RIGHT TO KNOW ADVISORY COMMITTEE
PUBLIC RECORDS EXCEPTION REVIEW SUBCOMMITTEE

Wednesday, November 13, 2019
9:00 a.m.
State House Room 438

DRAFT Meeting Agenda

1. Introductions
2. Review draft legislation to amend public records exceptions as voted at September 20, 2019 Subcommittee Meeting
3. Consider Ref #89 and Ref #90 related to records and meetings of the Maine Dairy Promotion Board and Maine Dairy and Nutrition Council and review suggested amendments based on September 20, 2019 Subcommittee discussion
4. Review suggested modification of exception in 1 MRSA §402, sub-§3, ¶ U related to records of railroad companies concerning hazardous materials shipments
5. Consider Ref #35A related to state court security records exception in 4 MRSA §17, sub-§15
6. Consider adding 4 M.R.S.A. §7 to the list of public records exceptions reviewed in Title 4 pursuant to 1 MRSA §433
7. Schedule additional meeting *(if necessary)*
8. Adjourn

Draft for Review 11/13/19

Right to Know Advisory Committee
Public Records Exceptions Review Subcommittee

PROPOSED DRAFT LEGISLATION TO AMEND EXCEPTIONS
REFLECTS DECISIONS MADE AT SEPT. 20TH MEETING

REF #6 (Amend 3-0)

Sec. ___. **1 MRSA §402, sub-§3, ¶ E** is amended as follows:

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:

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 when the subject matter is confidential or otherwise protected from disclosure by statute, other law or legal precedent, or evidentiary privilege. 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;

Summary

This language amends the scope of the public records exception to clarify that records, working papers and 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 are confidential when the subject matter is confidential or otherwise protected from disclosure by statute, other law or legal precedent, or evidentiary privilege.

REF #11(Amend 3-0)

Sec. ___. **1 MRSA §402, sub-§3, ¶ J** is amended as follows:

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:

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REFLECTS DECISIONS MADE AT SEPT. 20TH MEETING

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;

Summary

This language amends the scope of the public records exceptions to clarify that working papers become public records once distributed in a public meeting of an advisory organization and not when distributed by an individual member of an advisory organization.

REF #16 (Amend 3-0)

Sec. ___. 1 MRSA §402, sub-§3, ¶ O is amended as follows:

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:

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~~ personal address, ~~home~~ telephone number, ~~home~~ facsimile number, ~~home~~ e-mail address, ~~and personal~~ cellular telephone number, ~~and personal~~ pager number, and username, password and uniform resource locator for a personal social media account; 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;

Summary

This language amends the public records exception to provide that personal contact information concerning public employees protected as confidential includes a person's username, password and uniform resource location for a personal social media account.

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PROPOSED DRAFT LEGISLATION TO AMEND EXCEPTIONS
REFLECTS DECISIONS MADE AT SEPT. 20TH MEETING

REF # 73 (Amend 3-0)

Sec. ___. 5 MRSA §244-E, sub-§§ 2, 3 and 4 are amended as follows:

2. Contents of complaint confidential. A complaint alleging fraud, waste, inefficiency or abuse made through a hotline or other referral service established by the State Auditor for the confidential reporting of fraud, waste, inefficiency and abuse in State Government and any resulting investigation is confidential and may not be disclosed except as provided in subsections 3 and 4.

3. Coordination with Office of Program Evaluation and Government Accountability and Attorney General and state agencies. The State Auditor may disclose information that is confidential under this section to the Director of the Office of Program Evaluation and Government Accountability and the Attorney General to ensure appropriate agency referral or coordination between agencies to respond appropriately to all complaints made under this section. The State Auditor may disclose information that is confidential under this section related to a complaint alleging fraud, waste, inefficiency or abuse to a department or agency that is the subject of a complaint to ensure that the department or agency responds appropriately to the complaint. The department or agency shall maintain as confidential any information related to a complaint furnished by the State Auditor.

4. Reports. For each complaint under this section, the State Auditor shall submit a written report to the Governor and publish the report on the auditor's publicly accessible website. The report must include a detailed description of the nature of the complaint, the office, bureau or division within the department or any agency that is the subject of the complaint, the determination of potential cost savings, if any, any recommended action and a statement indicating the degree to which the complaint has been substantiated. The report must be submitted no later than 120 days after the State Auditor receives the complaint. In addition, the State Auditor shall publish a semiannual report to the Governor and Legislature of the complaints received by the hotline or other referral service, which may be electronically published. The report must include the following information:

A. The total number of complaints received;

B. The number of referrals of fraud or other criminal conduct to the Attorney General;

C. The number of referrals of agency performance issues to the Office of Program Evaluation and Government Accountability; and

D. The number of investigations by the State Auditor by current status whether opened, pending, completed or closed.

Summary

This language amends the public records exception to permit the State Auditor to share confidential information related to a complaint alleging fraud, waste, inefficiency or abuse to a department or agency that is the subject of a complaint to ensure that the department or agency responds

appropriately to the complaint. The language requires the department or agency to maintain the confidentiality of any information related to a complaint furnished by the State Auditor.

UNALLOCATED LANGUAGE TO DEVELOP DRAFTING STANDARDS AND REDUCE INCONSISTENCIES (Amend 2-0)

Sec. ___. Public records exceptions and confidential records; drafting templates. The Office of Policy and Legal Analysis, in consultation with the Office of the Revisor of Statutes and the Right to Know Advisory Committee, shall examine inconsistencies in statutory language related to the designation of information and records received or prepared for use in connection with the transaction of public or governmental business or containing information relating to the transaction of public or governmental business that is designated as confidential or not subject to public disclosure and shall recommend standardized language for use in drafting statutes to clearly delineate what information is confidential and the circumstances under which that information may appropriately be released. On or before _____, the Office of Policy and Legal Analysis shall submit a report with its recommendations to the Legislature.

Summary

This language directs the Office of Policy and Legal Analysis, in consultation with the Office of the Revisor of Statutes and the Right to Know Advisory Committee, to examine inconsistencies in statutory language related to the designation of information and records as confidential or not subject to public disclosure and to recommend standardized language for use in drafting statutes to clearly delineate what information is confidential and the circumstances under which that information may appropriately be released.

Draft for Review 11/13/19

Right to Know Advisory Committee
Public Records Exceptions Review Subcommittee

PROPOSED DRAFT LEGISLATION TO AMEND REF # 88 AND 89
(based on 9/20 discussion)

REF #88

Sec. __. 7 MRSA §2992-A, sub-§1, paragraph ¶C is amended as follows:

C. Notwithstanding paragraphs A and B:

(1) Employees of the board, including employees hired after July 1, 1996, are state employees for the purposes of the state retirement provisions of Title 5, Part 20 and the state employee health insurance program under Title 5, chapter 13, subchapter 2;

(2) All meetings and records of the board are subject to the provisions of Title 1, chapter 13, subchapter 1, except that, by majority vote of those members present recorded in a public session, records and meetings of the board may be closed to the public when public disclosure of the subject matter of the records or meetings would adversely affect the competitive position of the milk industry of the State ~~or segments of that industry~~. The Commissioner of Agriculture, Conservation and Forestry and those members of the Legislature appointed to serve on the joint standing committee of the Legislature having jurisdiction over agricultural, conservation and forestry matters have access to all material designated confidential by the board;

(3) For the purposes of the Maine Tort Claims Act, the board is a governmental entity and its employees are employees as those terms are defined in Title 14, section 8102;

(4) Funds received by the board pursuant to chapter 611 must be allocated to the board by the Legislature in accordance with Title 5, section 1673; and

(5) Except for representation of specific interests required by subsection 2, members of the board are governed by the conflict of interest provisions set forth in Title 5, section 18.

REF #89

Sec. __. 7 MRSA §2998-B, sub-§1, paragraph ¶C is amended to read:

C. Notwithstanding paragraphs A and B:

(1) Employees of the council, including employees hired after July 1, 1996, are state employees for the purposes of the state retirement provisions of Title 5, Part 20 and the state employee health insurance program under Title 5, chapter 13, subchapter 2;

(2) All meetings and records of the council are subject to the provisions of Title 1, chapter 13, subchapter 1, except that, by majority vote of those members present recorded in a public session, records and meetings of the council may be closed to the public when public disclosure of the subject matter of the records or meetings would adversely affect the competitive position

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PROPOSED DRAFT LEGISLATION TO AMEND REF # 88 AND 89
(based on 9/20 discussion)

of the milk industry of the State ~~or segments of that industry~~. The Commissioner of Agriculture, Conservation and Forestry and those members of the Legislature appointed to serve on the joint standing committee of the Legislature having jurisdiction over agricultural, conservation and forestry matters have access to all material designated confidential by the council;

(3) For the purposes of the Maine Tort Claims Act, the council is a governmental entity and its employees are employees as those terms are defined in Title 14, section 8102;

(4) Funds received by the council pursuant to chapters 603 and 611 must be allocated to the board by the Legislature in accordance with Title 5, section 1673; and

(5) Except for representation of specific interests required by subsection 2, members of the council are governed by the conflict of interest provisions set forth in Title 5, section 18.

Summary

This language amends the scope of the public records exceptions to remove references to a particular segment or segments of the milk industry.

McCarthyReid, Colleen

From: Sarah Littlefield <sarah@drinkmainemilk.org>
Sent: Friday, October 18, 2019 2:27 PM
To: McCarthyReid, Colleen
Cc: Risler, Hillary
Subject: RE: Right to Know Advisory Committee Request for input on suggested changes to 7 MRSA Section 2992-A and 2998-B

Hello Colleen,

Thank you for sending me such detail in the message and attachments, it was very helpful in reviewing the changes suggested. I believe that the striking of "or segments of that industry" is an acceptable change. I would also add that updating the contact person information to my own would be appropriate. Thank you for reaching out and please let me know if I can be of further assistance.

Sarah

SARAH LITTLEFIELD | EXECUTIVE DIRECTOR
MAINE DAIRY PROMOTION BOARD | MAINE DAIRY & NUTRITION COUNCIL

333 Cony Road | Augusta, Maine | 04330
Direct:(207)287-7582 | Mobile:(207)446-6121

From: McCarthyReid, Colleen [mailto:Colleen.McCarthyReid@legislature.maine.gov]
Sent: Friday, October 04, 2019 12:03 PM
To: sarah@drinkmainemilk.org
Cc: Risler, Hillary
Subject: Right to Know Advisory Committee Request for input on suggested changes to 7 MRSA Section 2992-A and 2998-B

Good afternoon Sarah,

I am contacting you on behalf of the Maine Right to Know Advisory Committee's Public Records Exceptions Review Subcommittee. One of the duties of the Advisory Committee is to review current public records exceptions in law and to make recommendations to the Legislature whether those exceptions should be continued, modified or repealed. I am assisting the Advisory Committee with their review of exceptions in current law contained in Titles 1 through 7-A. This process began in 2017; Cheryl Beyeler provided initial input from the Maine Dairy Promotion Board and the Maine Dairy & Nutrition Council. The Advisory Committee's Exceptions Review Subcommittee has reviewed the responses provided in late 2017 related to 7 MRSA Section 2992-A, subsection 1, paragraph C and 7 MRSA Section 2998-B, subsection 1, paragraph C. See the attached questionnaires.

During their recent discussion, the Subcommittee members have suggested that the statutory language might be amended to clarify the scope of the current exception. Before moving forward with any recommendation for changes, the Subcommittee would like additional input.

For your review, I have attached proposed draft language to amend the current provisions. Could you provide your thoughts on the drafts and whether the Maine Dairy Promotion Board and the Maine Dairy & Nutrition Council has any objections or comments? The Subcommittee's next meeting is on November 13, 2019. Any input you can provide before then would be greatly appreciated!

Thank you for your consideration, Colleen

Colleen McCarthy Reid, Esq.
Legislative Analyst
Office of Policy and Legal Analysis
Maine State Legislature
13 State House Station
Augusta, Maine 04333-0013
207-287-1670
colleen.mccarthyreid@legislature.maine.gov

Right to Know Advisory Committee
Public Records Exceptions Review Subcommittee

SUGGESED CHANGE TO 1 MRSA § 402, SUB-§3, ¶ U *(based on 9/20 discussion)*

Sec. ___. 1 MRSA §402, sub-§3, ¶ U is amended as follows:

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:

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~~.~~; except that such records may be disclosed after any discharge of hazardous materials transported by a railroad company that poses a threat to public health, safety and welfare. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5; and

Summary

This language amends the scope of the public records exception to permit the disclosure of records after any discharge of hazardous materials transported by a railroad company that poses a threat to public health, safety and welfare.

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McCarthyReid, Colleen

From: Madore, David <David.Madore@maine.gov>
Sent: Monday, October 28, 2019 1:26 PM
To: McCarthyReid, Colleen
Cc: Risler, Hillary
Subject: RE: Right to Know Advisory Committee Request for input on suggested changes to 1 MRSA Section 402, subsection 3, paragraph U

Hi Colleen,
We looked at the proposed language and support the suggested change. Thank you for giving us the opportunity to review.
Best,
Dave

From: McCarthyReid, Colleen <Colleen.McCarthyReid@legislature.maine.gov>
Sent: Wednesday, October 23, 2019 11:22 AM
To: Madore, David <David.Madore@maine.gov>
Cc: Risler, Hillary <hillary.risler@legislature.maine.gov>
Subject: RE: Right to Know Advisory Committee Request for input on suggested changes to 1 MRSA Section 402, subsection 3, paragraph U

Thanks very much!

Colleen McCarthy Reid, Esq.
Legislative Analyst
Joint Standing Committee on Health Coverage, Insurance and Financial Services
Office of Policy and Legal Analysis
Maine State Legislature
13 State House Station
Augusta, Maine 04333-0013
207-287-1670
colleen.mccarthyreid@legislature.maine.gov

From: Madore, David <David.Madore@maine.gov>
Sent: Wednesday, October 23, 2019 11:13 AM
To: McCarthyReid, Colleen <Colleen.McCarthyReid@legislature.maine.gov>
Cc: Risler, Hillary <Hillary.Risler@legislature.maine.gov>
Subject: RE: Right to Know Advisory Committee Request for input on suggested changes to 1 MRSA Section 402, subsection 3, paragraph U

Good morning Colleen,
We will review the proposed language and get back to you as soon as possible.
Thank you,
Dave

David R. Madore

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Director of Communications, Education & Outreach/Legislative Liaison
Maine Department of Environmental Protection
(207) 287-5842 (desk)
www.maine.gov/dep

From: McCarthyReid, Colleen <Colleen.McCarthyReid@legislature.maine.gov>
Sent: Wednesday, October 23, 2019 11:06 AM
To: Madore, David <David.Madore@maine.gov>
Cc: Risler, Hillary <hillary.risler@legislature.maine.gov>
Subject: Right to Know Advisory Committee Request for input on suggested changes to 1 MRSA Section 402, subsection 3, paragraph U

Good morning David,

I am contacting you on behalf of the Maine Right to Know Advisory Committee's Public Records Exceptions Review Subcommittee. I am providing staff assistance to the Advisory Committee this interim, along with Peggy Reinsch and Hillary Risler. One of the duties of the Advisory Committee is to review current public records exceptions in law and to make recommendations to the Legislature whether those exceptions should be continued, modified or repealed. I am assisting the Advisory Committee with their review of the exception in current law contained in Title 1, section 402, subsection 3, paragraph U related to records provided by a railroad company describing hazardous materials transported in Maine. You may recall previous discussion of this provision. Based on the review schedule, the Advisory Committee is taking another look at it.

During their recent discussion, the Subcommittee members have suggested that the statutory language might be amended to clarify the scope of the current exception to allow release of records to the public after hazardous materials transported by rail have been discharged if there is a threat to public health, safety and welfare. Before moving forward with any recommendation for changes, the Subcommittee would like additional input.

For review, I have attached proposed draft language to amend the current provision. Could you share with the appropriate DEP staff and provide feedback on the draft and whether DEP has any comments, suggestions or comments? The Subcommittee's next meeting is on November 13, 2019. Any input you can provide before then would be greatly appreciated!

Thank you for your consideration, Colleen

Colleen McCarthy Reid, Esq.
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Reference # 35-A

STATUTE: 4 MRSA §17, sub-§15, ¶C

AGENCY: State Court Administrator, Administrative Office of the Courts

CONTACT PERSON: Julie Finn

Dear Freedom of Access Act Contact Person:

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 1 through 7-A before 2019; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

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 exception provides that "the plans, arrangements and files involving court security matters are confidential." 4 MRS § 17(15)(C). The records subject to the exception include courthouse layouts and entrances; schematics of security cameras and systems; location and scheduling of judicial marshals; usage and scheduling of entry screening procedures; prisoner security and public protection; and all files and documents pertaining to same.

With respect to the information listed above in the exception, there have been no requests for security documents or plans since the last exceptions review by the RTKAC.

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

The Judicial Branch supports the continuation of this exception.

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?

There have been no problems with the application of this exception. It is clear that the records described are intended to be confidential because these records pertain to the protection of public safety. The language of the exception is sufficiently clear.

4. Does your agency recommend changes to this exception?

The Judicial Branch recommends no changes.

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

There are none.

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

No further information is needed or relevant.

Maine Revised Statutes

Title 4: JUDICIARY

Chapter 1: SUPREME JUDICIAL COURT

§17. DUTIES OF STATE COURT ADMINISTRATOR

The State Court Administrator, subject to the supervision and direction of the Chief Justice of the Supreme Judicial Court, is responsible for administration and management of the court system. The State Court Administrator shall: [1993, c. 675, Pt. C, §2 (AMD).]

1. Continuous survey and study. Carry on a continuous survey and study of the organization, operation, condition of business, practice and procedure of the Judicial Department. The State Court Administrator shall make recommendations to the Chief Justice to improve administration and management of the court system, including recommendations concerning the number of judges and other judicial personnel required for the efficient administration of justice;

[1993, c. 675, Pt. C, §3 (AMD) .]

1-A. Long-range planning. Develop and recommend to the Chief Justice long-range plans for the Judicial Department and operations of the courts;

[1993, c. 675, Pt. C, §4 (NEW) .]

2. Examine the status of dockets. Examine the status of dockets of all courts so as to determine cases and other judicial business that have been unduly delayed. From such reports, the administrator shall indicate which courts are in need of additional judicial personnel and make recommendations to the Chief Justice, to the Chief Justice of the Superior Court and to the Chief Judge of the District Court concerning the assignment or reassignment of personnel to courts that are in need of such personnel. The administrator shall also carry out the directives of the Chief Justice as to the assignment of personnel in these instances;

[1983, c. 269, §§1, 9 (AMD) .]

3. Investigate complaints. Investigate complaints with respect to the operation of the courts and relating to court and judicial security. Notwithstanding any other provision of law, complaints and investigative files that relate to court and judicial security are confidential. Nothing in this section precludes dissemination of such information to another criminal justice agency;

[2007, c. 597, §2 (AMD) .]

4. Examine statistical systems. Examine the statistical systems of the courts and make recommendations for a uniform system of judicial statistics. The administrator shall also collect and analyze statistical and other data relating to the business of the courts;

[1975, c. 408, §5-A (NEW) .]

5. Prescribe uniform administrative and business methods, etc. Prescribe uniform administrative and business methods, systems, forms, docketing and records to be used in the Supreme Judicial Court, in the Superior Court and in the District Court;

[1983, c. 269, §§2, 9 (AMD) .]

6. Implement standards and policies set by the Chief Justice. Implement standards and policies set by the Chief Justice regarding hours of court, the assignment of term parts and justices;

[1977, c. 544, §3 (AMD) .]

7. Act as supervisor of fiscal unit. Act as supervisor of the fiscal unit of the Administrative Office of the Courts and in so doing ensure that the fiscal unit:

A. Maintains fiscal controls and accounts of funds appropriated for the Judicial Department; [1995, c. 560, Pt. I, §1 (AMD).]

B. Prepares all requisitions for the payment of state money appropriated for the maintenance and operation of the Judicial Department; [1995, c. 560, Pt. I, §1 (AMD).]

C. Prepares budget estimates and submissions of state appropriations necessary for the maintenance and operation of the Judicial Department and makes appropriate recommendations; [1995, c. 560, Pt. I, §1 (AMD).]

D. Collects statistical and other data and makes reports to the Chief Justice, to the Chief Justice of the Superior Court and to the Chief Judge of the District Court relating to the expenditures of public money for the maintenance and operation of the Judicial Department; [1997, c. 24, Pt. II, §1 (AMD).]

E. Develops and implements a uniform set of accounting and budgetary accounts, based on generally accepted fiscal and accounting procedures, for the Supreme Judicial Court, for the Superior Court and for the District Court; and [1997, c. 24, Pt. II, §1 (AMD).]

F. Periodically studies the feasibility of continuing any agreement with the State Tax Assessor by which the Department of Administrative and Financial Services, Bureau of Revenue Services performs revenue-collecting services for the Judicial Department and, if it is determined that this would be in the best interests of the State, continues such an agreement. [2011, c. 1, §2 (COR).]

[2011, c. 1, §2 (COR) .]

8. Examine arrangements for use and maintenance of court facilities. Examine the arrangements for the use and maintenance of court facilities and supervise the purchase, distribution, exchange and transfer of judicial equipment and supplies thereof;

[1975, c. 408, §5-A (NEW) .]

9. Act as secretary. Act as secretary to the Judicial Conference;

[1975, c. 408, §5-A (NEW) .]

10. Submit an annual report. Submit an annual report to the Chief Justice, Legislature and Governor of the activities and accomplishments of the office for the preceding calendar year;

[1975, c. 408, §5-A (NEW) .]

11. Maintain liaison. Maintain liaison with the executive and the legislative branches and other public and private agencies whose activities impact the Judicial Department;

[1975, c. 408, §5-A (NEW) .]

12. Prepare and plan clerical offices. Prepare and plan for the organization and operation of clerical offices serving the Superior Court and the District Court;

[1983, c. 269, §§4, 9 (AMD) .]

13. Implement preservice and inservice educational and training programs. Develop and implement preservice and inservice educational and training programs for nonjudicial personnel of the Judicial Department;

[1987, c. 137, §1 (AMD) .]

14. Perform duties and attend other matters. Perform other duties and attend to other matters consistent with the powers delegated to the State Court Administrator by the Chief Justice and the Supreme Judicial Court;

[1991, c. 622, Pt. L, §4 (AMD) .]

15. Provide for court security. Plan and implement arrangements for safe and secure court premises to ensure the orderly conduct of judicial proceedings.

A. The State Court Administrator may contract for the services of qualified individuals as needed on a per diem basis to perform court security-related functions and services.

(1) For the purposes of this subsection, "qualified individuals" means municipal law enforcement officers, deputy sheriffs and other individuals who are certified pursuant to Title 25, section 2804-B or 2804-C and have successfully completed additional training in court security provided by the Maine Criminal Justice Academy or equivalent training.

(2) When under contract pursuant to this paragraph and then only for the assignment specifically contracted for, qualified individuals have the same duties and powers throughout the counties of the State as sheriffs have in their respective counties.

(3) Qualified municipal law enforcement officers and deputy sheriffs performing contractual services pursuant to this paragraph continue to be employees of the municipalities and counties in which they are employed.

(4) Qualified individuals other than municipal law enforcement officers or deputy sheriffs performing contractual services pursuant to this paragraph may not be considered employees of the State for any purpose, except that they must be treated as employees of the State for purposes of the Maine Tort Claims Act and the Maine Workers' Compensation Act of 1992. They must be paid reasonable per diem fees plus reimbursement of actual, necessary and reasonable expenses incurred in the performance of their duties, consistent with policies established by the State Court Administrator. [2011, c. 380, Pt. TT, §1 (AMD).]

B. The State Court Administrator may employ other qualified individuals to perform court security-related functions and services as court security officers.

(1) Court security officers employed under this paragraph must be certified pursuant to Title 25, section 2803-A, subsection 8-B.

(2) When on assignment for court security functions, court security officers have the same powers and duties throughout the counties of the State as sheriffs have in their respective counties.

(3) Court security officers employed under this paragraph are state employees for all purposes. [2003, c. 400, §1 (NEW).]

C. Notwithstanding any other provision of law, the plans, arrangements and files involving court security matters are confidential. Nothing in this section precludes dissemination of that information to another criminal justice agency; [2003, c. 400, §1 (NEW).]

[2011, c. 380, Pt. TT, §1 (AMD) .]

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16. Report on out-of-state travel. Submit to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs a quarterly report on out-of-state travel activity of the Judicial Department. The report must be submitted within 15 days after the end of each quarter and must include, for each individual who has been authorized to travel, the destination, purpose and cost by funding source of each trip; and

[1993, c. 675, Pt. C, §8 (AMD) .]

17. Statement of fiscal effect on judicial system. Apply the following requirements when the State Court Administrator prepares statements pertaining to the impact that executive orders and proposed legislation have upon judicial system resources, including the cost or savings to the judicial system. The State Court Administrator, in preparing such impact statements, shall make inquiry of the Chief Justice of the Superior Court, the Chief Judge of the District Court, a statewide association of prosecuting attorneys, a statewide association of criminal defense attorneys, a statewide association of trial attorneys and any other parties, as appropriate, in order to provide the most accurate estimate of the judicial branch impact of such legislation, by fiscal year.

A. The State Court Administrator shall furnish the statements to the legislative staff office designated to collect and assemble fiscal information for use of legislative committees under Title 3, section 163-A, subsection 10 and to:

(1) The Governor for judicial impact statements on executive orders; and

(2) The appropriate committee of the Legislature for the information of its members for proposed legislation. [1993, c. 675, Pt. C, §9 (NEW).]

B. The statement on a particular executive order prepared by the State Court Administrator must be included in the executive order if the executive order has a fiscal impact on the judicial system, as determined by the State Court Administrator. [1993, c. 675, Pt. C, §9 (NEW).]

C. The statement on proposed legislation prepared by the State Court Administrator must be considered in the preparation of the fiscal note included in a committee amendment or other amendment if the legislation or amendment has a fiscal impact on the judicial system, as determined by the State Court Administrator. [1993, c. 675, Pt. C, §9 (NEW).]

[2007, c. 240, Pt. YYY, §1 (AMD) .]

SECTION HISTORY
1975, c. 408, §§5-A (NEW). 1977, c. 544, §§1-6 (AMD). 1983, c. 269, §§1-4,9 (AMD). 1987, c. 137, §§1-3 (AMD). 1987, c. 776, §§1,2 (AMD). 1989, c. 324, (AMD). 1991, c. 570, §1 (AMD). 1991, c. 622, §§L4-6 (AMD). 1991, c. 885, §E3 (AMD). 1991, c. 885, §E47 (AFF). 1993, c. 675, §§C2-9 (AMD). 1995, c. 560, §I1 (AMD). 1997, c. 24, §§II1,2 (AMD). 2003, c. 400, §1 (AMD). 2007, c. 240, Pt. YYY, §1 (AMD). 2007, c. 597, §2 (AMD). RR 2011, c. 1, §2 (COR). 2011, c. 380, Pt. TT, §1 (AMD).

Maine Revised Statutes

Title 4: JUDICIARY

Chapter 1: SUPREME JUDICIAL COURT

§7. GENERAL JURISDICTION; CONTROL OF RECORDS

The Supreme Judicial Court may exercise its jurisdiction according to the common law not inconsistent with the Constitution or any statute, and may punish contempts against its authority by fine and imprisonment, or either, and administer oaths. It has general superintendence of all inferior courts for the prevention and correction of errors and abuses where the law does not expressly provide a remedy and has control of all records and documents in the custody of its clerks. Whenever justice or the public good requires, it may order the expunging from the records and papers on file in any case which has gone to judgment of any name or other part thereof unnecessary to the purpose and effect of said judgment. It may issue all writs and processes, not within the exclusive jurisdiction of the Superior Court, necessary for the furtherance of justice or the execution of the laws in the name of the State under the seal of said court, attested by any justice not a party or interested in the suit and signed by the clerk.

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MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 15-3
Docket No. Yor-14-167

SHAWN ASSELIN

v.

SUPERIOR COURT

Submitted on Briefs December 1, 2014
Decided January 22, 2015

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, and HJELM, JJ.

MEMORANDUM OF DECISION

Shawn Asselin appeals from a judgment of the Superior Court (York County, *Fritzsche, J.*) denying his requests pursuant to the Freedom of Access Act (FOAA), 1 M.R.S. §§ 400-414 (2014), for court records pertaining to *State v. Strong* (ALFSC-CR-2012-02049) and *State v. Wright* (ALFSC-CR-2012-02050). The parties' agreement on appeal that FOAA does not apply to the Superior Court renders the issue of Asselin's right to receive court records pursuant to FOAA moot and not justiciable. *See Lewiston Daily Sun v. Sch. Admin. Dist. No. 43*, 1999 ME 143, ¶ 13, 738 A.2d 1239. Even if this case were justiciable, the Superior Court correctly concluded that FOAA does not apply to the Judicial Branch. *See* 4 M.R.S. § 7 (2014) (vesting this Court with control over court records); *State v. Ireland*, 109 Me. 158, 159-60, 83 A. 453, 454 (1912) ("[T]here must be and is an inherent power in the court to preserve and protect its own records.").

The entry is:

Judgment affirmed.

On the briefs:

Shawn Asselin, appellant pro se, adopted the brief of amicus curiae Maine Freedom of Information Coalition as his brief

Sigmund D. Schutz, Esq., and Jonathan G. Mermin, Esq., Preti Flaherty Beliveau & Pachios, LLP, Portland, for amicus curiae Maine Freedom of Information Coalition

Janet T. Mills, Attorney General, and Kimberly L. Patwardhan, Asst. Atty. Gen., Office of the Attorney General, Augusta, for appellee Maine Superior Court

York County Superior Court docket number CV-2014-50
FOR CLERK REFERENCE ONLY

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738 A.2d 1239
Supreme Judicial Court of Maine.

LEWISTON DAILY SUN
v.
SCHOOL ADMINISTRATIVE DISTRICT NO. 43.

Docket No. And–99–158.
|
Argued Sept. 9, 1999.
|
Decided Oct. 18, 1999.

Synopsis

Newspaper sued school district under the Freedom of Access Act, alleging the district's decision in executive session to leave investigation of district's superintendent to the discretion of its attorney, who subsequently retained independent counsel, was final approval of an official action in violation of the Act. The Superior Court, Androscoggin County, Studstrup, J., entered judgment in favor of the school district. Newspaper appealed. The Supreme Judicial Court, Alexander, J., held that the matter was rendered moot in that all activity regarding the decision was completed when the board received and acted on the independent counsel's report.

Appeal dismissed.

Calkins, J., filed a dissenting opinion, in which Dana and Saufley, JJ., joined.

West Headnotes (8)

[1] **Education** ⇦ Meetings

Education ⇦ Appeals from decisions

Newspaper's suit against school district under the Freedom of Access Act for school board's deciding in executive session to leave investigation of the performance of the district's superintendent in the hands of the board's attorney, who subsequently retained independent counsel, was moot, insofar as all activity relating or arising from board's decision was completed with the board's receipt of the independent counsel's report, its meeting in consideration of the report, and the issuance of its letter to the superintendent stating its finding and decision regarding his performance. 1 M.R.S.A. § 405, subds. 2, 6, pars. A, E, F; 20–A M.R.S.A. § 6101, subd. 2, par. B(6).

[2] **Attorney General** ⇦ Powers and Duties

Penalties for official actions taken in executive session in violation of the Freedom of Access Act may only be sought by the Attorney General or his representative. 1 M.R.S.A. §§ 409, subd. 2, 410.

2 Cases that cite this headnote

[3] **Action** ⇦ Moot, hypothetical or abstract questions

Courts can only decide cases before them that involve justiciable controversies.

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9 Cases that cite this headnote

[4] **Action** ⇦ Moot, hypothetical or abstract questions

Justiciability requires a real and substantial controversy, admitting of specific relief through a judgment of conclusive character.

10 Cases that cite this headnote

[5] **Action** ⇦ Moot, hypothetical or abstract questions

If a case does not involve a justiciable controversy, it is moot.

9 Cases that cite this headnote

[6] **Appeal and Error** ⇦ Want of Actual Controversy

When mootness is an issue, the Supreme Court examines the record to determine whether there remains sufficient practical effects flowing from the resolution of the litigation to justify the application of limited judicial resources.

6 Cases that cite this headnote

[7] **Appeal and Error** ⇦ Want of Actual Controversy

While the mootness doctrine generally bars review of cases that do not present a justiciable controversy, there are three exceptions to the mootness doctrine which may justify addressing the merits of an issue if: (1) sufficient collateral consequences will result from the determination of the questions presented so as to justify relief; (2) the appeal contains questions of great public concern that, in the interest of providing future guidance to the bar and the public we may address; or (3) the issues are capable of repetition but evade review because of their fleeting or determinate nature.

11 Cases that cite this headnote

[8] **Declaratory Judgment** ⇦ Necessity

The Uniform Declaratory Judgments Act does not present an exception to the justiciability rule; the Act may be invoked only where there is a genuine controversy. 14 M.R.S.A. §§ 5951–5963.

3 Cases that cite this headnote

Attorneys and Law Firms

***1240** Bryan M. Dench (orally), James E. Belleau, Skelton, Taintor & Abbott, P.A., Auburn, for plaintiff.

Melissa A. Hewey (orally), Drummond Woodsum & MacMahon, Portland, for defendant.

Before WATHEN, C.J., and CLIFFORD, RUDMAN, DANA, SAUFLEY, ALEXANDER, and CALKINS, JJ.

Opinion

ALEXANDER, J.

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[¶ 1] The Lewiston Daily Sun appeals from a judgment of the Superior Court (Androscoggin County, *Studstrup, J.*) finding no violation of Maine's Freedom of Access Act, 1 M.R.S.A. §§ 401–410 (1989 & Supp.1998). The Sun contends that the court erred in determining that the Board of Directors of SAD 43 did not approve an official action when, in executive session, it accepted its attorney's recommendation for an independent investigation of complaints regarding the superintendent of the school district. Because we determine the action is moot, we dismiss the appeal.

[¶ 2] In 1997 and 1998, the Lewiston Daily Sun and the Board of Directors of SAD 43 were involved in a continuing dispute about policy and practice of SAD 43 regarding conduct of business in executive sessions. During this time period, the Board had also been receiving a number of complaints about the performance of its superintendent.

[¶ 3] On March 30, 1998, the Board held a meeting to hear complaints regarding the superintendent's job performance. As required by 20–A M.R.S.A. § 6101(2)(B)(6),[1] but over the newspaper's objection, the March 30 proceedings to receive complaints were conducted in executive session. After the March 30 meeting, the Board determined to ask individuals who had complaints regarding the superintendent to submit the complaints in writing. Fourteen written complaints were forthcoming.

[¶ 4] On April 14, 1998, the Board conducted another meeting, with its attorney present, to consider how to proceed to address complaints against the superintendent. ***1241** As required by 20–A M.R.S.A. § 6101(2)(B)(6) and as authorized by 1 M.R.S.A. § 405(6)(A), (E) & (F),[2] this meeting also was conducted in executive session.

[¶ 5] The trial court found that, at the April 14 meeting, the Board's attorney recommended an independent investigation of complaints, and the Board "agreed to follow the advice of their attorney and investigate the complaints ...." The court also found that the actual conduct of the investigation was left in the hands of the attorney, that the Board did not approve any specific individual as the investigator, and "consequently, there was no approval of a contract or expenditure of public funds made during the executive session."

[¶ 6] The next day, April 15, 1998, the Board's attorney engaged another attorney, from a different law firm, to conduct an independent investigation of the complaints regarding the superintendent. The newspaper learned of this action soon afterward and published a story regarding it the following week.

[¶ 7] On May 13, 1998, nearly a month after learning of the events at the April 14 meeting, the newspaper filed a four-count complaint asserting violations of the Freedom of Access Act. The first two counts challenged the March 30 executive session. The third count sought injunctive relief and was a general complaint against past SAD 43 executive session practices.[3] The fourth count asserted that the proceedings which resulted in the Board's attorney engaging another attorney to conduct an independent investigation amounted to an "official action" taken at the April 14 executive session. This was alleged to violate 1 M.R.S.A. § 405(2) which states that: "No ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official actions shall be finally approved at executive sessions."

[¶ 8] During May 1998, the attorney engaged to conduct the independent investigation ***1242** completed her investigation and filed a report with the Board. The report was received and considered at a May 26 Board meeting. Also on May 26, the Board sent a letter to the superintendent stating its findings and decision regarding the complaint and the superintendent's job performance. Over the superintendent's objection, this letter was made public in accordance with 20–A M.R.S.A. § 6101(2)(C).[4]

[¶ 9] Because the court had appropriately granted the newspaper's request for an expedited hearing, trial on count IV of the complaint commenced on May 27. Most of the Board members present at the April 14 meeting testified. Over the school district's objection, the record was then left open to receive testimony by deposition from Board members who were unable to be present on May 27.

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[¶ 10] After receiving briefs and giving the matter due consideration, the court determined that no "official actions" had been taken by the Board during its April 14 executive session and that, therefore, no violation of the Freedom of Access Act had occurred. At the newspaper's request, the court issued further findings in an order dated February 11, 1999. From that order, the newspaper appealed.

[1] [2] [¶ 11] The Freedom of Access Act provides a very narrow choice of remedies in circumstances where violation of its limits on executive sessions are found. Official actions determined to have been taken illegally in executive session may be declared "null and void." 1 M.R.S.A. § 409(2). Officials responsible for such actions may also be subject to civil penalties under 1 M.R.S.A. § 410. However, such penalties may only be sought by the Attorney General or his representative. *See Scola v. Town of Sanford,* 1997 ME 119, ¶ 7, 695 A.2d 1194, 1195. Thus, the only remedy which could result if the newspaper's appeal were successful would be a declaration that the Board counsel's engagement of an independent attorney to conduct an investigation of the superintendent was null and void. All actions relating to or arising from that activity were completed with the Board's receipt of the independent attorney's report, its action on it and issuance of its letter to the superintendent on May 26, 1998. When trial commenced in this matter, it is doubtful that there was any available relief that the court could grant on the newspaper's complaint had it ruled for the newspaper. The possibilities for relief have eroded with the passage of time.

[3] [4] [¶ 12] Courts cannot issue opinions on questions of fact or law simply because the issues are disputed or interesting. Courts can only decide cases before them that involve justiciable controversies. " 'Justiciability requires a real and substantial controversy, admitting of specific relief through a judgment of conclusive character ....' " *Halfway House, Inc. v. City of Portland,* 670 A.2d 1377, 1379 (Me.1996) (quoting *Hatfield v. Commissioner of Inland Fisheries,* 566 A.2d 737, 739–40 (Me.1989) *and Connors v. International Harvester Credit Corp.,* 447 A.2d 822, 824 (Me.1982)).

[5] [¶ 13] If a case does not involve a justiciable controversy, it is moot. Here, there is no specific relief which the trial court could have ordered or which this Court can order.

> For public policy reasons deeply imbedded in the history and nature of courts, the Law Court decides only questions of live controversy, and not ***1243** hypothetical, abstract or moot questions. The demands upon this Court are too heavy for it to commit any of its limited resources of time and effort to reviewing the legal correctness of action below at the behest of a person to whom our decision in no alternative will make any real difference.

Halfway House, Inc., 670 A.2d at 1380 (quoting *Sevigny v. Home Builders Association,* 429 A.2d 197, 201 (Me.1981)).

[6] [¶ 14] When mootness is an issue, we examine the record to determine " 'whether there remain sufficient practical effects flowing from the resolution of [the] litigation to justify the application of limited judicial resources.' " *Bureau of Employee Relations v. Labor Relations Board,* 655 A.2d 326, 327 (Me.1995) (quoting *State v. Irish,* 551 A.2d 860, 861–62 (Me.1988)).

[¶ 15] In Freedom of Access Act litigation, we have addressed the merits of an issue that was resolved prior to hearing because public records were disclosed to the plaintiff only after suit was filed and because the plaintiff, as prevailing party on a Freedom of Access issue, was entitled to recovery of costs. *See Cook v. Lisbon School Committee,* 682 A.2d 672, 680 (Me.1996). However, *Cook* presented very different issues from this case. In *Cook,* the plaintiff, in litigation which raised many issues, sought and was originally denied access to public documents. After filing suit, the documents at issue were turned over to Cook. Although this aspect of the larger controversy had been resolved by the time it reached the Superior Court, we held that:

> It would be contrary to the purposes of the Freedom of Access Act to permit a governmental body to avoid the payment of court costs for a violation of the Act merely by producing the improperly retained

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documents after the requesting party had undertaken the additional time and expense of filing an appeal of the denial in the Superior Court. *Id.*

[¶ 16] There is no such entitlement to costs or any other remedy here. Suit was filed nearly a month after disclosure of the events at the executive session, and the great bulk of the litigation in which the newspaper engaged; trial in the Superior Court, development of the record and briefing in the Superior Court, and this appeal occurred after any opportunity for relief had passed. Because there is no "real and substantial controversy, admitting of specific relief through a judgment of conclusive character," *Halfway House, Inc.*, 670 A.2d at 1379, this case is moot.

[7] [¶ 17] While the mootness doctrine generally bars review of cases that do not present a justiciable controversy, there are three exceptions to the mootness doctrine which may justify addressing the merits of an issue if:

(1) Sufficient collateral consequences will result from the determination of the questions presented so as to justify relief;

(2) the appeal contains questions of great public concern that, in the interest of providing future guidance to the bar and the public we may address; or

(3) the issues are capable of repetition but evade review because of their fleeting or determinate nature.

Halfway House, Inc., 670 A.2d at 1380; *Foster v. Bloomberg*, 657 A.2d 327, 329 n. 1 (Me.1995); *In re Faucher*, 558 A.2d 705, 706 (Me.1989). None of these exceptions to the mootness doctrine justify judicial intervention in this case. In fact, prudential considerations of judicial restraint argue against our addressing the merits of the issue presented here.

[¶ 18] On sensitive issues of complaints about employees and employee discipline, there is a delicate tension between the confidentiality mandate of 20–A M.R.S.A. § 6101(2)(B) and the limitations on executive sessions imposed by 1 M.R.S.A. § 405. The issue of the application of section 6101 was not addressed in the trial court's rulings or in the newspaper's briefing of the ***1244** issues to the trial court or this Court. Ruling on the issue of applicability of the limitations on executive sessions in section 405, in a case where there remain no practical consequences that can flow from such a ruling and where the record is undeveloped regarding the competing confidentiality mandate of section 6101, would be particularly inappropriate. In looking at the exceptions to the mootness doctrine, we could not reasonably provide future guidance to the public and the bar on this issue by ruling here and, beyond those consequences which had already occurred by May 26, 1998, no other collateral consequences can flow from the challenged Board actions or rulings by this Court.

[¶ 19] At oral argument, counsel for the newspaper asserted that ruling is needed because their ongoing controversy with SAD 43 indicates that the issue of confidentiality of executive sessions is one that is capable of repetition. However, each such event is heavily fact specific. Notably, one of the executive sessions identified as creating the basis for repetition of the problem is the March 30, 1998, executive session to hear complaints. Hearing complaints in executive session appears to have been mandatory if the provisions of 20–A M.R.S.A. § 6101(2)(B)(6) were to be respected.

[8] [¶ 20] The newspaper's complaint includes a claim under the Declaratory Judgments Act, 14 M.R.S.A. §§ 5951–5963 (1980 & Supp.1998). However, the Uniform Declaratory Judgments Act does not present an exception to the justiciability rule. It may be invoked only where there is a genuine controversy. *See Patrons Oxford Mut. v. Garcia*, 1998 ME 38, ¶ 4, 707 A.2d 384, 385; *Wagner v. Secretary of State*, 663 A.2d 564, 567 (Me.1995).

[¶ 21] When tried this case was moot, and on appeal this case is moot.

The entry is:

Appeal dismissed.

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CALKINS, J., with whom DANA and SAUFLEY, JJ., join, dissenting.
[¶ 22] I respectfully dissent.

[¶ 23] The appeal is not moot.[5] " 'The test for mootness is whether there remain sufficient practical effects flowing from the resolution of the litigation to justify the application of limited judicial resources.' " *Maine Civil Liberties Union v. City of South Portland,* 1999 ME 121, ¶ 8, 734 A.2d 191, 194 (quoting *Nugent v. Town of Camden,* 1998 ME 92, ¶ 6, 710 A.2d 245, 247).

[¶ 24] There remains a live case or controversy between the Lewiston Daily Sun and the Board of Directors of SAD 43 as to whether an official action was taken at the executive session of the Board on April 14, 1998. Even when an executive session is permitted under the Freedom of Access Act, 1 M.R.S.A. §§ 401–410 (1989 and Supp.1998), "official actions" may not be taken during executive sessions. *See* 1 M.R.S.A. § 405(2) (1989). "Official action" is not defined in the statute. Official actions taken during executive sessions are illegal and are subject to an order that they are null and void. *See* 1 M.R.S.A. § 409(2) (1989).

[¶ 25] The action of the Board in this case, as found by the trial court, was the reaching of a consensus or agreement by the Board members during the executive session to investigate further the complaint regarding the superintendent.[6] The Board's agreement resulted in the hiring ***1245** of a second attorney to do the investigation. The second attorney made a report to the Board and billed SAD 43 approximately $10,000 for her services. There is a case or controversy as to whether this action taken by the consensus of the Board was the type of "official action" that is prohibited during executive session. If it is an official action, it can be declared null and void pursuant to section 409(2). The practical effect of an order declaring the action null and void is to undo it, which in this case would be to invalidate the hiring of the second attorney and void the authorization to pay her for her services. This would require the Board to revisit the issue in a manner that conforms to the letter and spirit of the Freedom of Access Act. This is a sufficient practical effect to avoid a mootness dismissal.

[¶ 26] The Court concludes that because the second attorney was in fact hired and completed her report, which the Board acted upon, there is now no practical relief that can be granted. This conclusion is contrary to our holdings in *Cook v. Lisbon School Committee,* 682 A.2d 672 (Me.1996) *and Campbell v. Town of Machias,* 661 A.2d 1133, 1135 (Me.1995). In those cases we refused to find that the governmental entities' actions in providing the requested records to the plaintiffs after the court action was filed made the lawsuits moot. This appeal is not rendered moot simply because the official action was completed by the time the trial was held.

[¶ 27] By holding that this appeal is moot, we are telling governmental entities that as long as the work authorized by their actions in executive session is completed, they cannot be sanctioned for taking such actions unless the Attorney General seeks the statutory penalties in a civil violation complaint. This result substantially debilitates the Freedom of Access Act. Because I conclude that the statutory remedy of declaring illegal actions null and void is sufficient to raise a justiciable controversy, I would reach the merits of this appeal.

All Citations

738 A.2d 1239, 138 Ed. Law Rep. 1118, 1999 ME 143

Footnotes

1 **§ 6101. Record of directory information**

2. Access. The following provisions apply to access of employee records.

....

B. Except as provided in paragraph A, information in any form relating to an employee or applicant for employment, or to the employee's immediate family, shall be kept confidential if it relates to the following:

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....

(6) Complaints, charges of misconduct, replies thereto and memoranda and other materials pertaining to disciplinary action;

....

20–A M.R.S.A. § 6101.

2 **§ 405. Executive sessions**

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions.

....

6. Permitted deliberation. Deliberations may be conducted in executive sessions on the following matters and no others:

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

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

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

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

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

....

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

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute.

1 M.R.S.A. § 405.

3 The first three counts of the complaint were not considered further by the Superior Court, and are not at issue on this appeal, because they were out of time as filed more than 30 days after the events complained of. M.R. Civ. P. 80(b) requires that such actions "shall be filed within 30 days after notice of any action or refusal to act of which review is sought ...."

4 **§ 6101. Record of directory information**

....

2. Access. The following provisions apply to access of employee records.

....

C. Any written record of a decision involving disciplinary action taken with respect to an employee by the governing body of the school administrative unit shall not be included within any category of confidential information set forth in paragraph B.

20–A M.R.S.A. § 6101(2)(C).

5 Neither party raised or briefed the issue of mootness in either the Superior Court or this Court. The Superior Court did not discuss mootness although the posture of the case is no different in this Court than it was at the time the record was closed in the Superior Court.

6 The trial court made a legal conclusion that an "official action" was not taken at the executive session. The court, however, expressly found: "The consensus [of the Board], without any formal vote, was to follow the advice of their attorney and have further investigation conducted."

End of Document

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109 Me. 158
Supreme Judicial Court of Maine.

STATE
v.
IRELAND et al.

June 4, 1912.

Synopsis
Exceptions from Supreme Judicial Court, Aroostook County.

Luther J. Ireland and another were convicted of adultery, and bring exceptions. Exceptions overruled.

West Headnotes (3)

[1] **Courts** ⇦ Making and custody
Records ⇦ Custody, care, and use in general
Records ⇦ Nature, grounds, and rights of restoration
At common law and independent of any statute, courts have inherent power to preserve their own records and to substitute copies of lost records.

1 Cases that cite this headnote

[2] **Indictments and Charging Instruments** ⇦ Return, Filing, and Recording
An indictment duly found, returned, and filed becomes a part of the records of the court.

[3] **Indictments and Charging Instruments** ⇦ Loss or destruction
Copy of a lost or mislaid indictment may be substituted by order of the trial court as soon as the loss is discovered and before the case is submitted to the jury, but omission to do so before conviction is not fatal; the substitution being properly made upon satisfactory evidence at a forthcoming nisi prius term.

3 Cases that cite this headnote

***454** Argued before WHITEHOUSE, C. J., and CORNISH, KING, BIRD, HALEY, and HANSON, JJ.

Attorneys and Law Firms

Perley C. Brown, Co. Atty., of Presque Isle, for the State. Powers & Archilald, of Houlton, for defendants.

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Opinion

CORNISH, J.

An indictment for adultery was duly found and returned against the defendants by the grand jury at the April term, 1911, of the Supreme Judicial Court for Aroostook county and placed in the files of the court by the clerk. Upon this indictment the respondents were arraigned and severally pleaded not guilty. A jury was thereupon impaneled, the indictment was read to the jury, and the case proceeded to trial. At some later stage of the trial and before the case was finally submitted to the jury, it was discovered that the indictment had disappeared, whether it was mislaid or lost or accidentally destroyed or abstracted is not known. No copy was substituted. In the course of the charge the presiding justice instructed the jury, that, although the indictment had disappeared and could not be taken to the jury room with them, yet inasmuch as the respondents had been arraigned upon it and had pleaded to it, and it had been read to the jury in presenting the respondents for trial, he should permit them to retire and return a verdict in its absence.

The jury subsequently returned a verdict of guilty. Counsel for respondents before the verdict was taken seasonably objected to receiving any verdict in the absence of the indictment, and also moved the discharge of the respondents for the same reason. The presiding justice, however, received the verdict and subsequently pronounced sentence upon one of the respondents while the case against the other was continued for sentence. The case is before the court on the respondents' exceptions to these rulings.

This presents a question of novel impression in this state. What are the powers of the court in case an original indictment is missing from the files? Is it indispensable to the validity of a sentence that the indictment should be among the records at the time sentence is pronounced? This is an important question because the rights not only of the accused but of the public are affected by its answer.

[1] [2] It must of course be conceded that an indictment duly found by the grand jury, duly returned to court and filed by the clerk, becomes at once a part of the records of the court, and there must be and is an inherent power in the court to preserve and protect its own records. Shepley, J., in speaking of civil actions, and we see no reason why the words would not apply with court force to criminal causes, said: "Every court of record has power over its own records and proceedings to make them conform to its own sense of justice and truth so long as they remain incomplete and until final judgment has been entered." Lothrop v. Page, 26 Me. 119.

The record itself is but the outward evidence of a cause to which the jurisdiction of the court has attached. That jurisdiction cannot be taken away by the mere loss or abstraction of a part of the record. Rather the jurisdiction remains and the missing record should be supplied or substituted in such manner as the court itself may prescribe.

As the Supreme Court of Alabama said in Bradford v. State, 54 Ala. 230, where the indictment was lost after plea had been entered and the trial had begun: "Courts of record, independent of express legislation, have power to substitute any of the files or records which may be lost or destroyed. The power is a matter of necessity, whether the loss occurs while the cause is in fieri, before it has progressed to final judgment, or after such judgment has been rendered, and whether the loss is of the whole record or of papers which when it is finally made up will constitute a part of it."

This succinct statement of a fundamental principle we adopt as indispensable in the administration of criminal law. If the court does not possess the power to authorize the substitution of a lost indictment, the rights of the public are at the mercy not merely of accident but of design and the destruction of a courthouse with its contents by fire is equivalent to a jail delivery.

The decisions in other states are not in entire harmony, but it can safely be asserted that the overwhelming weight of authority has so solved the problem as to protect all the legal rights of the accused on the one hand and of the public on the other without allowing the accused to escape his deserts either through accident or artifice.

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In some states statutes have been passed expressly conferring this power in criminal cases, as in Arkansas, Miller v. State, 40 Ark. 488; Louisiana, State v. Heard, 49 La. Ann. 375, 21 South, 632; Oklahoma, Harmon v. Territory, 9 Okl. 313, 60 Pac. 115; and in Texas, Schultz v. State, 15 Tex. App. 258, 49 Am. Rep. 194.

In other states the court, while acknowledging the inherent common–law power, have construed statutes apparently originally designed to cover substitution in civil actions only to include criminal cases as well. See State v. Gardner, 13 Lea (Tenn.) 134, 49 Am. Rep. 660; Roberson v. State, 45 Fla. 94, 34 South, 294.

In many jurisdictions, however, the courts have assumed and exercised the power of substitution independent of any statute.

In Ganaway v. State, 22 Ala. 772, a majority of the court denied the power of the ***455** trial court to substitute an indictment before arraignment and trial. But in the later case of Bradford v. State, 54 Ala. 230, the indictment was lost after arraignment and plea, and the substitution of a copy during the trial was permitted.

In the early case of State v. Harrison, 10 Yerg. (Tenn.) 542, it was held that a judge could not supply a lost indictment upon affidavits of others and independent of his own recollection, but this decision was overruled in the later case of State v. Gardner, 13 Lea (Tenn.) 134, 49 Am. Rep. 660, in which it was held that the substitution might be made upon affidavits independent of the recollection of the judge. In that case 10 indictments were stolen from the clerk's files after arrest but before trial.

Without quoting at length further from decisions in other states, suffice it to say that the inherent power of the court at common law has been accepted as authority for substitution in the following states:

In South Dakota, State v. Circuit Ct., 20 S. D. 122, 104 N. W. 1048 (1905).

In Mississippi, McGuire v. State, 76 Miss. 504, 25 South. 495 (1899).

In West Virginia, State v. Strayer, 58 W. Va. 676, 52 S. E. 682 (1906), where the indictment was lost after verdict of guilty rendered.

In Pennsylvania, Commonwealth v. Becker, 14 Pa. Super. Ct. 430.

In Iowa, State v. Rivers, 58 Iowa, 102, 12 N. W. 117, 43 Am. Rep. 112; State v. Stevisger, 61 Iowa, 623, 16 N. W. 746; State v. Shank, 79 Iowa, 47, 44 N. W. 241 (1890).

In Indiana, Buckner v. State, 56 Ind. 208.

In Missouri, State v. Simpson, 67 Mo. 647; State v. Paul, 87 Mo. App. 47 (1900); and State v. McCarver, 194 Mo. 717, 92 S. W. 684 (1906).

The contrary view is held in Bradshaw v. Commonwealth, 57 Va. 507, 86 Am. Dec. 722, but it has not been generally followed, and the citations above given abundantly warrant the general doctrine laid down by text–writers that a copy may be substituted independent of an authorizing statute. 1 Bish. Crim. Proc. § 1400; 22 Cyc. p. 221; 10 Ency. Pl. & Pr. p. 417.
[3] But the respondents further contend that, even if a copy might have been substituted when the loss was discovered, none was in fact substituted and a verdict could not legally be rendered or sentence passed without either the original indictment or a copy on the files of the court. Why not? No legal or constitutional right of the respondents has been sacrificed or invaded.

The Constitution of Maine, art. 1, § 7, provides that, "No person shall be held to answer for a capital or infamous crime unless on a presentment or indictment of a grand jury," with certain exceptions immaterial here. This provision has been fully complied with. The indictment had been returned by the grand jury and to it the respondents had pleaded and placed themselves on trial as the docket entries prove, thus admitting its verity. Their next constitutional right was to the verdict of a jury duly impaneled and sworn which they had accepted as their tribunal. This right was fully given them.

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It was a right that could not be taken from them by the mere loss or abstraction of a paper, and the state had the corresponding right that, notwithstanding such loss or abstraction, the case should proceed and a judgment of conviction or acquittal be rendered. These rights are too sacred to be impaired by the accidental loss or willful abstraction of papers during the trial, and the mere fact that the jury did not have the indictment with them in the jury room could not nullify all that had gone before. The issue had already been made up. The jury knew the nature of the offense charged and the parties involved. The presence or absence of the indictment itself could not aid or hinder them in reaching their verdict. It did not in this case. Such meritless technicalities should not be permitted to thwart the adminstration of criminal justice.

The remaining constitutional right vouch–safed to the accused is that they shall not be put twice in jeopardy for the same offense. This can be secured by substituting a copy for the original. Such copy can be readily prepared by the county attorney who drafted the original. The notes of the stenographer at the trial will furnish all necessary data as to place, time, and parties, so that no possible error can creep in. Such a copy duly certified by the county attorney as such can by order of court at the next term be placed on file in lieu of the original and the rights of the respondents be thereby safely guarded.

It would have been proper for the county attorney to ask for such substitution as soon as the loss was discovered, but the omission to do so at that time was not fatal. Substitution can be made by the court upon satisfactory evidence at the coming term, and the rights of the respondents on the one hand and of the public on the other be fully protected.

The rulings of the presiding justice being free from exceptionable error, the entry must be exceptions overruled.

All Citations

109 Me. 158, 83 A. 453, 41 L.R.A.N.S. 1079, Am.Ann.Cas. 1913E,604

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STATE OF MAINE
SUPREME JUDICIAL COURT

ADMINISTRATIVE ORDER JB-05-20 (A. 5-19)

PUBLIC INFORMATION AND CONFIDENTIALITY

Effective: May 1, 2019

This order amends JB-05-20 (A. 9-17), signed and effective on September 25, 2017.

I. SCOPE AND PURPOSE

This order governs the release of public information and the protection of confidential and other sensitive information within the Judicial Branch. It is the policy of the Judicial Branch to provide meaningful access to court dockets, case files, and related information to the public; to appropriately and consistently respond to nonroutine requests by the public for information; to protect information which is designated as confidential from inadvertent or inappropriate disclosure and to assure that sensitive information is only communicated to appropriate recipients outside of the Judicial Branch. This order applies to all case types, including civil and criminal cases.

II. DEFINITIONS

For purposes of this order, the following terms have the following meanings:

A. "Administration of civil justice" has the same meaning as is defined by 16 M.R.S. §§ 632 and 803(1).

B. "Administration of criminal justice" has the same meaning as is defined by 16 M.R.S. § 703(1) and/or 16 M.R.S. § 803(2).[1]

C. "Administration of juvenile justice" has the same meaning as is defined by 16 M.R.S. § 803(3).

[1] "M.R.S." refers to the Maine Revised Statutes. The title number precedes "M.R.S." and the section number is provided after the section symbol (§).

D. "Aggregate information" means a request for information that is not maintained in the requested form and that would have to be assembled or derived from other records.

E. "AOC" means the Administrative Office of the Courts.

F. "At and by courts" means information or records of public judicial proceedings that are maintained at a clerk's office or transferred to the Records Center or other records storage under the control of a clerk's office.

G. "Clerk's office" means the office of the Clerk of the Law Court or of any Superior or District Court or any Consolidated Clerk's Office.

H. "Confidential court information" means:

1. the information or a portion of the information is made confidential by statute, policy, Administrative Order[2] or rule; or

2. the information or a portion of the information was impounded or sealed by a judge or is the subject of a pending motion or other request for impoundment or sealing;[3] or

3. the information is contained in judge's, magistrate's, clerk's, or law clerk's notes; judge's, magistrate's, clerk's, or law clerk's drafts; communications between judges, magistrates, law clerks, or clerks regarding the decision of cases; or other judicial working papers; or

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[2] For example, Access to Social Security Numbers and Qualified Domestic Relations Orders ("Quadros"), Me. Admin. Order JB-09-2 (effective April 1, 2009), restricts access to Social Security Numbers and QUADROS.

[3] In some limited circumstances, all information about a case may be impounded, specific information within a case, such as the identity of a party, or the fact that an impoundment motion was made and granted may be impounded or sealed. In these circumstances, judges need to make the scope of the impoundment order clear to the clerk's office. The clerk's office and OIT staff must take appropriate steps to ensure that the impounded information is not reflected in publicly available materials such as dockets, indices, and displays at public access terminals.

4. the information is contained in or relates to a pending request for an outstanding search warrant, arrest warrant, or other document that contains confidential law enforcement information;[4] or

5. psychiatric and child custody reports which shall be impounded upon their receipt by the clerks subject to the following rules:

   (a) The clerks shall notify counsel of record or self-represented parties of the receipt of any such reports and permit counsel or self-represented parties to inspect such reports at the clerks' offices; in criminal cases the clerks shall also make available to counsel or self-represented parties copies of the same if they have not otherwise received copies; and

   (b) Such reports may in whole or in part be released from impoundment by specific written authorization of the court under such conditions as the court may impose; and

   (c) Such reports may be used in evidence in the proceeding in connection with which it was obtained.

6. The information contained in reports of cellphone or other electronic device location information filed with the Kennebec County Consolidated Clerk's Office pursuant to the provisions of 16 M.R.S. § 650 unless otherwise ordered released by the court.

7. Any information that has been derived from confidential court information or files and then aggregated into a record by the Court. The aggregated record is deemed confidential.

I. "Confidential criminal history record information" has the same meaning as is defined by 16 M.R.S. §§ 632(2-A) and 703(2).

[4] This provision does not prohibit the release of executed or unexecuted warrants for failure to appear or failure to pay fines, fees, or restitution.

J. "Criminal history record information" has the same meaning as is defined by 16 M.R.S. §§ 632(3) and 703(3).

K. "Criminal justice agency" has the same meaning as is defined by 16 M.R.S. §§ 632(4), 703(4), and 803(4).

L. "Disposition" has the same meaning as is defined by 16 M.R.S. §§ 632(6) and 703(5).

M. "Dissemination" has the same meaning as is defined by 16 M.R.S. §§ 703(6) and 803(5).

N. "Executive order" has the same meaning as is defined by 16 M.R.S. §§ 632(7) and 703(7).

O. "Intelligence and investigative record information" has the same meaning as is defined by 16 M.R.S. § 803(7).

P. "Judge" means a Justice of the Supreme Judicial Court or Superior Court, a Judge of the District Court, or the Chief Justice or Judge of those courts, or a Family Law Magistrate.

Q. "Noncriminal justice agency" means a governmental entity or agency which is not engaged in the administration of the criminal justice system.

R. "Nonroutine request" means a request for information that is not contained in case files, dockets, indices, lists, or schedules, or a request that seeks confidential, impounded, or sealed information.

S. "OIT" means the Office of Information Technology within the Administrative Office of the Courts.

T. "Public criminal history record information" has the same meaning as is defined by 16 M.R.S. §§ 632(11-A) and 703(8).

U. "Public court information" means any information that is not confidential criminal history record information or confidential court information.

V. "Routine request" means a request for information that is contained in case files, dockets, indices, lists, or schedules, or a request that does not seek confidential, impounded, or sealed information.

W. "SBI" means the State Bureau of Identification.

X. "Scheduling information" means information listing or pertaining to the scheduling of a judicial activity related to a pending case.

Y. "Service Center" means the Judicial Branch Service Center. The Service Center provides multiple centralized services, including responding to customer telephone calls and other assigned tasks historically performed in Clerks' Offices.

Z. "Standing request" means a request for information or record or a type of information or record that is intended to be a continuing request, with supplementary responses as new information becomes available.

AA. "State" has the same meaning as is defined by 16 M.R.S. §§ 632(12), 703(9), and 803(8).

BB. "Statute" has the same meaning as is defined by 16 M.R.S. §§ 632(13), 703(10), and 804(9).

III. RECORDS MAINTAINED AT OR BY COURTS

A. In Person or Mail Requests

1. Information and records relating to cases that are maintained in case files, dockets, indices, lists, or schedules by and at the District, Superior, or Supreme Judicial Courts are generally public and access will be provided to a person who requests to inspect them or have copies made by clerk's office staff unless the information or a portion of it is confidential as provided in Part II, ¶ H.

Clerks and/or Clerical Staff at the Service Center will endeavor to provide the information requested using the following timetable:

1-5 names within 5 working days;
6-10 names within 30 working days;
11-15 names within 45 working days;
16-20 names within 60 working days; and
21+ names to be determined by the Clerk and/or Senior Service Center Associate

A person making a request for information for any names or cases for which that person is a party will not be charged a research fee as provided in the Judicial Branch fee schedule.

2. Records that are confidential or that contain information designated as confidential court information, materials that have been impounded or sealed by a judge, materials that are subject to a pending motion or other request for impoundment or sealing; or judge's, magistrate's, and law clerk's notes and workpapers will be placed in a separate sealed envelope in the file, and the file or record must have a label conspicuously affixed to it indicating that the file or record contains confidential materials.[5] If a request for access is made concerning the nonconfidential portion of a record, the clerk will remove the confidential materials before making the record available for inspection. Requests for inspection of confidential materials or for review of materials that contain information designated as confidential that are contained within a public case file must be made by motion with notice to all parties of record as provided in the Maine Rules of Civil Procedure or Maine Rules of Criminal Procedure.

[5] Clerks are encouraged to use a separate filing system for confidential materials, in which the materials are separately kept from the case files, where space and operational considerations permit such a system.

Judges may also maintain a confidential filing system for notes and workpapers, or may destroy them at the conclusion of the case.

3. Individual adult public criminal history information contained in public court records maintained by and at a clerk's office are open to public inspection and copying, and will be supplied if the records or indices are not located in a publicly accessible place.

4. If there is any doubt whether information is confidential information, Judicial Branch personnel should proceed cautiously in responding to the information request and provide access to information only when it is clearly appropriate to do so, or after consultation with a judge or the Manager, Clerk of Courts. Nonroutine requests should be referred to the State Court Administrator or designee.

5. Requests for information that would require clerk's office staff to perform research or provide aggregate information or respond to standing requests must be declined, unless the Chief Judge or Justice has preauthorized a response. The requestor should be informed that the requestor may conduct the research by examining the dockets themselves, or by using the public access terminal where one is available.

6. Requests for data or information that would require administrative or technical staff to perform substantial new research, program new reports, evaluate data, or respond to standing requests must be declined, unless the Chief Judge or Justice has preauthorized a response. Requests to provide "data dumps," "bulk data," or large quantities of case details will be denied.

7. Admitted and proffered exhibits, including both documents and physical items, are part of the public record of a case, and while in the custody of the clerk's office, are available for inspection and copying unless they are otherwise confidential. Exhibits submitted to the clerk, but never proffered or admitted, will be made available to the submitting party, but are subject to inspection or copying while in the custody of the clerk's office. Public copying or inspection of admitted and proffered exhibits as well as exhibits submitted to the clerk but never proffered or

admitted may be limited by the terms of a protective order or by a judicial order or administrative order governing the handling of contraband or dangerous materials.

8. Juror questionnaires, the records and information used in connection with the juror selection process, the names drawn, and juror seating charts are confidential and may not be disclosed to any person, except by judicial order. During the period of service of jurors and prospective jurors, the names and juror questionnaires of the members of the jury pool are confidential and may not be disclosed, except to the attorneys and their agents and investigators and self-represented parties.

   Once the period of juror service has expired, a person may file a written request for disclosure of the names of the jurors and an affidavit stating the basis for the request. Post-service juror contact information disclosure is allowed only with the approval of a judge and only in the very narrow circumstances authorized by 14 M.R.S. § 1254-A.

B. Telephone Requests for Information

1. Due to the risks of misunderstanding, misinterpretation, or incorrect quotation of oral information, it is the policy of the Judicial Branch to carefully limit the release of information by telephone. Clerks' office staff may respond to telephone requests for information **only** in the following circumstances:

   (a) Information about the status of a particular case may be given to parties, counsel, or other noncriminal justice governmental agencies with an interest[6] in that matter and to members of the bar to facilitate the assignment of cases.

[6] If a clerk has reason to doubt that the caller is a party or party's counsel, the clerk should call back at the telephone number kept on file for that party or counsel. Agencies with an interest in a matter include, for example, Probation and Parole, the Department of Corrections, or other law enforcement agencies.

(b) Scheduling information on nonconfidential cases may be released to any caller.

(c) Information may be given to criminal justice agencies as follows:

(i) Police emergencies or other urgent legitimate needs. If information is needed to respond to an emergency or for another situation in which an immediate response is needed, such as a patrol stop, border check, suspect in custody, check of imposed bail or bail conditions, pretrial release or sentencing conditions, including conditions of probation, filing, administrative release or deferred disposition, or a check of pending charges against a person under investigation, court personnel may provide the requested information by telephone, with a caution that it is partial information and that it only reflects the information maintained at that court. Clerks should endeavor to verify the identity of the caller before releasing the information.

(ii) Other criminal justice agency requests. Court personnel should evaluate the nature of the requested information and the need for a quick response against the other workload considerations in the court. The general rule is not to respond by phone, but to refer the requestor to SBI or to tell the requestor to get the information when next in court. However, for one-time requests when common sense dictates it, court personnel may provide the information over the telephone.

(d) Information may be given to noncriminal justice governmental agencies (i.e., Health and Human Services, Department of Environmental Protection, military recruiters, etc.) in limited circumstances. These requests, in general, should not be responded to over the phone and should be responded to in the same manner

as other telephone requests. However, all situations cannot be anticipated and clerks will sometimes be presented with an urgent need for information by a noncriminal justice agency (i.e., a request from the Department of Health and Human Services about a criminal record or a Protection From Abuse or Harassment record when they are in the process of preparing an emergency child protective matter). In those limited situations, clerks have the discretion to respond by telephone, with the caution that the provided information is partial and reflects only the information maintained at that court.

2. Telephone requests for comprehensive criminal history record information must be referred to the State Bureau of Investigation pursuant to 16 M.R.S. § 704.

3. Telephone requests for traffic record information must be referred to the Bureau of Motor Vehicles, which maintains records of motor vehicle violations and offenses pursuant to 29-A M.R.S. § 2607.

4. Telephone requests for Fish and Wildlife offense information should be referred to the Maine Warden's Service, which maintains records of violations and criminal offenses pursuant to Title 12 of the M.R.S.

5. Telephone requests for Marine Resources offense information should be referred to the Department of Marine Resources, which maintains records of violations and criminal offenses pursuant to Title 12 of the M.R.S.

6. In order to eliminate the dangers of misunderstanding or inaccuracy, telephone requestors of other information about a specific case should be told to make a written inquiry or to visit the court to examine the records themselves.

7. Telephone requests for information that would require clerk's office staff to perform research or provide aggregate

information and standing requests for categories of information must be declined, and the requestor informed that the requestor may conduct the research at the clerk's office.

C. Recordings of Court Hearings

1. Requests for duplicates of recordings of court hearings are governed by Administrative Order JB-05-14 as amended and M.R. App. P. 5.

2. When an Official Court Reporter takes the record at a court proceeding, his/her record is the primary and official court record, regardless of whether a simultaneous electronic recording is made at that time, unless otherwise ordered by the court in extraordinary circumstances.

   If a simultaneous electronic recording is made, it will serve as a backup to the official record and will not be made available to any person or party outside of the Judicial Branch.

   If the primary and official court record taken by an Official Court Reporter becomes unavailable, then the electronic record that was taken simultaneously will become the official record, unless otherwise ordered by the court in extraordinary circumstances.

IV. RECORDS MAINTAINED AT OR BY THE ADMINISTRATIVE OFFICE OF THE COURTS OR THE OFFICE OF INFORMATION TECHNOLOGY

A. Routine Information Requests

Staff members may respond to routine requests for nonconfidential information if the information can be provided without a material expenditure of staff time to compile or aggregate the requested information and if the request does not involve personnel information or other sensitive or controversial issues. If the employee is unsure as to the nature of the request or the permissibility of release of the information, he or she should proceed cautiously in responding to the information request and provide access to information only when it is clearly appropriate to do so, or after consultation with his or her

supervisor. Nonroutine requests should be referred to the State Court Administrator or designee.

The staff member shall notify the State Court Administrator of the nature of the request and the type of information provided.

B. Nonroutine Information Requests

A staff member shall consult with the State Court Administrator or designee if

1. a formal request for information is made,

2. responding to a request will require a material expenditure of staff time, or

3. a request involves confidential information or information that the receiving staff member considers potentially sensitive or controversial in light of the identity of the requestor, the content of the information, or the nature of the request.

C. Routine Personnel Information Requests

Personnel information is not generally available to the public. An employee may request information from that employee's personnel file or employment records by contacting the Director of Human Resources. An employee may also authorize a third party to verify employment or to obtain specified information from the employee's file or records through the Director of Human Resources.

A union may request information about an employee or group of employees, to the extent authorized by statute or an applicable collective bargaining agreement, from the Director of Human Resources. The Director shall provide the requested information unless the request is not properly authorized, or violates the affected employee's rights to privacy. In those circumstances, the Director shall refer the request as provided in paragraph A.

Requests for information pertaining to an employee or group of employees, including performance or statistical information, from requestors other than the employee or an authorized union are nonroutine requests subject to referral under paragraph A.

D. Fees

Fees will be charged for the provision of documents or information in accordance with applicable statutes, court rules, administrative orders, court policy, and fee schedules, where they apply. If there is no applicable statute, court rule, administrative order, court policy, or fee schedule which applies to a specific document or record, inspection of the document shall be provided at no charge and copies of documents shall be made and provided at the rate then in effect as set by the Fee Schedule, JB-05-26, as amended.

Requestors may use cameras to make copies of court records as provided in Administrative Order JB-05-15, *Cameras And Audio Recording In The Courts*, as amended. Copies made in accordance with JB-05-15 are not subject to fees.

Requests for electronic data, or for extracts, abstracts, or compilations of documents or records which involve a material expenditure of effort by Judicial Branch personnel require a special determination and will be responded to after consideration of:

1. the availability of personnel to fulfill the request,

2. the response time, if any was requested, and

3. the other workload of the affected staff.

If such a request is granted, the requestor shall be assessed a fee which is sufficient to cover the Judicial Branch's full actual costs, including staff time and associated overhead, for producing the requested information. The response and fee shall be determined by the appropriate member of the Administrative Team in consultation with the State Court Administrator or designee.

V. PROVISION OF INFORMATION TO INTERPRETERS

A. When an interpreter has been assigned to assist the court and parties with respect to any case, the clerks of court shall permit the assigned interpreter to review all public portions of the court's file in order to prepare for the hearing, conference, or trial.

B. When an interpreter has been assigned to assist the court and parties with respect to a child protective case, the clerks of court shall permit the interpreter to review the following portions of the court's file:

1. the petition pending, exclusive of any attached affidavits; and,

2. the most recent order by the court, the pretrial order controlling the hearing to which the interpreter has been assigned, or any order showing the current disposition of the case.

C. When an interpreter has been assigned to assist the court and the parties with respect to a juvenile case, the clerks of court shall permit the interpreter to review the following portions of the court's file:

1. the petition pending, exclusive of any attached affidavits; and,

2. the most recent order from the court, the pretrial order controlling the hearing to which the interpreter has been assigned, or any order showing the current disposition of the case.

D. In addition to the information outlined above, the court may, with the consent of the parties, provide additional information to the interpreter in order to ensure that the interpreter has no conflicts that would limit his or her participation in the case, and to ensure that the interpreter is fully prepared for the proceeding.

VI. DISSEMINATION OF OTHER INFORMATION

Pursuant to the Judicial Branch Code of Conduct, Judicial Branch employees are limited from disclosing court-related information other than in the performance of an official duty.

The identity of the jurist scheduled to preside over a particular court session will not be disclosed until the day of the scheduled session. If a case has been specially assigned, information may be provided to the parties and counsel of record in advance of the session.

VII. QUESTIONS RELATED TO THIS ADMINISTRATIVE ORDER

Any questions related to this administrative order should be referred to the State Court Administrator or designee.

For the Court,

/s/
Leigh I. Saufley
Chief Justice

Promulgation Date: May 1, 2019

Public Information and Confidentiality
AO JB-05-20 (A. 5-19), dated and effective May 1, 2019
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court
Issued to add a second paragraph to section VI: "The identity of the jurist scheduled to preside over a particular court session will not be disclosed until the day of the scheduled session. If a case has been specially assigned, information may be provided to the parties and counsel of record in advance of the session."

Historical Derivation of JB-05-20:

Public Information and Confidentiality
AO JB-05-20 (A. 9-17), dated and effective September 25, 2017
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court
Issued to clarify that the record taken by an Official Court Reporter at a court proceeding is the official court record, regardless of whether an electronic recording is made at the same time. The amended order adds section III(C)(2), which governs the conditions by which the unofficial record may become the official record.

Public Information and Confidentiality
AO JB-05-20 (A. 1-15), dated and effective January 14, 2015
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court
This amended order is issued to modify section III(A)(5) to direct that a request for information that seeks a response to a standing request will be declined absent the Chief Judge's preauthorization and to add section III(A)(6), which governs requests for data or information that would require administrative or technical staff to perform substantial new research, program new reports, evaluate data, or respond to standing requests. The amended order also requires the denial of requests for bulk data and renumbers section III(A)(6) and (7) as section III(A)(7) and (8).

Public Information and Confidentiality
AO JB-05-20 (A. 7-14), dated June 19, 2014, and effective July 1, 2014
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court
This amended order is issued to conform with current Maine statutes governing the dissemination of information.

Public Information and Confidentiality
AO JB-05-20 (A. 6-14), dated May 27, 2014, and effective June 1, 2014
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court
The amendment defines the term "Service Center," includes Clerical Staff of the Service Center in provisions concerning information requests in section III(A)(1), specifies in section III(A)(1) that no research fee will be charged when a party to a case requests information about that case, clarifies that section III(C) governs the duplication of recordings of court hearings and not transcripts, adds section V governing the provision of information to interpreters, renumbers the provision governing the dissemination of other information from V to VI, and makes minor technical corrections.

Public Information and Confidentiality
AO JB-05-20 (A. 12-13), dated December 3, 2013, effective October 9, 2013
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court
The amendment clarifies that reports of cellphone or other electronic device location information filed with the Kennebec County Consolidated Clerk's Office pursuant to the provisions of 16 M.R.S. § 650(4) is confidential information unless otherwise ordered released by the court.

Public Information and Confidentiality
AO JB-05-20 (A. 9-11), dated and effective September 19, 2011
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Public Information and Confidentiality
AO JB-05-20 (A. 5-09), dated May 1, 2009, effective May 1, 2009
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Public Information And Confidentiality
AO JB-05-20 (A. 2-09), dated February 27, 2009, effective February 27, 2009
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Public Information And Confidentiality
AO JB-05-20 (A. 1-06), dated December 19, 2005, effective January 1, 2006
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Public Information And Confidentiality
AO JB-05-20, dated June 29, 2005, effective August 1, 2005
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Public Information And Confidentiality
AO JB-03-04, dated May 13, 2003
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court; Nancy Mills, Chief Justice, Maine Superior Court; and Vendean V. Vafiades, Chief Judge, Maine District Court which replaced SJC-138, dated May 28, 1996; and SJC-138, dated June 11, 1996

Amended Order Regarding Psychiatric And Child Custody Reports
AO dated March 31, 1980
Signed by: Vincent L. McKusick, Chief Justice; and Sidney W. Wernick, Edward S. Godfrey, David A. Nichols, Harry P. Glassman, David G. Roberts, Associate Justices, Maine Supreme Judicial Court

FOR RTKAC REVIEW 11/13

Updated to reflect Subcommittee Actions on September 20, 2019

Existing Public Records Exceptions For Review by Public Records Exception Review Subcommittee:
Remaining Exceptions Pending Final Subcommittee Action as of Sept. 2019
Titles 1 through 7-A

REF. NO.	TITLE	SECTION	SUB-§, ¶	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
6	*1*	*402*	*3, ¶ E*	*Title 1, section 402, subsection 3, paragraph E, relating to 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*	Maine Maritime Academy; Maine Community College System; University of Maine System	No change	Amend as suggested by UM System *(draft language needs subcomm. approval)*
11	*1*	*402*	*3, ¶J*	*Title 1, section 402, subsection 3, paragraph J, relating to 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*			Amend: strike "by a member or" and consider putting time limit on confidentiality of records *(draft language needs subcomm. approval)*
16	*1*	*402*	*3, ¶ O*	*Title 1, section 402, subsection 3, paragraph O relating to personal contact information concerning public employees other than elected officials*	DAFS Bureau of Human Resources	Expand to include social media accounts	Amend to add username, password and URL (uniform resource locator) unique to a person for social media accounts to definition of "personal contact information" and clarify terms *(draft language needs*

Existing Public Records Exceptions For Review by Public Records Exception Review Subcommittee:
Remaining Exceptions Pending Final Subcommittee Action as of Sept. 2019
Titles 1 through 7-A

REF. NO.	TITLE	SECTION	SUB-§, ¶	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
							subcomm. approval)
24	*1*	*538*	*3*	*Title 1, section 538, subsection 3, relating to InforME subscriber information*	InforME; DAFS Office of Information Technology		No change
27	*1*	*1013*	*3-A*	*Title 1, section 1013, subsection 3-A, relating to a complaint alleging a violation of legislative ethics*	Maine Commission on Governmental Ethics and Election Practices	No change	No change
35A	*4*	*17*	*3*	*Title 4, section 17, subsection 15, relating to State Court security records*	Judicial Branch		Tabled
53	*5*	*7070*	*2*	*Title 5, section 7070, subsection 2, relating to state employees' personal information*	DAFS Bureau of Human Resources and Employee Relations	Expand to include social media accounts	No change
73	*5*	*244-E*	*2*	*Title 5, section 244-E, subsection 2, relating to the contents of a complaint alleging fraud, waste, inefficiency or abuse*	Office of the State Auditor	Amend to allow Auditor to forward complaints to other agencies that are expected to follow up on the complaint	Amend as suggested by State Auditor and also clarify that other agencies shall maintain confidentiality; consider requiring follow up and report back to State Auditor following investigation of complaint *(draft language needs subcomm. approval)*
85	*7*	*4204*	*10*	*Title 7, section 4204, subsection 10, relating to nutrient management*	Department of Agriculture	No change	No change

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Titles 1 through 7-A

REF. NO.	TITLE	SECTION	SUB-§, ¶	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
				plans			
86	*7*	*4205*	*2*	*Title 7, section 4205, subsection 2, relating to livestock operation permits and nutrient management plans*	Department of Agriculture	No change	No change
88	*7*	*2992-A*	*1*	*Title 7, subsection 2992-A, subsection 1, paragraph C, subparagraph (2), relating to records and meetings of Maine Dairy Promotion Board which may be closed to public when disclosure would adversely affect competitive position of milk industry*	Maine Dairy Promotion Board	No change	Tabled; consider impact of striking "or segment of that industry"
89	*7*	*2998-B*	*1*	*Title 7, section 2998-B, subsection 1, paragraph C, subparagraph (2), relating to records and meetings of Maine Dairy and Nutrition Council which may be closed to public when disclosure would adversely affect competitive position of milk industry*	Maine Dairy and Nutrition Council	No change	Tabled; consider impact of striking "or segment of that industry"
90	*7*	*306-A*	*3*	*Title 7, section 306-A, subsection 3, relating to agricultural development grant program, market research or development activities*	Department of Agriculture	No change	No change
92	*7*	*951-A*		*Title 7, section 951-A, relating to minimum standards for planting potatoes*	Department of Agriculture, Food and Rural Resources	No change	No change