officer; or [2011, c. 654, §9 (AMD) .]
- D. Obtains a vehicle registration plate number pursuant to subsection 7-A, paragraph B-1 and knowingly uses that vehicle registration plate number to identify or contact a person or knowingly disseminates that vehicle registration plate number to another person. [2011, c. 654, §9 (NEW) .]

[ 2011, c. 654, §9 (AMD) .]

**9. Prima facie evidence.** The absence of notice to a law enforcement agency with jurisdiction where the accident occurred is prima facie evidence of failure to report an accident.

[ 1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF) .]

**10. Suspension.** The Secretary of State may suspend or revoke the motor vehicle driver's license and certificate of registration of a person who is required to make a report and fails to do so or who fails to provide the information required by the Secretary of State.

[ 2003, c. 434, §28 (AMD); 2003, c. 434, §37 (AFF) .]

**11. Exemption.** The operator of a snowmobile or an all-terrain vehicle as defined by Title 12, section 13001, unless the all-terrain vehicle is registered for highway use by the Secretary of State under this Title, is exempt from the reporting requirements of subsection 2.

[ 2003, c. 614, §9 (AFF); 2003, c. 688, Pt. B, §11 (AFF); 2003, c. 688, Pt. B, §10 (RPR) .]

#### SECTION HISTORY

1993, c. 683, §A2 (NEW). 1993, c. 683, §B5 (AFF). RR 1995, c. 2, §71 (COR). 1997, c. 172, §1 (AMD). 1997, c. 178, §3 (AMD). 1999, c. 61, §1 (AMD). 2001, c. 360, §15 (AMD). 2003, c. 340, §§9,10 (AMD). 2003, c. 414, §B46 (AMD). 2003, c. 414, §D7 (AFF). 2003, c. 434, §§23-28 (AMD). 2003, c. 434, §37 (AFF). 2003, c. 614, §9 (AFF). 2003, c. 688, §§A35,36 (AMD). 2003, c. 688, §B10 (AMD). 2003, c. 688, §B11 (AFF). 2003, c. 709, §4 (AMD). 2007, c. 348, §23 (AMD). 2011, c. 390, §§1, 2 (AMD). 2011, c. 420, Pt. K, §1 (AMD). 2011, c. 420, Pt. K, §2 (AFF). 2011, c. 654, §§8, 9 (AMD). 2011, c. 662, §§18, 19 (AMD). 2013, c. 267, Pt. B, §24 (AMD) .

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**STATUTE:** 29-A MRSA § 2117-A, sub-§4

**AGENCY:** Dept. of Public Safety

**CONTACT PERSON:** Chris Parr

**CONTACT PERSON'S EMAIL ADDRESS:** christopher.parr@maine.gov

## QUESTIONS

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

- The agency has not had occasion to administer or apply this public records exception.
- The records (or, more accurately, data) subject to the exception are described in the exception.

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

- At this time the agency takes no position on whether the exception should be continued.

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

- The agency does not know of any problems that have occurred in the application of this exception.
- The type of data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the data covered.

4. Does your agency recommend changes to this exception?

- The agency does not recommend any changes to the exception at this time.
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include law enforcement agencies that currently or might use LPRs (e.g., the South Portland Police Department), the Maine Department of Transportation, and the Maine Turnpike Authority.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
- The agency does not have any further information to provide at this time.

Maine Revised Statutes

Title 29-A: MOTOR VEHICLES AND TRAFFIC HEADING:  
PL 1993, c. 683, Pt. A, §2 (new); Pt. B, §5 (aff)

Chapter 19: OPERATION HEADING: PL  
1993, c. 683, Pt. A, §2 (new); Pt. B, §5 (aff)

§2117-A. USE OF AUTOMATED LICENSE PLATE RECOGNITION SYSTEMS

**1. Definitions.** As used in this section, unless the context otherwise indicates, "automated license plate recognition system" means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration plates into computer-readable data. "Automated license plate recognition system" does not include a photo-monitoring system, as defined in Title 23, section 1980, subsection 2-A, paragraph B, subparagraph (4), when used by the Maine Turnpike Authority or a law enforcement agency for toll enforcement purposes.

[ 2009, c. 605, §1 (NEW) .]

**2. Prohibition.** Except as otherwise provided in subsection 3, a person may not use an automated license plate recognition system.

[ 2009, c. 605, §1 (NEW) .]

**3. Exception.** Subsection 2 does not apply to:

A. The Department of Transportation for the purposes of protecting public safety and transportation infrastructure; [2009, c. 605, §1 (NEW) .]

B. The Department of Public Safety, Bureau of State Police for the purposes of commercial motor vehicle screening and inspection; and [2009, c. 605, §1 (NEW) .]

C. Any state, county or municipal law enforcement agency when providing public safety, conducting criminal investigations and ensuring compliance with local, state and federal laws. For purposes of this paragraph, an automated license plate recognition system may use only information entered by a law enforcement officer as defined by Title 17-A, section 2, subsection 17 and based on specific and articulable facts of a concern for safety, wrongdoing or a criminal investigation or pursuant to a civil order or records from the National Crime Information Center database or an official published law enforcement bulletin. [2009, c. 605, §1 (NEW) .]

An authorized user under this subsection of an automated license plate recognition system may use an automated license plate recognition system only for the official and legitimate purposes of the user's employer.

[ 2009, c. 605, §1 (NEW) .]

**4. Confidentiality.** Data collected or retained through the use of an automated license plate recognition system in accordance with subsection 3 are confidential under Title 1, chapter 13 and are available for use only by a law enforcement agency in carrying out its functions or by an agency collecting information under subsection 3 for its intended purpose and any related civil or criminal proceeding.

A law enforcement agency may publish and release as public information summary reports using aggregate data that do not reveal the activities of an individual or firm and may share commercial motor vehicle screening data with the Federal Motor Carrier Safety Administration for regulatory compliance purposes.

[ 2009, c. 605, §1 (NEW) .]

**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 803, subsection 7, or data collected for the purposes of commercial motor vehicle screening, may not be stored for more than 21 days.

[ 2013, c. 267, Pt. B, §23 (AMD) .]

**6. Penalty.** Violation of this section is a Class E crime.

[ 2009, c. 605, §1 (NEW) .]

SECTION HISTORY

2009, c. 605, §1 (NEW). 2013, c. 267, Pt. B, §23 (AMD).

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STATUTE: 32 M.R.S. § 91-B, sub-§ 1

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- With respect to the quality assurance-related ("QA") records/data contemplated in the provision, the agency has rarely (if ever) administered/applied the exception. Likewise, with respect to the complaint investigation-related ("CI") records/data contemplated in the provision.
- The records/data subject to the exception are described in the exception.

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

- The agency supports the continuation of the QA exception, and supports the continuation of the CI exception so as to ensure for the protection of pending complaint-related information, as well as private, personal health information.

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

- The agency does not know of any problems that have occurred in the application of either the QA or CI exception.
- The type of records/data to which the QA and CI exceptions apply is understandable, and the language of the exceptions is sufficiently clear in describing the records/data covered.

4. Does your agency recommend changes to this exception?
  - The only change the agency might recommend is that the statute be amended to explicitly state in the provision that records/data covered by the exception are confidential and not “public records” for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not “public records” for the purpose of the FOAA. *See* 1 M.R.S. § 402(3)(A)).
  
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
  - Other stakeholders whose input perhaps should be considered in the evaluation of this exception include:
    - AAG Katie Johnson ([Katie.johnson@maine.gov](mailto:Katie.johnson@maine.gov));
    - Jeff Rowe, Chair, Maine Board of EMS ([jrowe@kennebunkmaine.us](mailto:jrowe@kennebunkmaine.us));
    - Michael Senecal, Chair-elect, Maine Board of EMS ([msenecal@fchn.org](mailto:msenecal@fchn.org));
    - Shaun St. Germain, Director, Maine Emergency Medical Services ([shaun.a.stgermain@maine.gov](mailto:shaun.a.stgermain@maine.gov)).
  
6. Please provide any further information that you believe is relevant to the Advisory Committee’s review.
  - The agency does not have any further information to provide at this time.

STATUTE: 32 M.R.S. § 91-B, sub-§ 1, ¶ A

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- The agency has rarely administered/applied the exception, but when it has done so, no problems are known to have been encountered.
- The records/data subject to the exception are described in the exception.

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

- The agency supports the continuation of the exception so as to ensure for the protection of private, personal information.

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

- The agency does not know of any problems that have occurred in the application of the exception.
- The type of records/data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records/data covered.

4. Does your agency recommend changes to this exception?

- The only change the agency might recommend is that the statute be amended to explicitly state in the provision that records/data covered by

the exception are confidential and not “public records” for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not “public records” for the purpose of the FOAA. *See* 1 M.R.S. § 402(3)(A)).

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

- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include:
  - AAG Katie Johnson ([Katie.johnson@maine.gov](mailto:Katie.johnson@maine.gov));
  - Jeff Rowe, Chair, Maine Board of EMS ([jrowe@kennebunkmaine.us](mailto:jrowe@kennebunkmaine.us));
  - Michael Senecal, Chair-elect, Maine Board of EMS ([msenecal@fchn.org](mailto:msenecal@fchn.org));
  - Shaun St. Germain, Director, Maine Emergency Medical Services ([shaun.a.stgermain@maine.gov](mailto:shaun.a.stgermain@maine.gov)).

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

- The agency does not have any further information to provide at this time.



**STATUTE:** 32 M.R.S. § 91-B, sub-§ 1, ¶ B

**AGENCY:** Dept. of Public Safety

**CONTACT PERSON:** Chris Parr

**CONTACT PERSON'S EMAIL ADDRESS:** christopher.parr@maine.gov

## QUESTIONS

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

- Please see response to question 1 @ Ref57 vis-à-vis CI records/data.

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

- Please see response to question 2 @ Ref57 vis-à-vis CI records/data.

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

- Please see response to question 3 @ Ref57 vis-à-vis CI records/data.

4. Does your agency recommend changes to this exception?

- Please see response to question 4 @ Ref. 57 vis-à-vis CI records/data.

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

- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include:

- AAG Katie Johnson ([Katie.johnson@maine.gov](mailto:Katie.johnson@maine.gov));
- Jeff Rowe, Chair, Maine Board of EMS  
([jrowe@kennebunkmaine.us](mailto:jrowe@kennebunkmaine.us));
- Michael Senecal, Chair-elect, Maine Board of EMS  
([msenecal@fchn.org](mailto:msenecal@fchn.org));
- Shaun St. Germain, Director, Maine Emergency Medical Services  
([shaun.a.stgermain@maine.gov](mailto:shaun.a.stgermain@maine.gov)).

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

- The agency does not have any further information to provide at this time.

STATUTE: 32 M.R.S. § 91-B, sub-§ 1, ¶ C

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- The agency has rarely administered/applied the exception, but when it has done so, no problems are known to have been encountered.
- The records/data subject to the exception are described in the exception.

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

- The agency supports the continuation of the exception so as to ensure for the protection of private, personal information, including, e.g., personal health information.

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

- The agency does not know of any problems that have occurred in the application of the exception.
- The type of records/data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records/data covered.

4. Does your agency recommend changes to this exception?

- The only change the agency might recommend is that the statute be amended to explicitly state in the provision that records/data covered by the exception are confidential and not “public records” for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not “public records” for the purpose of the FOAA. *See* 1 M.R.S. § 402(3)(A)).

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

- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include:
  - AAG Katie Johnson ([Katie.johnson@maine.gov](mailto:Katie.johnson@maine.gov));
  - Jeff Rowe, Chair, Maine Board of EMS ([jrowe@kennebunkmaine.us](mailto:jrowe@kennebunkmaine.us));
  - Michael Senecal, Chair-elect, Maine Board of EMS ([msenecal@fchn.org](mailto:msenecal@fchn.org));
  - Shaun St. Germain, Director, Maine Emergency Medical Services ([shaun.a.stgermain@maine.gov](mailto:shaun.a.stgermain@maine.gov)).

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

- The agency does not have any further information to provide at this time.

STATUTE: 32 M.R.S. § 91-B, sub-§ 1, ¶ D

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- The agency has not had occasion to administer or apply this exception.
- The records/data subject to the exception are described in the exception.

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

- The agency supports the continuation of the exception so as to ensure for the integrity of the licensing program generally and the examination test specifically.

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

- The agency does not know of any problems that have occurred in the application of the exception.
- The type of records/data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records/data covered.

4. Does your agency recommend changes to this exception?

- The only change the agency might recommend is that the statute be amended to explicitly state in the provision that records/data covered by

the exception are confidential and not “public records” for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not “public records” for the purpose of the FOAA. *See* 1 M.R.S. § 402(3)(A)).

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

- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include:
  - AAG Katie Johnson ([Katie.johnson@maine.gov](mailto:Katie.johnson@maine.gov));
  - Jeff Rowe, Chair, Maine Board of EMS ([jrowe@kennebunkmaine.us](mailto:jrowe@kennebunkmaine.us));
  - Michael Senecal, Chair-elect, Maine Board of EMS ([msenecal@fchn.org](mailto:msenecal@fchn.org));
  - Shaun St. Germain, Director, Maine Emergency Medical Services ([shaun.a.stgermain@maine.gov](mailto:shaun.a.stgermain@maine.gov)).

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

- The agency does not have any further information to provide at this time.

Maine Revised Statutes

Title 32: PROFESSIONS AND OCCUPATIONS

Chapter 2-B: MAINE EMERGENCY MEDICAL SERVICES ACT OF 1982

§91-B. CONFIDENTIALITY EXCEPTIONS

**1. Confidentiality.** Except as otherwise provided in this chapter, all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the board and all reports, information and records provided to the committee are confidential and may not be disclosed or obtained by discovery from the committee, the board or its staff. Quality assurance information may be disclosed to a licensee as part of any board-approved educational or corrective process. All complaints and investigative records of the board or any committee or subcommittee of the board are confidential during the pendency of an investigation and may not be disclosed by the committee, the board or its staff. Information or records that identify or permit identification of any patient that appears in any reports, information or records provided to the board or department for the purposes of investigation are confidential and may not be disclosed by the committee, the board or its staff.

A. A personal residence address, personal telephone number or personal e-mail address submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as permitted under this section or as otherwise required by law unless the applicant who submitted the information indicated pursuant to section 90-B that the applicant is willing to have the applicant's personal residence address, personal telephone number or personal e-mail address treated as a public record. Personal health information submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as otherwise permitted under this section or otherwise required by law.

The board and its committees and staff may disclose personal health information about and the personal residence address and personal telephone number of a licensee or an applicant for a license under this chapter to a government licensing or disciplinary authority or to a health care provider located within or outside this State that requests the information for the purposes of granting, limiting or denying a license or employment to the applicant or licensee. [2011, c. 271, §19 (NEW) .]

B. Any materials or information submitted to the board in support of an application that are designated as confidential by any other provision of law remain confidential in the possession of the board. Information in any report or record provided to the board pursuant to this chapter that permits identification of a person receiving emergency medical treatment is confidential. [2011, c. 271, §19 (NEW) .]

C. Information provided to the board under section 87-B is confidential if the information identifies or permits the identification of a trauma patient or a member of that patient's family. [2011, c. 271, §19 (NEW) .]

D. Examination questions used by the board to fulfill the cognitive testing requirements of this chapter are confidential. [2011, c. 271, §19 (NEW) .]

[ 2011, c. 271, §19 (NEW) .]

**2. Exceptions.** Information designated confidential under subsection 1 becomes a public record or may be released as provided in this subsection.

A. Confidential information may be released in an adjudicatory hearing or informal conference before the board or in any subsequent formal proceeding to which the confidential information is relevant. [2011, c. 271, §19 (NEW) .]

B. Confidential information may be released in a consent agreement or other written settlement when the confidential information constitutes or pertains to the basis of board action. [2011, c. 271, §19 (NEW) .]

C. Investigative records and complaints become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this paragraph, an investigation is concluded when:

- (1) Notice of an adjudicatory proceeding, as defined under Title 5, chapter 375, subchapter 1, has been issued;
- (2) A consent agreement has been executed; or
- (3) A letter of dismissal has been issued or the investigation has otherwise been closed. [2011, c. 271, §19 (NEW) .]

D. During the pendency of an investigation, a complaint or investigative record may be disclosed:

- (1) To Maine Emergency Medical Services employees designated by the director;
- (2) To designated complaint officers of the board;
- (3) By a Maine Emergency Medical Services employee or complaint officer designated by the board to the extent considered necessary to facilitate the investigation;
- (4) To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies;
- (5) By the director, to the extent the director determines such disclosure necessary to avoid imminent and serious harm. The authority of the director to make such a disclosure may not be delegated;
- (6) When it is determined, in accordance with rules adopted by the department, that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; or
- (7) To the person investigated on request of that person. The director may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the director determines that disclosure would prejudice the investigation. The authority of the director to make such a determination may not be delegated. [2011, c. 271, §19 (NEW) .]

E. Data collected by Maine Emergency Medical Services that allows identification of persons receiving emergency medical treatment may be released for purposes of research, public health surveillance and linkage with patient electronic medical records if the release is approved by the board, the Medical Direction and Practices Board and the director. Information that specifically identifies individuals must be removed from the information disclosed pursuant to this paragraph, unless the board, the Medical Direction and Practices Board and the director determine that the release of such information is necessary for the purposes of the research, public health surveillance or linkage with patient electronic medical records. [2015, c. 82, §8 (AMD) .]

F. Confidential information may be released in accordance with an order issued on a finding of good cause by a court of competent jurisdiction. [2011, c. 271, §19 (NEW) .]

G. Confidential information may be released to the Office of the Chief Medical Examiner within the Office of the Attorney General. [2011, c. 271, §19 (NEW) .]

[ 2015, c. 82, §8 (AMD) .]



**3. Violation.** A person who intentionally violates this section commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

[ 2011, c. 271, §19 (NEW) . ]

SECTION HISTORY

2011, c. 271, §19 (NEW) . 2015, c. 82, §8 (AMD) .

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STATUTE: 34-A MRSA § 11221, sub-§ 13

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- The agency has rarely had occasion to administer or apply this public records exception.
- The records (or, more accurately, data) subject to the exception are described in the exception.

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

- The agency supports continuation of the exception, as it ensures that the State Bureau of Identification is the authoritative and most up-to-date source for Maine sex offender registrant-related information, and also helps to protect the privacy of individuals who formerly needed to register with the Sex Offender Registry.

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

- The agency is unaware of any problems that have occurred in the application of this exception.
- The type of data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the data covered.

4. Does your agency recommend changes to this exception?
  - The agency does not recommend any changes to the exception at this time.
  
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
  - Other stakeholders whose input perhaps should be considered in the evaluation of this exception include district attorney's offices and the Maine Office of the Attorney General.
  
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
  - The agency does not have any further information to provide at this time.

**STATUTE:** 34-A MRSA § 11221, sub-§ 9-A

**AGENCY:** Dept. of Public Safety

**CONTACT PERSON:** Chris Parr

**CONTACT PERSON'S EMAIL ADDRESS:** christopher.parr@maine.gov

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
  - The agency has very rarely had occasion to administer or apply this public records exception (perhaps once?).
  - The records (or, more accurately, data) subject to the exception are described in the exception.
  
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
  - The agency supports continuation of the exception, as it protects the personal privacy of individuals accessing the online Sex Offender Registry website for information.
  
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
  - The agency is unaware of any problems that have occurred in the application of this exception.
  - The type of data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the data covered.
  
4. Does your agency recommend changes to this exception?

- The only change the agency might recommend is that the statute be amended to explicitly state in the provision that records/data covered by the exception are confidential and not “public records” for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not “public records” for the purpose of the FOAA. See 1 M.R.S. § 402(3)(A)).
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include district attorney’s offices and the Maine Office of the Attorney General.
6. Please provide any further information that you believe is relevant to the Advisory Committee’s review.
- The agency does not have any further information to provide at this time.

**Maine Revised Statutes**  
**Title 34-A: CORRECTIONS**  
**Chapter 15: SEX OFFENDER REGISTRATION AND**  
**NOTIFICATION ACT OF 1999 HEADING: PL 1999, c. 437, §2 (new)**

**§11221. MAINTENANCE OF SEX OFFENDER REGISTRY**

**1. Maintenance of registry.** The bureau shall establish and maintain a registry of persons required to register pursuant to this subchapter. The registry must include the following information on each registrant:

- A. The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, mailing address and physical location of expected domicile and residence; [2005, c. 423, §9 (AMD).]
- B. Place of employment and college or school being attended, if applicable, and the corresponding address and location; [2003, c. 371, §4 (AMD).]
- C. Offense history; [1999, c. 437, §2 (NEW).]
- D. Notation of any treatment received for a mental abnormality or personality disorder; [1999, c. 437, §2 (NEW).]
- E. A photograph and set of fingerprints; [1999, c. 437, §2 (NEW).]
- F. A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; and [2003, c. 711, Pt. C, §17 (AMD); 2003, c. 711, Pt. D, §2 (AFF).]
- G. Any other information the bureau determines important. [1999, c. 437, §2 (NEW).]

[ 2005, c. 423, §9 (AMD) .]

**2. National or regional registry.** The bureau is authorized to make the registry available to and accept files from a national or regional registry of registrants for the purpose of sharing information.

[ 2003, c. 711, Pt. C, §18 (AMD); 2003, c. 711, Pt. D, §2 (AFF) .]

**3. Registration form.** The bureau shall develop a standardized registration form to be made available to the appropriate reporting authorities and persons required to register.

[ 1999, c. 437, §2 (NEW) .]

**4. Verification form.** The bureau shall develop and mail a nonforwardable verification form to the last reported mailing address of each person required to meet the verification requirements of this chapter.

[ 1999, c. 437, §2 (NEW) .]

**5. Sexually violent predator directory.**

[ 2003, c. 371, §5 (RP) .]

**6. Distribution of information to department and law enforcement agencies.** The bureau shall distribute information described in subsection 1 to the department and law enforcement agencies having jurisdiction over the address and location of the registrant's domicile, residence, place of employment and college or school being attended.

[ 2005, c. 423, §10 (AMD) .]

**7. Rules.**

[ 2005, c. 423, §11 (RP) .]

**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 703, subsection 4.

[ 2013, c. 267, Pt. B, §28 (AMD) .]

**9. Public access to information.** The bureau shall provide information to the public as follows.

A. The bureau shall post on the Internet for public inspection the following information concerning a registrant:

- (1) The registrant's name, date of birth and photograph;
- (2) The registrant's city or town of domicile and residence;
- (3) The registrant's place of employment and college or school being attended, if applicable, and the corresponding address and location;
- (4) The statutory citation and name of the offense for which the registrant was convicted; and
- (5) The registrant's designation as a 10-year registrant or a lifetime registrant. [2011, c. 307, §1 (AMD) .]

B. Upon receiving a written request that includes the name and date of birth of a registrant, the bureau shall provide the following information concerning a registrant to the requestor:

- (1) The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, mailing address and physical location of domicile and residence;
- (2) The registrant's place of employment and college or school being attended, if applicable, and the corresponding address and location;
- (3) A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; and
- (4) The registrant's photograph. [2005, c. 423, §12 (AMD) .]

[ 2011, c. 307, §1 (AMD) .]

**9-A. Registry information.** Registry information created, collected or maintained by the bureau, including, but not limited to, information relating to the identity of persons accessing the registry, is confidential, except the following are public records:

A. Information provided to the public pursuant to subsection 9; and [2011, c. 299, §1 (NEW) .]

B. Applications and bureau decisions, including any documents made part of those decisions, pursuant to section 11202-A. [2011, c. 299, §1 (NEW) .]

[ 2011, c. 299, §1 (NEW) .]

**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 709.

[ 2013, c. 267, Pt. B, §29 (AMD) .]



**11. Maintenance by bureau.** Only the bureau is authorized to maintain a sex offender registry on the Internet for purposes of public access as described in subsection 9.

[ 2005, c. 545, §1 (AMD) .]

**12. Law enforcement agency website.** A law enforcement agency may maintain its own sex offender website and may make that information available for use by the public if:

A. A notice is prominently posted on the website that expressly states that the website is not the official state sex offender registry under subsection 1 and that the law enforcement agency posting the website is solely responsible for the website's content; [2005, c. 545, §2 (NEW) .]

B. The website provides a link to the bureau's Internet sex offender registry under subsection 1; [2005, c. 545, §2 (NEW) .]

C. The website contains information regarding only registrants who are domiciled, reside, attend college or school or work within the posting law enforcement agency's jurisdiction; and [2005, c. 545, §2 (NEW) .]

D. The information on the website is updated by the law enforcement agency as frequently as available resources permit, but no less than every 7 days. The law enforcement agency shall also prominently post on the website the date and time of the most recent update to the website. [2005, c. 545, §2 (NEW) .]

[ 2005, c. 545, §2 (NEW) .]

**13. Access to registrant information existing in electronic form restricted.** Notwithstanding Title 1, chapter 13:

A. The bureau may not disseminate in electronic form information about a registrant that is created, collected or maintained in electronic form by or for the bureau, except as made available to the public through the bureau's Internet website pursuant to subsection 9 and made available to the Background Check Center established pursuant to Title 22, chapter 1691; and [2015, c. 299, §26 (AMD) .]

B. Except as made available to the public through an Internet website maintained by a law enforcement agency pursuant to subsection 12, a law enforcement agency may not disseminate in electronic form information about a registrant that is collected or maintained in electronic form by or for the law enforcement agency. [2011, c. 299, §3 (NEW) .]

[ 2015, c. 299, §26 (AMD) .]

#### SECTION HISTORY

1999, c. 437, §2 (NEW). 2003, c. 371, §§4-7 (AMD). 2003, c. 711, §§17-20 (AMD). 2003, c. 711, §D2 (AFF). 2005, c. 423, §§9-13 (AMD). 2005, c. 545, §§1,2 (AMD). 2011, c. 299, §§1-3 (AMD). 2011, c. 307, §1 (AMD). 2013, c. 267, Pt. B, §§28, 29 (AMD). 2015, c. 299, §26 (AMD).

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#66

Maine Revised Statutes

**Title 34-B: BEHAVIORAL AND DEVELOPMENTAL SERVICES**  
**HEADING: PL 1995, c. 560, Pt. K, §7 (rpr); 2001, c. 354, §3 (amd)**

**Chapter 1: GENERAL PROVISIONS**

**§1931. MENTAL HEALTH HOMICIDE, SUICIDE AND AGGRAVATED ASSAULT REVIEW BOARD**

The Mental Health Homicide, Suicide and Aggravated Assault Review Board, referred to in this subchapter as "the board," is established. The board shall review homicides, suicides and aggravated assaults involving a person with severe and persistent mental illness as defined in section 3801, subsection 8-A. [2007, c. 609, §2 (NEW).]

**1. Members.** The board consists of:

- A. An attorney who is a member of a statewide association of criminal defense lawyers appointed by the President of the Senate; [2007, c. 609, §2 (NEW).]
- B. A psychiatrist appointed by the Speaker of the House; [2007, c. 609, §2 (NEW).]
- C. A psychiatric nurse appointed by the President of the Senate; [2007, c. 609, §2 (NEW).]
- D. A psychologist appointed by the Speaker of the House; [2007, c. 609, §2 (NEW).]
- E. A law enforcement officer appointed by the President of the Senate; [2007, c. 609, §2 (NEW).]
- F. The Commissioner of Health and Human Services or the commissioner's designee; [2007, c. 609, §2 (NEW).]
- G. The Commissioner of Corrections or the commissioner's designee; [2007, c. 609, §2 (NEW).]
- H. The Commissioner of Public Safety or the commissioner's designee; [2007, c. 609, §2 (NEW).]
- I. A judge or justice assigned by the Chief Justice of the Supreme Judicial Court; [2007, c. 609, §2 (NEW).]
- J. A representative of a prosecutors association designated by the Attorney General; [2007, c. 609, §2 (NEW).]
- K. An assistant attorney general responsible for the prosecution of homicide cases designated by the Attorney General; [2007, c. 609, §2 (NEW).]
- L. An assistant attorney general responsible for mental health cases designated by the Attorney General; [2007, c. 609, §2 (NEW).]
- M. A mental health service provider appointed by the Speaker of the House; [2007, c. 609, §2 (NEW).]
- N. A victim-witness advocate designated by the Attorney General; and [2007, c. 609, §2 (NEW).]
- O. Three persons appointed by the Governor from a list of nominees designated by statewide organizations that advocate for the rights of persons with serious and persistent mental illness. At least one of the appointees must represent the interests of persons with severe and persistent mental illness who are victims of crimes. [2007, c. 609, §2 (NEW).]

[ 2007, c. 609, §2 (NEW) .]

**2. Terms.** Members who are not state officials serve 2-year terms without compensation.

[ 2007, c. 609, §2 (NEW) .]

**3. Recommendations.** The board shall recommend to state and local agencies methods of preventing homicides, suicides and aggravated assaults involving persons with severe and persistent mental illness, including modifications of laws, rules, policies and procedures.

[ 2007, c. 609, §2 (NEW) .]

**4. Collect data.** The board shall collect and compile data related to homicides, suicides and aggravated assaults involving persons with severe and persistent mental illness. The board shall ensure that the collection of data and work of the board do not interfere with any pending criminal investigation or prosecution by state or county authorities.

[ 2007, c. 609, §2 (NEW) .]

**5. Information and records.** In any case subject to review by the board, upon written request of the board, any interested party that possesses information or records that are necessary and relevant to a review under this section shall as soon as practicable provide the board with the information and records. Persons disclosing or providing information or records upon the request of the board in compliance with this subsection are not criminally or civilly liable for disclosing or providing information or records.

[ 2007, c. 609, §2 (NEW) .]

**6. Confidentiality.** The proceedings of the board are confidential and are not public meetings for the purposes of the laws governing freedom of access, Title 1, chapter 13. Records of the board are confidential, are not public records for the purposes of the laws governing freedom of access, Title 1, chapter 13 and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The board shall disclose conclusions and recommendations of the board upon request in a manner that does not identify the parties, victims or witnesses. The board and members of the board may not disclose information, records or data that are otherwise classified as confidential.

[ 2007, c. 609, §2 (NEW) .]

**7. Unlawful dissemination.** A member of the board is guilty of unlawful dissemination if the member of the board knowingly disseminates records or information from those records that is confidential pertaining to a homicide, suicide or aggravated assault subject to review by the board. Unlawful dissemination is a Class E crime, punishable by a fine of not more than \$500 or by imprisonment of not more than 30 days.

[ 2007, c. 609, §2 (NEW) .]

**8. Report.** The board shall submit a report on the board's activities, conclusions and recommendations to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 30, 2009 and biennially thereafter. The committee shall review the report in a public meeting at which members of the public are provided an opportunity to address the committee.

[ 2007, c. 609, §2 (NEW) .]

SECTION HISTORY

2007, c. 609, §2 (NEW) .

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**STATUTE:** 34-B MRSA § 3864, sub-§ 12

**AGENCY:** Dept. of Public Safety

**CONTACT PERSON:** Chris Parr

**CONTACT PERSON'S EMAIL ADDRESS:** christopher.parr@maine.gov

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
  - The agency is unaware of any occasion when it has administered or applied this exception.
  - The records subject to the exception are described in the exception.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
  - The agency supports continuation of the exception, as it protects individuals' personal health information.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
  - The agency is unaware of any occasion when it has administered or applied this exception.
  - The type of records to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records covered.
4. Does your agency recommend changes to this exception?
  - The agency does not recommend any changes to the exception at this time.

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

- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include the Maine Office of the Attorney General, the Maine Judicial Branch, and the National Alliance on Mental Illness.

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

- The agency does not have any further information to provide at this time.



Maine Revised Statutes

Title 34-B: BEHAVIORAL AND DEVELOPMENTAL SERVICES  
HEADING: PL 1995, c. 560, Pt. K, §7 (rpr); 2001, c. 354, §3 (amd)

Chapter 3: MENTAL HEALTH

§3864. JUDICIAL PROCEDURE AND COMMITMENT

**1. Application.** An application to the District Court to admit a person to a psychiatric hospital, filed under section 3863, subsection 5-A, must be accompanied by:

- A. The emergency application under section 3863, subsection 1; [1983, c. 459, §7 (NEW) .]
- B. The accompanying certificate of the medical practitioner under section 3863, subsection 2; [2009, c. 651, §20 (AMD) .]
- C. The certificate of the physician or psychologist under section 3863, subsection 7; [2009, c. 651, §20 (AMD) .]
- D. A written statement, signed by the chief administrative officer of the psychiatric hospital, certifying that a copy of the application and the accompanying documents have been given personally to the patient and that the patient and the patient's guardian or next of kin, if any, have been notified of:
  - (1) The patient's right to retain an attorney or to have an attorney appointed;
  - (2) The patient's right to select or to have the patient's attorney select an independent examiner; and
  - (3) How to contact the District Court; and [2009, c. 651, §20 (AMD) .]
- E. A copy of the notice and instructions given to the patient. [1997, c. 422, §14 (NEW) .]

[ 2009, c. 651, §20 (AMD) .]

**1-A. Involuntary treatment.** An application under this section may also include a request for an order of involuntary treatment under subsection 7-A.

[ 2007, c. 446, §2 (NEW); 2007, c. 446, §7 (AFF) .]

**2. Detention pending judicial determination.** Notwithstanding any other provisions of this subchapter, a person, with respect to whom an application for the issuance of an order for hospitalization has been filed, may not be released or discharged during the pendency of the proceedings, unless:

- A. The District Court orders release or discharge upon the request of the patient or the patient's guardian, parent, spouse or next of kin; [2007, c. 319, §10 (AMD) .]
- B. The District Court orders release or discharge upon the report of the applicant that the person may be discharged with safety; [1995, c. 496, §3 (AMD) .]
- C. A court orders release or discharge upon a writ of habeas corpus under section 3804; [2015, c. 309, §6 (AMD) .]
- D. Upon request of the commissioner, the District Court orders the transfer of a patient in need of more specialized treatment to another psychiatric hospital. In the event of a transfer, the court shall transfer its file to the District Court having territorial jurisdiction over the receiving psychiatric hospital; or [2015, c. 309, §7 (AMD) .]

E. The person has capacity to make an informed decision for informal voluntary admission, agrees to informal voluntary admission and the chief administrative officer of the hospital determines that informal voluntary admission is suitable. [2015, c. 309, §8 (NEW) .]

[ 2015, c. 309, §§6-8 (AMD) .]

**3. Notice of receipt of application.** The giving of notice of receipt of application and date of hearing under this section is governed as follows.

A. Upon receipt by the District Court of the application and accompanying documents specified in subsection 1, the court shall cause written notice of the application and date of hearing:

- (1) To be mailed within 2 days of filing to the person; and
- (2) To be mailed to the person's guardian, if known, and to the person's spouse, parent or one of the person's adult children or, if none of these persons exist or if none of those persons can be located, to one of the person's next of kin or a friend, except that if the chief administrative officer has reason to believe that notice to any of these individuals would pose risk of harm to the person who is the subject of the application, notice to that individual may not be given. [1997, c. 422, §15 (AMD) .]

B. A docket entry is sufficient evidence that notice under this subsection has been given. [1983, c. 459, §7 (NEW) .]

[ 1997, c. 422, §15 (AMD) .]

**4. Examination.** Examinations under this section are governed as follows.

A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1 and at least 3 days after the person who is the subject of the examination was notified by the psychiatric hospital of the proceedings and of that person's right to retain counsel or to select an examiner, the court shall cause the person to be examined by a medical practitioner. If the application includes a request for an order for involuntary treatment under subsection 7-A, the practitioner must be a medical practitioner who is qualified to prescribe medication relevant to the patient's care. If the person under examination or the counsel for that person selects a qualified examiner who is reasonably available, the court shall give preference to choosing that examiner. [2009, c. 651, §21 (AMD) .]

B. The examination must be held at a psychiatric hospital or at any other suitable place not likely to have a harmful effect on the mental health of the person. [2009, c. 651, §21 (AMD) .]

C. [2007, c. 319, §10 (RP) .]

D. [2007, c. 319, §10 (RP) .]

E. The examiner shall report to the court on:

- (1) Whether the person is a mentally ill person within the meaning of section 3801, subsection 5;
- (2) When the establishment of a progressive treatment plan under section 3873-A is at issue, whether a person is suffering from a severe and persistent mental illness within the meaning of section 3801, subsection 8-A;
- (3) Whether the person poses a likelihood of serious harm within the meaning of section 3801, subsection 4-A;
- (4) When involuntary treatment is at issue, whether the need for such treatment meets the criteria of subsection 7-A, paragraphs A and B;
- (5) Whether adequate community resources are available for care and treatment of the person's mental illness; and

(6) Whether the person's clinical needs may be met by an order under section 3873-A to participate in a progressive treatment program. [2009, c. 651, §21 (AMD).]

F. [2007, c. 446, §7 (AFF); 2007, c. 446, §3 (RP).]

G. Opinions of the examiner may be based on personal observation or on history and information from other sources considered reliable by the examiner. [2009, c. 651, §21 (NEW).]

[ 2009, c. 651, §21 (AMD) .]

**5. Hearing.** Hearings under this section are governed as follows.

A. The District Court shall hold a hearing on the application not later than 14 days from the date of the application. The District Court may separate the hearing on commitment from the hearing on involuntary treatment.

(1) For good cause shown, on a motion by any party or by the court on its own motion, the hearing on commitment or on involuntary treatment may be continued for a period not to exceed 21 additional days.

(2) If the hearing on commitment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application and order the person discharged forthwith.

(2-A) If the hearing on involuntary treatment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application for involuntary treatment.

(3) In computing the time periods set forth in this paragraph, the Maine Rules of Civil Procedure apply. [2009, c. 651, §22 (AMD).]

A-1. Prior to the commencement of the hearing, the court shall inform the person that if an order of involuntary commitment is entered, that person is a prohibited person and may not own, possess or have under that person's control a firearm pursuant to Title 15, section 393, subsection 1. [2007, c. 670, §18 (NEW).]

B. The hearing must be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have harmful effect on the mental health of the person. If the setting is outside the psychiatric hospital to which the patient is currently admitted, the Department of Health and Human Services shall bear the responsibility and expense of transporting the patient to and from the hearing. If the patient is to be admitted to a psychiatric hospital following the hearing, then the hospital from which the patient came shall transport the patient to the admitting psychiatric hospital. If the patient is to be released following the hearing, then the hospital from which the patient came shall return the patient to that hospital or, at the patient's request, return the patient to the patient's place of residence. [2007, c. 319, §10 (AMD).]

C. The court shall receive all relevant and material evidence that may be offered in accordance with accepted rules of evidence and accepted judicial dispositions.

(1) The person, the applicant and all other persons to whom notice is required to be sent must be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses.

(2) The court may, in its discretion, receive the testimony of any other person and may subpoena any witness. [2007, c. 319, §10 (AMD).]

D. The person must be afforded an opportunity to be represented by counsel, and, if neither the person nor others provide counsel, the court shall appoint counsel for the person. [2007, c. 319, §10 (AMD) .]

E. In addition to proving that the patient is a mentally ill individual, the applicant must show:

(1) By evidence of the patient's recent actions and behavior, that due to the patient's mental illness the patient poses a likelihood of serious harm; and

(2) That, after full consideration of less restrictive treatment settings and modalities, inpatient hospitalization is the best available means for the treatment of the person. [2005, c. 519, Pt. BBBB, §10 (AMD); 2005, c. 519, Pt. BBBB, §20 (AFF).]

F. In each case, the applicant shall submit to the court, at the time of the hearing, testimony, including expert psychiatric testimony, indicating the individual treatment plan to be followed by the psychiatric hospital staff, if the person is committed under this section, and shall bear any expense for witnesses for this purpose. [2007, c. 319, §10 (AMD).]

G. A stenographic or electronic record must be made of the proceedings in all judicial hospitalization hearings.

(1) The record and all notes, exhibits and other evidence are confidential.

(2) The record and all notes, exhibits and other evidence must be retained as part of the District Court records for a period of 2 years from the date of the hearing. [2007, c. 319, §10 (AMD).]

H. The hearing is confidential and a report of the proceedings may not be released to the public or press, except by permission of the person or the person's counsel and with approval of the presiding District Court Judge, except that the court may order a public hearing on the request of the person or the person's counsel. [2007, c. 319, §10 (AMD).]

[ 2009, c. 651, §22 (AMD) .]

**6. Court findings.** Procedures dealing with the District Court's findings under this section are as follows.

A. The District Court shall so state in the record, if it finds upon completion of the hearing and consideration of the record:

(1) Clear and convincing evidence that the person is mentally ill and that the person's recent actions and behavior demonstrate that the person's illness poses a likelihood of serious harm;

(1-A) That adequate community resources for care and treatment of the person's mental illness are unavailable;

(2) That inpatient hospitalization is the best available means for treatment of the patient; and

(3) That it is satisfied with the individual treatment plan offered by the psychiatric hospital to which the applicant seeks the patient's involuntary commitment. [2009, c. 651, §23 (AMD).]

B. If the District Court makes the findings in paragraph A, subparagraphs (1), (1-A) and (2), but is not satisfied with the individual treatment plan as offered, it may continue the case for not longer than 10 days, pending reconsideration and resubmission of an individual treatment plan by the psychiatric hospital. [2009, c. 651, §23 (AMD).]

C. If the District Court makes the findings in section 3873-A, subsection 1, the court may issue an order under section 3873-A requiring the person to participate in a progressive treatment program. [2009, c. 651, §23 (NEW).]

[ 2009, c. 651, §23 (AMD) .]

**7. Commitment.** Upon making the findings described in subsection 6, paragraph A, the court may order commitment to a psychiatric hospital for a period not to exceed 4 months in the first instance and not to exceed one year after the first and all subsequent hearings.

A. The court may issue an order of commitment immediately after the completion of the hearing, or it may take the matter under advisement and issue an order within 24 hours of the hearing. [1983, c. 459, §7 (NEW) .]

B. If the court does not issue an order of commitment within 24 hours of the completion of the hearing, it shall dismiss the application and order the patient discharged immediately. [1995, c. 496, §6 (AMD) .]

[ 2009, c. 651, §24 (AMD) .]

**7-A. Involuntary treatment.** This subsection governs involuntary treatment.

A. The court may grant a psychiatric hospital power to implement a recommended treatment plan without a person's consent for up to 120 days or until the end of the commitment, whichever is sooner, if upon application the court finds:

- (1) That the person lacks the capacity to make an informed decision regarding treatment;
- (2) That the person is unable or unwilling to comply with recommended treatment;
- (3) That the need for the treatment outweighs the risks and side effects; and
- (4) That the recommended treatment is the least intrusive appropriate treatment option.

Alternatively, the court may appoint a surrogate to make treatment decisions on the person's behalf for the duration of the commitment if the court is satisfied that the surrogate is suitable, willing and reasonably available to act in the person's best interests. [2007, c. 446, §4 (NEW); 2007, c. 446, §7 (AFF) .]

B. The need for involuntary treatment under paragraph A may be based on findings that include, but are not limited to, the following:

- (1) That a failure to treat the illness is likely to produce lasting or irreparable harm to the person; or
- (2) That without the recommended treatment the person's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the person to pose a likelihood of serious harm. [2007, c. 446, §4 (NEW); 2007, c. 446, §7 (AFF) .]

C. The parties may agree to change, terminate or extend the treatment plan during the time period of an order for involuntary treatment. [2009, c. 651, §25 (AMD) .]

D. For good cause shown, any party may apply to the court to change or terminate the treatment plan. [2009, c. 651, §26 (AMD) .]

[ 2009, c. 651, §§25, 26 (AMD) .]

**8. Continued involuntary hospitalization.** If the chief administrative officer of the psychiatric hospital to which a person has been committed involuntarily by the District Court recommends that continued involuntary hospitalization is necessary for that person, the chief administrative officer shall notify the commissioner. The commissioner may then, not later than 21 days prior to the expiration of a period of commitment ordered by the court, make application in accordance with this section to the District Court that has territorial jurisdiction over the psychiatric hospital designated for treatment in the application by the commissioner for a hearing to be held under this section.

[ 2007, c. 319, §10 (AMD) .]

**9. Transportation.** Except for transportation expenses paid by the District Court pursuant to subsection 10, a continued involuntary hospitalization hearing that requires transportation of the patient to and from any psychiatric hospital to a court that has committed the person must be provided at the expense of the

Department of Health and Human Services. Transportation of an individual to a psychiatric hospital under these circumstances must involve the least restrictive form of transportation available that meets the clinical needs of that individual and be in compliance with departmental regulations.

[ 2007, c. 319, §10 (AMD) .]

**10. Expenses.** With the exception of expenses incurred by the applicant pursuant to subsection 5, paragraph F, the District Court is responsible for any expenses incurred under this section, including fees of appointed counsel, witness and notice fees and expenses of transportation for the person.

[ 2007, c. 319, §10 (AMD) .]

**11. Appeals.** A person ordered by the District Court to be committed to a psychiatric hospital may appeal from that order to the Superior Court.

A. The appeal is on questions of law only. [1983, c. 459, §7 (NEW) .]

B. Any findings of fact of the District Court may not be set aside unless clearly erroneous. [1983, c. 459, §7 (NEW) .]

C. The order of the District Court remains in effect pending the appeal. [2007, c. 319, §10 (AMD) .]

D. The District Court Civil Rules and the Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection. [1983, c. 459, §7 (NEW) .]

[ 2007, c. 319, §10 (AMD) .]

**12. Transmission of abstract of court ruling to the State Bureau of Identification.** Notwithstanding any other provision of this section or section 1207, a court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract of any order for involuntary commitment issued by the court pursuant to this section. The abstract must include:

A. The name, date of birth and gender of the person who is the subject of the order for involuntary commitment; [2007, c. 670, §19 (NEW) .]

B. The court's ruling that the person has been involuntarily committed; and [2007, c. 670, §19 (NEW) .]

C. A notation that the person has been notified by the court in accordance with subsection 5, paragraph A-1 and subsection 13. [2007, c. 670, §19 (NEW) .]

The abstract required in this subsection is confidential and is not a "public record" as defined in Title 1, chapter 13; however, a copy of the abstract may be provided by the State Bureau of Identification to a criminal justice agency for legitimate law enforcement purposes, to the Federal Bureau of Investigation, National Instant Criminal Background Check System or to an issuing authority for the purpose of processing concealed firearm permit applications.

For the purposes of this subsection, "criminal justice agency" means a federal, state, tribal, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.

[ 2007, c. 670, §19 (NEW) .]

**13. Firearms possession prohibition notification.** A court that orders a person to be committed involuntarily pursuant to this section shall inform the person that possession, ownership or control of a firearm by that person is prohibited pursuant to Title 15, section 393, subsection 1. As used in this subsection, "firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

[ 2007, c. 670, §20 (NEW) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1995, c. 496, §§3-6 (AMD). 1997, c. 422, §§13-19 (AMD). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 519, §§BBBB9,10 (AMD). 2005, c. 519, §§BBBB20 (AFF). 2007, c. 319, §10 (AMD). 2007, c. 446, §§2-4 (AMD). 2007, c. 446, §7 (AFF). 2007, c. 472, §1 (AMD). 2007, c. 670, §§18-20 (AMD). 2009, c. 281, §3 (AMD). 2009, c. 651, §§20-26 (AMD). 2015, c. 309, §§6-8 (AMD).

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**Nale, Craig**

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**From:** Nale, Craig  
**Sent:** Tuesday, July 19, 2016 4:58 PM  
**To:** Nale, Craig  
**Subject:** FW: FOAA Questionnaire for Right to Know Advisory Committee  
**Attachments:** Ref69 Draft bill to implement Efficiency Maine Trust recommendations (4).docx

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**From:** Michael Stoddard [<mailto:michael.stoddard@efficiencymaine.com>]  
**Sent:** Tuesday, July 19, 2016 2:55 PM  
**To:** Nale, Craig  
**Cc:** Fouts, Henry  
**Subject:** RE: FOAA Questionnaire for Right to Know Advisory Committee

Craig, thanks for the opportunity to discuss this. I have attached a cleaned up version per our discussion.

I have indicated the proposed changes in the Word version that you sent me earlier in the spring. Let me briefly explain the reasoning:

1. In Sec. 1(A)(2) – I have a two-part request.

The first is to switch the authorized party to make the “business sensitive” determination from the “board” to the “director.” It is just not realistic to think that with the volume of transactional activity we undertake at Efficiency Maine we can get the Board to vote on every instance in which it is appropriate to designate information as “confidential.” It seems unreasonably cumbersome to insist that both the record must be requested to be treated as confidential AND the Board must approve it as such. Our Board only meets once per month, and our members only make decisions through publicly noticed Board meetings that are held in person. These volunteer Board members hail from all corners of the state. There are far too many instances in which a decision to treat something as confidential needs to be made within hours or at most days, which can only occur in the ordinary course of business as managed by the director. (And even if the Board met more frequently, I don’t think they are not in a better position that the Trust Staff to understand whether particular information is “business sensitive.”)

The second is to incorporate this provision into sub-sub-(1), as an additional criteria explaining the process by which a request for designation gets approved, which will then allow the following two sub-sub-sections to read as standalone criteria, any one of which would, *de facto*, satisfy the test of whether a record should be treated as confidential.

2. In Sec. 1(A)(3) and (4), update the numbering and end the penultimate sub-sub-section with “or” to effectuate the point I made just above. If a record contains energy usage data or a social security data, it should be *de facto* confidential ; it shouldn’t need an additional affirmative determination by the director (or the Board) or anyone else. To avoid confusion, I respectfully request that the statute be amended to say “or.”

3. I also have proposed a new Section 2, which aims to amend sub-3 of 35-A MRSA Sec. 10106. The sole purpose of the proposed modification in this sub-section is to effectuate the same approach, for the same reasons, as indicated in point # 1, above. It does not seem reasonable or fair or desirable for any of the Trust’s stakeholders to force them to wait for a review and decision by our Board to approve and provide certain data/information of the type contemplated in the situations that are contemplated in the statute. These situations – such as referring a loan default to a credit reporting service, or reporting info to a federal or state agency pertaining to financial assistance, or when required to do so

through a litigation order – are basic, day-to-day business operations that are more appropriately within the director’s duties to implement than the Board.

4. I didn’t review or make any changes to the Summary. I leave it to you to figure out what is best there.

Please get in touch if you have any questions.

Thanks for considering these modest improvements, as they would really help us protect confidential info more securely while transacting business more efficiently and smoothly.

Best,

/Michael

**Michael D. Stoddard**

Executive Director

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**Right to Know Advisory Committee**  
**Subcommittee on Review of Existing Public Records Exceptions**  
**DRAFT Proposed Bill to Implement the Recommendation of the Efficiency Maine Trust**

**An Act to Implement Recommendations of the Right to Know Advisory Committee**  
**Regarding Public Records Exceptions**

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

**Sec. 1. 35-A MRS §10106, sub-§1, ¶A is amended to read:**

A. A record obtained or developed by the trust that:

(1) A person, including the trust, to whom the record belongs or pertains has requested be designated confidential and that;

(2) ~~T the board~~ the director has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains;

(3) ~~2~~ Contains information about the energy usage profile of an identifiable customer of a transmission and distribution utility in the State or an identifiable customer of a distributor of heating fuel or other energy source; ~~and or,~~

(4) ~~3~~ Contains the social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the trust; and

**Sec. 2. 35-A MRS §10106, sub-3 is amended to read:**

**3. Disclosure prohibited; further exceptions.** The director or a trustee, officer, employee, agent, other representative of the trust or other person may not knowingly divulge or disclose records designated confidential by this section, except that the ~~board~~ director, in ~~its~~ their discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1-A, may make or authorize any disclosure of information of the following types or under the following circumstances:

**SUMMARY**

This bill changes the criteria for designation of records of the Efficiency Maine Trust as confidential from requiring that each of four criteria be met to instead require that one of three

criteria be met, including: that a person to whom the record belongs has requested it be designated confidential and the director of the Efficiency Maine Trust has determined the record contains proprietary information, access to which would result in some competitive disadvantage to any person to whom the record belongs or pertains; that the record contains information about the energy usage profile of an identifiable individual; or that the record contains the social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the Efficiency Maine Trust. This bill also provides that the director of the Efficiency Maine Trust, instead of the Board of the Efficiency Maine Trust, may disclose or authorize disclosure of otherwise confidential in certain enumerated circumstance.

**RIGHT TO KNOW ADVISORY COMMITTEE  
PUBLIC RECORDS EXCEPTIONS REVIEW SUBCOMMITTEE**

**AGENDA**

August 17, 2016

10:00 a.m.

Room 438, State House, Augusta

**Convene**

1. Welcome and Introductions
2. Continue review of public records exceptions enacted after 2004 and before 2013: discussion and recommendations to the full Advisory Committee

**Adjourn**



**PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE**

**Maine Freedom of Access Act - public records exceptions**

**Enacted 2005 - 2012**

(Revised 8/16/2016)

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS
2	1	402	3	Title 1, section 402, subsection 3, paragraph C-1, relating to legislative working papers	Legislative Council, Executive Director	Tabled to discuss broader implications of individual exceptions
6	1	402	3	Title 1, section 402, subsection 3, paragraph Q, relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events for Department of Corrections or county jail	Department of Corrections	
13	5	1541	10-B	Title 5, section 1541, subsection 10-B, relating to internal audit working papers of the State Controller	Department of Administrative and Financial Services - Office of the State Controller	
35	12	8005	1	Title 12, section 8005, subsection 1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	Department of Agriculture, Conservation and Forestry	

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS
36	12	8005	2	Title 12, section 8005, subsection 2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs	Department of Agriculture, Conservation and Forestry	
37	12	8005	4	Title 12, section 8005, subsection 4, relating to forest management information designated confidential by agency furnishing the information	Department of Agriculture, Conservation and Forestry	
38	12	10110		Title 12, section 10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license	Department of Inland Fisheries and Wildlife	
39	12	12551-A	10	Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch	Department of Inland Fisheries and Wildlife	



Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS
40	14	6321-A	4	Title 14, section 6321-A, subsection 4, relating to the financial information disclosed in the course of mediation under the foreclosure mediation program	Administrative Office of the Courts	
41	17-A	1176	1	Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims	Department of Public Safety	
42	17-A	1176	5	Title 17-A, section 1176, subsection 5, relating to request by crime victim for notice of release of defendant	Department of Corrections	
43	20-A	13004	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel	Department of Education	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS
51	22	2153-A		Title 22, section 2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law	Department of Health and Human Services	
53	24-A	2736	2	Title 24-A, section 2736, subsection 2, relating to insurer rate filings on individual health insurance policies and supporting information, in regards to protected health information and descriptions of the amount and terms or conditions or reimbursement in a contract between an insurer and a 3rd party	Department of Professional and Financial Regulation - Bureau of Insurance	
54	25	4202		Title 25, section 4202, relating to records and information connected in any way with the work of a critical incident stress management team for law enforcement personnel	Department of Public Safety	
56	29-A	2251	7-A	Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in an accident report database	Department of Public Safety	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS
57	29-A	2117-A	4	Title 29-A, section 2117-A, relating to data collected or retained through the use of an automated license plate recognition system	Department of Public Safety; Department of Transportation	
58	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	Department of Public Safety	
59	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board	Department of Public Safety	
60	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to receiving emergency medical services as part of an application for credentialing by Emergency Medical Services Board	Department of Public Safety	
61	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 87-B	Department of Public Safety	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS
62	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board	Department of Public Safety	
64	34-A	11221	13	Title 34-A, section 11221, subsection 13, relating to disclosure of certain sex offender registry information	Department of Public Safety	
65	34-A	11221	9-A	Title 34-A, section 11221, subsection 9-A, relating to certain sex offender registry information	Department of Public Safety	
66	34-B	1931	6	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board	Mental Health Homicide, Suicide, and Aggravated Assault Review Board (MHSAARB)	
67	34-B	3864	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	Department of Public Safety	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS
69	35-A	10106		Title 35-A, section 10106 relating to records of the Efficiency Maine Trust and its board	Efficiency Maine	



**STATUTE:** 1 MRSA § 402, sub-§3

**AGENCY:** Dept. of Corrections

**CONTACT PERSON:** Jody Breton

**CONTACT PERSON'S EMAIL ADDRESS:** jody.l.breton@maine.gov

## QUESTIONS

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

Answer: This subsection contains many provisions that are not relevant to the DOC. The most relevant provisions are paragraphs A., O., and Q.

Paragraph A is about records made confidential by statute. This covers records of prisoners, residents of juvenile facilities, adult and juvenile probationers, and others who are in the custody or under the supervision of the DOC (see Title 34-A section 1216). This is cited frequently in denying requests for records.

Paragraph O. concerns personal contact information related to public employees. It is cited once in a while.

Paragraph Q. concerns "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 general public." This is cited once in a while.

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

Answer: The DOC supports the continuation of all of these exceptions.

Frequently, information about prisoners, juvenile residents, and others who the DOC has custody of or supervises is sensitive, including medical and mental health information and information that, if known, would endanger their safety (e.g., that a certain prisoner is an informant). The underlying statute, Title 34-A section 1216 Title

34-A section 1216, has sufficient exceptions for cases where the information needs to be released, such as when it is needed for a court case.

Personal contact information about DOC employees needs to be kept confidential so that former prisoners, families of prisoners, and others do not use that information to harass, stalk, or attack employees.

The exception for security plans, etc., is needed so that this information is not used to endanger the safety of DOC employees, plot escapes, bring drugs and other contraband into correctional facilities, etc.

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

Answer: There have been no major problems. The language is clear enough.

4. Does your agency recommend changes to this exception?

Answer: No.

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

Answer: With respect to Paragraph O--Unions that represent DOC employees.

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



**Maine Revised Statutes**  
**Title 1: GENERAL PROVISIONS**  
**Chapter 13: PUBLIC RECORDS AND PROCEEDINGS**

**§402. DEFINITIONS**

**1. Conditional approval.** Approval of 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.

[ 1975, c. 758, (NEW) .]

**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.

[ 1991, c. 773, §1 (NEW) .]

**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:

A. The Legislature of Maine and its committees and subcommittees; [1975, c. 758, (NEW) .]

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 Community College System and any of its committees and subcommittees; [1989, c. 358, §1 (AMD); 1989, c. 443, §1 (AMD); 1989, c. 878, Pt. A, §1 (RPR); 2003, c. 20, Pt. 00, §2 (AMD); 2003, c. 20, Pt. 00, §4 (AFF) .]

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; [1991, c. 848, §1 (AMD) .]

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; [1995, c. 608, §1 (AMD) .]

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; [2009, c. 334, §1 (AMD) .]

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 establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and [2009, c. 334, §2 (AMD) .]

G. The committee meetings, subcommittee meetings and full membership meetings of any association that:

(1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and

(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. Geographic 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 authorizes the release of the information; [2011, c. 149, §1 (AMD).]

*(Paragraph P as enacted by PL 2009, c. 339, §3 is REALLOCATED TO TITLE 1, SECTION 402, SUBSECTION 3, PARAGRAPH Q)*

Q. (REALLOCATED FROM T. 1, §402, sub-§3, ¶P) 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 general 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 or the Department of Corrections under conditions that protect the information from further disclosure; [2015, c. 335, §1 (AMD).]

R. Social security numbers in the possession of the Secretary of State; [2013, c. 518, §1 (AMD).]

S. 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; [2015, c. 161, §1 (AMD).]

T. Records describing research for the development of processing techniques for fisheries, aquaculture and seafood processing or the design and operation of a depuration plant in the possession of the Department of Marine Resources; and [2015, c. 161, §2 (AMD).]

U. Records provided by a railroad company describing hazardous materials transported by the railroad company in this State, the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes that are in the possession of a state or local emergency management entity or law enforcement agency, a fire department or other first responder. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5. [2015, c. 161, §3 (NEW).]

[ 2015, c. 161, §§1-3 (AMD); 2015, c. 335, §1 (AMD) .]

**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, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of furlough and dates of furlough; [2013, c. 267, Pt. B, §1 (AMD).]

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, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of residence and dates of supervision; and [2013, c. 267, Pt. B, §1 (AMD).]

C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, 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. [2013, c. 267, Pt. B, §1 (AMD).]

[ 2013, c. 267, Pt. B, §1 (AMD) .]

**Maine Revised Statutes**  
**Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES**  
**Chapter 143: ACCOUNTS AND CONTROL**

**§1541. POWERS AND DUTIES RELATING TO ACCOUNTING**

The Department of Administrative and Financial Services, through the Office of the State Controller, has authority: [2003, c. 600, §2 (AMD) .]

**1. Official system of general accounts.** To maintain an official system of general accounts, unless otherwise provided by law, embracing all the financial transactions of the State Government;

**2. Approve contracts and orders.** To examine and approve all contracts, orders and other documents, the purpose of which is to incur financial obligations against the State Government, to ascertain that moneys have been duly appropriated and allotted to meet such obligations and will be available when such obligations will become due and payable;

**3. Audit.** To audit and approve bills, invoices, accounts, payrolls and all other evidences of claims, demands or charges against the State Government; and to determine the regularity, legality and correctness of such claims, demands or charges. The State Controller may elect to audit electronically based systems for adequate safeguards and procedural controls. Notwithstanding any other provision of law, the State Controller may engage through sole source contracts auditors, accountants and investigators the State Controller considers necessary for special audits, financial audits and investigations to monitor and ensure adherence to contracts and to ensure proper financial controls. This subsection may not be construed to limit the powers and duties conferred and imposed by law upon the State Auditor as provided in Title 5, chapter 11;

[ 2005, c. 3, Pt. L, §1 (AMD) .]

**4. Inspect materials and labor.** To inquire into and cause an inspection to be made of articles and materials furnished, or work and labor performed, for the purpose of ascertaining that the prices, quality and amount of such articles or materials are fair, just and reasonable, and that all the requirements expressed or implied pertaining thereto have been complied with, and to reject or disallow any excess;

**5. Reports.** To make monthly reports on all receipts and expenditures of the State Government to the Governor and the State Auditor; to make monthly reports on appropriations, allotments, encumbrances and authorized payments to the Governor, to the State Auditor and to the head of the department or agency directly concerned;

**6. Forms.** To prescribe the forms of receipts, vouchers, bills or claims to be filed by departments and agencies with the Department of Administrative and Financial Services;

[ 2007, c. 466, Pt. A, §10 (AMD) .]

**7. Subsidiary accounts.** To prescribe such subsidiary accounts, including cost accounts, for the various departments and agencies as may be desired for the purposes of administration, supervision and financial control;

**8. Examine accounts.** To examine the accounts of every department or agency receiving appropriations from the State;

**9. Illegality of expenditures.** To report to the Attorney General for such action, civil or criminal, as he may deem necessary, all facts showing illegality in the expenditure of public moneys or the misappropriation of public properties;

**10. Other rights, powers and duties.** To exercise the rights, powers and duties conferred and imposed by law upon the State Auditor that were effective November 9, 1931 insofar as these relate to financial administration and general accounting control of the State Government, involving the keeping of general accounts, the auditing before payment of bills or vouchers and the authorizing of all claims against the State for which appropriations have been made. The State Controller may delegate authority for final approval of bills and vouchers to state agencies subject to adequate safeguards. This delegation of authority may be revoked by the State Controller at any time. The State Controller shall set up and maintain special accounts with respect to money received for designated purposes from the Federal Government.

[ 1993, c. 410, Pt. C, §1 (AMD) .]

**10-A. Internal control standards.** To implement the following internal control standards that define the minimum level of quality acceptable for internal control systems in operation throughout the various state agencies and departments and constitute the criteria against which such internal control systems must be evaluated by the State Controller. Internal control systems for the various state agencies and departments must be developed in accordance with the following internal control guidelines established by the State Controller.

A. Internal control systems of state agencies and departments are to be clearly documented and readily available for examination. Documentation of a state agency's or department's internal control systems must include internal control procedures, internal control accountability systems and identification of the operating cycles. Documentation of the state agency's or department's internal control systems must appear in management directives, administrative policy, procedures and manuals. [2003, c. 451, Pt. F, §1 (NEW) .]

B. All transactions and other significant events involving state agencies or departments must be promptly recorded, clearly documented and properly classified as to amount, account, fund and fiscal year. Documentation of a transaction or event must include the entire process or life cycle of the transaction or event, including the initiation or authorization of the transaction or event, all aspects of the transaction while in process and the classification in the accounting records. [2003, c. 451, Pt. F, §1 (NEW) .]

C. Transactions and other significant events involving state agencies or departments may be authorized and executed only by persons acting within the scope of their authority. Authorizations must be clearly communicated to managers and employees and must include the specific conditions and terms under which authorizations may be made. [2003, c. 451, Pt. F, §1 (NEW) .]

D. Key duties and responsibilities involving state agencies or departments, including authorizing, approving and recording transactions; issuing and receiving assets; making payments; and reviewing or monitoring transactions, must be assigned systematically to a number of individuals to ensure that effective checks and balances exist. [2003, c. 451, Pt. F, §1 (NEW) .]

E. Qualified and continuous supervision of all transactions and significant events must be provided by state agencies or departments to ensure that internal control objectives are achieved. The duties of a supervisor in carrying out this responsibility include clearly communicating the duties, responsibilities and accountabilities assigned to each staff member, systematically reviewing each member's work to the extent necessary and approving work at critical points to ensure that work flows as intended. [2003, c. 451, Pt. F, §1 (NEW) .]

F. Access to resources and records must be limited to authorized individuals as determined by the state agency or department head, except that the powers and duties of the State Auditor may not be limited by this subsection. Restrictions on access to resources depend upon the vulnerability of the resource and the perceived risk of loss, both of which must be periodically assessed. The state agency or department head is responsible for maintaining accountability for the custody and use of resources and shall assign qualified individuals for that purpose. Periodic comparison must be made between the resources and the recorded accountability of the resources to reduce the risk of unauthorized use or loss and protect against waste and wrongful acts. The vulnerability and value of the state agency or department resources determine the frequency of this comparison.

Within each state agency or department there must be a qualified employee whose responsibility, in addition to the employee's regularly assigned duties, is to ensure that the state agency or department has written documentation of its internal accounting and administrative control system on file. The employee shall, annually, or more often as conditions warrant, evaluate the effectiveness of the state agency's or department's internal control system and establish and implement changes necessary to ensure the continued integrity of the system. The employee shall:

- (1) Ensure that the documentation of all internal control systems is readily available for examination by the State Controller, Commissioner of Administrative and Financial Services and State Auditor;
- (2) Certify to the State Controller that the appropriate updates have been made and implemented by the state agency or department;
- (3) Ensure that the results of audits and recommendations to improve state agency or department internal controls are promptly evaluated by the state agency or department management;
- (4) Ensure that timely and appropriate corrective actions are effected by the state agency or department management in response to an audit;
- (5) Ensure that all actions determined by the state agency or department management as necessary to correct or otherwise resolve matters are addressed by the state agency or department in its budgetary request to the Legislature; and
- (6) Immediately notify the State Controller when an auditor, inspector general or other representative from the Federal Government or another nonstate organization requests access to state agency resources and records related to internal controls. The State Controller shall notify the State Auditor, the Office of Program Evaluation and Government Accountability and other interested parties of the audits and investigations in a timely manner.

All unaccounted for variances, losses, shortages or thefts of funds or property must be immediately reported to the State Controller, who shall review the matter to determine the amount involved that must be reported to the appropriate state agency or department management, law enforcement officials and the State Auditor. The State Controller shall also determine the internal control weakness that contributed to or caused the condition. The State Controller shall then make recommendations to the state agency or department official overseeing the internal control system and other appropriate management officials. The recommendations of the State Controller must address the correction of the conditions found and the necessary internal control policies and procedures that must be modified. The state agency or department oversight official and the appropriate management officials shall immediately implement policies and procedures necessary to prevent a recurrence of the problems identified and report the steps taken to the State Controller. From time to time the State Controller shall examine the policies and procedures implemented to ensure that the relevant policies and procedures are functioning appropriately. [2005, c. 490, §1 (AMD).]

G. Notwithstanding any other provision of law relating to confidentiality of information, the State Controller is granted access to all information in the files of any department or agency of the State as necessary to carry out the duties of the State Controller under this subsection; [2003, c. 451, Pt. F, §1 (NEW).]

[ 2005, c. 490, §1 (AMD) .]

**10-B. Confidentiality of internal audit working papers belonging to the Office of the State Controller.** Prior to the release of a final audit or investigation report and in the sole discretion of the State Controller, to disclose internal audit working papers to the department, commission or agency subject to the audit or investigation and to other auditors or law enforcement when such disclosure will not prejudice the audit or investigation. Except as provided in this subsection, internal audit working papers are confidential and may not be disclosed to any person. After release of the final audit or investigation report, internal audit working papers may be released as necessary to:

A. The department, commission or agency that was subject to the audit or investigation; [2007, c. 539, Pt. S, §1 (NEW).]

B. A federal agency providing a grant to the audited entity; [2007, c. 539, Pt. S, §1 (NEW).]

C. Law enforcement agencies for the purpose of criminal law enforcement or investigations; and [2007, c. 539, Pt. S, §1 (NEW).]

D. Other auditors in their work, including but not limited to the State Auditor; [2007, c. 539, Pt. S, §1 (NEW).]

[ 2007, c. 539, Pt. S, §1 (NEW) .]

**11. Definition.** The words, "the State Government," as used in this section shall include the judiciary and the Executive Department of the Governor.

[ 1967, c. 427, §3 (NEW) .]

**12. Central data procession service.**

[ 1975, c. 322, §2 (RP) .]

**12-A. Conference fee accounts.**

[ 1995, c. 316, §1 (RP) .]

**13. Travel expense reimbursement.** Through the State Controller, with the approval of the Commissioner of Administrative and Financial Services, to establish policies for travel expense reimbursement and carrying out this chapter. Those policies determining which expenses are reimbursable and levels of reimbursement are deemed rules, and must be adopted, modified and repealed, only in accordance with procedures set forth in the Maine Administrative Procedure Act, Title 5, chapter 375.

A. Notwithstanding any other provision of law, a state agency, as defined in section 8002, subsection 2, may not authorize reimbursement for travel by any person at a rate greater than the rate established in section 8 for state employees, except that a community action agency as defined in Title 22, section 5321 and the Maine State Housing Authority may reimburse at a greater rate if:

- (1) The employee of the agency being reimbursed is not a state employee for the purpose of collective bargaining;
- (2) The source of funds to pay for the reimbursement for travel is a nonstate source, including funds from a federal agency that are passed through the State for distribution; and
- (3) The rate of reimbursement for travel does not exceed the standard mileage rate for that year, as established by the United States Department of Treasury. [1997, c. 601, §1 (AMD) .]

[ 1997, c. 601, §1 (AMD) .]

**14. Fixed assets.** To maintain an official statewide system for fixed assets for all state agencies to update and reconcile annually.

[ 1997, c. 90, §1 (NEW) .]

SECTION HISTORY

1967, c. 427, §3 (AMD). P&SL 1969, c. 251, §C1 (AMD). 1975, c. 322, §2 (AMD). 1977, c. 248, (AMD). 1979, c. 70, (AMD). 1979, c. 312, §2 (AMD). 1983, c. 209, (AMD). 1985, c. 761, §G9 (AMD). 1985, c. 785, §SA52,53 (AMD). 1987, c. 402, §A38 (AMD). 1991, c. 780, §SY42,43 (AMD).

**Right to Know Advisory Committee  
Subcommittee on Review of Existing Public Records Exceptions**

**DRAFT Proposed Bill to Implement the Recommendation of the  
Department of Inland Fisheries and Wildlife**

**An Act to Implement Recommendations of the Right to Know Advisory Committee  
Regarding Public Records Exceptions**

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

**Sec. 1. 12 MRSA §10110 is amended to read:**

**§10110. Confidentiality**

**1. Indication of confidentiality.** ~~The commissioner shall allow an applicant for a hunting or fishing license to indicate that the applicant's e-mail address is confidential.~~

**2. Confidential information.** ~~If a person indicates that the A person's e-mail address submitted as part of the application process for a hunting or fishing license, permit or registration issued by the department is confidential as provided in subsection 1, that information is confidential~~ The commissioner may allow a person to clearly indicate that the e-mail address is not confidential.

**3. Exception.** E-mails designated as confidential under this section are not confidential to department personnel or law enforcement officers or for purposes of court proceedings. The department may disclose e-mails designated confidential under this section to a contractor or State agency performing marketing services for the department or conducting fish and game management research.

**SUMMARY**

This bill makes e-mail addresses submitted to the Department of Inland Fisheries and Wildlife in connection with an application for a hunting or fishing license, permit or registration confidential. The Commissioner of Inland Fisheries and Wildlife may allow the applicant to clearly indicates that the e-mail address is not confidential. This bill allows the Department of Inland Fisheries and Wildlife to disclose otherwise confidential emails to a contractor or State agency performing marketing services for the department or conducting fish and game management research.





**STATUTE:** 17-A MRSA § 1176, sub-§1

**AGENCY:** Office of the Attorney General

**CONTACT PERSON:** Phyllis Gardiner (on behalf of the Criminal Division)

**CONTACT PERSON'S EMAIL ADDRESS:** phyllis.gardiner@maine.gov

### QUESTIONS

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

*We do not have specific data on the frequency with which records requested under FOAA have been withheld based on this exception, but, in general, requests for records that contain victim information are increasing in frequency.*

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

*The AG's office strongly supports continuation of this exception as an important form of protection for victims of crimes. In some cases, release of this information could facilitate harassment or physical harm to the victim. Protecting the information from disclosure provides peace of mind to victims of domestic violence, the value of which cannot be understated.*

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

*Yes, the language is sufficiently clear, and it is beneficial to have this specific confidentiality protection, rather than relying on the unwarranted invasion of privacy exception in the Intelligence and Investigative Record Information Act, 16 M.R.S. § 804(3).*

4. Does your agency recommend changes to this exception?

*No.*

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

*Stakeholders would include all the District Attorneys, the Victim Witness Advocates in the District Attorneys' Offices, MeCASA, the Maine Coalition to End Domestic Violence, the Maine State Police, the Office of the Fire Marshal, and the Department of Corrections.*

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

**Maine Revised Statutes**  
**Title 17-A: MAINE CRIMINAL CODE**  
**Chapter 48: VICTIMS' RIGHTS HEADING: PL 1995, c. 680, §5 (new)**

**§1176. CONFIDENTIALITY OF VICTIM RECORDS**

**1. General rule of confidentiality.** Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined must be kept confidential, subject to disclosure only as authorized in this section.

[ 2007, c. 475, §13 (NEW) .]

**2. Disclosure to law enforcement or victim services agencies.** Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined may be disclosed only to:

A. A state agency if necessary to carry out the statutory duties of that agency; [2007, c. 475, §13 (NEW) .]

B. A criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile justice; [2007, c. 475, §13 (NEW) .]

C. A victims' service agency with a written agreement with a criminal justice agency to provide services as a victim advocate; or [2007, c. 475, §13 (NEW) .]

D. A person or agency upon request of the victim. [2007, c. 475, §13 (NEW) .]

[ 2007, c. 475, §13 (NEW) .]

**3. Limited disclosure as part of court order or bail condition.** A bail commissioner, judge, justice, court clerk, law enforcement officer or attorney for the State may disclose a victim's current address or location to the defendant or accused person, or the attorney or authorized agent of the defendant or accused person, as part of a bail condition or court order restricting contact with the victim, only when it is clear that the defendant already knows the victim's current address or location, or when the victim requests that such bail condition or court order be issued and the victim requests that the current address or location be specified.

[ 2007, c. 475, §13 (NEW) .]

**4. Limited disclosure pursuant to discovery.** Notwithstanding the provisions of the Maine Rules of Criminal Procedure, Rule 16, an attorney for the State may withhold the current address or location of a victim from a defendant, or the attorney or authorized agent of the defendant, if the attorney for the State has a good faith belief that such disclosure may compromise the safety of the victim.

[ 2007, c. 475, §13 (NEW) .]

**5. Disclosure of victim's request for notice prohibited.** In no case may a victim's request for notice of release of a defendant be disclosed except to those employees of the agency to which the defendant is committed and the office of the attorney for the State with which the request was filed in order for those employees to perform their official duties.

[ 2007, c. 475, §13 (NEW) .]

SECTION HISTORY

2005, c. 389, §1 (NEW). 2007, c. 475, §13 (RPR).



**Maine Revised Statutes**  
**Title 22: HEALTH AND WELFARE**  
**Chapter 551: PURE FOODS AND DRUGS GENERALLY**

**§2153-A. CONFIDENTIALITY OF CERTAIN INFORMATION**

The following information is confidential and may not be disclosed to the public: [2009, c. 393, §9 (NEW) .]

**1. United States Department of Agriculture, Food Safety and Inspection Service.** Information provided to the department or to any employee of the department by the United States Department of Agriculture, Food Safety and Inspection Service pursuant to 9 Code of Federal Regulations, Section 390.9 (2008) to the extent that the regulations designate the information confidential, the information is otherwise identified pursuant to the regulations as confidential or the regulations require the information to be protected from public disclosure; and

[ 2009, c. 393, §9 (NEW) .]

**2. Food and Drug Administration.** Information provided to the department or to any employee of the department by the United States Food and Drug Administration pursuant to 21 Code of Federal Regulations, Section 20.88 (2008) to the extent that the regulations designate the information confidential, the information is otherwise identified pursuant to the regulations as confidential or the regulations require the information to be protected from public disclosure.

[ 2009, c. 393, §9 (NEW) .]

SECTION HISTORY  
2009, c. 393, §9 (NEW) .

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**Maine Revised Statutes**  
**Title 22: HEALTH AND WELFARE**  
**Chapter 551: PURE FOODS AND DRUGS GENERALLY**

**§2153. POWERS OF COMMISSIONER**

The authority to promulgate, in a manner consistent with the Maine Administrative Procedure Act, regulations for the efficient enforcement of this subchapter is vested in the Commissioner of Agriculture, Conservation and Forestry. The commissioner is authorized to make the regulations promulgated under said subchapter conform in so far as practicable with those promulgated under the Federal Act. [1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

Hearings authorized or required by this subchapter shall be conducted by the commissioner or such officer, agent or employee as the commissioner may designate for the purpose. [1977, c. 694, §§ 346, 347 (AMD).]

**SECTION HISTORY**

1977, c. 694, §§346,347 (AMD). 2011, c. 657, Pt. W, §6 (REV).

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**Maine Revised Statutes**  
**Title 22: HEALTH AND WELFARE**  
**Chapter 1: DEPARTMENT OF HEALTH AND HUMAN**  
**SERVICES HEADING: PL 2003, c. 689, Pt. B, §6 (rev)**

**§1-A. DEFINITIONS**

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 539, Pt. N, §9 (NEW) .]

**1. Commissioner.** "Commissioner" means the Commissioner of Health and Human Services.

[ 2007, c. 539, Pt. N, §9 (NEW) .]

**2. Department.** "Department" means the Department of Health and Human Services.

[ 2007, c. 539, Pt. N, §9 (NEW) .]

**3. Intermediate care facility for persons with intellectual disabilities.** "Intermediate care facility for persons with intellectual disabilities" has the same meaning as in Title 34-B, section 1001, subsection 4-B.

[ 2011, c. 542, Pt. A, §23 (NEW) .]

SECTION HISTORY

2007, c. 539, Pt. N, §9 (NEW). 2011, c. 542, Pt. A, §23 (AMD) .

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**STATUTE: 5 MRSA § 1541, sub-§ 10-B**

**AGENCY:** Dept. of Administrative and Financial Services – State Controller

**CONTACT PERSON:** Rob Weaver

**CONTACT PERSON'S EMAIL ADDRESS:** robert.weaver@maine.gov

## QUESTIONS

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

**The OSC rarely has had need to deny records requests related to ongoing internal audits and/or investigations, under this exception. This is likely due to the limited number of investigations/audit underway at any point in time and the timing of interest by outside parties typically occurs after the official report has been released.**

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

**The OSC supports the continuation of this exception and believes it is critical to accomplishing the objectives of the internal audit division.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? **The OSC has not experienced problems in applying this exception and believes it is clear that the records described are confidential. The language is sufficiently clear to describe the applicable records.**

4. Does your agency recommend changes to this exception?

**The OSC does not recommend any changes to the exception or the language covering this exception.**

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

**Other audit and investigative agencies internal to State Government, including the Office of the State Auditor, the Office of Program Evaluation and Government Accountability and the Office of the Attorney General.**

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

The OSC believes that this exception is critical to ensure that ongoing internal audits and investigations are not jeopardized as a result of the release of working papers used to document and support these investigative activities.

It is also necessary to ensure that data on individuals that could reasonably be used to determine the identity of an individual supplying data for an audit are private if the data supplied by the individual were needed for an audit and the individual would not have provided the data to the auditor without an assurance that the individual's identity would remain private, or the auditor reasonably believes that the subject would not have provided the data. Over the years, State employees and other survey respondents have indicated that they would not feel they can be candid in surveys and interviews about the problems they perceive in their agencies if those documents were not considered protected.

**Maine Revised Statutes**  
**Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES**  
**Chapter 143: ACCOUNTS AND CONTROL**

**§1541. POWERS AND DUTIES RELATING TO ACCOUNTING**

The Department of Administrative and Financial Services, through the Office of the State Controller, has authority: [2003, c. 600, §2 (AMD) .]

**1. Official system of general accounts.** To maintain an official system of general accounts, unless otherwise provided by law, embracing all the financial transactions of the State Government;

**2. Approve contracts and orders.** To examine and approve all contracts, orders and other documents, the purpose of which is to incur financial obligations against the State Government, to ascertain that moneys have been duly appropriated and allotted to meet such obligations and will be available when such obligations will become due and payable;

**3. Audit.** To audit and approve bills, invoices, accounts, payrolls and all other evidences of claims, demands or charges against the State Government; and to determine the regularity, legality and correctness of such claims, demands or charges. The State Controller may elect to audit electronically based systems for adequate safeguards and procedural controls. Notwithstanding any other provision of law, the State Controller may engage through sole source contracts auditors, accountants and investigators the State Controller considers necessary for special audits, financial audits and investigations to monitor and ensure adherence to contracts and to ensure proper financial controls. This subsection may not be construed to limit the powers and duties conferred and imposed by law upon the State Auditor as provided in Title 5, chapter 11;

[ 2005, c. 3, Pt. L, §1 (AMD) .]

**4. Inspect materials and labor.** To inquire into and cause an inspection to be made of articles and materials furnished, or work and labor performed, for the purpose of ascertaining that the prices, quality and amount of such articles or materials are fair, just and reasonable, and that all the requirements expressed or implied pertaining thereto have been complied with, and to reject or disallow any excess;

**5. Reports.** To make monthly reports on all receipts and expenditures of the State Government to the Governor and the State Auditor; to make monthly reports on appropriations, allotments, encumbrances and authorized payments to the Governor, to the State Auditor and to the head of the department or agency directly concerned;

**6. Forms.** To prescribe the forms of receipts, vouchers, bills or claims to be filed by departments and agencies with the Department of Administrative and Financial Services;

[ 2007, c. 466, Pt. A, §10 (AMD) .]

**7. Subsidiary accounts.** To prescribe such subsidiary accounts, including cost accounts, for the various departments and agencies as may be desired for the purposes of administration, supervision and financial control;

**8. Examine accounts.** To examine the accounts of every department or agency receiving appropriations from the State;

**9. Illegality of expenditures.** To report to the Attorney General for such action, civil or criminal, as he may deem necessary, all facts showing illegality in the expenditure of public moneys or the misappropriation of public properties;

**10. Other rights, powers and duties.** To exercise the rights, powers and duties conferred and imposed by law upon the State Auditor that were effective November 9, 1931 insofar as these relate to financial administration and general accounting control of the State Government, involving the keeping of general accounts, the auditing before payment of bills or vouchers and the authorizing of all claims against the State for which appropriations have been made. The State Controller may delegate authority for final approval of bills and vouchers to state agencies subject to adequate safeguards. This delegation of authority may be revoked by the State Controller at any time. The State Controller shall set up and maintain special accounts with respect to money received for designated purposes from the Federal Government.

[ 1993, c. 410, Pt. C, §1 (AMD) .]

**10-A. Internal control standards.** To implement the following internal control standards that define the minimum level of quality acceptable for internal control systems in operation throughout the various state agencies and departments and constitute the criteria against which such internal control systems must be evaluated by the State Controller. Internal control systems for the various state agencies and departments must be developed in accordance with the following internal control guidelines established by the State Controller.

A. Internal control systems of state agencies and departments are to be clearly documented and readily available for examination. Documentation of a state agency's or department's internal control systems must include internal control procedures, internal control accountability systems and identification of the operating cycles. Documentation of the state agency's or department's internal control systems must appear in management directives, administrative policy, procedures and manuals. [2003, c. 451, Pt. F, §1 (NEW) .]

B. All transactions and other significant events involving state agencies or departments must be promptly recorded, clearly documented and properly classified as to amount, account, fund and fiscal year. Documentation of a transaction or event must include the entire process or life cycle of the transaction or event, including the initiation or authorization of the transaction or event, all aspects of the transaction while in process and the classification in the accounting records. [2003, c. 451, Pt. F, §1 (NEW) .]

C. Transactions and other significant events involving state agencies or departments may be authorized and executed only by persons acting within the scope of their authority. Authorizations must be clearly communicated to managers and employees and must include the specific conditions and terms under which authorizations may be made. [2003, c. 451, Pt. F, §1 (NEW) .]

D. Key duties and responsibilities involving state agencies or departments, including authorizing, approving and recording transactions; issuing and receiving assets; making payments; and reviewing or monitoring transactions, must be assigned systematically to a number of individuals to ensure that effective checks and balances exist. [2003, c. 451, Pt. F, §1 (NEW) .]

E. Qualified and continuous supervision of all transactions and significant events must be provided by state agencies or departments to ensure that internal control objectives are achieved. The duties of a supervisor in carrying out this responsibility include clearly communicating the duties, responsibilities and accountabilities assigned to each staff member, systematically reviewing each member's work to the extent necessary and approving work at critical points to ensure that work flows as intended. [2003, c. 451, Pt. F, §1 (NEW) .]

F. Access to resources and records must be limited to authorized individuals as determined by the state agency or department head, except that the powers and duties of the State Auditor may not be limited by this subsection. Restrictions on access to resources depend upon the vulnerability of the resource and the perceived risk of loss, both of which must be periodically assessed. The state agency or department head is responsible for maintaining accountability for the custody and use of resources and shall assign qualified individuals for that purpose. Periodic comparison must be made between the resources and the recorded accountability of the resources to reduce the risk of unauthorized use or loss and protect against waste and wrongful acts. The vulnerability and value of the state agency or department resources determine the frequency of this comparison.

Within each state agency or department there must be a qualified employee whose responsibility, in addition to the employee's regularly assigned duties, is to ensure that the state agency or department has written documentation of its internal accounting and administrative control system on file. The employee shall, annually, or more often as conditions warrant, evaluate the effectiveness of the state agency's or department's internal control system and establish and implement changes necessary to ensure the continued integrity of the system. The employee shall:

- (1) Ensure that the documentation of all internal control systems is readily available for examination by the State Controller, Commissioner of Administrative and Financial Services and State Auditor;
- (2) Certify to the State Controller that the appropriate updates have been made and implemented by the state agency or department;
- (3) Ensure that the results of audits and recommendations to improve state agency or department internal controls are promptly evaluated by the state agency or department management;
- (4) Ensure that timely and appropriate corrective actions are effected by the state agency or department management in response to an audit;
- (5) Ensure that all actions determined by the state agency or department management as necessary to correct or otherwise resolve matters are addressed by the state agency or department in its budgetary request to the Legislature; and
- (6) Immediately notify the State Controller when an auditor, inspector general or other representative from the Federal Government or another nonstate organization requests access to state agency resources and records related to internal controls. The State Controller shall notify the State Auditor, the Office of Program Evaluation and Government Accountability and other interested parties of the audits and investigations in a timely manner.

All unaccounted for variances, losses, shortages or thefts of funds or property must be immediately reported to the State Controller, who shall review the matter to determine the amount involved that must be reported to the appropriate state agency or department management, law enforcement officials and the State Auditor. The State Controller shall also determine the internal control weakness that contributed to or caused the condition. The State Controller shall then make recommendations to the state agency or department official overseeing the internal control system and other appropriate management officials. The recommendations of the State Controller must address the correction of the conditions found and the necessary internal control policies and procedures that must be modified. The state agency or department oversight official and the appropriate management officials shall immediately implement policies and procedures necessary to prevent a recurrence of the problems identified and report the steps taken to the State Controller. From time to time the State Controller shall examine the policies and procedures implemented to ensure that the relevant policies and procedures are functioning appropriately. [2005, c. 490, §1 (AMD) .]

G. Notwithstanding any other provision of law relating to confidentiality of information, the State Controller is granted access to all information in the files of any department or agency of the State as necessary to carry out the duties of the State Controller under this subsection; [2003, c. 451, Pt. F, §1 (NEW) .]

[ 2005, c. 490, §1 (AMD) .]

**10-B. Confidentiality of internal audit working papers belonging to the Office of the State Controller.** Prior to the release of a final audit or investigation report and in the sole discretion of the State Controller, to disclose internal audit working papers to the department, commission or agency subject to the audit or investigation and to other auditors or law enforcement when such disclosure will not prejudice the audit or investigation. Except as provided in this subsection, internal audit working papers are confidential and may not be disclosed to any person. After release of the final audit or investigation report, internal audit working papers may be released as necessary to:

A. The department, commission or agency that was subject to the audit or investigation; [2007, c. 539, Pt. S, §1 (NEW) .]

B. A federal agency providing a grant to the audited entity; [2007, c. 539, Pt. S, §1 (NEW) .]

C. Law enforcement agencies for the purpose of criminal law enforcement or investigations; and [2007, c. 539, Pt. S, §1 (NEW) .]

D. Other auditors in their work, including but not limited to the State Auditor; [2007, c. 539, Pt. S, §1 (NEW) .]

[ 2007, c. 539, Pt. S, §1 (NEW) .]

**11. Definition.** The words, "the State Government," as used in this section shall include the judiciary and the Executive Department of the Governor.

[ 1967, c. 427, §3 (NEW) .]

**12. Central data procession service.**

[ 1975, c. 322, §2 (RP) .]

**12-A. Conference fee accounts.**

[ 1995, c. 316, §1 (RP) .]

**13. Travel expense reimbursement.** Through the State Controller, with the approval of the Commissioner of Administrative and Financial Services, to establish policies for travel expense reimbursement and carrying out this chapter. Those policies determining which expenses are reimbursable and levels of reimbursement are deemed rules, and must be adopted, modified and repealed, only in accordance with procedures set forth in the Maine Administrative Procedure Act, Title 5, chapter 375.

A. Notwithstanding any other provision of law, a state agency, as defined in section 8002, subsection 2, may not authorize reimbursement for travel by any person at a rate greater than the rate established in section 8 for state employees, except that a community action agency as defined in Title 22, section 5321 and the Maine State Housing Authority may reimburse at a greater rate if:

(1) The employee of the agency being reimbursed is not a state employee for the purpose of collective bargaining;

(2) The source of funds to pay for the reimbursement for travel is a nonstate source, including funds from a federal agency that are passed through the State for distribution; and

(3) The rate of reimbursement for travel does not exceed the standard mileage rate for that year, as established by the United States Department of Treasury. [1997, c. 601, §1 (AMD) .]

[ 1997, c. 601, §1 (AMD) .]

**14. Fixed assets.** To maintain an official statewide system for fixed assets for all state agencies to update and reconcile annually.

[ 1997, c. 90, §1 (NEW) .]

**SECTION HISTORY**

1967, c. 427, §3 (AMD). P&SL 1969, c. 251, §C1 (AMD). 1975, c. 322, §2 (AMD). 1977, c. 248, (AMD). 1979, c. 70, (AMD). 1979, c. 312, §2 (AMD). 1983, c. 209, (AMD). 1985, c. 761, §G9 (AMD). 1985, c. 785, §§A52,53 (AMD). 1987, c. 402, §A38 (AMD). 1991, c. 780, §§Y42,43 (AMD) .



**STATUTE:** 22 MRSA § 2153-A

**AGENCY:** Dept. of Agriculture, Conservation and Forestry

**CONTACT PERSON:** Mari Wells-Eager

**CONTACT PERSON'S EMAIL ADDRESS:** mari.wells@maine.gov

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).  
Not often. Quality Assurance and Regulations doesn't receive many FOAA requests.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.  
Absolutely must support, must comply with federal regulation.

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

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

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.  
Ron Dyer 287-7522

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



## Fouts, Henry

---

**From:** Ayotte, Shannon  
**Sent:** Monday, August 22, 2016 10:28 AM  
**To:** Nale, Craig  
**Subject:** RE: Right to Know FOAA Question  
**Attachments:** Ref51 with answers.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Responding on Mari's behalf,

Yes, we still need to follow this confidentiality exception as we must follow the federal requirements and sign confidentiality agreements with them each year. See answers on the form attached.

---

**From:** Nale, Craig [<mailto:Craig.Nale@legislature.maine.gov>]  
**Sent:** Tuesday, August 16, 2016 12:08 PM  
**To:** Ayotte, Shannon  
**Subject:** Right to Know FOAA Question

Hi Shannon,

I'm just following up on this as we prepare materials for tomorrow's Right to Know Advisory Committee meeting.

Thanks again,  
Craig

---

**From:** Nale, Craig  
**Sent:** Monday, August 15, 2016 11:37 AM  
**To:** Ayotte, Shannon  
**Subject:** RE: FOAA Question

Hi Shannon,

The exception is at 22 MRSA § 2153-A. The questionnaire originally sent to Ms. Wells-Eager is attached. I think the questions are fully outlined below and in the attachment, but I'm happy to talk anytime.

Thanks,  
Craig

---

**From:** Ayotte, Shannon [<mailto:Shannon.Ayotte@maine.gov>]  
**Sent:** Monday, August 15, 2016 11:34 AM  
**To:** Nale, Craig  
**Subject:** RE: FOAA Question

I am researching this for Mari Wells-Eagar. What specific exception is this?

---

**From:** Wells, Mari  
**Sent:** Monday, August 15, 2016 11:14 AM  
**To:** Ayotte, Shannon  
**Subject:** FW: FOAA Question

---

**From:** Nale, Craig [<mailto:Craig.Nale@legislature.maine.gov>]  
**Sent:** Thursday, August 11, 2016 10:44 AM  
**To:** Wells, Mari  
**Subject:** FW: FOAA Question

Hi Mari,

In connection with the review of existing public records by the Right to Know Advisory Committee, I sent the email below last year to gather more information about the exception cited in the attached questionnaire. I don't believe there was any resolution to this issue. Any help with the question below would be greatly appreciated before the Advisory Committee takes the issue up again next week.

Thanks again,  
Craig

---

**From:** Nale, Craig  
**Sent:** Tuesday, October 20, 2015 11:51 AM  
**To:** Wells, Mari  
**Subject:** FOAA Question

Hi Mari:

The attached questionnaire was sent to Kevin Wells at the Department of Health and Human Services, but he thought it might be better directed to the DACF. My reading of the statute is that DACF must promulgate the regulations that determine whether documents are confidential, but that DHHS would maintain the documents and therefore respond to FOAA requests for those documents.

Would you mind taking a look either responding to the questionnaire or help clarify who maintains these documents?

I'm happy to discuss further with you or anyone from DACF. Thanks very much,

Craig

**Craig T. Nale, Esq.**  
Legislative Analyst  
Office of Policy and Legal Analysis  
Maine State Legislature  
13 State House, Augusta, ME 04330  
(207) 287-1670  
[craig.nale@legislature.maine.gov](mailto:craig.nale@legislature.maine.gov)

**Maine Revised Statutes**  
**Title 22: HEALTH AND WELFARE**  
**Chapter 551: PURE FOODS AND DRUGS GENERALLY**

**§2153-A. CONFIDENTIALITY OF CERTAIN INFORMATION**

The following information is confidential and may not be disclosed to the public: [2009, c. 393, §9 (NEW) .]

**1. United States Department of Agriculture, Food Safety and Inspection Service.** Information provided to the department or to any employee of the department by the United States Department of Agriculture, Food Safety and Inspection Service pursuant to 9 Code of Federal Regulations, Section 390.9 (2008) to the extent that the regulations designate the information confidential, the information is otherwise identified pursuant to the regulations as confidential or the regulations require the information to be protected from public disclosure; and

[ 2009, c. 393, §9 (NEW) .]

**2. Food and Drug Administration.** Information provided to the department or to any employee of the department by the United States Food and Drug Administration pursuant to 21 Code of Federal Regulations, Section 20.88 (2008) to the extent that the regulations designate the information confidential, the information is otherwise identified pursuant to the regulations as confidential or the regulations require the information to be protected from public disclosure.

[ 2009, c. 393, §9 (NEW) .]

**SECTION HISTORY**

2009, c. 393, §9 (NEW) .

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STATUTE: 25 M.R.S. § 4202

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
  - Since the exception was enacted into law, the agency has not had occasion to administer or apply the exception.
  - The records (or, more accurately, data) to which the exception applies are those described in the exception.
  
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
  - The agency supports the continuation of the exception so as to ensure that law enforcement personnel who are involved in or respond to traumatic incidents can seek in confidence the emotional and mental-health support that critical incident stress management teams provide.
  
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
  - The agency has not had any problems in applying this exception.
  - The type of records/data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records/data covered.
  
4. Does your agency recommend changes to this exception?

- The only change the agency might recommend is that the statute be amended to explicitly state in the exception that records/data covered by the exception are confidential and not “public records” for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not “public records” for the purpose of the FOAA. See 1 M.R.S. § 402(3)(A)).
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include other law enforcement agencies that have critical incident stress management teams, and first responder agencies.
6. Please provide any further information that you believe is relevant to the Advisory Committee’s review.
- The agency does not have any further information to provide at this time.



## Maine Revised Statutes

### Title 25: INTERNAL SECURITY AND PUBLIC SAFETY

#### Chapter 501: CRITICAL INCIDENT STRESS MANAGEMENT TEAMS

##### §4202. CRITICAL INCIDENT STRESS MANAGEMENT TEAMS

**1. Information confidential.** Except as provided in subsection 2, all proceedings, communications and records, including, but not limited to, information concerning the identity of a person seeking or being furnished assistance, connected in any way with the work of a critical incident stress management team are confidential and are not subject to compulsory legal process or otherwise discoverable or admissible in evidence in any civil action unless the confidentiality is waived by the affected person. Statistical data not identifying a person seeking the assistance of a critical incident stress management team must be made available for statistical evaluation and may not be made available for any other purpose.

[ 2009, c. 289, §1 (NEW) .]

**2. Mandatory disclosure of information.** Unless protected by a privilege of law recognized by this State, a member of a critical incident stress management team must disclose to appropriate federal, state or local government agencies or law enforcement agencies the following types of information:

A. An admission by a person seeking the assistance of the critical incident stress management team that the person has committed a crime; [2009, c. 289, §1 (NEW) .]

B. A disclosure of information by a person seeking the assistance of a critical incident stress management team that must be reported pursuant to any applicable law; or [2009, c. 289, §1 (NEW) .]

C. A disclosure of information by a person seeking the assistance of a critical incident stress management team that would lead one to reasonably think that the person seeking assistance is a danger to that person or to another person. [2009, c. 289, §1 (NEW) .]

Information disclosed under this subsection is no longer confidential unless it is otherwise designated confidential by statute.

[ 2009, c. 289, §1 (NEW) .]

##### SECTION HISTORY

2009, c. 289, §1 (NEW) .

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STATUTE: 29-A MRSA § 2251, sub-§ 7-A

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- Since the exception was enacted into law, the agency perhaps has had only two or so occasions to apply the exception.
- The records (or, more accurately, data) to which the exception applies are those described in the exception.

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

- The agency supports the continuation of the exception to ensure that personally identifying information of residents and non-residents of Maine is protected and not publicly disseminated in bulk.

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

- The agency has not had any problems in applying this exception.
- The type of data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records covered.

4. Does your agency recommend changes to this exception?

- The agency does not recommend any changes to the exception at this time.
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include the Maine Department of Transportation, Maine Office of the Secretary of State, the Maine Turnpike Authority, and the National Highway Traffic Safety Administration.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
- The agency does not have any further information to provide at this time.

Maine Revised Statutes

Title 29-A: MOTOR VEHICLES AND TRAFFIC HEADING:  
PL 1993, c. 683, Pt. A, §2 (new); Pt. B, §5 (aff)

Chapter 19: OPERATION HEADING: PL  
1993, c. 683, Pt. A, §2 (new); Pt. B, §5 (aff)

**§2251. ACCIDENT REPORTS**

**1. Definition.** As used in this section, "reportable accident" means an accident on a public way or a place where public traffic may reasonably be anticipated, resulting in bodily injury or death to a person or apparent property damage of \$1,000 or more. Apparent property damage under this subsection must be based upon the market value of the necessary repairs and may not be limited to the current value of the vehicle or property.

[ 2007, c. 348, §23 (AMD) .]

**2. Report required.** A reportable accident must be reported immediately by the quickest means of communication to a state police officer, or to the nearest state police field office, or to the sheriff's office, or to a deputy sheriff, within the county in which the accident occurred, or to the office of the police department, or to an officer, of the municipality in which the accident occurred. The accident must be reported by:

A. The operator of an involved vehicle; [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]

B. A person acting for the operator; or [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]

C. If the operator is unknown, the owner of an involved vehicle having knowledge of the accident. [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]

[ 1995, c. 2, §71 (COR) .]

**3. Form.** The Chief of the State Police:

A. Shall prepare and supply forms and approve the format for electronic submission for reports that require sufficiently detailed information to disclose the cause, conditions, persons and vehicles involved, including information to permit the Secretary of State to determine whether the requirement for proof of financial responsibility is inapplicable; [2003, c. 688, Pt. A, §35 (RPR).]

B. Shall receive, tabulate and analyze accident reports; [2003, c. 434, §23 (AMD); 2003, c. 434, §37 (AFF).]

B-1. Shall send all accident reports to the Secretary of State; and [2003, c. 434, §23 (NEW); 2003, c. 434, §37 (AFF).]

C. May publish statistical information on the number, cause and location of accidents. [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]

[ 2003, c. 688, Pt. A, §35 (AMD) .]

**4. Investigation.** A law enforcement officer who investigates a reportable accident shall:

A. Interview participants and witnesses; and [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]

B. Within 5 days from the time of notification of the accident, transmit an electronic report or the original written report containing all available information to the Chief of the State Police. [2003, c. 688, Pt. A, §36 (RPR).]

Every reported accident must be promptly investigated.

If the accident results in serious bodily injury or death of any person, the investigation must be conducted by an officer who has met the training standards of a full-time law enforcement officer. A law enforcement officer who investigates an accident involving a bus or truck with a gross vehicle weight rating or a registered weight in excess of 10,000 pounds that results in the death of any person shall request a certified accident reconstructionist and the Bureau of State Police Commercial Vehicle Enforcement Unit to assist in the investigation of the accident. The Attorney General shall designate an assistant attorney general familiar with federal commercial vehicle laws and regulations to serve as a resource to any district attorney who initiates a prosecution arising from an accident involving a bus or truck with a gross vehicle weight rating or a registered weight in excess of 10,000 pounds that results in the death of any person.

[ 2003, c. 688, Pt. A, §36 (AMD) .]

#### 5. Forty-eight-hour report.

[ 2003, c. 434, §37 (AFF); 2003, c. 434, §25 (RP) .]

**6. Financial responsibility information.** The owner or operator of a vehicle involved in an accident shall furnish additional relevant information as the Secretary of State requires to determine the applicability of the requirement of proof of financial responsibility.

The Secretary of State may rely on the accuracy of the information until there is reason to believe that the information is erroneous.

[ 2003, c. 434, §37 (AFF); 2003, c. 434, §26 (RPR) .]

**7. Report information.** An accident report made by an investigating officer or a report made by an operator as required by subsection 2 is for the purposes of statistical analysis and accident prevention.

A report or statement contained in the accident report, or a report as required by subsection 2, a statement made or testimony taken at a hearing before the Secretary of State held under section 2483, or a decision made as a result of that report, statement or testimony may not be admitted in evidence in any trial, civil or criminal, arising out of the accident.

A report may be admissible in evidence solely to prove compliance with this section.

Notwithstanding subsection 7-A, the Chief of the State Police may disclose the date, time and location of the accident and the names and addresses of operators, owners, injured persons, witnesses and the investigating officer. On written request, the chief may furnish a photocopy of the investigating officer's report at the expense of the person making the request. The cost of furnishing a copy of the report is not subject to the limitations of Title 1, section 408-A.

[ 2011, c. 662, §18 (AMD) .]

**7-A. Accident report database; public dissemination of accident report data.** Data contained in an accident report database maintained, administered or contributed to by the Department of Public Safety, Bureau of State Police must be treated as follows.

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

- (1) "Data" means information existing in an electronic medium and contained in an accident report database.
- (2) "Nonpersonally identifying accident report data" means any data in an accident report that are not personally identifying accident report data.

(3) "Personally identifying accident report data" means:

- (a) An individual's name, residential and post office box mailing address, social security number, date of birth and driver's license number;
- (b) A vehicle registration plate number;
- (c) An insurance policy number;
- (d) Information contained in any free text data field of an accident report; and
- (e) Any other information contained in a data field of an accident report that may be used to identify a person. [2011, c. 654, §8 (AMD).]

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. [2013, c. 267, Pt. B, §24 (AMD).]

B-1. The Department of Public Safety, Bureau of State Police may disseminate a vehicle registration plate number contained in an accident report database maintained, administered or contributed to by the Bureau of State Police to a person only if that person provides the Bureau of State Police an affidavit stating that the person will not:

- (1) Use a vehicle registration plate number to identify or contact a person; or
- (2) Disseminate a vehicle registration plate number to another person. [2011, c. 654, §8 (NEW).]

C. The Department of Public Safety, Bureau of State Police may publicly disseminate nonpersonally identifying accident report data that are contained in an accident report database maintained, administered or contributed to by the Bureau of State Police. The cost of furnishing a copy of such data is not subject to the limitations of Title 1, section 408-A. [2011, c. 662, §19 (AMD).]

[ 2013, c. 267, Pt. B, §24 (AMD) .]

**8. Violation.** A person commits a Class E crime if that person:

- A. Is required to make an oral or written report and knowingly fails to do so within the time required; [2001, c. 360, §15 (AMD).]
- B. Is an operator involved in a reportable accident and knowingly fails to give a correct name and address when requested by an officer at the scene; [2011, c. 654, §9 (AMD).]
- C. Is the operator involved in a reportable accident or the owner of a vehicle involved in a reportable accident and knowingly fails to produce the vehicle or, if the vehicle is operational, return it to the scene when requested by the investigating officer; or [2011, c. 654, §9 (AMD).]
- D. Obtains a vehicle registration plate number pursuant to subsection 7-A, paragraph B-1 and knowingly uses that vehicle registration plate number to identify or contact a person or knowingly disseminates that vehicle registration plate number to another person. [2011, c. 654, §9 (NEW).]

[ 2011, c. 654, §9 (AMD) .]

**9. Prima facie evidence.** The absence of notice to a law enforcement agency with jurisdiction where the accident occurred is prima facie evidence of failure to report an accident.

[ 1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF) .]

**10. Suspension.** The Secretary of State may suspend or revoke the motor vehicle driver's license and certificate of registration of a person who is required to make a report and fails to do so or who fails to provide the information required by the Secretary of State.

[ 2003, c. 434, §28 (AMD); 2003, c. 434, §37 (AFF) .]

**11. Exemption.** The operator of a snowmobile or an all-terrain vehicle as defined by Title 12, section 13001, unless the all-terrain vehicle is registered for highway use by the Secretary of State under this Title, is exempt from the reporting requirements of subsection 2.

[ 2003, c. 614, §9 (AFF); 2003, c. 688, Pt. B, §11 (AFF); 2003, c. 688, Pt. B, §10 (RPR) .]

#### SECTION HISTORY

1993, c. 683, §A2 (NEW). 1993, c. 683, §B5 (AFF). RR 1995, c. 2, §71 (COR). 1997, c. 172, §1 (AMD). 1997, c. 178, §3 (AMD). 1999, c. 61, §1 (AMD). 2001, c. 360, §15 (AMD). 2003, c. 340, §§9,10 (AMD). 2003, c. 414, §B46 (AMD). 2003, c. 414, §D7 (AFF). 2003, c. 434, §§23-28 (AMD). 2003, c. 434, §37 (AFF). 2003, c. 614, §9 (AFF). 2003, c. 688, §§A35,36 (AMD). 2003, c. 688, §B10 (AMD). 2003, c. 688, §B11 (AFF). 2003, c. 709, §4 (AMD). 2007, c. 348, §23 (AMD). 2011, c. 390, §§1, 2 (AMD). 2011, c. 420, Pt. K, §1 (AMD). 2011, c. 420, Pt. K, §2 (AFF). 2011, c. 654, §§8, 9 (AMD). 2011, c. 662, §§18, 19 (AMD). 2013, c. 267, Pt. B, §24 (AMD) .

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STATUTE: 29-A MRSA § 2117-A, sub-§4

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- The agency has not had occasion to administer or apply this public records exception.
- The records (or, more accurately, data) subject to the exception are described in the exception.

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

- At this time the agency takes no position on whether the exception should be continued.

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

- The agency does not know of any problems that have occurred in the application of this exception.
- The type of data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the data covered.

4. Does your agency recommend changes to this exception?

- The agency does not recommend any changes to the exception at this time.
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include law enforcement agencies that currently or might use LPRs (e.g., the South Portland Police Department), the Maine Department of Transportation, and the Maine Turnpike Authority.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
- The agency does not have any further information to provide at this time.

Maine Revised Statutes

Title 29-A: MOTOR VEHICLES AND TRAFFIC HEADING:  
PL 1993, c. 683, Pt. A, §2 (new); Pt. B, §5 (aff)

Chapter 19: OPERATION HEADING: PL  
1993, c. 683, Pt. A, §2 (new); Pt. B, §5 (aff)

§2117-A. USE OF AUTOMATED LICENSE PLATE RECOGNITION SYSTEMS

**1. Definitions.** As used in this section, unless the context otherwise indicates, "automated license plate recognition system" means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration plates into computer-readable data. "Automated license plate recognition system" does not include a photo-monitoring system, as defined in Title 23, section 1980, subsection 2-A, paragraph B, subparagraph (4), when used by the Maine Turnpike Authority or a law enforcement agency for toll enforcement purposes.

[ 2009, c. 605, §1 (NEW) .]

**2. Prohibition.** Except as otherwise provided in subsection 3, a person may not use an automated license plate recognition system.

[ 2009, c. 605, §1 (NEW) .]

**3. Exception.** Subsection 2 does not apply to:

A. The Department of Transportation for the purposes of protecting public safety and transportation infrastructure; [2009, c. 605, §1 (NEW) .]

B. The Department of Public Safety, Bureau of State Police for the purposes of commercial motor vehicle screening and inspection; and [2009, c. 605, §1 (NEW) .]

C. Any state, county or municipal law enforcement agency when providing public safety, conducting criminal investigations and ensuring compliance with local, state and federal laws. For purposes of this paragraph, an automated license plate recognition system may use only information entered by a law enforcement officer as defined by Title 17-A, section 2, subsection 17 and based on specific and articulable facts of a concern for safety, wrongdoing or a criminal investigation or pursuant to a civil order or records from the National Crime Information Center database or an official published law enforcement bulletin. [2009, c. 605, §1 (NEW) .]

An authorized user under this subsection of an automated license plate recognition system may use an automated license plate recognition system only for the official and legitimate purposes of the user's employer.

[ 2009, c. 605, §1 (NEW) .]

**4. Confidentiality.** Data collected or retained through the use of an automated license plate recognition system in accordance with subsection 3 are confidential under Title 1, chapter 13 and are available for use only by a law enforcement agency in carrying out its functions or by an agency collecting information under subsection 3 for its intended purpose and any related civil or criminal proceeding.

A law enforcement agency may publish and release as public information summary reports using aggregate data that do not reveal the activities of an individual or firm and may share commercial motor vehicle screening data with the Federal Motor Carrier Safety Administration for regulatory compliance purposes.

[ 2009, c. 605, §1 (NEW) .]

**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 803, subsection 7, or data collected for the purposes of commercial motor vehicle screening, may not be stored for more than 21 days.

[ 2013, c. 267, Pt. B, §23 (AMD) .]

**6. Penalty.** Violation of this section is a Class E crime.

[ 2009, c. 605, §1 (NEW) .]

SECTION HISTORY

2009, c. 605, §1 (NEW). 2013, c. 267, Pt. B, §23 (AMD).

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STATUTE: 32 M.R.S. § 91-B, sub-§ 1

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- With respect to the quality assurance-related ("QA") records/data contemplated in the provision, the agency has rarely (if ever) administered/applied the exception. Likewise, with respect to the complaint investigation-related ("CI") records/data contemplated in the provision.
- The records/data subject to the exception are described in the exception.

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

- The agency supports the continuation of the QA exception, and supports the continuation of the CI exception so as to ensure for the protection of pending complaint-related information, as well as private, personal health information.

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

- The agency does not know of any problems that have occurred in the application of either the QA or CI exception.
- The type of records/data to which the QA and CI exceptions apply is understandable, and the language of the exceptions is sufficiently clear in describing the records/data covered.

4. Does your agency recommend changes to this exception?
  - The only change the agency might recommend is that the statute be amended to explicitly state in the provision that records/data covered by the exception are confidential and not “public records” for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not “public records” for the purpose of the FOAA. *See* 1 M.R.S. § 402(3)(A)).
  
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
  - Other stakeholders whose input perhaps should be considered in the evaluation of this exception include:
    - AAG Katie Johnson ([Katie.johnson@maine.gov](mailto:Katie.johnson@maine.gov));
    - Jeff Rowe, Chair, Maine Board of EMS ([jrowe@kennebunkmaine.us](mailto:jrowe@kennebunkmaine.us));
    - Michael Senecal, Chair-elect, Maine Board of EMS ([msenecal@fchn.org](mailto:msenecal@fchn.org));
    - Shaun St. Germain, Director, Maine Emergency Medical Services ([shaun.a.stgermain@maine.gov](mailto:shaun.a.stgermain@maine.gov)).
  
6. Please provide any further information that you believe is relevant to the Advisory Committee’s review.
  - The agency does not have any further information to provide at this time.

STATUTE: 32 M.R.S. § 91-B, sub-§ 1, ¶ A

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
  - The agency has rarely administered/applied the exception, but when it has done so, no problems are known to have been encountered.
  - The records/data subject to the exception are described in the exception.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
  - The agency supports the continuation of the exception so as to ensure for the protection of private, personal information.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
  - The agency does not know of any problems that have occurred in the application of the exception.
  - The type of records/data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records/data covered.
4. Does your agency recommend changes to this exception?
  - The only change the agency might recommend is that the statute be amended to explicitly state in the provision that records/data covered by

the exception are confidential and not "public records" for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not "public records" for the purpose of the FOAA. See 1 M.R.S. § 402(3)(A)).

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

- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include:
  - AAG Katie Johnson ([Katie.johnson@maine.gov](mailto:Katie.johnson@maine.gov));
  - Jeff Rowe, Chair, Maine Board of EMS ([jrowe@kennebunkmaine.us](mailto:jrowe@kennebunkmaine.us));
  - Michael Senecal, Chair-elect, Maine Board of EMS ([msenecal@fchn.org](mailto:msenecal@fchn.org));
  - Shaun St. Germain, Director, Maine Emergency Medical Services ([shaun.a.stgermain@maine.gov](mailto:shaun.a.stgermain@maine.gov)).

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

- The agency does not have any further information to provide at this time.



STATUTE: 32 M.R.S. § 91-B, sub-§ 1, ¶ B

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- Please see response to question 1 @ Ref57 vis-à-vis CI records/data.

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

- Please see response to question 2 @ Ref57 vis-à-vis CI records/data.

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

- Please see response to question 3 @ Ref57 vis-à-vis CI records/data.

4. Does your agency recommend changes to this exception?

- Please see response to question 4 @ Ref. 57 vis-à-vis CI records/data.

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

- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include:

- AAG Katie Johnson ([Katie.johnson@maine.gov](mailto:Katie.johnson@maine.gov));
- Jeff Rowe, Chair, Maine Board of EMS  
([jrowe@kennebunkmaine.us](mailto:jrowe@kennebunkmaine.us));
- Michael Senecal, Chair-elect, Maine Board of EMS  
([msenecal@fchn.org](mailto:msenecal@fchn.org));
- Shaun St. Germain, Director, Maine Emergency Medical Services  
([shaun.a.stgermain@maine.gov](mailto:shaun.a.stgermain@maine.gov)).

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

- The agency does not have any further information to provide at this time.

STATUTE: 32 M.R.S. § 91-B, sub-§ 1, ¶ C

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
  - The agency has rarely administered/applied the exception, but when it has done so, no problems are known to have been encountered.
  - The records/data subject to the exception are described in the exception.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
  - The agency supports the continuation of the exception so as to ensure for the protection of private, personal information, including, e.g., personal health information.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
  - The agency does not know of any problems that have occurred in the application of the exception.
  - The type of records/data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records/data covered.
4. Does your agency recommend changes to this exception?

- The only change the agency might recommend is that the statute be amended to explicitly state in the provision that records/data covered by the exception are confidential and not “public records” for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not “public records” for the purpose of the FOAA. See 1 M.R.S. § 402(3)(A)).

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

- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include:
  - AAG Katie Johnson ([Katie.johnson@maine.gov](mailto:Katie.johnson@maine.gov));
  - Jeff Rowe, Chair, Maine Board of EMS ([jrowe@kennebunkmaine.us](mailto:jrowe@kennebunkmaine.us));
  - Michael Senecal, Chair-elect, Maine Board of EMS ([msenecal@fchn.org](mailto:msenecal@fchn.org));
  - Shaun St. Germain, Director, Maine Emergency Medical Services ([shaun.a.stgermain@maine.gov](mailto:shaun.a.stgermain@maine.gov)).

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

- The agency does not have any further information to provide at this time.

STATUTE: 32 M.R.S. § 91-B, sub-§ 1, ¶ D

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- The agency has not had occasion to administer or apply this exception.
- The records/data subject to the exception are described in the exception.

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

- The agency supports the continuation of the exception so as to ensure for the integrity of the licensing program generally and the examination test specifically.

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

- The agency does not know of any problems that have occurred in the application of the exception.
- The type of records/data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records/data covered.

4. Does your agency recommend changes to this exception?

- The only change the agency might recommend is that the statute be amended to explicitly state in the provision that records/data covered by

the exception are confidential and not "public records" for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not "public records" for the purpose of the FOAA. See 1 M.R.S. § 402(3)(A)).

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

- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include:
  - AAG Katie Johnson ([Katie.johnson@maine.gov](mailto:Katie.johnson@maine.gov));
  - Jeff Rowe, Chair, Maine Board of EMS ([jrowe@kennebunkmaine.us](mailto:jrowe@kennebunkmaine.us));
  - Michael Senecal, Chair-elect, Maine Board of EMS ([msenecal@fchn.org](mailto:msenecal@fchn.org));
  - Shaun St. Germain, Director, Maine Emergency Medical Services ([shaun.a.stgermain@maine.gov](mailto:shaun.a.stgermain@maine.gov)).

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

- The agency does not have any further information to provide at this time.

## Maine Revised Statutes

### Title 32: PROFESSIONS AND OCCUPATIONS

#### Chapter 2-B: MAINE EMERGENCY MEDICAL SERVICES ACT OF 1982

##### §91-B. CONFIDENTIALITY EXCEPTIONS

**1. Confidentiality.** Except as otherwise provided in this chapter, all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the board and all reports, information and records provided to the committee are confidential and may not be disclosed or obtained by discovery from the committee, the board or its staff. Quality assurance information may be disclosed to a licensee as part of any board-approved educational or corrective process. All complaints and investigative records of the board or any committee or subcommittee of the board are confidential during the pendency of an investigation and may not be disclosed by the committee, the board or its staff. Information or records that identify or permit identification of any patient that appears in any reports, information or records provided to the board or department for the purposes of investigation are confidential and may not be disclosed by the committee, the board or its staff.

A. A personal residence address, personal telephone number or personal e-mail address submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as permitted under this section or as otherwise required by law unless the applicant who submitted the information indicated pursuant to section 90-B that the applicant is willing to have the applicant's personal residence address, personal telephone number or personal e-mail address treated as a public record. Personal health information submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as otherwise permitted under this section or otherwise required by law.

The board and its committees and staff may disclose personal health information about and the personal residence address and personal telephone number of a licensee or an applicant for a license under this chapter to a government licensing or disciplinary authority or to a health care provider located within or outside this State that requests the information for the purposes of granting, limiting or denying a license or employment to the applicant or licensee. [2011, c. 271, §19 (NEW).]

B. Any materials or information submitted to the board in support of an application that are designated as confidential by any other provision of law remain confidential in the possession of the board. Information in any report or record provided to the board pursuant to this chapter that permits identification of a person receiving emergency medical treatment is confidential. [2011, c. 271, §19 (NEW).]

C. Information provided to the board under section 87-B is confidential if the information identifies or permits the identification of a trauma patient or a member of that patient's family. [2011, c. 271, §19 (NEW).]

D. Examination questions used by the board to fulfill the cognitive testing requirements of this chapter are confidential. [2011, c. 271, §19 (NEW).]

[ 2011, c. 271, §19 (NEW) .]

**2. Exceptions.** Information designated confidential under subsection 1 becomes a public record or may be released as provided in this subsection.

A. Confidential information may be released in an adjudicatory hearing or informal conference before the board or in any subsequent formal proceeding to which the confidential information is relevant. [2011, c. 271, §19 (NEW).]

B. Confidential information may be released in a consent agreement or other written settlement when the confidential information constitutes or pertains to the basis of board action. [2011, c. 271, §19 (NEW) .]

C. Investigative records and complaints become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this paragraph, an investigation is concluded when:

- (1) Notice of an adjudicatory proceeding, as defined under Title 5, chapter 375, subchapter 1, has been issued;
- (2) A consent agreement has been executed; or
- (3) A letter of dismissal has been issued or the investigation has otherwise been closed. [2011, c. 271, §19 (NEW) .]

D. During the pendency of an investigation, a complaint or investigative record may be disclosed:

- (1) To Maine Emergency Medical Services employees designated by the director;
- (2) To designated complaint officers of the board;
- (3) By a Maine Emergency Medical Services employee or complaint officer designated by the board to the extent considered necessary to facilitate the investigation;
- (4) To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies;
- (5) By the director, to the extent the director determines such disclosure necessary to avoid imminent and serious harm. The authority of the director to make such a disclosure may not be delegated;
- (6) When it is determined, in accordance with rules adopted by the department, that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; or
- (7) To the person investigated on request of that person. The director may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the director determines that disclosure would prejudice the investigation. The authority of the director to make such a determination may not be delegated. [2011, c. 271, §19 (NEW) .]

E. Data collected by Maine Emergency Medical Services that allows identification of persons receiving emergency medical treatment may be released for purposes of research, public health surveillance and linkage with patient electronic medical records if the release is approved by the board, the Medical Direction and Practices Board and the director. Information that specifically identifies individuals must be removed from the information disclosed pursuant to this paragraph, unless the board, the Medical Direction and Practices Board and the director determine that the release of such information is necessary for the purposes of the research, public health surveillance or linkage with patient electronic medical records. [2015, c. 82, §8 (AMD) .]

F. Confidential information may be released in accordance with an order issued on a finding of good cause by a court of competent jurisdiction. [2011, c. 271, §19 (NEW) .]

G. Confidential information may be released to the Office of the Chief Medical Examiner within the Office of the Attorney General. [2011, c. 271, §19 (NEW) .]

[ 2015, c. 82, §8 (AMD) .]



**3. Violation.** A person who intentionally violates this section commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

[ 2011, c. 271, §19 (NEW) .]

SECTION HISTORY

2011, c. 271, §19 (NEW). 2015, c. 82, §8 (AMD).

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STATUTE: 34-A MRSA § 11221, sub-§ 13

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- The agency has rarely had occasion to administer or apply this public records exception.
- The records (or, more accurately, data) subject to the exception are described in the exception.

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

- The agency supports continuation of the exception, as it ensures that the State Bureau of Identification is the authoritative and most up-to-date source for Maine sex offender registrant-related information, and also helps to protect the privacy of individuals who formerly needed to register with the Sex Offender Registry.

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

- The agency is unaware of any problems that have occurred in the application of this exception.
- The type of data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the data covered.

4. Does your agency recommend changes to this exception?
  - The agency does not recommend any changes to the exception at this time.
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
  - Other stakeholders whose input perhaps should be considered in the evaluation of this exception include district attorney's offices and the Maine Office of the Attorney General.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
  - The agency does not have any further information to provide at this time.

STATUTE: 34-A MRSA § 11221, sub-§ 9-A

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
  - The agency has very rarely had occasion to administer or apply this public records exception (perhaps once?).
  - The records (or, more accurately, data) subject to the exception are described in the exception.
  
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
  - The agency supports continuation of the exception, as it protects the personal privacy of individuals accessing the online Sex Offender Registry website for information.
  
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
  - The agency is unaware of any problems that have occurred in the application of this exception.
  - The type of data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the data covered.
  
4. Does your agency recommend changes to this exception?

- The only change the agency might recommend is that the statute be amended to explicitly state in the provision that records/data covered by the exception are confidential and not "public records" for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not "public records" for the purpose of the FOAA. See 1 M.R.S. § 402(3)(A)).
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include district attorney's offices and the Maine Office of the Attorney General.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
- The agency does not have any further information to provide at this time.

**Maine Revised Statutes**  
**Title 34-A: CORRECTIONS**

**Chapter 15: SEX OFFENDER REGISTRATION AND  
NOTIFICATION ACT OF 1999 HEADING: PL 1999, c. 437, §2 (new)**

**§11221. MAINTENANCE OF SEX OFFENDER REGISTRY**

**1. Maintenance of registry.** The bureau shall establish and maintain a registry of persons required to register pursuant to this subchapter. The registry must include the following information on each registrant:

- A. The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, mailing address and physical location of expected domicile and residence; [2005, c. 423, §9 (AMD) .]
- B. Place of employment and college or school being attended, if applicable, and the corresponding address and location; [2003, c. 371, §4 (AMD) .]
- C. Offense history; [1999, c. 437, §2 (NEW) .]
- D. Notation of any treatment received for a mental abnormality or personality disorder; [1999, c. 437, §2 (NEW) .]
- E. A photograph and set of fingerprints; [1999, c. 437, §2 (NEW) .]
- F. A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; and [2003, c. 711, Pt. C, §17 (AMD); 2003, c. 711, Pt. D, §2 (AFF) .]
- G. Any other information the bureau determines important. [1999, c. 437, §2 (NEW) .]

[ 2005, c. 423, §9 (AMD) .]

**2. National or regional registry.** The bureau is authorized to make the registry available to and accept files from a national or regional registry of registrants for the purpose of sharing information.

[ 2003, c. 711, Pt. C, §18 (AMD); 2003, c. 711, Pt. D, §2 (AFF) .]

**3. Registration form.** The bureau shall develop a standardized registration form to be made available to the appropriate reporting authorities and persons required to register.

[ 1999, c. 437, §2 (NEW) .]

**4. Verification form.** The bureau shall develop and mail a nonforwardable verification form to the last reported mailing address of each person required to meet the verification requirements of this chapter.

[ 1999, c. 437, §2 (NEW) .]

**5. Sexually violent predator directory.**

[ 2003, c. 371, §5 (RP) .]

**6. Distribution of information to department and law enforcement agencies.** The bureau shall distribute information described in subsection 1 to the department and law enforcement agencies having jurisdiction over the address and location of the registrant's domicile, residence, place of employment and college or school being attended.

[ 2005, c. 423, §10 (AMD) .]

**7. Rules.**

[ 2005, c. 423, §11 (RP) .]

**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 703, subsection 4.

[ 2013, c. 267, Pt. B, §28 (AMD) .]

**9. Public access to information.** The bureau shall provide information to the public as follows.

A. The bureau shall post on the Internet for public inspection the following information concerning a registrant:

- (1) The registrant's name, date of birth and photograph;
- (2) The registrant's city or town of domicile and residence;
- (3) The registrant's place of employment and college or school being attended, if applicable, and the corresponding address and location;
- (4) The statutory citation and name of the offense for which the registrant was convicted; and
- (5) The registrant's designation as a 10-year registrant or a lifetime registrant. [2011, c. 307, §1 (AMD) .]

B. Upon receiving a written request that includes the name and date of birth of a registrant, the bureau shall provide the following information concerning a registrant to the requestor:

- (1) The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, mailing address and physical location of domicile and residence;
- (2) The registrant's place of employment and college or school being attended, if applicable, and the corresponding address and location;
- (3) A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; and
- (4) The registrant's photograph. [2005, c. 423, §12 (AMD) .]

[ 2011, c. 307, §1 (AMD) .]

**9-A. Registry information.** Registry information created, collected or maintained by the bureau, including, but not limited to, information relating to the identity of persons accessing the registry, is confidential, except the following are public records:

A. Information provided to the public pursuant to subsection 9; and [2011, c. 299, §1 (NEW) .]

B. Applications and bureau decisions, including any documents made part of those decisions, pursuant to section 11202-A. [2011, c. 299, §1 (NEW) .]

[ 2011, c. 299, §1 (NEW) .]

**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 709.

[ 2013, c. 267, Pt. B, §29 (AMD) .]



**11. Maintenance by bureau.** Only the bureau is authorized to maintain a sex offender registry on the Internet for purposes of public access as described in subsection 9.

[ 2005, c. 545, §1 (AMD) .]

**12. Law enforcement agency website.** A law enforcement agency may maintain its own sex offender website and may make that information available for use by the public if:

A. A notice is prominently posted on the website that expressly states that the website is not the official state sex offender registry under subsection 1 and that the law enforcement agency posting the website is solely responsible for the website's content; [2005, c. 545, §2 (NEW) .]

B. The website provides a link to the bureau's Internet sex offender registry under subsection 1; [2005, c. 545, §2 (NEW) .]

C. The website contains information regarding only registrants who are domiciled, reside, attend college or school or work within the posting law enforcement agency's jurisdiction; and [2005, c. 545, §2 (NEW) .]

D. The information on the website is updated by the law enforcement agency as frequently as available resources permit, but no less than every 7 days. The law enforcement agency shall also prominently post on the website the date and time of the most recent update to the website. [2005, c. 545, §2 (NEW) .]

[ 2005, c. 545, §2 (NEW) .]

**13. Access to registrant information existing in electronic form restricted.** Notwithstanding Title 1, chapter 13:

A. The bureau may not disseminate in electronic form information about a registrant that is created, collected or maintained in electronic form by or for the bureau, except as made available to the public through the bureau's Internet website pursuant to subsection 9 and made available to the Background Check Center established pursuant to Title 22, chapter 1691; and [2015, c. 299, §26 (AMD) .]

B. Except as made available to the public through an Internet website maintained by a law enforcement agency pursuant to subsection 12, a law enforcement agency may not disseminate in electronic form information about a registrant that is collected or maintained in electronic form by or for the law enforcement agency. [2011, c. 299, §3 (NEW) .]

[ 2015, c. 299, §26 (AMD) .]

#### SECTION HISTORY

1999, c. 437, §2 (NEW). 2003, c. 371, §§4-7 (AMD). 2003, c. 711, §§C17-20 (AMD). 2003, c. 711, §D2 (AFF). 2005, c. 423, §§9-13 (AMD). 2005, c. 545, §§1,2 (AMD). 2011, c. 299, §§1-3 (AMD). 2011, c. 307, §1 (AMD). 2013, c. 267, Pt. B, §§28, 29 (AMD). 2015, c. 299, §26 (AMD).

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#66

Maine Revised Statutes

**Title 34-B: BEHAVIORAL AND DEVELOPMENTAL SERVICES**  
**HEADING: PL 1995, c. 560, Pt. K, §7 (rpr); 2001, c. 354, §3 (amd)**

**Chapter 1: GENERAL PROVISIONS**

**§1931. MENTAL HEALTH HOMICIDE, SUICIDE AND AGGRAVATED ASSAULT REVIEW BOARD**

The Mental Health Homicide, Suicide and Aggravated Assault Review Board, referred to in this subchapter as "the board," is established. The board shall review homicides, suicides and aggravated assaults involving a person with severe and persistent mental illness as defined in section 3801, subsection 8-A. [2007, c. 609, §2 (NEW).]

**1. Members.** The board consists of:

- A. An attorney who is a member of a statewide association of criminal defense lawyers appointed by the President of the Senate; [2007, c. 609, §2 (NEW).]
- B. A psychiatrist appointed by the Speaker of the House; [2007, c. 609, §2 (NEW).]
- C. A psychiatric nurse appointed by the President of the Senate; [2007, c. 609, §2 (NEW).]
- D. A psychologist appointed by the Speaker of the House; [2007, c. 609, §2 (NEW).]
- E. A law enforcement officer appointed by the President of the Senate; [2007, c. 609, §2 (NEW).]
- F. The Commissioner of Health and Human Services or the commissioner's designee; [2007, c. 609, §2 (NEW).]
- G. The Commissioner of Corrections or the commissioner's designee; [2007, c. 609, §2 (NEW).]
- H. The Commissioner of Public Safety or the commissioner's designee; [2007, c. 609, §2 (NEW).]
- I. A judge or justice assigned by the Chief Justice of the Supreme Judicial Court; [2007, c. 609, §2 (NEW).]
- J. A representative of a prosecutors association designated by the Attorney General; [2007, c. 609, §2 (NEW).]
- K. An assistant attorney general responsible for the prosecution of homicide cases designated by the Attorney General; [2007, c. 609, §2 (NEW).]
- L. An assistant attorney general responsible for mental health cases designated by the Attorney General; [2007, c. 609, §2 (NEW).]
- M. A mental health service provider appointed by the Speaker of the House; [2007, c. 609, §2 (NEW).]
- N. A victim-witness advocate designated by the Attorney General; and [2007, c. 609, §2 (NEW).]
- O. Three persons appointed by the Governor from a list of nominees designated by statewide organizations that advocate for the rights of persons with serious and persistent mental illness. At least one of the appointees must represent the interests of persons with severe and persistent mental illness who are victims of crimes. [2007, c. 609, §2 (NEW).]

[ 2007, c. 609, §2 (NEW) .]

**2. Terms.** Members who are not state officials serve 2-year terms without compensation.

[ 2007, c. 609, §2 (NEW) .]

**3. Recommendations.** The board shall recommend to state and local agencies methods of preventing homicides, suicides and aggravated assaults involving persons with severe and persistent mental illness, including modifications of laws, rules, policies and procedures.

[ 2007, c. 609, §2 (NEW) .]

**4. Collect data.** The board shall collect and compile data related to homicides, suicides and aggravated assaults involving persons with severe and persistent mental illness. The board shall ensure that the collection of data and work of the board do not interfere with any pending criminal investigation or prosecution by state or county authorities.

[ 2007, c. 609, §2 (NEW) .]

**5. Information and records.** In any case subject to review by the board, upon written request of the board, any interested party that possesses information or records that are necessary and relevant to a review under this section shall as soon as practicable provide the board with the information and records. Persons disclosing or providing information or records upon the request of the board in compliance with this subsection are not criminally or civilly liable for disclosing or providing information or records.

[ 2007, c. 609, §2 (NEW) .]

**6. Confidentiality.** The proceedings of the board are confidential and are not public meetings for the purposes of the laws governing freedom of access, Title 1, chapter 13. Records of the board are confidential, are not public records for the purposes of the laws governing freedom of access, Title 1, chapter 13 and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The board shall disclose conclusions and recommendations of the board upon request in a manner that does not identify the parties, victims or witnesses. The board and members of the board may not disclose information, records or data that are otherwise classified as confidential.

[ 2007, c. 609, §2 (NEW) .]

**7. Unlawful dissemination.** A member of the board is guilty of unlawful dissemination if the member of the board knowingly disseminates records or information from those records that is confidential pertaining to a homicide, suicide or aggravated assault subject to review by the board. Unlawful dissemination is a Class E crime, punishable by a fine of not more than \$500 or by imprisonment of not more than 30 days.

[ 2007, c. 609, §2 (NEW) .]

**8. Report.** The board shall submit a report on the board's activities, conclusions and recommendations to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 30, 2009 and biennially thereafter. The committee shall review the report in a public meeting at which members of the public are provided an opportunity to address the committee.

[ 2007, c. 609, §2 (NEW) .]

SECTION HISTORY

2007, c. 609, §2 (NEW) .

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STATUTE: 34-B MRSA § 3864, sub-§ 12

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
  - The agency is unaware of any occasion when it has administered or applied this exception.
  - The records subject to the exception are described in the exception.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
  - The agency supports continuation of the exception, as it protects individuals' personal health information.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
  - The agency is unaware of any occasion when it has administered or applied this exception.
  - The type of records to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records covered.
4. Does your agency recommend changes to this exception?
  - The agency does not recommend any changes to the exception at this time.

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

- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include the Maine Office of the Attorney General, the Maine Judicial Branch, and the National Alliance on Mental Illness.

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

- The agency does not have any further information to provide at this time.



Maine Revised Statutes

Title 34-B: BEHAVIORAL AND DEVELOPMENTAL SERVICES  
HEADING: PL 1995, c. 560, Pt. K, §7 (rpr); 2001, c. 354, §3 (amd)

Chapter 3: MENTAL HEALTH

§3864. JUDICIAL PROCEDURE AND COMMITMENT

1. **Application.** An application to the District Court to admit a person to a psychiatric hospital, filed under section 3863, subsection 5-A, must be accompanied by:

A. The emergency application under section 3863, subsection 1; [1983, c. 459, §7 (NEW) .]

B. The accompanying certificate of the medical practitioner under section 3863, subsection 2; [2009, c. 651, §20 (AMD) .]

C. The certificate of the physician or psychologist under section 3863, subsection 7; [2009, c. 651, §20 (AMD) .]

D. A written statement, signed by the chief administrative officer of the psychiatric hospital, certifying that a copy of the application and the accompanying documents have been given personally to the patient and that the patient and the patient's guardian or next of kin, if any, have been notified of:

(1) The patient's right to retain an attorney or to have an attorney appointed;

(2) The patient's right to select or to have the patient's attorney select an independent examiner; and

(3) How to contact the District Court; and [2009, c. 651, §20 (AMD) .]

E. A copy of the notice and instructions given to the patient. [1997, c. 422, §14 (NEW) .]

[ 2009, c. 651, §20 (AMD) .]

1-A. **Involuntary treatment.** An application under this section may also include a request for an order of involuntary treatment under subsection 7-A.

[ 2007, c. 446, §2 (NEW); 2007, c. 446, §7 (AFF) .]

2. **Detention pending judicial determination.** Notwithstanding any other provisions of this subchapter, a person, with respect to whom an application for the issuance of an order for hospitalization has been filed, may not be released or discharged during the pendency of the proceedings, unless:

A. The District Court orders release or discharge upon the request of the patient or the patient's guardian, parent, spouse or next of kin; [2007, c. 319, §10 (AMD) .]

B. The District Court orders release or discharge upon the report of the applicant that the person may be discharged with safety; [1995, c. 496, §3 (AMD) .]

C. A court orders release or discharge upon a writ of habeas corpus under section 3804; [2015, c. 309, §6 (AMD) .]

D. Upon request of the commissioner, the District Court orders the transfer of a patient in need of more specialized treatment to another psychiatric hospital. In the event of a transfer, the court shall transfer its file to the District Court having territorial jurisdiction over the receiving psychiatric hospital; or [2015, c. 309, §7 (AMD) .]

E. The person has capacity to make an informed decision for informal voluntary admission, agrees to informal voluntary admission and the chief administrative officer of the hospital determines that informal voluntary admission is suitable. [2015, c. 309, §8 (NEW) .]

[ 2015, c. 309, §§6-8 (AMD) .]

**3. Notice of receipt of application.** The giving of notice of receipt of application and date of hearing under this section is governed as follows.

A. Upon receipt by the District Court of the application and accompanying documents specified in subsection 1, the court shall cause written notice of the application and date of hearing:

(1) To be mailed within 2 days of filing to the person; and

(2) To be mailed to the person's guardian, if known, and to the person's spouse, parent or one of the person's adult children or, if none of these persons exist or if none of those persons can be located, to one of the person's next of kin or a friend, except that if the chief administrative officer has reason to believe that notice to any of these individuals would pose risk of harm to the person who is the subject of the application, notice to that individual may not be given. [1997, c. 422, §15 (AMD) .]

B. A docket entry is sufficient evidence that notice under this subsection has been given. [1983, c. 459, §7 (NEW) .]

[ 1997, c. 422, §15 (AMD) .]

**4. Examination.** Examinations under this section are governed as follows.

A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1 and at least 3 days after the person who is the subject of the examination was notified by the psychiatric hospital of the proceedings and of that person's right to retain counsel or to select an examiner, the court shall cause the person to be examined by a medical practitioner. If the application includes a request for an order for involuntary treatment under subsection 7-A, the practitioner must be a medical practitioner who is qualified to prescribe medication relevant to the patient's care. If the person under examination or the counsel for that person selects a qualified examiner who is reasonably available, the court shall give preference to choosing that examiner. [2009, c. 651, §21 (AMD) .]

B. The examination must be held at a psychiatric hospital or at any other suitable place not likely to have a harmful effect on the mental health of the person. [2009, c. 651, §21 (AMD) .]

C. [2007, c. 319, §10 (RP) .]

D. [2007, c. 319, §10 (RP) .]

E. The examiner shall report to the court on:

(1) Whether the person is a mentally ill person within the meaning of section 3801, subsection 5;

(2) When the establishment of a progressive treatment plan under section 3873-A is at issue, whether a person is suffering from a severe and persistent mental illness within the meaning of section 3801, subsection 8-A;

(3) Whether the person poses a likelihood of serious harm within the meaning of section 3801, subsection 4-A;

(4) When involuntary treatment is at issue, whether the need for such treatment meets the criteria of subsection 7-A, paragraphs A and B;

(5) Whether adequate community resources are available for care and treatment of the person's mental illness; and

(6) Whether the person's clinical needs may be met by an order under section 3873-A to participate in a progressive treatment program. [2009, c. 651, §21 (AMD).]

F. [2007, c. 446, §7 (AFF); 2007, c. 446, §3 (RP).]

G. Opinions of the examiner may be based on personal observation or on history and information from other sources considered reliable by the examiner. [2009, c. 651, §21 (NEW).]

[ 2009, c. 651, §21 (AMD) .]

**5. Hearing.** Hearings under this section are governed as follows.

A. The District Court shall hold a hearing on the application not later than 14 days from the date of the application. The District Court may separate the hearing on commitment from the hearing on involuntary treatment.

(1) For good cause shown, on a motion by any party or by the court on its own motion, the hearing on commitment or on involuntary treatment may be continued for a period not to exceed 21 additional days.

(2) If the hearing on commitment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application and order the person discharged forthwith.

(2-A) If the hearing on involuntary treatment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application for involuntary treatment.

(3) In computing the time periods set forth in this paragraph, the Maine Rules of Civil Procedure apply. [2009, c. 651, §22 (AMD).]

A-1. Prior to the commencement of the hearing, the court shall inform the person that if an order of involuntary commitment is entered, that person is a prohibited person and may not own, possess or have under that person's control a firearm pursuant to Title 15, section 393, subsection 1. [2007, c. 670, §18 (NEW).]

B. The hearing must be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have harmful effect on the mental health of the person. If the setting is outside the psychiatric hospital to which the patient is currently admitted, the Department of Health and Human Services shall bear the responsibility and expense of transporting the patient to and from the hearing. If the patient is to be admitted to a psychiatric hospital following the hearing, then the hospital from which the patient came shall transport the patient to the admitting psychiatric hospital. If the patient is to be released following the hearing, then the hospital from which the patient came shall return the patient to that hospital or, at the patient's request, return the patient to the patient's place of residence. [2007, c. 319, §10 (AMD).]

C. The court shall receive all relevant and material evidence that may be offered in accordance with accepted rules of evidence and accepted judicial dispositions.

(1) The person, the applicant and all other persons to whom notice is required to be sent must be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses.

(2) The court may, in its discretion, receive the testimony of any other person and may subpoena any witness. [2007, c. 319, §10 (AMD).]

D. The person must be afforded an opportunity to be represented by counsel, and, if neither the person nor others provide counsel, the court shall appoint counsel for the person. [2007, c. 319, §10 (AMD) .]

E. In addition to proving that the patient is a mentally ill individual, the applicant must show:

(1) By evidence of the patient's recent actions and behavior, that due to the patient's mental illness the patient poses a likelihood of serious harm; and

(2) That, after full consideration of less restrictive treatment settings and modalities, inpatient hospitalization is the best available means for the treatment of the person. [2005, c. 519, Pt. BBBB, §10 (AMD); 2005, c. 519, Pt. BBBB, §20 (AFF).]

F. In each case, the applicant shall submit to the court, at the time of the hearing, testimony, including expert psychiatric testimony, indicating the individual treatment plan to be followed by the psychiatric hospital staff, if the person is committed under this section, and shall bear any expense for witnesses for this purpose. [2007, c. 319, §10 (AMD).]

G. A stenographic or electronic record must be made of the proceedings in all judicial hospitalization hearings.

(1) The record and all notes, exhibits and other evidence are confidential.

(2) The record and all notes, exhibits and other evidence must be retained as part of the District Court records for a period of 2 years from the date of the hearing. [2007, c. 319, §10 (AMD).]

H. The hearing is confidential and a report of the proceedings may not be released to the public or press, except by permission of the person or the person's counsel and with approval of the presiding District Court Judge, except that the court may order a public hearing on the request of the person or the person's counsel. [2007, c. 319, §10 (AMD).]

[ 2009, c. 651, §22 (AMD) .]

**6. Court findings.** Procedures dealing with the District Court's findings under this section are as follows.

A. The District Court shall so state in the record, if it finds upon completion of the hearing and consideration of the record:

(1) Clear and convincing evidence that the person is mentally ill and that the person's recent actions and behavior demonstrate that the person's illness poses a likelihood of serious harm;

(1-A) That adequate community resources for care and treatment of the person's mental illness are unavailable;

(2) That inpatient hospitalization is the best available means for treatment of the patient; and

(3) That it is satisfied with the individual treatment plan offered by the psychiatric hospital to which the applicant seeks the patient's involuntary commitment. [2009, c. 651, §23 (AMD).]

B. If the District Court makes the findings in paragraph A, subparagraphs (1), (1-A) and (2), but is not satisfied with the individual treatment plan as offered, it may continue the case for not longer than 10 days, pending reconsideration and resubmission of an individual treatment plan by the psychiatric hospital. [2009, c. 651, §23 (AMD).]

C. If the District Court makes the findings in section 3873-A, subsection 1, the court may issue an order under section 3873-A requiring the person to participate in a progressive treatment program. [2009, c. 651, §23 (NEW).]

[ 2009, c. 651, §23 (AMD) .]

**7. Commitment.** Upon making the findings described in subsection 6, paragraph A, the court may order commitment to a psychiatric hospital for a period not to exceed 4 months in the first instance and not to exceed one year after the first and all subsequent hearings.

A. The court may issue an order of commitment immediately after the completion of the hearing, or it may take the matter under advisement and issue an order within 24 hours of the hearing. [1983, c. 459, §7 (NEW) .]

B. If the court does not issue an order of commitment within 24 hours of the completion of the hearing, it shall dismiss the application and order the patient discharged immediately. [1995, c. 496, §6 (AMD) .]

[ 2009, c. 651, §24 (AMD) .]

**7-A. Involuntary treatment.** This subsection governs involuntary treatment.

A. The court may grant a psychiatric hospital power to implement a recommended treatment plan without a person's consent for up to 120 days or until the end of the commitment, whichever is sooner, if upon application the court finds:

- (1) That the person lacks the capacity to make an informed decision regarding treatment;
- (2) That the person is unable or unwilling to comply with recommended treatment;
- (3) That the need for the treatment outweighs the risks and side effects; and
- (4) That the recommended treatment is the least intrusive appropriate treatment option.

Alternatively, the court may appoint a surrogate to make treatment decisions on the person's behalf for the duration of the commitment if the court is satisfied that the surrogate is suitable, willing and reasonably available to act in the person's best interests. [2007, c. 446, §4 (NEW); 2007, c. 446, §7 (AFF) .]

B. The need for involuntary treatment under paragraph A may be based on findings that include, but are not limited to, the following:

- (1) That a failure to treat the illness is likely to produce lasting or irreparable harm to the person; or
- (2) That without the recommended treatment the person's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the person to pose a likelihood of serious harm. [2007, c. 446, §4 (NEW); 2007, c. 446, §7 (AFF) .]

C. The parties may agree to change, terminate or extend the treatment plan during the time period of an order for involuntary treatment. [2009, c. 651, §25 (AMD) .]

D. For good cause shown, any party may apply to the court to change or terminate the treatment plan. [2009, c. 651, §26 (AMD) .]

[ 2009, c. 651, §§25, 26 (AMD) .]

**8. Continued involuntary hospitalization.** If the chief administrative officer of the psychiatric hospital to which a person has been committed involuntarily by the District Court recommends that continued involuntary hospitalization is necessary for that person, the chief administrative officer shall notify the commissioner. The commissioner may then, not later than 21 days prior to the expiration of a period of commitment ordered by the court, make application in accordance with this section to the District Court that has territorial jurisdiction over the psychiatric hospital designated for treatment in the application by the commissioner for a hearing to be held under this section.

[ 2007, c. 319, §10 (AMD) .]

**9. Transportation.** Except for transportation expenses paid by the District Court pursuant to subsection 10, a continued involuntary hospitalization hearing that requires transportation of the patient to and from any psychiatric hospital to a court that has committed the person must be provided at the expense of the

Department of Health and Human Services. Transportation of an individual to a psychiatric hospital under these circumstances must involve the least restrictive form of transportation available that meets the clinical needs of that individual and be in compliance with departmental regulations.

[ 2007, c. 319, §10 (AMD) .]

**10. Expenses.** With the exception of expenses incurred by the applicant pursuant to subsection 5, paragraph F, the District Court is responsible for any expenses incurred under this section, including fees of appointed counsel, witness and notice fees and expenses of transportation for the person.

[ 2007, c. 319, §10 (AMD) .]

**11. Appeals.** A person ordered by the District Court to be committed to a psychiatric hospital may appeal from that order to the Superior Court.

A. The appeal is on questions of law only. [1983, c. 459, §7 (NEW) .]

B. Any findings of fact of the District Court may not be set aside unless clearly erroneous. [1983, c. 459, §7 (NEW) .]

C. The order of the District Court remains in effect pending the appeal. [2007, c. 319, §10 (AMD) .]

D. The District Court Civil Rules and the Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection. [1983, c. 459, §7 (NEW) .]

[ 2007, c. 319, §10 (AMD) .]

**12. Transmission of abstract of court ruling to the State Bureau of Identification.** Notwithstanding any other provision of this section or section 1207, a court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract of any order for involuntary commitment issued by the court pursuant to this section. The abstract must include:

A. The name, date of birth and gender of the person who is the subject of the order for involuntary commitment; [2007, c. 670, §19 (NEW) .]

B. The court's ruling that the person has been involuntarily committed; and [2007, c. 670, §19 (NEW) .]

C. A notation that the person has been notified by the court in accordance with subsection 5, paragraph A-1 and subsection 13. [2007, c. 670, §19 (NEW) .]

The abstract required in this subsection is confidential and is not a "public record" as defined in Title 1, chapter 13; however, a copy of the abstract may be provided by the State Bureau of Identification to a criminal justice agency for legitimate law enforcement purposes, to the Federal Bureau of Investigation, National Instant Criminal Background Check System or to an issuing authority for the purpose of processing concealed firearm permit applications.

For the purposes of this subsection, "criminal justice agency" means a federal, state, tribal, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.

[ 2007, c. 670, §19 (NEW) .]

**13. Firearms possession prohibition notification.** A court that orders a person to be committed involuntarily pursuant to this section shall inform the person that possession, ownership or control of a firearm by that person is prohibited pursuant to Title 15, section 393, subsection 1. As used in this subsection, "firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

[ 2007, c. 670, §20 (NEW) .]

SECTION HISTORY

1983, c. 459, §7 (NEW). 1995, c. 496, §§3-6 (AMD). 1997, c. 422, §§13-19 (AMD). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 519, §§BBBB9,10 (AMD). 2005, c. 519, §BBBB20 (AFF). 2007, c. 319, §10 (AMD). 2007, c. 446, §§2-4 (AMD). 2007, c. 446, §7 (AFF). 2007, c. 472, §1 (AMD). 2007, c. 670, §§18-20 (AMD). 2009, c. 281, §3 (AMD). 2009, c. 651, §§20-26 (AMD). 2015, c. 309, §§6-8 (AMD).

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**STATUTE:** 35-A MRSA § 10106

**AGENCY:** Efficiency Maine

**CONTACT PERSON:** Karen Bickerman

**CONTACT PERSON'S EMAIL ADDRESS:** karen.bickerman@maine.gov

## QUESTIONS

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

RESPONSE: The Efficiency Maine Trust has not encountered problems administering this exception. The records most commonly subject to the exception are the personally identifiable information of utility customers, including their contact information and data about their energy usage, which are provided by the utilities to the Trust upon request. We are unaware of any occasions on which the Trust has cited the exception in response to a FOA request, as we have not in five years had any FOA requests for utility customer data.

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

RESPONSE: The Efficiency Maine Trust strongly supports continuation of this exception. It is critical for the effective and efficient administration of the Trust's statutory purpose that it have access to utility's customer's address, contact information and energy usage. This enables the Trust to efficiently communicate with customers about their eligibility for efficiency program benefits, and to identify the types and sizes of efficiency projects that would be most suitable for those customers. It is also essential for the Trust in preparing its three-year strategic plan. The Trust has arranged appropriate procedures and arrangements with the utilities to maintain confidentiality of this information.

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

RESPONSE: The Trust feels that the language is not sufficiently clear and could be improved.

4. Does your agency recommend changes to this exception?

RESPONSE: We believe there are some minor drafting errors that create some lack of clarity about what is required for a record to be considered confidential. Sub-section (1)(A)(3) of 35-A §10106 should replace the word “and” with the word “or.” (I know, ironic, right?)

Also, generally, the section should be more clear about the need to protect utility customer’s data consistent with PUC rules and protective orders that relate to such data. The language of the Trust’s exceptions would be improved if it clearly tracked or matched what the PUC rules say about protecting utility data and in a way that obviated the need for the Trust to seek a protective order from the PUC in each case. This is unnecessarily time consuming and resource intensive and creates inefficiencies in program administration and planning.

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

RESPONSE: Office of the Public Advocate. Public Utilities Commission. Utilities.

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

**Nale, Craig**

---

**From:** Nale, Craig  
**Sent:** Tuesday, July 19, 2016 4:58 PM  
**To:** Nale, Craig  
**Subject:** FW: FOAA Questionnaire for Right to Know Advisory Committee  
**Attachments:** Ref69 Draft bill to implement Efficiency Maine Trust recommendations (4).docx

**From:** Michael Stoddard [<mailto:michael.stoddard@efficiencymaine.com>]  
**Sent:** Tuesday, July 19, 2016 2:55 PM  
**To:** Nale, Craig  
**Cc:** Fouts, Henry  
**Subject:** RE: FOAA Questionnaire for Right to Know Advisory Committee

Craig, thanks for the opportunity to discuss this. I have attached a cleaned up version per our discussion.

I have indicated the proposed changes in the Word version that you sent me earlier in the spring. Let me briefly explain the reasoning:

1. In Sec. 1(A)(2) – I have a two-part request.

The first is to switch the authorized party to make the “business sensitive” determination from the “board” to the “director.” It is just not realistic to think that with the volume of transactional activity we undertake at Efficiency Maine we can get the Board to vote on every instance in which it is appropriate to designate information as “confidential.” It seems unreasonably cumbersome to insist that both the record must be requested to be treated as confidential AND the Board must approve it as such. Our Board only meets once per month, and our members only make decisions through publicly noticed Board meetings that are held in person. These volunteer Board members hail from all corners of the state. There are far too many instances in which a decision to treat something as confidential needs to be made within hours or at most days, which can only occur in the ordinary course of business as managed by the director. (And even if the Board met more frequently, I don’t think they are not in a better position that the Trust Staff to understand whether particular information is “business sensitive.”)

The second is to incorporate this provision into sub-sub-(1), as an additional criteria explaining the process by which a request for designation gets approved, which will then allow the following two sub-sub-sections to read as standalone criteria, any one of which would, *de facto*, satisfy the test of whether a record should be treated as confidential.

2. In Sec. 1(A)(3) and (4), update the numbering and end the penultimate sub-sub-section with “or” to effectuate the point I made just above. If a record contains energy usage data or a social security data, it should be *de facto* confidential ; it shouldn’t need an additional affirmative determination by the director (or the Board) or anyone else. To avoid confusion, I respectfully request that the statute be amended to say “or.”

3. I also have proposed a new Section 2, which aims to amend sub-3 of 35-A MRSA Sec. 10106. The sole purpose of the proposed modification in this sub-section is to effectuate the same approach, for the same reasons, as indicated in point # 1, above. It does not seem reasonable or fair or desirable for any of the Trust’s stakeholders to force them to wait for a review and decision by our Board to approve and provide certain data/information of the type contemplated in the situations that are contemplated in the statute. These situations – such as referring a loan default to a credit reporting service, or reporting info to a federal or state agency pertaining to financial assistance, or when required to do so

through a litigation order – are basic, day-to-day business operations that are more appropriately within the director's duties to implement than the Board.

4. I didn't review or make any changes to the Summary. I leave it to you to figure out what is best there.

Please get in touch if you have any questions.

Thanks for considering these modest improvements, as they would really help us protect confidential info more securely while transacting business more efficiently and smoothly.

Best,

/Michael

**Michael D. Stoddard**

Executive Director

168 Capitol Street, Suite 1

Augusta, ME 04330

207.213.4150

[michael.stoddard@efficiencymaine.com](mailto:michael.stoddard@efficiencymaine.com)

[www.efficiencymaine.com](http://www.efficiencymaine.com)

**Right to Know Advisory Committee**  
**Subcommittee on Review of Existing Public Records Exceptions**  
**DRAFT Proposed Bill to Implement the Recommendation of the Efficiency Maine Trust**

**An Act to Implement Recommendations of the Right to Know Advisory Committee**  
**Regarding Public Records Exceptions**

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

**Sec. 1. 35-A MRS §10106, sub-§1, ¶A is amended to read:**

A. A record obtained or developed by the trust that:

(1) A person, including the trust, to whom the record belongs or pertains has requested be designated confidential and that;

(2) ~~T the board~~ the director has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains;

(3~~2~~) Contains information about the energy usage profile of an identifiable customer of a transmission and distribution utility in the State or an identifiable customer of a distributor of heating fuel or other energy source; and or,

(4~~3~~) Contains the social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the trust; and

**Sec. 2. 35-A MRS §10106, sub-3 is amended to read:**

**3. Disclosure prohibited; further exceptions.** The director or a trustee, officer, employee, agent, other representative of the trust or other person may not knowingly divulge or disclose records designated confidential by this section, except that the ~~board~~ director, in ~~its~~ their discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1-A, may make or authorize any disclosure of information of the following types or under the following circumstances:

**SUMMARY**

This bill changes the criteria for designation of records of the Efficiency Maine Trust as confidential from requiring that each of four criteria be met to instead require that one of three

criteria be met, including: that a person to whom the record belongs has requested it be designated confidential and the director of the Efficiency Maine Trust has determined the record contains proprietary information, access to which would result in some competitive disadvantage to any person to whom the record belongs or pertains; that the record contains information about the energy usage profile of an identifiable individual; or that the record contains the social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the Efficiency Maine Trust. This bill also provides that the director of the Efficiency Maine Trust, instead of the Board of the Efficiency Maine Trust, may disclose or authorize disclosure of otherwise confidential in certain enumerated circumstance.

**RIGHT TO KNOW ADVISORY COMMITTEE  
PUBLIC RECORDS EXCEPTIONS REVIEW SUBCOMMITTEE**

**AGENDA**

September 14, 2016

10:00 a.m.

Room 438, State House, Augusta

**Convene**

1. Welcome and Introductions
2. Continue review of public records exceptions enacted after 2004 and before 2013:  
discussion and recommendations to the full Advisory Committee

**Adjourn**





**PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE**

**Maine Freedom of Access Act - public records exceptions**

**Enacted 2005 - 2012**

(Revised 9/14/2016)

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS
2	1	402	3	Title 1, section 402, subsection 3, paragraph C-1, relating to legislative working papers	Legislative Council, Executive Director	5-1 No Modification; amendments
13	5	1541	10-B	Title 5, section 1541, subsection 10-B, relating to internal audit working papers of the State Controller	Department of Administrative and Financial Services - Office of the State Controller	Tabled to check again with FOAA contact
37	12	8005	4	Title 12, section 8005, subsection 4, relating to forest management information designated confidential by agency furnishing the information	Department of Agriculture, Conservation and Forestry	5-1 No Modification
43	20-A	13004	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel	Department of Education	Review with full Advisory Committee

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS
51	22	2153-A		Title 22, section 2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law	Department of Health and Human Services	Tabled 8/17; review response from ACF on 9/14
54	25	4202		Title 25, section 4202, relating to records and information connected in any way with the work of a critical incident stress management team for law enforcement personnel	Department of Public Safety	
56	29-A	2251	7-A	Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in an accident report database	Department of Public Safety	
57	29-A	2117-A	4	Title 29-A, section 2117-A, relating to data collected or retained through the use of an automated license plate recognition system	Department of Public Safety; Department of Transportation	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS
58	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	Department of Public Safety	
59	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board	Department of Public Safety	
60	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to information about a person receiving emergency medical services as part of an application for credentialing by Emergency Medical Services Board	Department of Public Safety	
61	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 87-B	Department of Public Safety	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS
62	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board	Department of Public Safety	
64	34-A	11221	13	Title 34-A, section 11221, subsection 13, relating to disclosure of certain sex offender registry information	Department of Public Safety	
65	34-A	11221	9-A	Title 34-A, section 11221, subsection 9-A, relating to certain sex offender registry information	Department of Public Safety	
66	34-B	1931	6	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board	Mental Health Homicide, Suicide, and Aggravated Assault Review Board (MHSAARB)	
67	34-B	3864	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	Department of Public Safety	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS
69	35-A	10106		Title 35-A, section 10106 relating to records of the Efficiency Maine Trust and its board	Efficiency Maine	



**STATUTE: 5 MRSA § 1541, sub-§ 10-B**

**AGENCY:** Dept. of Administrative and Financial Services – State Controller

**CONTACT PERSON:** Rob Weaver

**CONTACT PERSON'S EMAIL ADDRESS:** robert.weaver@maine.gov

## QUESTIONS

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

**The OSC rarely has had need to deny records requests related to ongoing internal audits and/or investigations, under this exception. This is likely due to the limited number of investigations/audit underway at any point in time and the timing of interest by outside parties typically occurs after the official report has been released.**

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

**The OSC supports the continuation of this exception and believes it is critical to accomplishing the objectives of the internal audit division.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? **The OSC has not experienced problems in applying this exception and believes it is clear that the records described are confidential. The language is sufficiently clear to describe the applicable records.**

4. Does your agency recommend changes to this exception?

**The OSC does not recommend any changes to the exception or the language covering this exception.**

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

**Other audit and investigative agencies internal to State Government, including the Office of the State Auditor, the Office of Program Evaluation and Government Accountability and the Office of the Attorney General.**

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

**The OSC believes that this exception is critical to ensure that ongoing internal audits and investigations are not jeopardized as a result of the release of working papers used to document and support these investigative activities.**

**It is also necessary to ensure that data on individuals that could reasonably be used to determine the identity of an individual supplying data for an audit are private if the data supplied by the individual were needed for an audit and the individual would not have provided the data to the auditor without an assurance that the individual's identity would remain private, or the auditor reasonably believes that the subject would not have provided the data. Over the years, State employees and other survey respondents have indicated that they would not feel they can be candid in surveys and interviews about the problems they perceive in their agencies if those documents were not considered protected.**



**STATUTE:** 22 MRSA § 2153-A

**AGENCY:** Dept. of Agriculture, Conservation and Forestry

**CONTACT PERSON:** Mari Wells-Eager

**CONTACT PERSON'S EMAIL ADDRESS:** mari.wells@maine.gov

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).  
Not often. Quality Assurance and Regulations doesn't receive many FOAA requests.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.  
Absolutely must support, must comply with federal regulation.

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

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

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.  
Ron Dyer 287-7522

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



## Fouts, Henry

---

**From:** Ayotte, Shannon <Shannon.Ayotte@maine.gov>  
**Sent:** Monday, August 22, 2016 10:28 AM  
**To:** Nale, Craig  
**Subject:** RE: Right to Know FOAA Question  
**Attachments:** Ref51 with answers.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Responding on Mari's behalf,

Yes, we still need to follow this confidentiality exception as we must follow the federal requirements and sign confidentiality agreements with them each year. See answers on the form attached.

---

**From:** Nale, Craig [<mailto:Craig.Nale@legislature.maine.gov>]  
**Sent:** Tuesday, August 16, 2016 12:08 PM  
**To:** Ayotte, Shannon  
**Subject:** Right to Know FOAA Question

Hi Shannon,

I'm just following up on this as we prepare materials for tomorrow's Right to Know Advisory Committee meeting.

Thanks again,  
Craig

---

**From:** Nale, Craig  
**Sent:** Monday, August 15, 2016 11:37 AM  
**To:** Ayotte, Shannon  
**Subject:** RE: FOAA Question

Hi Shannon,

The exception is at 22 MRSA § 2153-A. The questionnaire originally sent to Ms. Wells-Eager is attached. I think the questions are fully outlined below and in the attachment, but I'm happy to talk anytime.

Thanks,  
Craig

---

**From:** Ayotte, Shannon [<mailto:Shannon.Ayotte@maine.gov>]  
**Sent:** Monday, August 15, 2016 11:34 AM  
**To:** Nale, Craig  
**Subject:** RE: FOAA Question

I am researching this for Mari Wells-Eagar. What specific exception is this?

---

**From:** Wells, Mari  
**Sent:** Monday, August 15, 2016 11:14 AM  
**To:** Ayotte, Shannon  
**Subject:** FW: FOAA Question

---

**From:** Nale, Craig [<mailto:Craig.Nale@legislature.maine.gov>]  
**Sent:** Thursday, August 11, 2016 10:44 AM  
**To:** Wells, Mari  
**Subject:** FW: FOAA Question

Hi Mari,

In connection with the review of existing public records by the Right to Know Advisory Committee, I sent the email below last year to gather more information about the exception cited in the attached questionnaire. I don't believe there was any resolution to this issue. Any help with the question below would be greatly appreciated before the Advisory Committee takes the issue up again next week.

Thanks again,  
Craig

---

**From:** Nale, Craig  
**Sent:** Tuesday, October 20, 2015 11:51 AM  
**To:** Wells, Mari  
**Subject:** FOAA Question

Hi Mari:

The attached questionnaire was sent to Kevin Wells at the Department of Health and Human Services, but he thought it might be better directed to the DACF. My reading of the statute is that DACF must promulgate the regulations that determine whether documents are confidential, but that DHHS would maintain the documents and therefore respond to FOAA requests for those documents.

Would you mind taking a look either responding to the questionnaire or help clarify who maintains these documents?

I'm happy to discuss further with you or anyone from DACF. Thanks very much,

Craig

**Craig T. Nale, Esq.**  
Legislative Analyst  
Office of Policy and Legal Analysis  
Maine State Legislature  
13 State House, Augusta, ME 04330  
(207) 287-1670  
[craig.nale@legislature.maine.gov](mailto:craig.nale@legislature.maine.gov)

Hon. David C. Burns, Chair  
Hon. Kimberly Monaghan  
Suzanne Goucher  
Stephanie Grinnell  
A. J. Higgins  
Richard LaHaye  
Mary Ann Lynch  
Judy Meyer  
Kelly Morgan



Paul Nicklas  
Christopher Parr  
Linda Pistner  
Harry Pringle  
Helen Rankin  
Luke Rossignol  
William Shorey  
Eric Stout

STATE OF MAINE  
**RIGHT TO KNOW ADVISORY COMMITTEE**

September 12, 2016

Chandler E. Woodcock, Commissioner  
Department of Inland Fisheries and Wildlife  
41 State House Station  
Augusta, ME 04333

Dear Commissioner Woodcock:

The Right to Know Advisory Committee recently considered a request by the Department of Inland Fisheries and Wildlife to consider a revision to the language of Title 12, section 10110 of the Maine Revised Statutes. We thank you and your staff for your input; however, we are concerned about the scope of the proposed amendment and feel this matter may be better resolved by the Joint Standing Committee on Inland Fisheries and Wildlife of the Legislature.

The Advisory Committee first sought input from the Department on this provision of law, which pertains to the confidentiality of email address submitted to the Department, as part of our annual review of existing public records exceptions. The Department initially supported the continuation of the exception without change, but we sought further guidance about the merits of a blanket confidentiality provision for email address versus providing confidentiality only upon request.

The resulting proposed amendment provided confidentiality for email address submitted as part of an application for any license, permit or registration issued by the Department unless the applicant clearly indicated that the email address is not confidential. In addition, the proposed amendment included new exceptions to email confidentiality for contractors or other State agencies performing marketing services for the Department or conducting fish and game management research. A copy of the draft amendment the Advisory Committee considered is attached for your reference.

While we support the default confidentiality of email addresses for license, permit and registration applicants, as well as the possibility of a person indicating that his or her email address is not confidential, we do not feel we have sufficient information or understanding of the scope of the proposed exceptions to make a recommendation on that portion of your proposal.

We hope you will consider submitting a bill to effect changes to this provision to the 128th Legislature.

Sincerely,

Sen. David C. Burns, Chair  
Right to Know Advisory Committee



**29-A M.R.S.A. §1301, sub §6-A is amended to read:**

**6-A. Confidentiality.** Except as ~~authorized under~~ required by 18 United States Code, Section 2721(b), the Secretary of State may not disseminate information collected under subsection 6, ~~to any~~ entity without specific authorization from the Legislature. For every willful violation of this subsection, a person commits a civil violation for which a fine of not more than \$500 may be adjudged.





**Right to Know Advisory Committee**  
**Subcommittee on Review of Existing Public Records Exceptions**  
***DRAFT* Proposed Bill to Implement the Recommendation of the Efficiency Maine Trust**

**An Act to Implement Recommendations of the Right to Know Advisory Committee**  
**Regarding Public Records Exceptions**

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

**Sec. 1. 35-A MRS §10106, sub-§1, ¶A is amended to read:**

A. A record obtained or developed by the trust that:

- (1) A person, including the trust, to whom the record belongs or pertains has requested be designated confidential;
- (2) The board has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains;
- (3) Contains information about the energy usage profile of an identifiable customer of a transmission and distribution utility in the State or an identifiable customer of a distributor of heating fuel or other energy source; ~~and~~ or
- (4) Contains the social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the trust; and

**SUMMARY**

This bill changes the criteria for designation of records of the Efficiency Maine Trust as confidential from requiring that each of four criteria be met to instead require that one of the four criteria be met, including: that a person to whom the record belongs has requested it be designated confidential; that the Efficiency Maine Trust Board has determined the record contains proprietary information, access to which would result in some competitive disadvantage to any person to whom the record belongs or pertains; that the record contains information about the energy usage profile of an identifiable individual; or that the record contains the social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the Efficiency Maine Trust.



**RIGHT TO KNOW ADVISORY COMMITTEE  
PUBLIC RECORDS EXCEPTIONS REVIEW SUBCOMMITTEE**

AGENDA  
October 5, 2016  
10:00 a.m.  
Room 438, State House, Augusta

**Convene**

1. Welcome and Introductions
2. Continue review of public records exceptions enacted after 2004 and before 2013:  
discussion and recommendations to the full Advisory Committee

**Adjourn**



**PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE**

**Maine Freedom of Access Act - public records exceptions**

**Enacted 2005 - 2012**

(Revised 9/14/2016)

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
1	1	402	2	Title 1, section 402, subsection 2, paragraph G, relating to committee meetings pertaining to interscholastic sports	Maine Principal's Association - Interscholastic Management Committee	Indefinitely postpone because this is a public meetings exception	Accepted Subcommittee recommendation
2	1	402	3	Title 1, section 402, subsection 3, paragraph C-1, relating to legislative working papers	Legislative Council, Executive Director	Amend to apply to records instead of information	Tabled; review again in Subcommittee
3	1	402	3	Title 1, section 402, subsection 3, paragraph N, relating to Social Security Numbers	Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive	No Modification	Accepted Subcommittee recommendation
4	1	402	3	Title 1, section 402, subsection 3, paragraph O, relating to personal contact information concerning public employees other than elected officials	Department of Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive Director; Administrative Office of the Courts	No Modification	Accepted Subcommittee recommendation

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
5	1	402	3	Title 1, section 402, subsection 3, paragraph P, relating to geographic information regarding recreational trails on private land	Department of Inland Fisheries and Wildlife; Department of Agriculture, Conservation and Forestry	No Modification	Accepted Subcommittee recommendation
6	1	402	3	Title 1, section 402, subsection 3, paragraph Q, relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events for Department of Corrections or county jail	Department of Corrections	No Modification	Accepted Subcommittee recommendation
7	1	402	3	Title 1, section 402, subsection 3, paragraph R, relating to Social Security numbers in possession of the Secretary of State	Secretary of State	Repeal (reconsidered at 9/14/16 meeting)	Accepted Subcommittee recommendation to repeal

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
8	1	538	3	Title 1, section 538, subsection 3, relating to InforME subscriber information	Information Resources of Maine (InforME)	No Modification	Accepted Subcommittee recommendation
9	1	1013	2	Title 1, section 1013, subsection 2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions	Commission on Governmental Ethics and Election Practices	No Modification	Accepted Subcommittee recommendation
10	1	1013	4	Title 1, section 1013, subsection 4, relating to Commission on Governmental Ethics and Election Practices records other than complaints	Commission on Governmental Ethics and Election Practices	No Modification	Accepted Subcommittee recommendation
11	1	1013	3-A	Title 1, section 1013, subsection 3-A, relating to complaint alleging a violation of legislative ethics	Commission on Governmental Ethics and Election Practices	No Modification	Accepted Subcommittee recommendation
12	4	1806		Title 4, section 1806, relating to certain information and records in the possession of the Maine Commission on Indigent Legal Services	Maine Commission on Indigent Legal Services	No Modification	Accepted Subcommittee recommendation
13	5	1541	10-B	Title 5, section 1541, subsection 10-B, relating to internal audit working papers of the State Controller	Department of Administrative and Financial Services - Office of the State Controller	No modification	Accepted Subcommittee recommendation

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
14	5	17057	3	Title 5, section 17057, subsection 3, relating to home contact information of Maine Public Employees Retirement System members, benefit recipients and staff	Maine Public Employees Retirement System	No Modification	Accepted Subcommittee recommendation
15	5	17057	4	Title 5, section 17057, subsection 4, relating to Maine Public Employees Retirement System private market investment activity	Maine Public Employees Retirement System	No Modification	Accepted Subcommittee recommendation
16	5	17057	5	Title 5, section 17057, subsection 3, relating to Maine Public Employees Retirement System employees personal and complaint and disciplinary information	Maine Public Employees Retirement System	No Modification	Accepted Subcommittee recommendation
17	5	90-B	7	Title 5, section 90-B, subsection 7, relating to the Address Confidentiality Program	Secretary of State	No Modification	Accepted Subcommittee recommendation
18	7	1052	2-A	Title 7, section 1052, subsection 2-A, relating to total potential acreage of genetically modified crops reported by individual manufacturers	Department of Agriculture, Conservation and Forestry	No Modification	Accepted Subcommittee recommendation



Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
19	7	2231	3	Title 7, section 2231, subsection 3, relating to criminal history records provided to the Commissioner of Agriculture, Conservation and Forestry as part of an application to grow industrial hemp for commercial purposes	Department of Agriculture, Conservation and Forestry	Repealed by PL 2009, ch. 320, section 1	Accepted Subcommittee recommendation
20	8	1006	1	Title 8, section 1006, subsection 1, paragraph A, relating to information or records required by the Gambling Control Board for licensure: trade secrets and proprietary information	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
21	8	1006	1	Title 8, section 1006, subsection 1, paragraph B, relating to information or records required by the Gambling Control Board for licensure: would be unwarranted invasion of privacy of key executive, gaming employee or another person	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
22	8	1006	1	Title 8, section 1006, subsection 1, paragraph C, relating to information or records required by the Gambling Control Board for licensure: key executive or gaming employee compensation	Department of Public Safety	No Modification	Accepted Subcommittee recommendation

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
23	8	1006	1	Title 8, section 1006, subsection 1, paragraph D, relating to information or records required by the Gambling Control Board for licensure: financial, statistical and surveillance information related to the applicant	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
24	8	1006	1	Title 8, section 1006, subsection 1, paragraph E, relating to information or records required by the Gambling Control Board for licensure: creditworthiness, credit rating or financial condition of person or project	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
25	8	1006	1	Title 8, section 1006, subsection 1, paragraph F, relating to information or records required by the Gambling Control Board for licensure: information from other jurisdictions conditioned on remaining confidential	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
26	8	1006	1	Title 8, section 1006, subsection 1, paragraph G, relating to information or records required by the Gambling Control Board for licensure: information designated confidential under federal law	Department of Public Safety	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
27	8	1006	1	Title 8, section 1006, subsection 1, paragraph H, relating to information or records required by the Gambling Control Board for licensure: specific personal information, including Social Security number, of any individual	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
28	8	1006	3	Title 8, section 1006, subsection 3, relating to records and information developed as part of suitability requirement to select operator of central site monitoring system, held by Gambling Control Board and Dept. of Public Safety	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
29	8	1006	4	Title 8, section 1006, subsection 4, relating to financial, statistical and surveillance information from the central site monitoring system held by the Gambling Control Board and the Dept. of Public Safety	Department of Public Safety	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
30	8	1007	2	Title 8, section 1007, subsection 2, relating to information or records received by the Gambling Control Board or Department of Public Safety from another agency pursuant to agreement	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
31	8	1008		Title 8, section 1008, relating to information or records used or produced by the Gambling Control Board or Department of Public Safety in connection with hearings, proceedings or appeals pursuant to Title 8, section 1052	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
32	8	1052		Title 8, section 1052, relating to reports, information or records compiled by the Gambling Control Board and Dept. of Public Safety concerning noncompliance with or violation of the chapter by an applicant, licensee, owner or key executive	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
33	8	270-A		Title 8, section 270-A, relating to records and information included in application or materials required for issuance of commercial track license	Department of Agriculture, Conservation and Forestry	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
34	9-A	6-105-A		Title 9-A, section 6-105-A, last paragraph, relating to information concerning uniform multistate licensing system provided to Consumer Credit Protection by other jurisdictions	Department of Professional and Financial Regulation - Bureau of Consumer Credit Protection	No Modification	Accepted Subcommittee recommendation
35	12	8005	1	Title 12, section 8005, subsection 1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	Department of Agriculture, Conservation and Forestry	No Modification	Accepted Subcommittee recommendation
36	12	8005	2	Title 12, section 8005, subsection 2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs	Department of Agriculture, Conservation and Forestry	No Modification	Accepted Subcommittee recommendation
37	12	8005	4	Title 12, section 8005, subsection 4, relating to forest management information designated confidential by agency furnishing the information	Department of Agriculture, Conservation and Forestry	5-1 No Modification	Accepted Subcommittee recommendation

Ref. #	M/R/S TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
38	12	10110		Title 12, section 10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license	Department of Inland Fisheries and Wildlife	No Modification; Send letter to IFW Committee expressing approval of opt-in language from DIFW but concern about marketing and contractors language	Accepted Subcommittee recommendation; send letter
39	12	12551-A	10	Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch	Department of Inland Fisheries and Wildlife	No Modification	Accepted Subcommittee recommendation
40	14	6321-A	4	Title 14, section 6321-A, subsection 4, relating to the financial information disclosed in the course of mediation under the foreclosure mediation program	Administrative Office of the Courts	No Modification	Accepted Subcommittee recommendation
41	17-A	1176	1	Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
42	17-A	1176	5	Title 17-A, section 1176, subsection 5, relating to request by crime victim for notice of release of defendant	Department of Corrections	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
43	20-A	13004	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel	Department of Education	Review with full Advisory Committee	No modification
44	21-A	1003	3-A	Title 21-A, section 1003, subsection 3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices	Maine Commission on Governmental Ethics and Election Practices	No Modification	Accepted Subcommittee recommendation
45	21-A	1125	3	Title 21-A, section 1125, subsection 3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices	No Modification	Accepted Subcommittee recommendation
46	21-A	1125	2-B	Title 21-A, section 1125, subsection 2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices	Indefinitely postpone because citizen's initiation repeals this exception	Accepted Subcommittee recommendation
47	21-A	196-A		Title 21-A, section 196-A, relating to information contained electronically in the central voter registration system	Secretary of State	No Modification	Accepted Subcommittee recommendation

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
48	22	1494		Title 22, section 1494, relating to occupational disease reporting	Department of Health and Human Services	No Modification	Accepted Subcommittee recommendation
49	22	2425	8	Title 22, section 2425, subsection 8, relating to medical marijuana registry identification cards	Department of Health and Human Services	No Modification	Accepted Subcommittee recommendation
50	22	1711-C	20	Title 22, section 1711-C, subsection 20, relating to hospital records concerning health care information pertaining to an individual	HealthInfoNet	Repeal because information is already adequately protected and FOAA doesn't apply to HealthInfoNet	Did not accept Subcommittee recommendation; Unanimous vote to continue exception without modification
51	22	2153-A		Title 22, section 2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law	Department of Health and Human Services	No modification	Accepted Subcommittee recommendation



Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
52	22	4087-A	6	Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman	Child Welfare Ombudsman	No Modification	Accepted Subcommittee recommendation
53	24-A	2736	2	Title 24-A, section 2736, subsection 2, relating to insurer rate filings on individual health insurance policies and supporting information, in regards to protected health information and descriptions of the amount and terms or conditions or reimbursement in a contract between an insurer and a 3rd party	Department of Professional and Financial Regulation - Bureau of Insurance	No review. Not a new PR exception.	Accepted Subcommittee recommendation
54	25	4202		Title 25, section 4202, relating to records and information connected in any way with the work of a critical incident stress management team for law enforcement personnel	Department of Public Safety	No modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
55	29-A	1301	6-A	Title 29-A, section 1301, relating to the social security number of an applicant for a driver's license or nondriver identification card	Secretary of State	No modification	Approve of language recommended by SOS but understand SOS will submit legislation to effect the change
56	29-A	2251	7-A	Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in an accident report database	Department of Public Safety		Accepted Subcommittee recommendation
57	29-A	2117-A	4	Title 29-A, section 2117-A, relating to data collected or retained through the use of an automated license plate recognition system	Department of Public Safety; Department of Transportation	Tabled. Reach out to DOT, Me. St. Police, BMV and trucking interests	
58	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	Department of Public Safety	Tabled. Follow up re: first sentence	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
59	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board	Department of Public Safety	No modification	Accepted Subcommittee recommendation
60	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to information about a person receiving emergency medical services as part of an application for credentialing by Emergency Medical Services Board	Department of Public Safety	No modification	Accepted Subcommittee recommendation
61	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 87-B	Department of Public Safety	No modification	Accepted Subcommittee recommendation
62	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board	Department of Public Safety	Tabled. Follow up re: need for exam questions to be confidential	

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	A/C RECOMMENDATION
63	30-A	4706	1	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities	Maine State Housing Authority (MaineHousing)	No modification	Accepted Subcommittee recommendation
64	34-A	11221	13	Title 34-A, section 11221, subsection 13, relating to disclosure of certain sex offender registry information	Department of Public Safety	No modification	Accepted Subcommittee recommendation
65	34-A	11221	9-A	Title 34-A, section 11221, subsection 9-A, relating to certain sex offender registry information	Department of Public Safety	No modification	Accepted Subcommittee recommendation
66	34-B	1931	6	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board	Mental Health Homicide, Suicide, and Aggravated Assault Review Board (MHHS/ARB)	Tabled. Check if Homicide Review Board has replaced this board.	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
67	34-B	3864	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	Department of Public Safety	No modification	Accepted Subcommittee recommendation
68	35-A	122	1-B	Title 35-A, section 122, subsection 1-B, paragraph G, relating to information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use in the context of energy infrastructure corridors	Interagency Review Panel (Governor's Energy Office)	No Modification	Accepted Subcommittee recommendation
69	35-A	10106		Title 35-A, section 10106 relating to records of the Efficiency Maine Trust and its board	Efficiency Maine	Voted no modification but needs to re-review to consider effect of making entire record confidential when it includes only SSN/address/email/telephone	Sent back to Subcommittee

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
70	36	6271	2	Title 36, section 6271, subsection 2, relating to an application, information submitted in support of an application and files and communications in relation to a municipal property tax deferral program for senior citizens	Maine Municipal Association	No Modification	Accepted Subcommittee recommendation
71	38	1310-B	2	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	Department of Environmental Protection	No Modification	Accepted Subcommittee recommendation
72	38	580-B	11	Title 38, section 580-B, subsection 11, relating to records held by the Department of Environmental Protection or its agents regarding individual auctions administered under the carbon dioxide cap-and-trade program	Department of Environmental Protection	No Modification	Accepted Subcommittee recommendation

**DRAFT Proposed Bill to Implement the Recommendations of the  
Public Records Exceptions Review Subcommittee**

**An Act to Implement Recommendations of the Right to Know Advisory Committee  
Regarding Public Records Exceptions**

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

**Sec. 1. 1 MRSA §402, sub-§3, ¶C-1 is amended to read:**

C-1. ~~Information contained in~~ Records that are a communication between a constituent and an elected official if the ~~information~~ communication contains any of the following information that:

(1) Is of a personal nature, consisting of:

- (a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
- (b) Credit or financial information;
- (c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;
- (d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or
- (e) An individual's social security number; or

(2) Would be confidential if it were in the possession of another public agency or official;

Notwithstanding this paragraph, the records described in this paragraph are public records if the information described in subparagraphs (1) and (2) may be redacted without significant effort by the agency or public official having custody or control of the record and such redactions are made prior to public release.

**Sec. 2. 1 MRSA §402, sub-§3, ¶V is enacted to read:**

V. Records containing any of the following information:

(1) Information of a personal nature, consisting of:

- (a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
- (b) Credit or financial information;
- (c) Information pertaining to the personal history, general character or conduct of an individual or any member of the individual's immediate family;

(d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or

(e) An individual's social security number; or

(2) Information that would be confidential if it were in the possession of another public agency or official.

## **SUMMARY**

This bill amends Maine's Freedom of Access Act by amending an exception to the definition of public records covered by the Act. The current exception for certain personal information contained in a communication between a legislator and constituent is broadened to exclude the entire record of the communication, as opposed to the personal information contained in the communication. The record of this communication may be a public record, provided the agency or public official may easily redact the private information from the record and does in fact do so prior to release of such records to the public.

It also adds a new exception to the definition of public records covered by the Freedom of Access Act for any records that contain any certain personal information.



Public Records Exceptions Subcommittee  
Right to Know Advisory Committee

Sample language for Section 2 of Subcommittee proposed draft legislation, related to the federal Privacy Act of 1974, 5 U.S.C. § 552a, et seq.

The term “personally identifiable information” refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.

Office of Management and Budget Memorandum M-07-16, “Safeguarding Against and Responding to the Breach of Personally Identifiable Information” (May 22, 2007)



**Fouts, Henry**

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**From:** Linda Pistner <lpistner@roadrunner.com>  
**Sent:** Tuesday, October 04, 2016 3:19 PM  
**To:** Fouts, Henry  
**Cc:** Kielty, Brenda  
**Subject:** comments on draft legislation re constituent mail and exception for personal information

Hi, Henry, here are my thoughts on the draft legislation we discussed. Thanks for forwarding them to the Chair and members for me.

Dear Members of the Right to Know Advisory Committee and Exceptions Subcommittee,

I am sorry that I won't be able to join you for Wednesday's meetings. Unfortunately (for me), the flu caught up to me before the state's flu shot clinic and I have been impatiently languishing at home. I did not even consider remote participation in these meetings, which will not surprise you given my views about the law. ;) I had intended to outline in writing my concerns about these two proposals in any event.

Section 1 makes the entire record of a constituent communication confidential if any of the listed personal information is contained in it, subject to an exception that makes such records public if the protected information can be redacted "without significant effort."

Constituent communications, as we know, can contain a lot of information that the constituent might believe is being shared only with a legislator. This provision of the FOAA is of course intended to protect that personal information, and many legislators now use a disclaimer or warning about the possibility that information sent to them may become public. However, these same records might also include requests for

legislation, or encourage the legislator to vote a particular way on pending legislation, information that is now and should continue to be public. This proposal would make that information confidential as well, and for that reason alone I would not support it.

There is another problem, one that I brought up at our last meeting, but very imprecisely. Redaction is mentioned in Sec. 408-A, as Chris Parr pointed out, but only as an activity for which time can be charged in determining fees for fulfilling a FOAA. What the last paragraph of Section 1 of the draft would do for the first time is establish a standard for when redaction is required. Currently any dispute about redaction can be resolved by a court on a case by case basis, an approach that has worked pretty well.

Some issues to consider in creating a standard for redaction: 1) should it apply in all circumstances, rather than just constituent communications; 2) while the suggested standard, "without significant effort," is too vague, what would be clearer, fair and meaningful; and 3) given the differing points of view of the numerous stakeholders, should more time be taken in crafting a standard, if that is to be pursued.

Section 2. This section creates a new exception of general application for several categories of personal information. Again, the records rather than just the personal information contained in them would be made confidential, which is too broad, particularly when applied to all public records. In addition, this proposal would conflict with a variety of laws and rules governing what is confidential in specific contexts, provisions that are tailored to circumstances. We have seen, for example, how even making just the address of a holder of a state professional or occupational license generates competing considerations.

Again, I regret not being with you today for what are always interesting discussions.

Best,

**Nale, Craig**

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**From:** Parr, Christopher <Christopher.Parr@maine.gov>  
**Sent:** Thursday, September 29, 2016 2:57 PM  
**To:** Nale, Craig  
**Cc:** Scott, Brian P; Scott, Bruce G  
**Subject:** RE: RTKAC Subcommittee items

Craig:

I've spoken with Maj. Brian Scott about this.

The position of the Maine State Police is that the exception re: automated license plate recognition system data should remain in place.

Best, C

CHRISTOPHER PARR  
STAFF ATTORNEY | MAINE STATE POLICE  
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**From:** Nale, Craig [mailto:Craig.Nale@legislature.maine.gov]  
**Sent:** Wednesday, September 28, 2016 9:18 AM  
**To:** Parr, Christopher  
**Subject:** RE: RTKAC Subcommittee items

Hi Chris,

Thanks for forwarding to Mr. St. Germain. About paragraph 1, the subcommittee members were seeking more information about the confidential information to justify the continuation of the exception. Perhaps the concern about the balance of public access and confidentiality could be addressed with some greater understanding of why (or whether) it would be a concern of the State for that information to be available to the public? The fact that DPS took no position on the exception seemed to concern the members, although there was not a more detailed discussion about particular issues with this one.

Craig

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**From:** Parr, Christopher [<mailto:Christopher.Parr@maine.gov>]  
**Sent:** Wednesday, September 28, 2016 7:45 AM  
**To:** Nale, Craig; StGermain, Shaun A  
**Cc:** Scott, Brian P  
**Subject:** RE: RTKAC Subcommittee items  
**Importance:** High

Craig:

Thanks for the email.

With this email I am forwarding your email below to Shaun St. Germain, Director of Maine Emergency Medical Services here at DPS. He is best able to respond to paragraphs 2 and 3 of your query.

Point of clarification: Is there a question with regard to paragraph 1?

C

CHRISTOPHER PARR  
STAFF ATTORNEY | MAINE STATE POLICE  
(e) [christopher.parr@maine.gov](mailto:christopher.parr@maine.gov)

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---

**From:** Nale, Craig [<mailto:Craig.Nale@legislature.maine.gov>]  
**Sent:** Tuesday, September 27, 2016 3:10 PM  
**To:** Parr, Christopher  
**Subject:** RTKAC Subcommittee items

Hi Chris,

At the last RTKAC Subcommittee meeting members had some additional questions or concerns about three provisions affecting DPS: Ref ## 57, 58 and 62.

Ref #57 is at 29-A MRS § 2117-A(4). It makes data collected by an automated license plate recognition system confidential and available for use only by a law enforcement agency; DOT for protecting public safety and transportation infrastructure; and DPS/State Police for commercial motor vehicle screening and inspection. The exception does allow a law enforcement agency to publish aggregate data and to share commercial motor vehicle screening data for federal regulatory compliance purposes. Subcommittee members were concerned about the balance of confidentiality and public access because DPS did not take a position on whether the exception should be continued. Members asked that we reach out to DOT, BMV and commercial trucking representatives for further input, which I am doing.

Ref #58 is at 32 MRSA § 91-B(1). There are several exceptions in the opening paragraph and in paragraphs A-D below it, but the exception the Subcommittee is seeking further information on here is in the first sentence. The first sentence provides that “all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the [Emergency Medical Services Board] and all reports, information and records provided to the committee are confidential and may not be disclosed or obtained by discovery from the committee, the board or its staff.” Subcommittee members were concerned about the breadth of this exception, and especially with the confidentiality of reports, information and records provided to the Board.

Ref #62 is also within 32 MRSA § 91-B(1), but includes only ¶D. This exception makes examination questions used by the Emergency Medical Services Board to fulfill cognitive testing requirements (required by 32 MRSA § 85(3)(C)). A concern with the exception is whether those questions need to be confidential when applicants might find them useful for preparing for the exam (like bar applicants use old bar exam questions to study).

If I can help explain these any further or reach out to additional interested groups for some information please just let me know. Thanks again for all your help with these.

Craig

Craig T. Nale, Esq.  
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# MAINE MOTOR TRANSPORT ASSOCIATION

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*"The spokesman for the Maine Trucking Industry"*

September 30, 2016

Dear Right to Know Advisory Committee,

Thank you for the opportunity to provide comment on the Committee's review of Title 29-A §2117-A, the use of automated license plate recognition systems (ALPR's), on behalf of our over 1,350 members. We regret we were unable to attend in person to provide our comments.

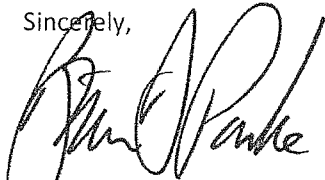
The Maine Motor Transport Association supports the law as currently written. It is our belief that the current exceptions to prohibit the use of automated plate readers are reasonable. The law affords protections to individuals and companies, while allowing the reasonable use of ALPR'S for specific purposes outlined in the law.

The Trucking Industry is directly impacted by the use of ALPR's on a daily basis as we are regulated by the Federal Motor Carrier Safety Administration and the Maine State Police because we are engaged in commerce. The Maine State Police, in particular, routinely utilize ALPR'S to screen truck traffic for compliance and safety. The use of this technology allows truck traffic to be screened with nominal interruption to daily delivery routines, keeping the flow of commerce moving. In an industry where safety is the highest priority, ALPR's help to identify trucking companies with poor safety ratings, while allowing companies with excellent safety records to continue with little down time. This keeps the flow of goods and services, and our economy moving.

Subsection 4 of the law protects the confidentiality of the data collected and allows its use for limited purposes, which we support.

Please do not hesitate to contact myself or Tim Doyle if we can answer any questions. Again, thank you for the opportunity to comment.

Sincerely,



Brian Parke, President and CEO  
Maine Motor Transport Association





STATE OF MAINE  
OFFICE OF THE  
SECRETARY OF STATE

MATTHEW DUNLAP  
SECRETARY OF STATE

4 January 2011

The Honorable Ronald F. Collins, Senate Chair  
Joint Standing Committee on Transportation  
3 State House Station  
Augusta, ME 04333

The Honorable Richard M. Cebra, House Chair  
Joint Standing Committee on Transportation  
2 State House Station  
Augusta, ME 04333

Dear Senator Collins and Representative Cebra,

Attached please find the final report of the Automated License Plate Recognition System Working Group. Pursuant to Chapter 605 of the Public Laws 2010, the Secretary of State was charged with assembling the group and holding a series of public meetings over the use, limitations, and governance of the deployment of plate recognition technology.

I would like to thank all who participated, and in particular would like to thank the South Portland Police Department, without whose cooperation and hospitality in hosting the working group's meetings our work would have been much more difficult.

Please do not hesitate to contact our offices if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Dunlap".

Matthew Dunlap  
Secretary of State



# **Report of the Automated License Plate Recognition System Working Group**

**Given to the Joint Standing Committee on Transportation**

**January 2011**

## **Introduction:**

Emerging technologies offer great promise for enhancing the ability of law enforcement officers to optimize their performance in executing their sworn duties. New technologies also offer new challenges to the public trust, however, which bear scrutiny and review to ensure that the use of new tools has public support.

The Automated License Plate Recognition Working Group was assembled pursuant to Chapter 605, PL 2010 (LD 1561), "*An Act to Regulate the Use of Automated License Plate Recognition Systems.*" LD 1561 was introduced by State Senator Dennis Damon, D-Hancock, amid concerns that plate recognition technologies, such as the South Portland Police Department implemented following a grant award, allow law enforcement officers far too much access to information about law-abiding citizens and their movements, and thus represents an untenable invasion of privacy. The original bill called for a proscription of such technologies. The bill was amended and passed into law outlining conditions of use and information retention schedules; and also the establishment, by the Secretary of State, of the Working Group whose product is this report.

The Working Group was fortunate in that the South Portland Police Department immediately recognized the force and weight of Senator Damon's concerns, and the echoing of those concerns by privacy advocates, by aggressively working on sophisticated policies of use of the plate recognition readers. Further, SPPD has been open and generous in making demonstrations of the equipment readily available so that members could better understand its uses and limitations.

The policies adopted by South Portland, coupled with draft policies from the International Association of Chiefs of Police and the Maine Chiefs of Police, provide a strong baseline for a statewide policy that should be considered for adoption by any agency.

The Working Group recommends that the Legislature adopt the following provisions:

- Amend MRSA Title 25, Section 2803-B to require a policy governing use of Automated License Plate Readers be adopted by a law enforcement agency seeking to employ the technology;
- The Board of Trustees of the Maine Criminal Justice Academy should adopt standards for a model policy based on the IACP model policy, and;

- License plate information collected by an agency incidental to a project should not be subjected to Freedom of Information Act requests, and should be purged immediately upon completion of the project.

These recommendations are more fully discussed in the report. The Chair wishes to thank all of the participants for their energy and insights, and particularly the South Portland Police Department, without whose experience and input this work would have been made much more difficult.

Chapter 605 and the working Group membership are included in Appendix A.

### **Automated License Plate Recognition Systems (ALPR's)**

ALPR systems are fixed or mobile devices which use optical character recognition technology, and computer algorithms to convert license plate images into computer data. The plate data then can be searched against various law enforcement databases. Typically, an ALPR system is mounted on a police cruiser. The system scans license plates entering the system's field of view, and compares the image data to a previously defined database loaded into a computer in the cruiser. Upon a "hit", the officer is notified. The officer then must follow established procedure to verify the plate status, and to take any appropriate action.

Typically, the local database or "hot list" is a concatenation of several law enforcement motor vehicle-related databases including stolen vehicles, suspended registrations, tax and toll violators, vehicles registered to missing or wanted persons, or vehicles registered to other persons of interest. Specific registrations also may be entered into the hot list, for example for "AMBER" alerts.

Hot lists must be updated frequently to be of value.

ALPR's are able to store information about plates that have been read, including the plate number, date, time and location of the data capture. This data can be uploaded from the cruiser's computer to a central site and stored indefinitely. Potentially, the data may be combined with other public and private data sources, analyzed, or shared with other entities. In addition, as with any sensitive database, data security is a concern. This ability to retain, share and combine large amounts of data, and the potential ability to track a vehicle's movement over time raises privacy concerns.

### **ALPR Working Group:**

The ALPR Working Group included representatives from the Department of Public Safety, the Maine Chiefs of Police, the Maine Sheriffs Association, the South Portland Police Department, and the Department of Attorney General, the Maine Civil Liberties Union, the Maine Turnpike Authority, Maine Department of Transportation, the Maine Legislature, ALPR vendors, municipalities, the general public, and the Department of Secretary of State. The Working

Group met three times at the South Portland Public Safety Building. The Working Group's meeting minutes and related documents have been posted to the Secretary of State's website at:

<http://www.maine.gov/sos/alpr.htm>

The Working Group reviewed ALPR-related issues, including several states' existing ALPR policies. The Working Group specifically reviewed the International Association of Chiefs of Police's (IACP) model ALPR policy, and the South Portland Police Department's policy. The Working Group noted that there are issues with respect to data collection, retention, access and usage. The Working Group agreed that state statutes and policies must be flexible and agile enough to address current and future issues, while protecting personal privacy.

The Working Group agreed to limit its discussions to issues primarily related to traffic enforcement and direct public safety. Issues and concerns relative to the use of ALPR technology for targeted criminal surveillance are beyond the Working Group's charge. The legislature should address these issues separately.

The Working Group noted that proposed state and municipal laws and policies go through a rigorous review process, often including a fiscal review. Still, it can be difficult for the public to track proposed policy changes.

The Working Group noted that the IACP's model policy on ALPR usage is comprehensive, adequately addresses privacy and confidentiality of data, and could serve as a model state policy. The IACP model policy is contained in Appendix B. The South Portland Police Department's policy is available at the website above. Draft legislation requiring the MCJA to create a model policy is contained in Appendix C.

The Working Group acknowledged that ALPR technology is an important law enforcement tool, enabling law enforcement personnel to be much more efficient and effective, resulting in increased highway safety. The Working Group also acknowledged that personal privacy and data confidentiality must be protected. The Working Group found that, in general, Maine has strong laws and policies in place to protect the public from the misuse of law enforcement-related data and intelligence.

The Working Group noted that Maine law enforcement agencies are required to develop and follow policies relative to most law enforcement actions. These policies must conform to the Maine Criminal Justice Academy's model policies, and must be submitted annually to the Board of Trustees for review. Failure of a law enforcement agency to submit their policies for review can result in prosecution. If an officer violates an agency policy, that officer can be disciplined including losing certification as a law enforcement officer.

The Working Group discussed the twenty-one day retention period for ALPR data currently in Maine law. While most law enforcement agencies likely would prefer a longer retention period, some members expressed concern about retaining the data at all. The Working Group noted that the current twenty-one day limit is a compromise, and agreed not to recommend any change at this time to the maximum retention period.

The Working Group noted that some non-law enforcement agencies use ALPR-type technology including the Maine Turnpike Authority, and the Maine Department of Transportation. The MTA uses cameras at toll booths to capture images only of toll violators. A person processes these photos individually. The MDOT uses imaging to analyze traffic patterns, including in particular, turning movements. MDOT uses only the last three digits of the plate, and never needs to determine the vehicle registrant.

### **Working Group Findings and Recommendations:**

The Automated License Plate Recognition Working Group makes the following findings and recommendations:

- Maine's privacy and confidentiality laws with respect to law enforcement data and intelligence are sufficient to protect citizens' rights. Law enforcement agencies must protect and hold confidential intelligence information including ALPR data.
- LD1561 clarified the use of ALPR data, and limited its retention and dissemination.
- Law enforcement agencies planning to use ALPR technology should be required to adopt a usage policy based on a model policy approved by the Maine Criminal Justice Academy. 25 MRSA 2803-B should be amended to require any law enforcement agency using ALPR technology to submit its policy annually to the Board of Trustees of the Criminal Justice Academy for review for compliance with the model policy.
- Any state agency intending to use technology similar to ALPR's should develop a data collection, retention and disposal policy. ALPR-type data used for planning purposes should not be subject to Freedom of Information Act disclosure.
- The Commissioner of Public Safety should make periodic reports, as requested, to the relevant joint committees of the legislature relative to ALPR usage in the state.
- Public input should be actively sought for any ALPR policy changes at both the state and municipal level.



# Appendix A

## 29-A MRSA, §2117-A, Chapter 605, PL 2010 Use Of Automated License Plate Recognition Systems

**1. Definitions.** As used in this section, unless the context otherwise indicates, "automated license plate recognition system" means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration plates into computer-readable data. "Automated license plate recognition system" does not include a photo-monitoring system, as defined in Title 23, section 1980, subsection 2- A, paragraph B, subparagraph (4), when used by the Maine Turnpike Authority or a law enforcement agency for toll enforcement purposes.

**2. Prohibition.** Except as otherwise provided in subsection 3, a person may not use an automated license plate recognition system.

**3. Exception.** Subsection 2 does not apply to:

A. The Department of Transportation for the purposes of protecting public safety and transportation infrastructure;

B. The Department of Public Safety, Bureau of State Police for the purposes of commercial motor vehicle screening and inspection; and

C. Any state, county or municipal law enforcement agency when providing public safety, conducting criminal investigations and ensuring compliance with local, state and federal laws. For purposes of this paragraph, an automated license plate recognition system may use only information entered by a law enforcement officer as defined by Title 17-A, section 2, subsection 17 and based on specific and articulable facts of a concern for safety, wrongdoing or a criminal investigation or pursuant to a civil order or records from the National Crime Information Center database or an official published law enforcement bulletin.

An authorized user under this subsection of an automated license plate recognition system may use an automated license plate recognition system only for the official and legitimate purposes of the user's employer.

**4. Confidentiality.** Data collected or retained through the use of an automated license plate recognition system in accordance with subsection 3 are confidential under Title 1, chapter 13 and are available for use only by a law enforcement agency in carrying out its functions or by an agency collecting information under subsection 3 for its intended purpose and any related civil or criminal proceeding.

A law enforcement agency may publish and release as public information summary reports using aggregate data that do not reveal the activities of an individual or firm and may share commercial motor vehicle screening data with the Federal Motor Carrier Safety Administration for regulatory compliance purposes.

**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 information as defined by Title 16, section 611, subsection 8, or data collected for the purposes of commercial motor vehicle screening, may not be stored for more than 21 days.

**6. Penalty.** Violation of this section is a Class E crime.

### **Automated License Plate Recognition Working Group Membership**

Matt	Dunlap	Secretary of State
Edward	Googins	South Portland Police Department and President of Maine Chiefs of Police Association
Frank	Clark	South Portland Police Department
Everett	Flannery	Maine Sheriff's Association and Chief Deputy of the Kennebec County Sheriff's Office
Catherine	Curtis	Deputy Secretary of State, Bureau of Motor Vehicles
Dennis	Damon	Senator, Maine Legislature
Brian	MacMaster	Dir. Investigations, Dept. of Attorney General
Anne	Jordan	Commissioner, Department of Public Safety
Stephen	Landry	Assistant Traffic Engineer, Department of Transportation
Shenna	Bellows	Executive Dir., Maine Civil Liberties Union
Alysia	Melnick	Public Policy Counsel, Maine Civil Liberties Union
Dan	Riley	Bernstein Shur for Federal Signal Corporation
Richard	Somerville	Maine Turnpike Authority
Richard	Trahey	Service Centers Coalition
Kathleen	McGee	Citizen
David	Guilmette	Bureau of Motor Vehicles
Garry	Hinkley	Bureau of Motor Vehicles
Nikki	Bachelor	Bureau of Motor Vehicles

# Appendix B

## LICENSE PLATE READERS

### Model Policy

<i>Effective Date</i> August 2010		<i>Number</i>
<i>Subject</i> License Plate Readers		
<i>Reference</i>		<i>Special Instructions</i>
<i>Distribution</i>	<i>Reevaluation Date</i> August 2011	<i>No. Pages</i> 3

#### I. PURPOSE

The purpose of this policy is to provide officers with guidelines on the proper use of license plate recognition (LPR) systems, also commonly known as license plate reader systems.

#### II. POLICY

The availability and use of LPR systems have provided many opportunities for the enhancement of productivity, effectiveness, and officer safety. It is the policy of this agency that all members abide by the guidelines set forth herein when using LPR systems.

#### III. ACRONYMS AND DEFINITIONS

*FOUO*: For Official Use Only

*LPR*: License Plate Recognition/License Plate Reader

*OCR*: Optical Character Recognition

*Read*: Digital images of license plates and vehicles and associated metadata (e.g., date, time, and geographic coordinates associated with the vehicle image capture) that are captured by the LPR system.

*Alert*: A visual and/or auditory notice that is triggered when the LPR system receives a potential "hit" on a license plate.

*Hit*: A read matched to a plate that has previously been registered on an agency's "hot list" of vehicle plates related to stolen vehicles, wanted vehicles, or other factors supporting investigation, or which has been manually registered by a user for further investigation.

*Hot list*: License plate numbers of stolen cars, vehicles owned by persons of interest, and vehicles associated with AMBER Alerts that are regularly added to "hot lists" circulated among law enforcement agen-

cies. Hot list information can come from a variety of sources, including stolen vehicle information from the National Insurance Crime Bureau and the National Crime Information Center (NCIC), as well as national AMBER Alerts and Department of Homeland Security watch lists. Departments of motor vehicles can provide lists of expired registration tags, and law enforcement agencies can interface their own, locally compiled hot lists to the LPR system. These lists serve an officer safety function as well as an investigatory purpose. In addition to agency supported hot lists, users may also manually add license plate numbers to hot lists in order to be alerted if and when a vehicle license plate of interest is "read" by the LPR system.

*Fixed LPR system*: LPR cameras that are permanently affixed to a structure, such as a pole, a traffic barrier, or a bridge.

*Mobile LPR system*: LPR cameras that are affixed, either permanently (hardwired) or temporarily (e.g., magnet-mounted), to a law enforcement vehicle for mobile deployment.

*Portable LPR system*: LPR cameras that are transportable and can be moved and deployed in a variety of venues as needed, such as a traffic barrel or speed radar sign.

#### IV. PROCEDURES

##### A. General

1. The use of LPR systems is restricted to public safety-related missions of this agency.
2. LPR systems and associated equipment and databases are authorized for official public safety purposes. Misuse of this equipment and associated databases, or data, may be subject to sanctions and/or disciplinary actions.
3. LPR systems and LPR data and associated

media are the property of this agency and intended for use in conducting official business with limited exceptions noted elsewhere in this policy.

#### B. Administration

1. The agency shall designate an employee(s) with administrative oversight for LPR system deployment and operations who is (are) responsible for the following:
  - a. Establishing protocols for access, collection, storage, and retention of LPR data and associated media files
  - b. Establishing protocols to preserve and document LPR reads and "alerts" or "hits" that are acted on in the field or associated with investigations or prosecutions
  - c. Establishing protocols to establish and ensure the security and integrity of data captured, stored, and/or retained by the LPR system
  - d. Ensuring the proper selection of the personnel approved to operate the LPR system and maintaining an adequate number of trainees;
  - e. Maintaining records identifying approved LPR deployments and documenting their results, including appropriate documentation of significant incidents and arrests that are related to LPR usage
  - f. Authorizing any requests for LPR systems use or data access according to the policies and guidelines of this agency
2. Designated, trained personnel shall check equipment on a regular basis to ensure functionality and camera alignment. Any equipment that falls outside expected functionality shall be removed from service until deficiencies have been corrected.
3. LPR systems repairs, hardware or software, shall be made by agency authorized sources.

#### C. License Plate Reader System Usage

1. LPR operation and access to LPR collected data shall be for official agency purposes only.
2. Only officers who have been properly trained in the use and operational protocols of the LPR systems shall be permitted to use it.
3. At the start of each shift users must ensure that the LPR system has been updated with the most current hot lists available.
4. LPR Alerts/Hits: Prior to initiation of the stop:
  - a. Visually verify that the vehicle plate number matches the plate number run by the LPR system, including both alphanumeric characters of the license plate and the state of issuance.
  - b. Verify the current status of the plate through dispatch or MDT query when cir-

cumstances allow.

5. In each case in which an alert or a hit is triggered, the user should record the disposition of the alert and the hit into the LPR system
  6. Hot lists may be updated manually if the user enters a specific plate into the LPR system and wants to be alerted when that plate is located. Whenever a plate is manually entered into the LPR system, the officer should document the reason.
  7. Special Details: LPR use during nontraditional deployments (e.g., special operations or during a criminal investigation) must be approved by the administrator.
  8. Searches of historical data within the LPR system should be done in accordance with established departmental policies and procedures.
- #### D. LPR Data Sharing and Dissemination
- LPR data should be considered FOUO and can be shared for legitimate law enforcement purposes:
1. When LPR data are disseminated outside the agency, it should be documented in a secondary dissemination log.
  2. Information sharing among agencies should be dictated in accordance with MOUs (memoranda of understanding) or established departmental policies.
- #### E. Retention
- Please refer to the *License Plate Reader Concepts and Issues Paper* for a discussion on retention.

#### Acknowledgment

This *Model Policy* was developed by the International Association of Chiefs of Police (IACP) Law Enforcement Information Management (LEIM) Section, in cooperation with the IACP National Law Enforcement Policy Center. Additional support was provided by the LPR Model Policy Working Group, to whom we are deeply appreciative for sharing their agency policies and expertise.

Every effort has been made by the IACP National Law Enforcement Policy Center staff and advisory board to ensure that this model policy incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no "model" policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities among other factors.

This project was supported by Grant No. 2006-DG-EX-K004 awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: the Bureau of Justice Assistance, the Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Office of Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice or the IACP.

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# Appendix C

## An Act Relating to Automatic License Plate Recognition Policies

Section 1. 25 MRSA § 2803-B as amended by C. 652, PL 2009, is further amended as follows:

**1. Law enforcement policies.** All law enforcement agencies shall adopt written policies regarding procedures to deal with the following:

- A. Use of physical force, including the use of electronic weapons and less-than-lethal munitions;
- B. Barricaded persons and hostage situations;
- C. Persons exhibiting deviant behavior;
- D. Domestic violence, which must include, at a minimum, the following:
  - (1) A process to ensure that a victim receives notification of the defendant's release from jail;
  - (2) A process for the collection of information regarding the defendant that includes the defendant's previous history, the parties' relationship, the name of the victim and a process to relay this information to a bail commissioner before a bail determination is made; and
  - (3) A process for the safe retrieval of personal property belonging to the victim or the defendant that includes identification of a possible neutral location for retrieval, the presence of at least one law enforcement officer during the retrieval and giving the victim the option of at least 24 hours notice to each party prior to the retrieval;
- E. Hate or bias crimes;
- F. Police pursuits;
- G. Citizen complaints of police misconduct;
- H. Criminal conduct engaged in by law enforcement officers;
- I. Death investigations, including at a minimum the protocol of the Department of the Attorney General regarding such investigations;
- J. Public notification regarding persons in the community required to register under Title 34-A, chapter 15;
- K. Digital, electronic, audio, video or other recording of law enforcement interviews of suspects in serious crimes and the preservation of investigative notes and records in such cases; and
- L. Mental illness and the process for involuntary commitment.
- M. Automated License Plate Recognition Systems, if an agency elects to use such a system.

For purposes of this section, “Automated License Plate Recognition System” means a device that uses a camera or optical character reader and computer technology to capture digital images of license plates and to compare images to a database of plates of interest.”

The chief administrative officer of each agency shall certify to the board that attempts were made to obtain public comment during the formulation of policies.

**2. Minimum policy standards.** The board shall establish minimum standards for each law enforcement policy no later than June 1, 1995, except that policies for expanded requirements for domestic violence under subsection 1, paragraph D, subparagraphs (1) to (3) must be established no later than January 1, 2003; policies for death investigations under subsection 1, paragraph I must be established no later than January 1, 2004; policies for public notification regarding persons in the community required to register under Title 34- A, chapter 15 under subsection 1, paragraph J must be established no later than January 1, 2006; policies for the recording and preservation of interviews of suspects in serious crimes under subsection 1, paragraph K must be established no later than January 1, 2005; policies for the expanded use of physical force, including the use of electronic weapons and less-than-lethal munitions under subsection 1, paragraph A, must be established no later than January 1, 2010; ~~and~~ policies for mental illness and the process for involuntary commitment under subsection 1, paragraph L must be established no later than January 1, 2010; and policies for the use of automated license plate recognition systems under subsection 1, paragraph M must be established no later than July 1, 2012.

**3. Agency compliance.** The chief administrative officer of each law enforcement agency shall certify to the board no later than January 1, 1996 that the agency has adopted written policies consistent with the minimum standards established by the board pursuant to subsection 2, except that certification to the board for expanded policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) to (3) must be made to the board no later than June 1, 2003; certification to the board for adoption of a death investigation policy under subsection 1, paragraph I must be made to the board no later than June 1, 2004; certification to the board for adoption of a public notification policy under subsection 1, paragraph J must be made to the board no later than June 1, 2006; certification to the board for adoption of a policy for the recording and preservation of interviews of suspects in serious crimes under subsection 1, paragraph K must be made to the board no later than June 1, 2005; certification to the board for adoption of an expanded use of physical force policy under subsection 1, paragraph A must be made to the board no later than June 1, 2010; and certification to the board for adoption of a policy regarding mental illness and the process for involuntary commitment under subsection 1, paragraph L must be made to the board no later than June 1, 2010. The certification must be accompanied by copies of the agency policies. The chief administrative officer of each agency shall certify to the board no later than June 1, 1996 that the agency has provided orientation and training for its members with respect to the policies, except that certification for orientation and training with respect to expanded policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) and (3) must be made to the board no later than January 1, 2004; certification for orientation and training with respect to policies regarding death investigations under subsection 1, paragraph I must be made to the board no later than January 1, 2005; certification for orientation and training with respect to policies regarding public notification under subsection 1, paragraph J must be made to the board no later than January 1, 2007; certification for orientation and training with respect to policies regarding the recording and

preservation of interviews of suspects in serious crimes under subsection 1, paragraph K must be made to the board no later than January 1, 2006; certification for orientation and training with respect to policies regarding expanded use of physical force under subsection 1, paragraph A must be made to the board no later than January 1, 2011; ~~and~~ certification for orientation and training with respect to policies regarding mental illness and the process for involuntary commitment under subsection 1, paragraph L must be made to the board no later than January 1, 2011; and certification for orientation and training with respect to policies regarding automated license plate recognition systems under subsection 1, paragraph M, prior to implementing such a system.

#### **4. Penalty.**

**5. Annual standards review.** The board shall review annually the minimum standards for each policy to determine whether changes in any of the standards are necessary to incorporate improved procedures identified by critiquing known actual events or by reviewing new enforcement practices demonstrated to reduce crime, increase officer safety or increase public safety.

**6. Freedom of access.** The chief administrative officer of a municipal, county or state law enforcement agency shall certify to the board annually beginning on January 1, 2004 that the agency has adopted a written policy regarding procedures to deal with a freedom of access request and that the chief administrative officer has designated a person who is trained to respond to a request received by the agency pursuant to Title 1, chapter 13.

**7. Certification by record custodian.** Notwithstanding any other law or rule of evidence, a certificate by the custodian of the records of the board, when signed and sworn to by that custodian, or the custodian's designee, is admissible in a judicial or administrative proceeding as prima facie evidence of any fact stated in the certificate or in any documents attached to the certificate.

### Summary

This legislation is based on the recommendations of the Automated License Plate Recognition Working Group authorized by Chapter 605, PL 2010. The bill would require any law enforcement agency using ALPR's to develop a usage policy based on standards approved by the Maine Criminal Justice Academy. The MCJA must establish minimum standards for the use of ALPR's.



## 58, 62

**Fouts, Henry**

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**From:** Nale, Craig  
**Sent:** Wednesday, October 05, 2016 8:23 AM  
**To:** Fouts, Henry  
**Subject:** FW: RTKAC Subcommittee items  
**Attachments:** cf125-LD-1489.pdf; cf127-LD-0818.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

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**From:** StGermain, Shaun A [mailto:Shaun.A.StGermain@maine.gov]  
**Sent:** Tuesday, October 04, 2016 5:20 PM  
**To:** Nale, Craig  
**Cc:** Parr, Christopher  
**Subject:** RE: RTKAC Subcommittee items

Craig,  
I've asked Katie Johnson for her input on your questions. Attached is some information regarding the confidentiality provision in the EMS Act.

I'll try answering your questions as best I can for your session tomorrow.

“all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the [Emergency Medical Services Board] and all reports, information and records provided to the committee are confidential and may not be disclosed or obtained by discovery from the committee, the board or its staff.”

Much of this may have to do with the potential for information gained from the QA process being used against the provider in litigation. In addition to that, the QA process is a difficult one to approach, and many providers are hesitant to engage in the process if they feel threatened, either by the threat of litigation or through the loss of professional stature. Furthermore, QA is meant to be instructive rather than punitive. It is this approach that enables us to gather accurate information. Anything warranting a deeper look (i.e. harm to a patient), then our investigations committee would look at the situation and proceed. All investigation decisions are made public upon final dispensation.

Ref #62 is also within 32 MRSA § 91-B(1), but includes only ¶D. This exception makes examination questions used by the Emergency Medical Services Board to fulfill cognitive testing requirements (required by 32 MRSA § 85(3)(C)). A concern with the exception is whether those questions need to be confidential when applicants might find them useful for preparing for the exam (like bar applicants use old bar exam questions to study).

In order to protect the integrity of the exam process, we keep all exams confidential. The questions themselves do not necessarily change from year to year. This policy is consistent with the National Registry of Emergency Medical Technicians, which is where much of our exam material originates.

I hope this helps. I would be happy to speak with you further if you like. I'll be in our Board meeting by 9:30, but will have email available.

Regards,  
Shaun

---

**From:** Parr, Christopher  
**Sent:** Monday, October 03, 2016 12:15 PM  
**To:** StGermain, Shaun A  
**Subject:** RE: RTKAC Subcommittee items  
**Importance:** High

Hi, Shaun:

Could you please contact Craig Nale re: his inquiries below? (I've highlighted the relevant, MEMS-related inquiries.)

Please don't hesitate to let me know if you wish to discuss.

C

CHRISTOPHER PARR  
STAFF ATTORNEY | MAINE STATE POLICE  
(e) [christopher.parr@maine.gov](mailto:christopher.parr@maine.gov)

DEPARTMENT OF PUBLIC SAFETY  
MAINE STATE POLICE  
45 COMMERCE DRIVE, SUITE 1  
AUGUSTA, ME 04333-0042



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---

**From:** Parr, Christopher  
**Sent:** Wednesday, September 28, 2016 7:45 AM  
**To:** Nale, Craig; StGermain, Shaun A  
**Cc:** Scott, Brian P  
**Subject:** RE: RTKAC Subcommittee items  
**Importance:** High

Craig:

Thanks for the email.

With this email I am forwarding your email below to Shaun St. Germain, Director of Maine Emergency Medical Services here at DPS. He is best able to respond to paragraphs 2 and 3 of your query.

Point of clarification: Is there a question with regard to paragraph 1?

C

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**From:** Nale, Craig [<mailto:Craig.Nale@legislature.maine.gov>]  
**Sent:** Tuesday, September 27, 2016 3:10 PM  
**To:** Parr, Christopher  
**Subject:** RTKAC Subcommittee items

Hi Chris,

At the last RTKAC Subcommittee meeting members had some additional questions or concerns about three provisions affecting DPS: Ref ## 57, 58 and 62.

Ref #57 is at 29-A MRSA § 2117-A(4). It makes data collected by an automated license plate recognition system confidential and available for use only by a law enforcement agency; DOT for protecting public safety and transportation infrastructure; and DPS/State Police for commercial motor vehicle screening and inspection. The exception does allow a law enforcement agency to publish aggregate data and to share commercial motor vehicle screening data for federal regulatory compliance purposes. Subcommittee members were concerned about the balance of confidentiality and public access because DPS did not take a position on whether the exception should be continued. Members asked that we reach out to DOT, BMV and commercial trucking representatives for further input, which I am doing.

Ref #58 is at 32 MRSA § 91-B(1). There are several exceptions in the opening paragraph and in paragraphs A-D below it, but the exception the Subcommittee is seeking further information on here is in the first sentence. The first sentence provides that "all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the [Emergency Medical Services Board] and all reports, information and records provided to the committee are confidential and may not be disclosed or obtained by discovery from the committee, the board or its staff." Subcommittee members were concerned about the breadth of this exception, and especially with the confidentiality of reports, information and records provided to the Board.

Ref #62 is also within 32 MRSA § 91-B(1), but includes only ¶D. This exception makes examination questions used by the Emergency Medical Services Board to fulfill cognitive testing requirements (required by 32 MRSA § 85(3)(C)). A concern with the exception is whether those questions need to be confidential when applicants might find them useful for preparing for the exam (like bar applicants use old bar exam questions to study).

If I can help explain these any further or reach out to additional interested groups for some information please just let me know. Thanks again for all your help with these.

Craig

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**Right to Know Advisory Committee**  
**Subcommittee on Review of Existing Public Records Exceptions**  
***DRAFT* Proposed Bill to Implement the Recommendation of the Efficiency Maine Trust**

**An Act to Implement Recommendations of the Right to Know Advisory Committee**  
**Regarding Public Records Exceptions**

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

**Sec. 1. 35-A MRS §10106, sub-§1, ¶A is amended to read:**

A. A record obtained or developed by the trust that:

(1) A person, including the trust, to whom the record belongs or pertains has requested be designated confidential; and that the director has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains; or

~~(2) The board has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains;~~

~~(3)~~ (2) Contains information about the energy usage profile of an identifiable customer of a transmission and distribution utility in the State or an identifiable customer of a distributor of heating fuel or other energy source; and

~~(4) Contains the social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the trust; and~~

The social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the trust is confidential.

**Sec. 2. 35-A MRS §10106, sub-§3 is amended to read:**

**3. Disclosure prohibited; further exceptions.** The director or a trustee, officer, employee, agent, other representative of the trust or other person may not knowingly divulge or disclose records designated confidential by this section, except that the ~~board~~ director, in ~~it's~~ the director's discretion and in conformity with legislative freedom of access criteria in Title 1,

chapter 13, subchapter 1-A, may make or authorize any disclosure of information of the following types or under the following circumstances:

### **SUMMARY**

This bill changes the criteria for designation of records of the Efficiency Maine Trust as confidential from requiring that each of four criteria be met to instead require that one of two criteria be met, including: that a person to whom the record belongs has requested it be designated confidential and the director of the Efficiency Maine Trust Board has determined the record contains proprietary information, access to which would result in some competitive disadvantage to any person to whom the record belongs or pertains; or that the record contains information about the energy usage profile of an identifiable individual. The bill provides that the social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the Efficiency Maine Trust is confidential. This bill also provides that the director of the Efficiency Maine Trust, instead of the Board of the Efficiency Maine Trust, may disclose or authorize disclosure of otherwise confidential information in certain specified circumstances.