

RIGHT TO KNOW ADVISORY COMMITTEE

AGENDA

August 17, 2016

1:00 p.m.

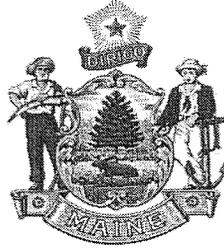
Room 438, State House, Augusta

Convene

1. Welcome and Introductions
2. Review of draft letter to Judiciary Committee regarding public records exception enacted in LD 484 (Public Law 2015, chapter 161) relating to hazardous material transported by railroads
3. Discussion regarding public access to personal contact information for professions and occupations licensed by the State
4. Public Access Ombudsman update & recap of Public Access Officer training
 - Brenda Kielty, Public Access Ombudsman
5. Discussion regarding potential Right to Know Advisory Committee public hearing
6. Review subcommittee recommendations relating to existing public records exceptions
7. Discussion regarding Criminal History Record Information Act (CHRIA) and the Judicial Branch
8. Discussion regarding proposal to require local boards and committees to record executive sessions and preserve these records so that they may be legally discoverable in case of a dispute about the content or propriety of the discussion held during these sessions
9. Discussion regarding anonymous FOAA requests and the extent to which an agency can ask the purpose of a FOAA request
10. Other issues or questions

Adjourn

Hon. David C. Burns, Chair
Hon. Kimberly Monaghan
Suzanne Goucher
Stephanie Grinnell
A. J. Higgins
Richard LaHaye
Mary Ann Lynch
Judy Meyer



Kelly Morgan
Christopher Parr
Linda Pistner
Harry Pringle
Helen Rankin
Luke Rossignol
William Shorey
Eric Stout

STATE OF MAINE
RIGHT TO KNOW ADVISORY COMMITTEE

{date}

Sen. David C. Burns, Senate Chair
Rep. Barry J. Hobbins, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, Maine 04333-0100

Dear Sen. Burns and Rep. Hobbins,

At the Judiciary Committee's request, the Right to Know Advisory Committee reviewed the public records exception in current law that protects as confidential records provided by a railroad company describing hazardous materials transported by the railroad company that are in the possession of a state or local emergency management agency or law enforcement agency, a fire department or other first responder. See 1 MRSA §402, sub-§3, ¶U. We understand that your request was prompted by media articles following enactment of the exception indicating that the public's access to information about the transportation of crude oil through the State may be limited and your interest in ensuring that the public have an additional opportunity to comment and, if necessary, to recommend changes to current law.

The Advisory Committee discussed the public records exception and agreed that the exception may benefit from additional consideration. Although the Advisory Committee offers these comments, we recommend that the Judiciary Committee consider submitting a committee bill to the First Regular Session of the 128th Legislature so that the current exception may be fully vetted by the Legislature in a manner that allows the most meaningful participation by stakeholders, state and local government entities and other members of the public.

The Advisory Committee believes that the current exception is not intended to prevent public access to summary or aggregate information about the transportation of hazardous materials by rail in the State, particularly crude oil, or to prohibit disclosure of information about spills or discharges of hazardous materials. The Advisory Committee expressed the following concerns about the current exception as written.

- Does public disclosure jeopardize the safety of the public and if so, does that safety interest substantially outweigh the public interest in disclosure of the records?

- Does public disclosure disadvantage a business or financial interest and, if so, does that interest substantially outweigh the public interest in disclosure of the records?
- Is the language of the current exception too broad? Is the proposed exception as narrowly tailored as possible? The current law references records describing hazardous materials transported by rail as defined in 49 Code of Federal Regulations 172.101 and represents a table of more than 200 pages identifying hazardous materials subject to the exception.
- Does the current language need to be clarified? Does the exception apply to records possessed by the Department of Environmental Protection that relate only to its function as a “first responder”? Are records held by the DEP that are collected from railroad companies for other purposes subject to the exception?
- Is the exception intended to limit the release of information on a retrospective basis? How long should information be kept confidential?

We are hopeful that we've provided enough information to assist you in further evaluating this public records exception. Please feel free to contact us or our committee staff if you have any questions or would like additional input.

Thank you for your consideration.

Sincerely,

Sen. David C. Burns, Chair
Right to Know Advisory Committee

cc: Right to Know Advisory Committee

POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES

Policy Option	Source	Template/ Example of statutory language
<p>Require applicant or licensee to provide current professional address telephone number as public contact address; personal residential address and telephone number are confidential information and may not be disclosed unless provided as public contact address</p>	<p>Maine law: 32 MRSA §§90-B & 91-B (emergency medical services); 32 MRSA §2109 (nursing); 32 MRSA §2600-A (osteopathic medicine); 32 MRSA §3300-A (medicine)</p>	<p>§ <u> </u>. CONFIDENTIALITY OF PERSONAL INFORMATION OF APPLICANT OR LICENSEE</p> <p>An applicant or licensee shall provide the board with a current professional address and telephone number, which will be their public contact address, and a personal residence address and telephone number. <u>An applicant's or licensee's personal residence address and telephone number is confidential information and may not be disclosed except as permitted by this section or as required by law, unless the personal residence address and telephone number have been provided as the public contact address.</u> Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted by this section or as required by law. The personal health information and personal residence address and telephone number may be provided to other governmental licensing or disciplinary authorities or to any health care providers located within or outside this State that are concerned with granting, limiting or denying a physician's employment or privileges.</p>
<p>Designate home address and home telephone number as confidential; disclosure by board and staff permitted as necessary to perform duties and functions</p>	<p>Maine law: 32 MRSA §7032 (Social workers)</p>	<p>§ 7032. Addresses confidential</p> <p><u>The address and telephone number of an applicant for licensure or a person licensed under this chapter that are in the possession of the board are confidential.</u> Nothing in this section prohibits the board and its staff from using and disclosing the address and telephone number of an applicant or licensee as necessary to perform the duties and functions of the board.</p>
<p>Designate home address and telephone number confidential; disclosure permitted by written consent, by court order, for criminal justice purposes or for permitting purposes by law enforcement or permitting auths.</p>	<p>Maine law: 32 MRSA §8124 (Professional investigators)</p>	<p>§8124. CONFIDENTIAL INFORMATION</p> <p><u>The home address and home telephone number of a professional investigator or investigative assistant obtained by the State under this chapter are confidential</u> and may not be disclosed by the board except by written consent of the subject of the information, by court order, for criminal justice purposes or for permitting purposes by law enforcement agencies or permitting authorities.</p>

**POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF
PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES**

Policy Option	Source	Template/ Example of statutory language
Designate residential addresses and telephone numbers used as business addresses or telephone numbers as "not public records"	Maine law: 32 MRSA §16607, sub-§2, ¶ E (Securities)	<p>2. Nonpublic records. <u>The following records are not public records and are not available for public examination</u> under subsection 1:</p> <p>E. Any social security number, <u>residential address unless used as a business address and residential telephone number unless used as a business telephone number contained in a record that is filed,</u></p>
Designate home address, home telephone number, home email address, personal cellular telephone number and personal pager number as not public records	Maine law: 1 MRSA §402, sub-§3, ¶O (public employees except for elected officials)	<p>3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:</p> <p>O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:</p> <p>(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and</p> <p>(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials;</p>
Designate all applications for a license and all documents made part of an application	Maine law : 32 MRSA §9418 (private security guards)	§9418. CONFIDENTIALITY OF APPLICATION AND INFORMATION COLLECTED BY THE COMMISSIONER

**POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF
PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES**

Policy Option	Source	Template/ Example of statutory language
<p>confidential, but require permanent record of each license for public inspection and require disclosure of list of names and current addresses of security guards upon specific request</p>		<p>Notwithstanding Title 1, chapter 13, subchapter 1, <u>all applications for a license to be a contract security company and any documents made a part of the application, refusals and any information of record collected by the commissioner during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 9405 and 9411-A, and all information of record collected by the commissioner during the process of ascertaining whether a natural person meets the requirements of section 9410-A, are confidential and may not be made available for public inspection or copying.</u> The applicant or natural person may waive this confidentiality by written notice to the commissioner. All proceedings relating to the issuance of a license to be a contract security company are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant.</p> <p><u>The commissioner or his designee shall make a permanent record of each license to be a contract security company in a suitable book or file kept for that purpose. The record shall include a copy of the license and shall be available for public inspection. Upon a specific request, the commissioner or his designee shall provide a list of names and current addresses of security guards employed by licensed contract security companies.</u></p>
<p>Require directory of certain employee/licensee information; designate other information about employee confidential</p>	<p>Maine law: 20-A MRSA § 6101 (teachers, school employees)</p>	<p>§6101. RECORD OF DIRECTORY INFORMATION</p> <p>The following provisions apply to employee records.</p> <p>1. Contents. <u>A school administrative unit shall maintain a record of directory information on each employee as follows:</u></p> <ul style="list-style-type: none"> A. Name; B. Dates of employment; C. Regular and extracurricular duties, including all courses taught in that school administrative unit;

POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES

Policy Option	Source	Template/ Example of statutory language
		<p>D. Post-secondary educational institutions attended;</p> <p>E. Major and minor fields of study recognized by the post-secondary institutions attended; and</p> <p>F. Degrees received and dates awarded.</p> <p>2. Access. The following provisions apply to access of employee records.</p> <p>A. <u>The record of directory information shall be available for inspection and copying by any person.</u></p> <p>B. <u>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, must be kept confidential if it relates to the following:</u></p> <ul style="list-style-type: none"> (1) All information, working papers and examinations used in the examination or evaluation of all applicants for employment; (2) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders; (3) Performance evaluations, personal references and other reports and evaluations reflecting on the quality or adequacy of the employee's work or general character compiled and maintained for employment purposes; (4) Credit information; (5) Except as provided by subsection 1, the personal history, general character or conduct of the employee or any member of the employee's immediate family; (6) Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action;

POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES

Policy Option	Source	Template/ Example of statutory language
		<p>(7) Social security number;</p> <p>(8) The teacher action plan and support system documents and reports maintained for certification purposes; and</p> <p>(9) Criminal history record information obtained pursuant to section 6.103.</p> <p>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.</p> <p>3. Commissioner's review. The commissioner shall have access to any of the records or documents designated as confidential in this section for carrying out the commissioner's duties pursuant to section 13020. Copies of any such records or documents shall simultaneously be provided to the employee.</p> <p>The commissioner shall also have access to support system documents for carrying out the commissioner's certification and support system approval duties pursuant to chapter 502 and to other confidential employee records for carrying out the commissioner's school approval duties pursuant to chapter 206.</p>
Designate certain personal information related to applicants or licensees as confidential	Maine law: 8 MRSA §1006 (Gambling Control Board; confidentiality of records and information)	<p>§1006. CONFIDENTIALITY OF RECORDS AND INFORMATION</p> <p>1. Application and licensing records and information. This subsection applies to information or records included in an application or materials required by the board for issuance of a license pursuant to this chapter, including records obtained or developed by the board or department related to an applicant or licensee. For the purposes of Title 1, section 402, subsection 3, the following records and information are designated as confidential and may not be disclosed except as provided:</p>

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Policy Option	Source	Template/ Example of statutory language
		<p>A. Trade secrets as defined in Title 10, section 1542 and proprietary information that if released could be competitively harmful to the submitter of the information;</p> <p><u>B. Information that if released would constitute an unwarranted invasion of personal privacy of a key executive, gaming employee or any other individual included in application materials, as determined by the board. Upon request, the board shall release a summary of information confidential under this paragraph describing the basis for the board's action in granting, denying, renewing, suspending, revoking or failing to grant or renew a license issued under this chapter. In preparing a summary, the board shall maximize public access to that information while taking reasonable measures to protect the confidentiality of that information;</u></p> <p>C. Key executive or gaming employee compensation, except that:</p> <p>(1) Executive compensation required to be filed with the federal Securities and Exchange Commission or, with respect to applicants or licensees that are not publicly traded corporations, executive compensation that would be required to be filed with the federal Securities and Exchange Commission were the applicant or licensee a publicly traded corporation or controlled by a publicly traded corporation is not confidential; and</p> <p>(2) Compensation of the officers of the business entity that is organized or authorized to do business in this State who are responsible for the management of gaming operations, as determined by the board, is not confidential;</p> <p>D. Financial, statistical and surveillance information related to the applicant or licensee that is obtained by the board or department from the central site monitoring system or surveillance devices;</p> <p>E. Records that contain an assessment by a person who is not employed</p>

**POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF
PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES**

Policy Option	Source	Template/ Example of statutory language
Prohibit posting of "personal information" about professional and occupational licenses on the Internet	California law: Section 27, Business and Professions Code	<p>by the board or the department of the creditworthiness, credit rating or financial condition of any person or project, including reports that detail specific information for presentation to the board or department. Persons retained by the board or department to provide such an assessment shall prepare reports that indicate their conclusions and summarize information reviewed by them in a way that maximizes public access to that information;</p> <p>F. Information obtained from other jurisdictions designated as confidential by the jurisdiction from which it is obtained and that must remain confidential as a condition of receipt. The board and the department may use information designated as confidential by the jurisdiction from which it is obtained but shall first make reasonable efforts to use information that is known to be publicly available from another source;</p> <p>G. Information that is designated confidential under federal law whether obtained from federal authorities or provided to the board or department by an applicant, licensee or key executive; and</p> <p><u>H. Birth dates, social security numbers, home addresses and telephone numbers, passport numbers, driver's license numbers, fingerprints, marital status, family relationships and support information, health status, personal financial records and tax returns of any individuals.</u></p>
	California law: Section 27, Business and Professions Code	<p>27. (a) Each entity specified in subdivisions (c), (d), and (e) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related</p>

POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES

Policy Option	Source	Template/ Example of statutory language
<p>Designate information pertaining to applicants and licenses confidential with certain exceptions; names, addresses, license information of applicants and licensees is not confidential and registry must be maintained and available to public</p>	<p>Missouri law: Section 324.001(8) (Division of Professional registration) and 324.032 (registry of licenses)</p>	<p>enforcement action, including accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. <u>The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.</u></p>
		<p>8. <u>All educational transcripts, test scores, complaints, investigatory reports, and information pertaining to any person who is an applicant or licensee of any agency assigned to the division of professional registration by statute or by the department are confidential and may not be disclosed to the public or any member of the public, except with the written consent of the person whose records are involved.</u> The agency which possesses the records or information shall disclose the records or information if the person whose records or information is involved has consented to the disclosure. Each agency is entitled to the attorney-client privilege and work-product privilege to the same extent as any other person. Provided, however, that any board may disclose confidential information without the consent of the person involved in the course of voluntary interstate exchange of information, or in the course of any litigation concerning that person, or pursuant to a lawful request, or to other administrative or law enforcement agencies acting within the scope of their statutory authority. <u>Information regarding identity.</u></p>

**POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF
PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES**

Policy Option	Source	Template/ Example of statutory language including names and addresses, registration, and currency of the license of the persons possessing licenses to engage in a professional occupation and the names and addresses of applicants for such licenses is not confidential information.
Designate personal information about licensees and applicants confidential and exempt from public records law	North Dakota law: NDCC §44-04-18.1 (exemptions from public records law)	<p>Registry of licenses, permits, and certificates issued, contents--copying of registry information.</p> <p>324.032. The division of professional registration shall maintain, for each board in the division, a <u>registry of each person holding a current license, permit, or certificate issued by that board. The registry shall contain the name, Social Security number, and address of each person licensed or registered together with other relevant information as determined by the board.</u> The registry for each board shall at all times be available to the board and copies shall be supplied to the board on request. <u>Copies of the registry, except for the registrant's Social Security number, shall be available from the division or the board to any individual who pays the reasonable copying cost.</u> Any individual may copy the registry during regular business hours. The information in the registry shall be furnished upon request to the family support division. Questions concerning the currency of license of any individual shall be answered, without charge, by the appropriate board. <u>Each year each board may publish, or cause to be published, a directory containing the name and address of each person licensed or registered for the current year together with any other information the board deems necessary.</u> Any expense incurred by the state relating to such publication shall be charged to the board. An official copy of any such publication shall be filed with the director.</p>
		<p>4. Except as otherwise specifically provided by law, <u>personal information regarding a licensee maintained by an occupational or professional board, association, state agency, or commission created by law is exempt.</u> As used in this section, "licensee" means an individual who has applied for, holds, or</p>

POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES

Policy Option	Source	Template/ Example of statutory language
<p>Designate home telephone number and email address of applicants and licensees confidential; require provider profile of all licensees to be public</p>	<p>Indiana law: IC 25-1-5-10 (provider profile); IC 25-1-5-11 (confidentiality of personal information)</p>	<p>has held in the past an occupational or professional license, certificate, credential, permit, or registration issued by a state occupational or professional board, association, agency, or commission.</p> <p>From 44-04-18-1 (2): As used in this section, "<u>personal information</u>" means a <u>person's home address; home telephone number or personal cell phone number; photograph; medical information; motor vehicle operator's identification number; public employee identification number; payroll deduction information; the name, address, telephone number, and date of birth of any dependent or emergency contact; any credit, debit, or electronic fund transfer card number; and any account number at a bank or other financial institution.</u></p>
		<p>IC 25-1-5-10 Provider profiles Sec. 10. (a) As used in this section, "provider" means an individual licensed, certified, registered, or permitted by any of the entities described in IC 25-0.5-6. (b) <u>The agency shall create and maintain a provider profile for each provider described in subsection (a).</u> (c) <u>A provider profile must contain the following information:</u> (1) <u>The provider's name.</u> (2) <u>The provider's license, certification, registration, or permit number.</u> (3) <u>The provider's license, certification, registration, or permit type.</u> (4) <u>The date the provider's license, certification, registration, or permit was issued.</u> (5) <u>The date the provider's license, certification, registration, or permit expires.</u> (6) <u>The current status of the provider's license, certification, registration, or permit.</u> (7) <u>The provider's city and state of record.</u></p>

**POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF
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Policy Option	Source	Template/ Example of statutory language
		<p><u>(8) A statement of any disciplinary action taken against the provider within the previous ten (10) years by an entity described in IC 25-0.5-6.</u></p> <p><u>(d) The agency shall make provider profiles available to the public.</u></p> <p>(e) The computer gateway administered by the office of technology established by IC 4-13.1-2-1 shall make the information described in subsection (c)(1), (c)(2), (c)(3), (c)(6), (c)(7), and (c)(8) generally available to the public on the Internet.</p> <p>(f) The agency may adopt rules under IC 4-22-2 to implement this section.</p> <p>IC 25-1-5-11</p> <p>Personal information; confidentiality; Social Security numbers; access; exceptions to confidentiality</p> <p>Sec. 11. (a) As used in this section, "applicant" means an individual who applies for a license, certificate, registration, or permit issued by a board under this title.</p> <p>(b) As used in this section, "licensee" means an individual who is or has been licensed, certified, or registered by a board under this title.</p> <p><u>(c) As used in this section, "personal information" means the following:</u></p> <p><u>(1) Home telephone number.</u></p> <p><u>(2) Electronic mail address.</u></p> <p><u>(d) Except as otherwise provided in this section, the personal information of an individual who is:</u></p> <p><u>(1) a licensee;</u></p> <p><u>(2) an applicant; or</u></p> <p><u>(3) a board member;</u></p> <p><u>is confidential for purposes of IC 5-14-3-4 and may not be disclosed to the public by the agency or a board.</u></p> <p>(e) An applicant or a licensee shall provide the applicant's or licensee's Social Security number to the agency.</p> <p>(f) The agency and the boards shall collect and release the applicant's or licensee's Social Security number as provided in state or federal law.</p>

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Policy Option	Source	Template/ Example of statutory language
		<p>(e) Notwithstanding IC 4-1-10-3, the agency and the boards may allow access to the Social Security number of each applicant or licensee to:</p> <p>(1) a testing service that provides the examination for licensure, certification, or registration to the agency or the boards; or</p> <p>(2) an individual state regulatory board or an organization composed of state regulatory boards for the applicant's or licensee's profession for the purpose of coordinating:</p> <p>(A) licensure, certification, or registration; and</p> <p>(B) disciplinary activities among the individual states.</p> <p>(h) Notwithstanding subsection (d), the agency or a board may disclose personal information of an individual described in subsection (d) if the person requesting the information provides proof of identity and represents that the use of the personal Indiana Code information will be strictly limited to at least one (1) of the following:</p> <p>(1) For use by a government agency, including a court or law enforcement agency, in carrying out its functions, or a person acting on behalf of a government agency in carrying out its functions.</p> <p>(2) For use in connection with a civil, a criminal, an administrative, or an arbitration proceeding in a court or government agency or before a self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or under an order of a court.</p> <p>(3) For use in research activities, and for use in producing statistical reports, as long as the personal information is not published, re-disclosed, or used to contact the individuals who are the subject of the personal information.</p> <p>(4) For use by any person, when the person demonstrates, in a form and manner prescribed by the agency, that written consent has been obtained from the individual who is the subject of the information.</p> <p>(5) For any other use specifically authorized by law that is related to the agency or a board or to public safety.</p>

FOR RTKAC
Review re: LD 1171

Died Between Houses
Majority OTP-A Accepted
in House; Minority on TP
Accepted in Senate
E.D. 1171

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Date: (Filing No. H-)

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 802, L.D. 1171, Bill, “An Act To Protect Certain Information under the Maine Human Rights Act”

Amend the bill in section 1 in paragraph B in the 8th line (page 1, line 11 in L.D.) by inserting after the following: "investigation." the following: 'The commission may direct that information designated confidential under subsection 5 be redacted from records and documents before those records and documents are provided to the commission.'

Amend the bill by striking out all of section 2 and inserting the following:

'Sec. 2. 5 MRSA §4612, sub-§5, as amended by PL 2011, c. 613, §20 and affected by §29, is repealed and the following enacted in its place:

5. Confidentiality. The Legislature finds that a person who participates in the commission's investigative process as a complainant, a respondent or otherwise has a right to privacy in certain information the person provides to the commission. This subsection governs the confidentiality of certain information.

A. The following information is confidential and may not be disclosed:

- (1) The identity of a person who is not a party to a complaint;
- (2) Medical, counseling, psychiatric and other records revealing a person's medical or mental health condition or disability;
- (3) The identity of a minor, including a minor who is a party to a complaint;
- (4) Personnel records, including payroll records;
- (5) Social security numbers, personal telephone numbers and home addresses, unless a home address is a material fact at issue in an investigation;
- (6) Banking and financial information, including credit checks, unless such information is directly related to an undue burden defense or other material fact at issue in an investigation;
- (7) Criminal history record information that is not otherwise made public by law;

COMMITTEE AMENDMENT

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1 (8) Evidence of conduct or statements made in compromise settlement
2 negotiations, offers of settlement and any final agreements made prior to the
3 conclusion of an investigative process, unless the parties otherwise agree in
4 writing; and

5 (9) The identity of a complainant or a 3rd-party witness who has established a
6 compelling and immediate need to proceed with or participate in an investigation
7 with anonymity or a pseudonym. This need must be determined necessary by the
8 commission or its executive director to avoid imminent and serious harm.

9 B. Information designated as confidential in paragraph A may not be released
10 without the written authorization of the person who is the subject of the information,
11 except that during an investigation conducted pursuant to subsection 1, if the case
12 relates to the complainant's medical diagnosis or disability, the respondent is entitled
13 to receive unredacted copies of the complainant's medical records, medical diagnoses,
14 medical information and information regarding any disability experienced by the
15 complainant. Information under this paragraph may be released by the commission
16 to the respondent only if:

17 (1) The complainant authorizes that disclosure to the respondent by signing a
18 medical release form provided by the commission; and

19 (2) The respondent signs a nondisclosure agreement provided by the commission
20 and agrees to keep all medical, counseling, psychiatric or other records that
21 reveal that person's medical or mental health condition or disability confidential
22 during the pendency of the investigation and after the investigation has
23 concluded.

24 C. Nothing in this subsection may be construed to limit the ability of the commission
25 during the pendency of an investigation or during its deliberations in a complaint at a
26 public hearing to consider or discuss information designated confidential under this
27 subsection, if that information is relevant to consideration of and deliberation in the
28 complaint.

29 D. At the close of the investigation, the signed report of the investigator is a public
30 record. Drafts of the report of the investigator are not public records except that if the
31 final recommendation to the commission has been changed during the editing
32 process, the final draft containing the earlier recommendation is a public record.

33 E. Nothing in this subsection may be construed to limit the ability of a person to
34 provide written authorization to disclose information about that person that is
35 designated confidential by this section.'

36 **SUMMARY**

37 This amendment is the majority report of the committee. It replaces section 2 of the
38 bill but, like the bill, it revises the confidentiality provisions of the Maine Human Rights
39 Act. This amendment protects from public disclosure information in the records of the
40 Maine Human Rights Commission that identifies a minor, a person's medical condition or
41 disability, the identity of a person not a party to a complaint at the commission, personnel
42 records, social security numbers, residential addresses and personal phone numbers,

COMMITTEE AMENDMENT

2

1 banking and financial information, criminal history information not otherwise made
2 public by law and the identity of a person who has established a compelling and
3 immediate need to proceed with or participate in a commission investigation with
4 anonymity.

5

FISCAL NOTE REQUIRED

6

(See attached)



127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1171

H.P. 802

House of Representatives, March 31, 2015

An Act To Protect Certain Information under the Maine Human Rights Act

Reference to the Committee on Judiciary suggested and ordered printed.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative WARREN of Hallowell.
Cosponsored by Senator KATZ of Kennebec and
Representatives: EVANGELOS of Friendship, GINZLER of Bridgton, HOBBS of Saco,
McCREIGHT of Harpswell, MOONEN of Portland, SHERMAN of Hodgdon, Senators:
BURNS of Washington, JOHNSON of Lincoln.

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

2 **Sec. 1. 5 MRSA §4612, sub-§1, ¶B,** as amended by PL 2009, c. 235, §2, is
3 further amended to read:

4 B. The commission or its delegated commissioner or investigator shall conduct such
5 preliminary investigation as it determines necessary to determine whether there are
6 reasonable grounds to believe that unlawful discrimination has occurred. In
7 conducting an investigation, the commission, or its designated representative, must
8 have access at all reasonable times to premises, records, documents, individuals and
9 other evidence or possible sources of evidence and may examine, record and copy
10 those materials and take and record the testimony or statements of such persons as are
11 reasonably necessary for the furtherance of the investigation. The commission may
12 issue subpoenas to compel access to or production of those materials or the
13 appearance of those persons, subject to section 4566, subsections 4-A and 4-B, and
14 may serve interrogatories on a respondent to the same extent as interrogatories served
15 in aid of a civil action in the Superior Court. The commission may administer oaths.
16 The complaint and evidence collected during the investigation of the complaint, other
17 than data ~~identifying persons not parties to the complaint~~ designated confidential
18 under subsection 5, is a matter of public record at the conclusion of the investigation
19 of the complaint prior to a determination by the commission. An investigation is
20 concluded upon issuance of a letter of dismissal or upon listing of the complaint on a
21 published commission meeting agenda, whichever first occurs. Prior to the
22 conclusion of an investigation, all information possessed by the commission relating
23 to the investigation is confidential and may not be disclosed, except that the
24 commission and its employees have discretion to disclose such information as is
25 reasonably necessary to further the investigation. Notwithstanding any other
26 provision of this section, the complaint and evidence collected during the
27 investigation of the complaint may be used as evidence in any subsequent
28 proceeding, civil or criminal. The commission must conclude an investigation under
29 this paragraph within 2 years after the complaint is filed with the commission.

30 **Sec. 2. 5 MRSA §4612, sub-§5,** as amended by PL 2011, c. 613, §20 and affected
31 by §29, is repealed and the following enacted in its place:

32 **5. Confidentiality.** This subsection governs the confidentiality of certain
33 information.

34 A. Records of the commission that are open to the public under Title 1, chapter 13
35 must be kept in such a manner as to ensure that:

36 (1) Information identifying a person who is not a party to a complaint under this
37 chapter as a complainant or a respondent is not reflected in the record; and

38 (2) Medical records, medical diagnoses, medical information and information
39 regarding a complainant's disability is not reflected in the record.

40 B. Information identifying a minor is confidential and records of the commission that
41 are open to the public under Title 1, chapter 13 must be kept in such a manner as to
42 ensure that information identifying a minor is not reflected in the record.

1 C. Medical records, medical diagnoses, medical information and information
2 regarding an individual's disability are confidential and may not be released without
3 the written authorization of the individual who is the subject of the medical records,
4 medical diagnoses, medical information and information regarding the disability,
5 except that:

6 (1) During an investigation conducted pursuant to subsection 1, the commission
7 or its delegated commissioner or investigator may request and is entitled to
8 receive access to the complainant's medical records, medical diagnoses, medical
9 information and information regarding any disability experienced by the
10 complainant;

11 (2) During an investigation conducted pursuant to subsection 1, medical records,
12 medical diagnoses, medical information and information regarding an
13 individual's disability that are used by an investigator must be provided to the
14 commission or its delegated commissioner or investigator with the names
15 redacted of individuals who are not parties to the complaint, except that, upon
16 request, the commission or its delegated commissioner or investigator and the
17 complainant may receive unredacted records;

18 (3) During an investigation conducted pursuant to subsection 1, if the case
19 relates to the complainant's medical diagnoses or disability, the respondent is
20 entitled to receive unredacted copies of the complainant's medical records,
21 medical diagnoses, medical information and information regarding any disability
22 experienced by the complainant, if:

23 (a) The complainant authorizes that disclosure to the respondent by signing
24 the medical release form provided by the commission; and

25 (b) The respondent signs the nondisclosure agreement provided by the
26 commission;

27 (4) Nothing in this paragraph may be construed to limit the ability of the
28 commission during the pendency of an investigation or during its deliberations on
29 a complaint at a public hearing to consider or discuss a complainant's medical
30 records, medical diagnoses, medical information and information regarding any
31 disability experienced by the complainant if that information is relevant to
32 consideration of and deliberation on the complaint; and

33 (5) The commission may provide to the parties to a complaint and their counsel
34 an unredacted copy of an investigator's report concerning that complaint.

35 Nothing in this paragraph may be construed to limit the ability of a complainant or
36 other individual to provide written authorization to disclose the complainant's or the
37 individual's own medical records, medical diagnoses, medical information and
38 information regarding the complainant's or the individual's disability.

39 **SUMMARY**

40 This bill protects from public disclosure information in the records of the Maine
41 Human Rights Commission that identifies minors. It also designates as confidential
42 medical records, medical diagnoses, medical information and information regarding an

7

1 individual's disability contained in the commission's records. The bill specifies that
2 medical records, medical diagnoses, medical information and information regarding an
3 individual's disability may not be disclosed without the written authorization of the
4 individual who is the subject of the medical records or medical diagnoses and provides
5 specific exceptions designed to authorize disclosure necessary to further investigation of
6 and deliberation on complaints.





HOUSE OF REPRESENTATIVES

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Testimony in Support of LD 1171, An Act to Protect Certain Information under the Maine Human Rights Act

Senator Burns, Representative Hobbins and Fellow Members of the Judiciary Committee, I am pleased to present to you, LD 1171, An Act to Protect Certain Information under the Maine Human Rights Act.

The Maine Human Rights Act was enacted to prevent discrimination based on race, color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin, age and familial status. The Act invests the Maine Human Rights Commission, an investigative agency, with the power to investigate all forms of discrimination in order to promote the full enjoyment of human rights by our citizens. In doing so, the Commission has the power to conduct hearings, request and subpoena records, and do everything reasonably necessary to perform its duties.

The Commission's ability to investigate complaints and collect all relevant information to the complaint is necessarily fairly vast, and often may involve the collection of otherwise highly confidential records, including medical records, for example.

I have sponsored LD 1171 because under current law, the only information collected in the course of an investigation that is designated as confidential at the conclusion of the investigation is "data identifying persons not parties to the complaint." All other information collected during the course of an investigation is specifically designated as "a matter of public record at the conclusion of the investigation of the complaint prior to a determination by the commission."

The effect of current law is that otherwise confidential, highly sensitive records that are collected in the course of an investigation automatically become a matter of public record at the conclusion of an investigation. If, for example, a parent or guardian files a complaint on behalf of a child, the identity of that child is automatically a matter of public record at the conclusion of an investigation. If someone files a complaint alleging disability discrimination, and the Commission receives highly sensitive medical records during the course of the investigation, all of these otherwise confidential medical records automatically become a matter of public record at the conclusion of the investigation. There are no exceptions, except for the identity of third parties. This is not right. A person should not have to choose between asserting their rights and keeping highly sensitive, otherwise confidential records private. LD 1171 reasonably and fairly addresses this problem.

LD 1171 designates as confidential, and protects from public disclosure, certain records that are otherwise confidential and it also protects from public disclosure the identification of minors. The bill also retains the current provision allowing for confidentiality for third parties. While LD 1171 ensures protection of certain records, it allows for the individual who is the subject of the records to provide written authorization for disclosure. The bill also anticipates and allows exceptions for disclosures necessary to investigate complaints, or deliberation on complaints, at public hearing.

LD 1171 simply protects from public disclosure records that are otherwise confidential, and by doing so ensures that the Commission can do its work investigating complaints while at the same time ensuring that sensitive medical information will not automatically become public record at the conclusion of an investigation. I urge you to support this important legislation.



Maine Human Rights Commission

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Amy M. Sneirson
EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

April 28, 2015

The Honorable David Burns, Senate Chair
The Honorable Barry Hobbins, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333

Re: LD 1171, "An Act to Protect Certain Identifying Information under the Maine Human Rights Act"

Dear Senator Burns, Representative Hobbins, and members of the Joint Standing Committee on Judiciary:

The Maine Human Rights Commission - the State agency charged with enforcing the Maine Human Rights Act, 5 M.R.S. §§ 4551, *et seq.* ("MHRA") - has the duty of investigating, conciliating, and at times litigating discrimination cases under the MHRA. It is also charged with promulgating rules and regulations to effectuate the MHRA and with making recommendations for further legislation or executive action concerning infringements on human rights or personal dignity in Maine. 5 M.R.S. § 4566(7), (11). To that end, the Commission is pleased to provide this testimony in support of LD 1171.

The MHRA - which makes it unlawful to discriminate in employment, housing, education, public accommodations, and extension of credit - declares it to be the State's policy to prevent discrimination against a person with a physical or mental disability, race/color, sex, sexual orientation, age, religion, and ancestry/national origin². 5 M.R.S. §§ 4552 and 4572.

Records related to medical conditions or disabilities

To take advantage of the remedies offered under the MHRA, a person must file a claim with the Maine Human Rights Commission ("Commission") and understand that his/her complaint will be sent to the party about whom they are complaining. If a claim relates to disability, the complainant must file a release allowing the respondent to share medical records and discuss them with the Commission so the Commission can consider the disability-related issues at hand. This means that complainants must allow their current and former employers, housing providers, restaurants, hotels, doctors, etc., to consider highly personal medical or disability-related information as part of the Commission's process. While our investigative process is pending, the Commission has a statutory obligation to maintain confidentiality of records here - we cannot

² The MHRA also prohibits discrimination in employment because of a previous assertion of a workers' compensation claim or actions protected under the Whistleblowers' Protection Act, and in housing because of familial status and source of income. 5 M.R.S. § 4572.

even confirm that a particular complaint has been filed here. See 5 M.R.S. § 4612(1)(B) (“Prior to the conclusion of an investigation, all information possessed by the commission relating to the investigation is confidential and may not be disclosed, except that the commission and its employees have discretion to disclose such information as is reasonably necessary to further the investigation.”). The parties each sign a non-disclosure agreement as well, agreeing to keep anything that they learn through our process confidential. This offers complainants some measure of confidentiality for their medical or disability-related records during our process.

However, this measure of confidentiality ends when a case is dismissed, withdrawn, or completed via investigation here. At that point, under the MHRA, everything in a case file becomes subject to the Freedom of Access Act (1 M.R.S. §§ 400 *et seq.*). The MHRA specifically provides that “[t]he complaint and evidence collected during the investigation of the complaint, other than data identifying persons not parties to the complaint, is a matter of public record at the conclusion of the investigation of the complaint prior to a determination by the commission.” 5 M.R.S. § 4612(1)(B) (also providing that “[a]n investigation is concluded upon issuance of a letter of dismissal or upon listing of the complaint on a published commission meeting agenda, whichever first occurs.”) There are only two exceptions provided under the MHRA to the FOAA mandate: information related to the identities of third-party witnesses (anyone who is not the complainant or respondent) and information related to settlement. That means that a complainant’s medical or disability-related information filed here to support his or her case becomes available to the public and media when a case is finished, no matter how private it may be.

This serves as a strong disincentive for people with disabilities to file complaints with the Commission, and leaves people with disabilities with an unacceptable choice to make in order to assert the rights the MHRA guarantees them. They can seek to enforce their rights under the MHRA, but only if they totally give up any right to privacy about the disability and/or medical records related to their assertion of rights. In this digital age of social media and records that live on the Internet forever, anyone can make a request under FOAA and review anyone else’s disability or medical records on file here and put them on the Internet for anyone to read. This should not be the price a person has to pay to claim rights under the MHRA.

This is not a theoretical situation – it happens in our office and around Maine every single day.

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Complaints/year	628	700	718	819	849	666	772	643	654	656
Allegations/year	909	1014	1097	1399	1132	1191	1337	1272	1266	1567
Disability allegations per year	281	308	346	467	450	438	450	445	448	581

There is another important benefit to the proposal in LD 1171 related to medical information, and that is to protect the medical information about any persons who are not parties but who are involved in our investigations, whether as witnesses or even counsel for parties. The MHRA specifically states that the identities of third parties must be kept confidential even under FOAA (5 M.R.S. § 4612(1)(B)), so when we are responding to FOAA requests we must redact voluminous records to remove the names of third parties. However, this does nothing to remove from public disclosure medical or disability information in our files related to those third parties (albeit without a person’s name on it, which we redact). Often, we have counsel who request accommodations related to their own medical conditions during our process, and we have no way to keep that information confidential. Similarly, if a respondent raises a defense that involves

comparing a complainant to other persons with medical conditions or disabilities, the comparator's medical conditions become part of the public record (with name redacted³) when our investigation is closed. In this day and age, it is often not difficult for members of the public to put clues together and to figure out the comparator's or lawyer's name and put it together with the medical information. This cannot be what the drafters of the MHRA intended.

We have considered this issue to see if there is any other avenue for claiming that individuals' medical records and disability-related information might be protected from FOAA disclosure, and do not see any approach other than what is presented in LD 1171. Although there are many, many existing exceptions to FOAA already, none of them seem to apply in this scenario. For example, 22 M.R.S. §1711-C protects health care information but that statute is directed at disclosures by a health care practitioner or facility. Similarly, the federal Health Insurance Portability and Accountability Act ("HIPAA") establishes national standards to protect individuals' medical records and other personal health information, but it applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically.

The proposals in LD 1171 are carefully tailored to ensure that respondents have a full opportunity to argue the medical or disability concerns at issue throughout our investigation process and at a Commission hearing, and to ensure that our Commissioners have the opportunity to consider the medical/disability details in deciding whether discrimination happened in a particular case. Representative Warren's proposal takes care to outline provisions allowing Commission staff, Commissioners, and parties full access to medical information (after appropriate releases are signed) and full opportunity to utilize those during the investigative and hearing processes at the Commission, and then properly makes the records confidential unless the person whose records are at issue consents in writing to their publication. Her bill also specifies that when a respondent provides the Commission with information about a witness's or other individual's medical conditions as part of its defense, the respondent must redact the name of the witness/individual before providing the information to the Commission; currently, we spend enormous amounts of staff time redacting the names of third party witnesses or other comparator individuals from respondents' documents when answering a FOAA request.

LD 1171's proposals regarding shielding medical/disability records that are part of Commission investigative files from FOAA should be enacted.

Records related to identities of minor children

The second proposal in LD 1171 is to allow the Commission to protect the identities of minor children involved in Commission complaints or cases. Just as described above with respect to medical/disability records, the identities of minor children whose parents bring complaints on behalf of their children must become public and subject to FOAA when their cases end here. Although we can utilize pseudonyms for the minors while the case is pending at the Commission, we cannot shield the identity information of the minor

³ We do also redact a few other types of personally identifiable information that other statutes or FOAA already exempt from public disclosure, such as residential addresses and Social Security numbers.

or parents once the investigation ends and the case records are subject to FOAA. In this day and age of social media, a parent's choice to bring a complaint on behalf of his or her child would go viral instantly and would live on the internet forever, following that child for a lifetime. This can be a strong disincentive for parents to assert the rights of their children, as can the unfortunate possibility that that families and students could put themselves at risk if they make claims against their schools and that becomes public information.

This, too, is not a theoretical situation. In 2015 so far, we have received 16 complaints that parents filed on behalf of their minor children. That number is not unusual, given that in prior years we received an average of 18 such complaints per year (2014=9; 2013=12; 2012=17; 2011=14; and 2010=21).

We currently have no mechanism at all to shield the names of minor children from the public under FOAA. LD 1171 would allow us to do that, and we urge you to adopt this portion of the bill as well.

Conclusion

Thank you for the opportunity to provide this testimony reflecting our strong support of LD 1171. The Maine Human Rights Commission will be glad to discuss this matter at your convenience and/or be present at the work session for further deliberation.

Sincerely,



Amy M. Sneirson
Executive Director

Cc: Maine Human Rights Commission

DISABILITY RIGHTS MAINE

April 28, 2015

Senator David Burns, Chair
Representative Barry Hobbins, Chair
Committee on Judiciary
c/o Legislative Information
100 State House Station
Augusta, ME 04333

Re: LD 1171, An Act to Protect Certain Information under the Maine Human Rights Act

Dear Chairman Burns, Chairman Hobbins and Members of the Judiciary Committee,

I appear today to offer testimony on behalf of the Disability Rights Maine (DRM), Maine's Protection and Advocacy agency for people with disabilities, on LD 1171, An Act to Protect Certain Information under the Maine Human Rights Act. For the following reasons, we urge the Committee to vote ought to pass this important and long overdue legislation.

Through its operation of multiple federal and state funded programs, DRM advocates for individuals with disabilities whose rights have been violated, who are at risk of abuse or neglect, or who have faced discrimination on the basis of their disability. DRM seeks redress where rights concerns arise related housing, education, physical access, rehabilitation, health care, community supports, and employment. Additionally, DRM works toward public policy reform through training, outreach and systemic advocacy.

As a Managing Attorney at Disability Rights Maine, I regularly represent individuals at the Maine Human Rights Commission ("the Commission"), as I have done over the course of more than fifteen years. In addition, I served as a Commissioner at the Maine Human Rights Commission from 2005-2007. Further, in 2007, I was appointed by this Committee on Judiciary to work with my colleagues who represent the business community to propose language for a new definition of disability under the Maine Human Rights Act. As some of you may recall, the new definition of disability that we proposed was voted ought to pass by this Committee and was subsequently enacted by the Maine Legislature on June 21, 2007.

Over my many years of representing complainants, working with investigators and other Commission staff, assisting individuals in fact finding and Commission hearings, as well as presiding over Commission meetings with my fellow commissioners, I have become very familiar with the workings of the Maine Human Rights Act, including what works well in the

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MAINE'S PROTECTION AND ADVOCACY AGENCY FOR PEOPLE WITH DISABILITIES

14

law and what could be improved. I firmly believe that LD 1171 is long overdue and will significantly improve the workings of the Commission by (1) ensuring that investigators will have the freedom to fully and fairly investigate claims of discrimination and (2) sensitive medical records and identities of minors will be protected from becoming public record at the close of an investigation.

As you know, the Maine Human Rights Act specifically designates the Maine Human Rights Commission as the agency to investigate discrimination complaints based on disability, sex, religion or any other class designated as protected under the Act. 5 M.R.S.A. §4552. In order to carry out the purposes of the Act, the Commission must investigate all forms of discrimination and make recommended findings with regard to whether discrimination occurred. 5 M.R.S.A. §4566. In the course of its work, the Commission often must, by necessity, receive otherwise confidential records, it may subpoena records and compel parties to produce information. 5 M.R.S.A. §4566. The problem with the current statute is that almost everything in the investigator's file becomes public once an investigation is completed, no matter how sensitive or otherwise confidential a record is.

In fact, the only information collected in the course of an investigation that is designated as confidential at the conclusion of the investigation is "data identifying persons not parties to the complaint." 5 M.R.S.A. 4612(1)(B). All other information automatically becomes "a matter of public record at the conclusion of the investigation." 5 M.R.S.A. 4612(1)(B). This is particularly and most obviously difficult and problematic for complainants who have alleged disability discrimination.

All parties, in order to prove or avoid liability, are required to meet their burden of proof in bringing or defending a claim of discrimination at the Commission. For disability discrimination complainants, this often means having to disclose otherwise confidential medical records in order to show that they have a qualifying disability. For example, this might include records which prove that the complainant has a physical or mental impairment that substantially limits one or more major life activities. Individuals also are required to sign releases of information for the Commission in order to allow the investigator to obtain records from employers which may contain sensitive medical information. Commonly this may also include a detailed letter from a physician recommending reasonable accommodation based on an "invisible" disability such as bipolar disorder or HIV which has not been publicly disclosed. In instances such as these, the complainant would have to provide sensitive, otherwise confidential medical records to the investigator in order to meet their burden of proof. Under current statute, there is nothing preventing these records from automatically becoming public at the close of an investigation. LD 1171 is an effective solution to this problem.

LD 1171 protects some of the most sensitive, often otherwise confidential records from public disclosure, including identity of minors and medical records, diagnoses, medical information and other information regarding disability. Yet it strikes a reasonable balance which will allow individuals who are the subject of the records the ability to disclose the records with written authorization. In addition, LD 1171 provides specific exceptions to authorize disclosure when necessary to further the investigation and during deliberation of the complaint.

LD 1171 strikes an appropriate and fair balance between allowing free and unfettered investigation and assures that certain highly sensitive records will not automatically become public record. We respectfully urge this Committee to vote ought to pass on this important legislation.

Thank you.

Sincerely,



Kristin L. Aiello
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kla/st

Maine Revised Statutes

Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES

Chapter 337: HUMAN RIGHTS ACT

§4612. PROCEDURE ON COMPLAINTS

1. Predetermination resolution; investigation. Upon receipt of such a complaint, the commission or its delegated single commissioner or investigator shall take the following actions.

A. The commission or its delegated single commissioner or investigator shall provide an opportunity for the complainant and respondent to resolve the matter by settlement agreement prior to a determination of whether there are reasonable grounds to believe that unlawful discrimination has occurred. Evidence of conduct or statements made in compromise settlement negotiations, offers of settlement and any final agreement are confidential and may not be disclosed without the written consent of the parties to the proceeding nor used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the commission or a party. Notwithstanding this paragraph, the commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate settlement. The commission may adopt rules providing for a 3rd-party neutral mediation program. The rules may permit one or more parties to a proceeding to agree to pay the costs of mediation. The commission may receive funds from any source for the purposes of implementing a 3rd-party neutral mediation program. [2007, c. 243, §5 (AMD) .]

B. The commission or its delegated commissioner or investigator shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred. In conducting an investigation, the commission, or its designated representative, must have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy those materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The commission may issue subpoenas to compel access to or production of those materials or the appearance of those persons, subject to section 4566, subsections 4-A and 4-B, and may serve interrogatories on a respondent to the same extent as interrogatories served in aid of a civil action in the Superior Court. The commission may administer oaths. The complaint and evidence collected during the investigation of the complaint, other than data identifying persons not parties to the complaint, is a matter of public record at the conclusion of the investigation of the complaint prior to a determination by the commission. An investigation is concluded upon issuance of a letter of dismissal or upon listing of the complaint on a published commission meeting agenda, whichever first occurs. Prior to the conclusion of an investigation, all information possessed by the commission relating to the investigation is confidential and may not be disclosed, except that the commission and its employees have discretion to disclose such information as is reasonably necessary to further the investigation. Notwithstanding any other provision of this section, the complaint and evidence collected during the investigation of the complaint may be used as evidence in any subsequent proceeding, civil or criminal. The commission must conclude an investigation under this paragraph within 2 years after the complaint is filed with the commission. [2009, c. 235, §2 (AMD) .]

[2009, c. 235, §2 (AMD) .]

2. Order of dismissal. If the commission does not find reasonable grounds to believe that unlawful discrimination has occurred, it shall enter an order so finding, and dismiss the proceeding.

[1971, c. 501, §1 (NEW) .]

3. Informal methods, conciliation. If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, but finds no emergency of the sort contemplated in subsection 4, paragraph B, it

shall endeavor to eliminate such discrimination by informal means such as conference, conciliation and persuasion. Everything said or done as part of such endeavors is confidential and may not be disclosed without the written consent of the parties to the proceeding, nor used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the commission or a party. Notwithstanding this subsection, the commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate conciliation. If the case is disposed of by such informal means in a manner satisfactory to a majority of the commission, it shall dismiss the proceeding.

[2007, c. 243, §7 (AMD) .]

4. Civil action by commission.

A. If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, and further believes that irreparable injury or great inconvenience will be caused the victim of such discrimination or to members of a racial, color, sex, sexual orientation, physical or mental disability, religious or nationality group or age group if relief is not immediately granted, or if conciliation efforts under subsection 3 have not succeeded, the commission may file in the Superior Court a civil action seeking such relief as is appropriate, including temporary restraining orders. In a complaint investigated pursuant to a memorandum of understanding between the commission and the United States Department of Housing and Urban Development that results in a reasonable grounds determination, the commission shall file a civil action for the use of complainant if conciliation efforts under subsection 3 are unsuccessful. [2011, c. 613, §19 (AMD); 2011, c. 613, §29 (AFF).]

B. Grounds for the filing of such an action before attempting conciliation include, but are not limited to:

- (1) In unlawful housing discrimination, that the housing accommodation sought is likely to be sold or rented to another during the pendency of proceedings, or that an unlawful eviction is about to occur;
- (2) In unlawful employment discrimination, that the victim of the discrimination has lost or is threatened with the loss of job and income as a result of such discrimination;
- (3) In unlawful public accommodations discrimination, that such discrimination is causing inconvenience to many persons;
- (4) In any unlawful discrimination, that the victim of the discrimination is suffering or is in danger of suffering severe financial loss in relation to circumstances, severe hardship or personal danger as a result of such discrimination. [1991, c. 99, §30 (AMD) .]

[2011, c. 613, §19 (AMD); 2011, c. 613, §29 (AFF) .]

5. Confidentiality of 3rd-party records. The Legislature finds that persons who are not parties to a complaint under this chapter as a complainant or a respondent have a right to privacy. Any records of the commission that are open to the public under Title 1, chapter 13, must be kept in such a manner as to ensure that data identifying these 3rd parties is not reflected in the record. Only data reflecting the identity of these persons may be kept confidential.

[2011, c. 613, §20 (AMD); 2011, c. 613, §29 (AFF) .]

6. Right to sue. If, within 180 days of a complaint being filed with the commission, the commission has not filed a civil action in the case or has not entered into a conciliation agreement in the case, the complainant may request a right-to-sue letter, and, if a letter is given, the commission shall end its investigation.

[1995, c. 462, Pt. A, §7 (AMD) .]

SECTION HISTORY

1971, c. 501, §1 (NEW). 1973, c. 347, §13 (AMD). 1973, c. 415, §2 (AMD). 1973, c. 625, §37 (AMD). 1973, c. 705, §11 (AMD). 1973, c. 788, §28 (AMD). 1975, c. 358, §15 (AMD). 1977, c. 648, §2 (AMD). 1981, c. 6, (AMD). 1983, c. 281, §§1,2 (AMD). 1985, c. 585, §§1,2 (AMD). 1991,

PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE

Maine Freedom of Access Act - public records exceptions

Enacted 2005 - 2012

(Revised 8/16/2016)

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
1	1	402	2	Title 1, section 402, subsection 2, paragraph G, relating to committee meetings pertaining to interscholastic sports	Maine Principal's Association - Interscholastic Management Committee	Indefinitely postpone because MPA is not a public body	
2	1	402	3	Title 1, section 402, subsection 3, paragraph C-1, relating to legislative working papers	Legislative Council, Executive Director		
3	1	402	3	Title 1, section 402, subsection 3, paragraph N, relating to Social Security Numbers	Department of Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive Director; Administrative Office of the Courts	No Modification	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
4	1	402	3	Title 1, section 402, subsection 3, paragraph O, relating to personal contact information concerning public employees other than elected officials	Department of Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive Director; Administrative Office of the Courts	No Modification	
5	1	402	3	Title 1, section 402, subsection 3, paragraph P, relating to geographic information regarding recreational trails on private land	Department of Inland Fisheries and Wildlife; Department of Agriculture, Conservation and Forestry	No Modification	No Modification
6	1	402	3	Title 1, section 402, subsection 3, paragraph Q, relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events for Department of Corrections or county jail	Department of Corrections		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
7	1	402	3	Title 1, section 402, subsection 3, paragraph R, relating to Social Security numbers in possession of the Secretary of State	Secretary of State	No Modification	
8	1	538	3	Title 1, section 538, subsection 3, relating to InforME subscriber information	Information Resources of Maine (InforME)	No Modification	No Modification
9	1	1013	2	Title 1, section 1013, subsection 2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions	Commission on Governmental Ethics and Election Practices	No Modification	
10	1	1013	4	Title 1, section 1013, subsection 4, relating to Commission on Governmental Ethics and Election Practices records other than complaints	Commission on Governmental Ethics and Election Practices	No Modification	
11	1	1013	3-A	Title 1, section 1013, subsection 3-A, relating to complaint alleging a violation of legislative ethics	Commission on Governmental Ethics and Election Practices	No Modification	
12	4	1806		Title 4, section 1806, relating to certain information and records in the possession of the Maine Commission on Indigent Legal Services	Maine Commission on Indigent Legal Services	No Modification	No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
13	5	1541	10-B	Title 5, section 1541, subsection 10-B, relating to internal audit working papers of the State Controller	Department of Administrative and Financial Services - Office of the State Controller		
14	5	17057	3	Title 5, section 17057, subsection 3, relating to home contact information of Maine Public Employees Retirement System members, benefit recipients and staff	Maine Public Employees Retirement System	No Modification	No Modification
15	5	17057	4	Title 5, section 17057, subsection 4, relating to Maine Public Employees Retirement System private market investment activity	Maine Public Employees Retirement System	No Modification	No Modification
16	5	17057	5	Title 5, section 17057, subsection 3, relating to Maine Public Employees Retirement System employees personal and complaint and disciplinary information	Maine Public Employees Retirement System	No Modification	No Modification
17	5	90-B	7	Title 5, section 90-B, subsection 7, relating to the Address Confidentiality Program	Secretary of State	No Modification	No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
18	7	1052	2-A	Title 7, section 1052, subsection 2-A, relating to total potential acreage of genetically modified crops reported by individual manufacturers	Department of Agriculture, Conservation and Forestry	No Modification	No Modification
19	7	2231	3	Title 7, section 2231, subsection 3, relating to criminal history records provided to the Commissioner of Agriculture, Conservation and Forestry as part of an application to grow industrial hemp for commercial purposes	Department of Agriculture, Conservation and Forestry	Repealed by PL 2009, ch. 320, section 1	
20	8	1006	1	Title 8, section 1006, subsection 1, paragraph A, relating to information or records required by the Gambling Control Board for licensure: trade secrets and proprietary information	Department of Public Safety	No Modification	No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
21	8	1006	1	Title 8, section 1006, subsection 1, paragraph B, relating to information or records required by the Gambling Control Board for licensure: would be unwarranted invasion of privacy of key executive, gaming employee or another person	Department of Public Safety	No Modification	No Modification
22	8	1006	1	Title 8, section 1006, subsection 1, paragraph C, relating to information or records required by the Gambling Control Board for licensure: key executive or gaming employee compensation	Department of Public Safety	No Modification	No Modification
23	8	1006	1	Title 8, section 1006, subsection 1, paragraph D, relating to information or records required by the Gambling Control Board for licensure: financial, statistical and surveillance information related to the applicant	Department of Public Safety	No Modification	No Modification

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
24	8	1006	1	Title 8, section 1006, subsection 1, paragraph E, relating to information or records required by the Gambling Control Board for licensure: creditworthiness, credit rating or financial condition of person or project	Department of Public Safety	No Modification	No Modification
25	8	1006	1	Title 8, section 1006, subsection 1, paragraph F, relating to information or records required by the Gambling Control Board for licensure: information from other jurisdictions conditioned on remaining confidential	Department of Public Safety	No Modification	No Modification
26	8	1006	1	Title 8, section 1006, subsection 1, paragraph G, relating to information or records required by the Gambling Control Board for licensure: information designated confidential under federal law	Department of Public Safety	No Modification	No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
27	8	1006	1	Title 8, section 1006, subsection 1, paragraph H, relating to information or records required by the Gambling Control Board for licensure: specific personal information, including Social Security number, of any individual	Department of Public Safety	No Modification	No Modification
28	8	1006	3	Title 8, section 1006, subsection 3, relating to records and information developed as part of suitability requirement to select operator of central site monitoring system, held by Gambling Control Board and Dept. of Public Safety	Department of Public Safety	No Modification	No Modification
29	8	1006	4	Title 8, section 1006, subsection 4, relating to financial, statistical and surveillance information from the central site monitoring system held by the Gambling Control Board and the Dept. of Public Safety	Department of Public Safety	No Modification	No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
30	8	1007	2	Title 8, section 1007, subsection 2, relating to information or records received by the Gambling Control Board or Department of Public Safety from another agency pursuant to agreement	Department of Public Safety	No Modification	No Modification
31	8	1008		Title 8, section 1008, relating to information or records used or produced by the Gambling Control Board or Department of Public Safety in connection with hearings, proceedings or appeals pursuant to Title 8, section 1052	Department of Public Safety	No Modification	No Modification
32	8	1052		Title 8, section 1052, relating to reports, information or records compiled by the Gambling Control Board and Dept. of Public Safety concerning noncompliance with or violation of the chapter by an applicant, licensee, owner or key executive	Department of Public Safety	No Modification	No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
33	8	270-A		Title 8, section 270-A, relating to records and information included in application or materials required for issuance of commercial track license	Department of Agriculture, Conservation and Forestry	No Modification	No Modification
34	9-A	6-105-A		Title 9-A, section 6-105-A, last paragraph, relating to information concerning uniform multistate licensing system provided to Consumer Credit Protection by other jurisdictions	Department of Professional and Financial Regulation - Bureau of Consumer Credit Protection	No Modification	No Modification
35	12	8005	1	Title 12, section 8005, subsection 1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	Department of Agriculture, Conservation and Forestry	No Modification	No Modification

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

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
39	12	12551-A	10	Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch	Department of Inland Fisheries and Wildlife		
40	14	6321-A	4	Title 14, section 6321-A, subsection 4, relating to the financial information disclosed in the course of mediation under the foreclosure mediation program	Administrative Office of the Courts		
41	17-A	1176	1	Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims	Department of Public Safety		
42	17-A	1176	5	Title 17-A, section 1176, subsection 5, relating to request by crime victim for notice of release of defendant	Department of Corrections		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
43	20-A	13004	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel	Department of Education		
44	21-A	1003	3-A	Title 21-A, section 1003, subsection 3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices	Maine Commission on Governmental Ethics and Election Practices	No Modification	
45	21-A	1125	3	Title 21-A, section 1125, subsection 3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices	No Modification	
46	21-A	1125	2-B	Title 21-A, section 1125, subsection 2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices	Indefinitely postpone because citizen's initiation repeals this exception	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
47	21-A	196-A		Title 21-A, section 196-A, relating to information contained electronically in the central voter registration system	Secretary of State	No Modification	
48	22	1494		Title 22, section 1494, relating to occupational disease reporting	Department of Health and Human Services	No Modification	No Modification
49	22	2425	8	Title 22, section 2425, subsection 8, relating to medical marijuana registry identification cards	Department of Health and Human Services	No Modification	
50	22	1711-C	20	Title 22, section 1711-C, subsection 20, relating to hospital records concerning health care information pertaining to an individual	HealthInfoNet	Repeal exception because information purportedly protected is already protected and HealthInfoNet not subject to FOAA	
51	22	2153-A		Title 22, section 2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law	Department of Health and Human Services		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
52	22	4087-A	6	Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman	Child Welfare Ombudsman	No Modification	
53	24-A	2736	2	Title 24-A, section 2736, subsection 2, relating to insurer rate filings on individual health insurance policies and supporting information, in regards to protected health information and descriptions of the amount and terms or conditions or reimbursement in a contract between an insurer and a 3rd party	Department of Professional and Financial Regulation - Bureau of Insurance	Review not necessary; not a new PR exception	
54	25	4202		Title 25, section 4202, relating to records and information connected in any way with the work of a critical incident stress management team for law enforcement personnel	Department of Public Safety		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
55	29-A	1301	6-A	Title 29-A, section 1301, relating to the social security number of an applicant for a driver's license or nondriver identification card	Secretary of State	No Modification	
56	29-A	2251	7-A	Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in an accident report database	Department of Public Safety		
57	29-A	2117-A	4	Title 29-A, section 2117-A, relating to data collected or retained through the use of an automated license plate recognition system	Department of Public Safety; Department of Transportation		
58	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	Department of Public Safety		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
59	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board	Department of Public Safety		
60	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to information about a person receiving emergency medical services as part of an application for credentialing by Emergency Medical Services Board	Department of Public Safety		
61	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 87-B	Department of Public Safety		
62	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board	Department of Public Safety		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
63	30-A	4706	1	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities	Maine State Housing Authority (MaineHousing)	No Modification	
64	34-A	11221	13	Title 34-A, section 11221, subsection 13, relating to disclosure of certain sex offender registry information	Department of Public Safety		
65	34-A	11221	9-A	Title 34-A, section 11221, subsection 9-A, relating to certain sex offender registry information	Department of Public Safety		
66	34-B	1931	6	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board	Mental Health Homicide, Suicide, and Aggravated Assault Review Board (MHHSAAARB)		
67	34-B	3864	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	Department of Public Safety		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
68	35-A	122	1-B	Title 35-A, section 122, subsection 1-B, paragraph G, relating to information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use in the context of energy infrastructure corridors	Interagency Review Panel (Governor's Energy Office)	No Modification	
69	35-A	10106		Title 35-A, section 10106 relating to records of the Efficiency Maine Trust and its board	Efficiency Maine		
70	36	6271	2	Title 36, section 6271, subsection 2, relating to an application, information submitted in support of an application and files and communications in relation to a municipal property tax deferral program for senior citizens	Maine Municipal Association	No Modification	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
71	38	1310-B	2	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	Department of Environmental Protection	No Modification	
72	38	580-B	11	Title 38, section 580-B, subsection 11, relating to records held by the Department of Environmental Protection or its agents regarding individual auctions administered under the carbon dioxide cap-and-trade program	Department of Environmental Protection	No Modification	

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

§403. MEETINGS TO BE OPEN TO PUBLIC; RECORD OF MEETINGS

1. Proceedings open to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.

[2011, c. 320, Pt. C, §1 (NEW) .]

2. Record of public proceedings. Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include:

A. The date, time and place of the public proceeding; [2011, c. 320, Pt. C, §1 (NEW) .]

B. The members of the body holding the public proceeding recorded as either present or absent; and [2011, c. 320, Pt. C, §1 (NEW) .]

C. All motions and votes taken, by individual member, if there is a roll call. [2011, c. 320, Pt. C, §1 (NEW) .]

[2011, c. 320, Pt. C, §1 (NEW) .]

3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.

[2011, c. 320, Pt. C, §1 (NEW) .]

4. Maintenance of record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.

[2011, c. 320, Pt. C, §1 (NEW) .]

5. Validity of action. The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.

[2011, c. 320, Pt. C, §1 (NEW) .]

6. Advisory bodies exempt from record requirements. Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.

[2011, c. 320, Pt. C, §1 (NEW) .]

SECTION HISTORY

1969, c. 293, (AMD). 1975, c. 422, §1 (AMD). 1975, c. 758, (RPR).
2009, c. 240, §1 (AMD). 2011, c. 320, Pt. C, §1 (RPR).

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

§405. EXECUTIVE SESSIONS

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

1. Not to defeat purposes of subchapter. An executive session may not be used to defeat the purposes of this subchapter as stated in section 401.

[2009, c. 240, §2 (AMD) .]

2. Final approval of certain items prohibited. An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at an executive session.

[2009, c. 240, §2 (AMD) .]

3. Procedure for calling of executive session. An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.

[2009, c. 240, §2 (AMD) .]

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

[2003, c. 709, §1 (AMD) .]

5. Matters not contained in motion prohibited. Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.

[2009, c. 240, §2 (AMD) .]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[2009, c. 240, §2 (AMD) .]

SECTION HISTORY

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

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

§407. DECISIONS

1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

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

2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof must be kept by the agency and made available to any interested member of the public who may wish to review it.

[2009, c. 240, §3 (AMD) .]

SECTION HISTORY

1975, c. 758, (NEW) . 2009, c. 240, §3 (AMD) .

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

§409. APPEALS

1. Records. Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may appeal the refusal, denial or failure within 30 calendar days of the receipt of the written notice of refusal, denial or failure to the Superior Court within the State for the county where the person resides or the agency has its principal office. The agency or official shall file a statement of position explaining the basis for denial within 14 calendar days of service of the appeal. If a court, after a review, with taking of testimony and other evidence as determined necessary, determines such refusal, denial or failure was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[2015, c. 249, §2 (AMD) .]

2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[2011, c. 559, Pt. A, §2 (AMD) .]

3. Proceedings not exclusive. The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.

[2009, c. 240, §6 (AMD) .]

4. Attorney's fees. In an appeal under subsection 1 or 2, the court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.

This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.

[2009, c. 423, §1 (NEW) .]

SECTION HISTORY

1975, c. 758, (NEW). 1987, c. 477, §5 (AMD). 2007, c. 695, Pt. C, §1 (AMD). 2009, c. 240, §§5, 6 (AMD). 2009, c. 423, §1 (AMD). 2011, c. 559, Pt. A, §§1, 2 (AMD). 2011, c. 662, §6 (AMD). 2013, c. 350, §3 (AMD). 2015, c. 249, §2 (AMD).

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

§408-A. PUBLIC RECORDS AVAILABLE FOR INSPECTION AND COPYING

* [Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record. [2011, c. 662, §5 (NEW) .]

1. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee as provided in subsection 8.

[2011, c. 662, §5 (NEW) .]

2. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 8.

A. A request need not be made in person or in writing. [2011, c. 662, §5 (NEW) .]

B. The agency or official shall mail the copy upon request. [2011, c. 662, §5 (NEW) .]

[2011, c. 662, §5 (NEW) .]

* { **3. Acknowledgment; clarification; time estimate; cost estimate.** The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within 5 working days of receiving the request and may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, the agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request, as well as a cost estimate as provided in subsection 9. The agency or official shall make a good faith effort to fully respond to the request within the estimated time. For purposes of this subsection, the date a request is received is the date a sufficient description of the public record is received by the agency or official at the office responsible for maintaining the public record. An agency or official that receives a request for a public record that is maintained by that agency but is not maintained by the office that received the request shall forward the request to the office of the agency or official that maintains the record, without willful delay, and shall notify the requester that the request has been forwarded and that the office to which the request has been forwarded will acknowledge receipt within 5 working days of receiving the request.

[2015, c. 317, §1 (AMD) .]

4. (CONFLICT: Text as amended by PL 2015, c. 248, §1) Refusals; denials. If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide written notice of the denial, stating the reason for the denial, within 5 working days of the receipt of the request for inspection or copying. A request for inspection or copying may be denied, in whole or in part, on the basis that the request is unduly burdensome or oppressive if the procedures established in subsection 4-A are followed. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

[2015, c. 248, §1 (AMD) .]

4. (CONFLICT: Text as amended by PL 2015, c. 249, §1) **Refusals; denials.** If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide, within 5 working days of the receipt of the request for inspection or copying, written notice of the denial, stating the reason for the denial or the expectation that the request will be denied in full or in part following a review. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

[2015, c. 249, §1 (AMD) .]

4-A. Action for protection. A body, an agency or official may seek protection from a request for inspection or copying that is unduly burdensome or oppressive by filing an action for an order of protection in the Superior Court for the county where the request for records was made within 30 days of receipt of the request.

A. The following information must be included in the complaint if available or provided to the parties and filed with the court no more than 14 days from the filing of the complaint or such other period as the court may order:

- (1) The terms of the request and any modifications agreed to by the requesting party;
- (2) A statement of the facts that demonstrate the burdensome or oppressive nature of the request, with a good faith estimate of the time required to search for, retrieve, redact if necessary and compile the records responsive to the request and the resulting costs calculated in accordance with subsection 8;
- (3) A description of the efforts made by the body, agency or official to inform the requesting party of the good faith estimate of costs and to discuss possible modifications of the request that would reduce the burden of production; and
- (4) Proof that the body, agency or official has submitted a notice of intent to file an action under this subsection to the party requesting the records, dated at least 10 days prior to filing the complaint for an order of protection under this subsection. [2015, c. 248, §2 (NEW) .]

B. Any appeal that may be filed by the requesting party under section 409 may be consolidated with an action under this subsection. [2015, c. 248, §2 (NEW) .]

C. An action for protection may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require upon the request of any party. [2015, c. 248, §2 (NEW) .]

D. If the court finds that the body, agency or official has demonstrated good cause to limit or deny the request, the court shall enter an order making such findings and establishing the terms upon which production, if any, must be made. If the court finds that the body, agency or official has not demonstrated good cause to limit or deny the request, the court shall establish a date by which the records must be provided to the requesting party. [2015, c. 248, §2 (NEW) .]

[2015, c. 248, §2 (NEW) .]

5. Schedule. Inspection, conversion pursuant to subsection 7 and copying of a public record subject to a request under this section may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody or control of the public record requested. If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.

[2011, c. 662, §5 (NEW) .]

6. No requirement to create new record. An agency or official is not required to create a record that does not exist.

[2011, c. 662, §5 (NEW) .]

7. Electronically stored public records. An agency or official having custody or control of a public record subject to a request under this section shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

A. If in order to provide access to an electronically stored public record the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the agency or official may charge a fee to cover the cost of conversion as provided in subsection 8. [2011, c. 662, §5 (NEW) .]

B. This subsection does not require an agency or official to provide a requester with access to a computer terminal. [2011, c. 662, §5 (NEW) .]

[2011, c. 662, §5 (NEW) .]

8. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying. [2011, c. 662, §5 (NEW) .]

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information. [2011, c. 662, §5 (NEW) .]

C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format. [2011, c. 662, §5 (NEW) .]

D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies. [2011, c. 662, §5 (NEW) .]

E. The agency or official may charge for the actual mailing costs to mail a copy of a record. [2011, c. 662, §5 (NEW) .]

[2011, c. 662, §5 (NEW) .]

9. Estimate. The agency or official having custody or control of a public record subject to a request under this section shall provide to the requester an estimate of the time necessary to complete the request and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than \$30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 10 applies.

[2011, c. 662, §5 (NEW) .]

10. Payment in advance. The agency or official having custody or control of a public record subject to a request under this section may require a requester to pay all or a portion of the estimated costs to complete the request prior to the search, retrieval, compiling, conversion and copying of the public record if:

A. The estimated total cost exceeds \$100; or [2011, c. 662, §5 (NEW) .]

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner. [2011, c. 662, §5 (NEW).]

[2011, c. 662, §5 (NEW) .]

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

A. The requester is indigent; or [2011, c. 662, §5 (NEW).]

B. The agency or official considers release of the public record requested to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. [2011, c. 662, §5 (NEW).]

[2011, c. 662, §5 (NEW) .]

SECTION HISTORY

2011, c. 662, §5 (NEW). 2013, c. 350, §§1, 2 (AMD). 2015, c. 248, §§1, 2 (AMD). 2015, c. 249, §1 (AMD). 2015, c. 317, §1 (AMD).

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State public record laws:
Distinctions based on requestor type or purpose

- Maine
 - An agency may request clarification concerning which public record or public records are being requested. 1 MRSA §408-A(3)
 - An agency may waive fees if the requestor is indigent or the agency considers release of the records to be in the public interest and not primarily in the commercial interest of the requestor. 1 MRSA §408-A(11)

- Arizona
 - When a requestor requests public records for a commercial purpose, they must submit a statement setting forth the commercial purpose for which the records will be used. If the request is determined to be a misuse of public records, the custodian of records may apply to the Governor requesting that the Governor by executive order prohibit the furnishing of the requested records.
 - If a person obtains a public record for a commercial purpose without indicating the actual commercial purpose, or obtains a public record for a noncommercial purpose and uses it or allows someone else to use the record for a commercial purpose, the person may be liable to the agency for damages in the amount of three times the amount of actual damages, if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the record.

- District of Columbia
 - The fee schedules that may be adopted by a public body vary depending on the purpose of the request (e.g. commercial) and the identity of the requester (e.g., news media).

- Illinois
 - For commercial requests, the public body may charge up to \$10 for each hour spent by personnel in searching for and retrieving a requested record or examining the record for necessary redactions, if in excess of 8 hours.
 - Documents must be furnished without charge or at a reduced charge if the person requesting the documents states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest.

- Kentucky
 - The public records custodian may require a written application, signed by the applicant and with his or her name printed legibly on the application, describing the records to be inspected/copied.
 - The public agency may not require a person requesting records for a noncommercial purpose to state their exact purpose for requesting the records
 - When a person requests public records for a commercial purpose, the public agency may require a certified statement stating the commercial purpose for which the records shall be used and may charge a special fee

- It is unlawful to obtain a public record for a commercial purpose without indicating the commercial purpose (if required by agency), using the record for a different commercial purpose than stated, or obtaining a record for a noncommercial purpose and then allowing it to be used for a commercial purpose
- A requestor who misuses public records (per above) may be liable for damages to the public agency for three times the amount that would have been charged for the public record if the actual commercial purpose for which it was obtained or used had been stated, costs, reasonable attorney's fees and any other penalty established by law
- New York
 - The release of lists of names may be denied if such lists are to be used for commercial or fundraising purposes.
- Ohio
 - The Bureau of Motor Vehicles is permitted to charge additional fees for responding to commercial requests that seek 1) copies of a record or information in a format other than the format already available, or information that cannot be extracted without examining all items in a database or class of records and 2) the requester intends to use or forward the copies for surveys, marketing, solicitation or resale for commercial purposes.
- Oklahoma
 - If a public records request is made solely for a commercial purpose, the agency can charge a reasonable fee to recover the direct cost of the document search.
- Oregon
 - The identity and motive of the person requesting a public record may be relevant when the record is subject to a conditional public records exemption, which requires a determination of the public interest in disclosure of the record (e.g., trade secrets, records pertaining to pending litigation, etc.).
- South Carolina
 - A person requesting records relating to the registration and licensing of motor vehicles must submit his or her name and address, state the reason for the request, and must certify that the requested information will not be used for a purpose related to telephone marketing or solicitation
 - A person requesting records related to state-collected personal information may be required to state their intended use of the records because state-collected personal information is prohibited from being used for commercial solicitation
 - A person who uses personal information obtained from a public records request for commercial solicitation commits a misdemeanor and may be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year

- Texas
 - A public agency is specifically prohibited from making any inquiry of a requestor other than 1) to establish the requestor's proper identification, 2) to clarify a request if the governmental body is unclear and 3) to discuss the request with the requestor if the scope of the request could be narrowed if a large amount of information has been requested.
 - An agency does not need to comply with requests from individuals who are incarcerated or their agents (other than the individual's attorney)
- Virginia
 - Agency may require the requestor to provide their name and legal address
 - Incarcerated people are prohibited from requesting records
- Washington
 - Agencies are prohibited from selling or providing lists of individuals for commercial purposes
 - Applies to requests from commercial entities, but not to those from governmental entities
 - Lists of professional licensees and applicants must be made available to those professional associations or educational organizations recognized by their professional licensing or examination board
 - An incarcerated person may be enjoined from obtaining records if it is determined that the request was made to harass or intimidate a public agency or employee, would assist criminal activity, or if the request would threaten the security of a correctional facility or any person.
- Wisconsin
 - Requestor may be required to confirm identity if requesting a record that has personally identifiable information pertaining to the requestor
 - Incarcerated persons or persons involuntarily committed to a mental institution are generally prohibited from requesting records (unless the record contains specific references to the individual or the individual's minor child over whom the individual has not been denied rights)

NOTICE OF PUBLIC HEARING

The Right to Know Advisory Committee will hold a public hearing at the following time and place:

September 14, 2016, 10:00 am
Room 438, State House
Augusta, ME 04333

The purpose of the hearing is to take comments and suggestions about how the Freedom of Access Act is working and how it might be improved, consistent with its goals of giving citizens adequate access to records and meetings of decision making bodies of government.

Maine's Right to Know Advisory Committee serves as a resource for ensuring compliance with the law and responsibility for a broad range of activities to advance the purposes and principles underlying Maine's Freedom of Access Act. The Freedom of Access Act, which can be found at Title 1, chapter 13 of the Maine Revised Statutes, states the Legislature's intent that public proceedings exist to aid in the conduct of the people's business, that government actions be taken openly, and that the records of government actions be open to public inspection and deliberations be conducted openly. The law provides the public with the right to inspect and copy public records and imposes requirements on government bodies who have received such a request, as well as requiring that bodies of government conduct their meetings in public. The law also provides specific exceptions that allow State and local government bodies to keep certain records or information confidential, or to have executive sessions that are not open to the public during meetings that are otherwise public.

The Advisory Committee requests testimony on the following topic:

Considering the sensitive nature of certain information held by government entities, how could public access to government meetings and records be improved?

Written comments may be submitted to:

Craig T. Nale
Office of Policy and Legal Analysis
Cross Office Building, Room 215
13 State House Station
Augusta, ME 04333
craig.nale@legislature.maine.gov

If you plan to testify at the public hearing or to submit comments, the Right to Know Advisory Committee requests that your testimony or comments relate to the following general questions:

- How did you learn about the rights provided in the Freedom of Access Act?
- Did you have questions about how to make a request for a public record, and if so, how did you get answers to them?
- What were you surprised to learn when you made a request for a public record?
- If an issue arose that affected your ability to obtain a public record, how did you attempt to resolve that issue?
- If you are a member of a government body, how does your understanding of the requirements of the Freedom of Access Act differ from the expectations of those making public records requests?
- If you are a member of a government body, do the requirements of the Freedom of Access Act allow you to accomplish your government duties and comply with existing public access requirements and procedures?

This hearing is not a forum for the resolution of specific complaints about meetings or records. The Right to Know Advisory Committee asks that your testimony and comments do not question the motives of others or seek resolution of a particular dispute. Depending upon attendance, the Advisory Committee may limit testimony to a certain duration.



FOR RTKAC Review 8/17/16
Submitted by Nicole Clegg, PPNNE

To: Members of the Maine Right to Know Advisory Committee:
From: Nicole Clegg, VP Public Policy
Date: August 16, 2016
Re: Protections for the personal information of licensed practitioners

Thank you for the opportunity to provide additional information regarding freedom of information requests of licensed practitioners and the security risks they present PPNNE practitioners.

In conversations with our security personnel for Planned Parenthood Federation of America (PPFA) and its affiliates, I learned that the security risks our Maine health care practitioners face are not unique. In fact, the use of freedom of information requests to collect personal information that can be used to harass or intimidate health care providers is pervasive with thousands of records having been released to unknown entities. This information is often posted in hostile contexts online. An example, <http://abortiondocs.org/search-results/?state=ME>, includes multiple license files of Maine medical practitioners that were released through freedom of information requests.

State courts have also had to weigh in on this issue including recent cases in New Hampshire, Maryland and Washington, where the courts determined that the risks were great enough to protect the information.

In a statement to the court in Washington (attached), Ellen Gertzog, PPFA's National Director of Affiliate Security outlined those risks:

Planned Parenthood employees also experience invasion of their privacy and threats to their sense of safety by having personal information posted online. There are many websites where anti-abortion activists not only post photographs of staff members, but also of their cars and homes, sometimes with addresses, license plate numbers, and private phone numbers, leaving these employees vulnerable to harassment in their homes and neighborhoods. These websites implicitly encourage activism against these providers and cause employees to be afraid for their own safety and that of their families.

While I did not look at all fifty states in my research I found that when personal information is protected by a state, it is generally done in one of four ways: (1) statutes limiting the information licensing boards can share; (2) address confidentiality program; (3) exempting information from the information required for disclosure under the state's public information act; and (4) prohibiting publication of personal information of certain persons on the internet.

Of the examples, in my opinion, Maryland's law provides the best example of providing protections for licensed professionals while still making appropriate information public (attached).

Maryland has a provision in its Public Information Act requiring custodians to deny inspection of the portions of public records that contain information about "the licensing of an individual in an occupation or a profession," but requires allowing access to specified information, including the name of the licensee, the business address or home address if the business address is unavailable (after redacting any information that identifies the location as the home address), the educational and occupational background of the licensee, the professional qualifications of the licensee, any orders and findings that result from formal disciplinary actions, and "any evidence that has been provided to the custodian to meet the requirements of a statute as to financial responsibility."¹ Record custodians may allow inspection of other information about a licensee if "the custodian finds a compelling public purpose" and "the rules or regulations of the official custodian allow the inspection."² Inspection is also required by a "person in interest," which in most circumstances is the person who is the subject of the public record.³ For physicians and nurses, the effect of this law is to prohibit members of the public from accessing licensing records except for the specified information, unless the board of medicine or board of nursing promulgates rules to permit inspection of other records.

If the Maine legislature were to pursue a similar policy, I would suggest in the interest of efficiency and consistency, a public disclosure form be developed that could be provided when a freedom of information request is made. The form would be completed by the license applicant and would include the information the legislature has determined is public. When public disclosure requests are made, this form could be provided rather than redacting fifty or more pages in a license file, which has proven problematic.

California has approached the issue differently with a program that allows reproductive health care providers, patients, and volunteers to use a state-designated address in nearly all public records as a means of concealing their personal addresses from the public.⁴ This law is an extension of a similar program for victims of certain crimes such as domestic violence, stalking, and trafficking that allows victims to keep their personal addresses out of public records. Thirty-five states have some form of address confidentiality program for victims of such crimes.⁵ California extends the protection to reproductive health care providers.

Under the program, the California Secretary of State (SOS) provides participants with an address that they can use for official purposes.⁶ Participants can request that state and local agencies use the SOS address for them when creating or modifying a public record, except it cannot be used to modify a birth, fetal death, death, or marriage record.⁷ State and local

¹ Md. Gen. Provis. § 4-333.

² *Id.*

³ Md. Gen. Provis § 4-101(g).

⁴ See Cal. Gov't Code § 6215 et seq.

⁵ Missouri Secretary of State, *Address Confidentiality Programs by State*, available at <http://www.sos.mo.gov/business/SafeAtHome/AddressConfidentialityProgramsByState>.

⁶ Cal. Gov't Code § 6215.2(1).

⁷ Cal. Gov't Code § 6215.5(a), (b).

agencies are required to accept the SOS address when creating or modifying a public record, unless the SOS determines (1) the agency is required by statute or regulation to use the confidential address and (2) the address will only be used for those statutory/regulatory purposes and won't be publically disseminated.⁸ The SOS is required to forward all first-class mail and all mail sent by a government agency to participants.⁹

Another way that states can protect the personal information of individuals is to include exemptions for that information in their public information laws. For example, several states include exemptions for the personal information of law enforcement officers and/or elected officials in their freedom of information laws.¹⁰ This typically includes at least their address and telephone number, but in some cases includes photographs¹¹ and/or the names of family members.¹² A few states have exemptions for the personal information about emergency medical technicians¹³ and information contained in gun permit records and/or applications for gun permits.¹⁴

I would be happy to discuss these options at the next meeting.

⁸ *Id.*

⁹ Cal. Gov't Code § 6215.5(e).

¹⁰ *See, e.g.*, Idaho Code Ann. § 74-106; Tex. Gov't Code § 552.117; Fla. Stat. Ann. § 119.071(4)(d)(2)(a)(I); Mich. Comp. Laws Ann. § 15.243(1)(s); Or. Rev. Stat. Ann. § 192.501(31); W. Va. Code Ann. § 29B-1-4(a)(21).

¹¹ *See, e.g.*, Fla. Stat. Ann. § 119.071(4)(d)(2)(a)(I).

¹² *See, e.g.*, Mich. Comp. Laws Ann. § 15.243(1)(s).

¹³ *See, e.g.*, Fla. Stat. Ann. § (o)(exempting from disclosure "the home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under [Florida law]; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics" if the emergency medical technicians or paramedics have "made reasonable efforts to protect such information from being accessible through other means available to the public."

¹⁴ *See* Kelsey M. Swanson, *The Right to Know: An Approach to Gun Licenses and Public Access to Government Records*, 56 UCLA L. Rev. 1579, 1628 (2009).

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

JANE AND JOHN DOES 1 - 10,
individually and on behalf of others
similarly situated,

Plaintiffs,

v.

UNIVERSITY OF WASHINGTON, a
Washington public corporation; DAVID
DALEIDEN, an individual; and ZACHARY
FREEMAN, an individual;

Defendants.

No.
DECLARATION OF ELLEN GERTZOG

I, ELLEN GERTZOG, state and declare as follows:

1. I am the National Director for Affiliate Security at Planned Parenthood Federation of America ("PPFA"). I make this declaration based on personal knowledge, and if called and sworn as a witness, I could and would testify as set forth below.

2. I have worked for Planned Parenthood since 1990. I first worked at a local affiliate in Rochester, New York, where I was responsible for security at that location. In 1997, I began to work for PPFA on the affiliate security team. I have held the position of National Director for Affiliate Security since 2008.

3. Through my work and from a review of relevant literature, I know that there has been a long history of violence against abortion providers and abortion-providing facilities.

DECLARATION OF ELLEN GERTZOG - 1

1 According to the National Abortion Federation (“NAF”), “[s]ince 1977 there have been 11
2 murders, 26 attempted murders, 42 bombings, 185 arsons, and thousands of incidents of criminal
3 activities directed at abortion providers.” National Abortion Federation, 2015 Violence and
4 Disruption Statistics, at 1 (Apr. 2016), available at [http://prochoice.org/wp-](http://prochoice.org/wp-content/uploads/2015-NAF-Violence-Disruption-Stats.pdf)
5 [content/uploads/2015-NAF-Violence-Disruption-Stats.pdf](http://prochoice.org/wp-content/uploads/2015-NAF-Violence-Disruption-Stats.pdf) (hereafter, NAF Report).

6 4. In my time at PPFA, I have seen a steady escalation of tactics designed to
7 intimidate individuals associated with Planned Parenthood. In general, there is a growing
8 understanding among law enforcement and other security analysts that the kind of language and
9 rhetoric used to discuss controversial subjects such as abortion can incite violence. Individuals
10 who are inspired by anti-abortion rhetoric can even commit deadly acts of violence. For
11 example, in November 2015, a man who shot and killed three people and injured nine at a
12 Planned Parenthood health center in Colorado Springs, Colorado specifically indicated that he
13 was inspired by rhetoric surrounding fetal tissue donation and other anti-abortion rhetoric. *See*
14 Fred Barbash and Yanan Wang, “The twisted ‘dream’ of accused Planned Parenthood killer
15 Robert Dear Jr.,” Washington Post (April 12, 2016), attached as **Exhibit A**.

16 5. Planned Parenthood employees have been harassed in their homes, in their
17 workplaces, over the phone, and through any online presence they may have, such as on social
18 media, all due to the nature of their employment and their association with abortion. This creates
19 a dynamic in which no part of these Planned Parenthood employees’ lives are their own to live
20 free from harassment. Even if these employees have not experienced direct violence, this
21 environment of constant harassment because of their jobs creates fear and intimidation, along
22 with the knowledge that they could experience violence at any time.

23 6. Planned Parenthood employees also experience invasion of their privacy and
24 threats to their sense of safety by having personal information posted online. There are many
25 websites where anti-abortion activists not only post photographs of staff members, but also of
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DECLARATION OF ELLEN GERTZOG - 2

1 their cars and homes, sometimes with addresses, license plate numbers, and private phone
2 numbers, leaving these employees vulnerable to harassment in their homes and neighborhoods.
3 These websites implicitly encourage activism against these providers and cause employees to be
4 afraid for their own safety and that of their families.

5 7. Planned Parenthood employees have reported being harassed in their homes and
6 neighborhoods. Employees have reported that anti-abortion activists often sent graphic postcards
7 to employees' home addresses, distributed leaflets in employees' neighborhoods to "warn"
8 neighbors that someone associated with abortion lived nearby, and picketed employees' homes.
9 These activities have been perpetrated most often against Planned Parenthood physicians, but
10 staff in other roles and even vendors who provide Planned Parenthood with supplies have also
11 been targeted.

12 8. Since July 2015, when an anti-abortion group called the Center for Medical
13 Progress ("CMP") released covertly recorded videos showing Planned Parenthood employees
14 discussing fetal tissue donation, there has been a sharp increase in threats, harassment,
15 vandalism, and violence against Planned Parenthood affiliates, staff members, and patients. As a
16 recent NAF report explains, the "2015 statistics reflect a dramatic increase in hate speech and
17 internet harassment, death threats, attempted murder, and murder, which coincided with the
18 release of heavily-edited, misleading, and inflammatory videos beginning in July." NAF Report
19 at 1.

20 9. In addition to the Colorado Springs shooting, in July and August of 2015,
21 immediately following the release of the CMP videos, Planned Parenthood affiliates reported
22 849 incidents of violence, harassment, and vandalism at health centers around the country. This
23 number is more than triple the average number of incidents that Planned Parenthood affiliates
24 reported in July and August of 2014. These incidents included threats and suspicious calls,
25 trespassing, disruptive persons, persons attempting to bring weapons into the clinic, and
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DECLARATION OF ELLEN GERTZOG - 3

1 vandalism. Harassment was the most common security incident. Increased numbers of security
2 incidents have continued since that time to the present day.

3 10. In the immediate aftermath of the CMP video release, Planned Parenthood
4 employees were subjected to increased threats and harassment. In one case, a man offered a
5 bounty of \$10,000 to murder one Planned Parenthood physician, who was filmed without her
6 knowledge or consent and featured in the CMP videos. While that particular perpetrator has
7 been identified by law enforcement, other employees have also received abhorrent, graphic
8 communications that rise to the level of actionable threats.

9 11. One medical director of a Planned Parenthood clinic has relocated her family
10 twice in the last year in order to protect herself and her preschool-aged children. She left her
11 first home because picketers came to her home and behaved aggressively toward her and her
12 family. After she moved, picketers came to her new home, forcing her once again to move in
13 order to be able to live and raise her family free of harassment.

14 12. Acts of arson and vandalism are also a serious concern for Planned Parenthood
15 affiliated clinics. In September of 2015, the level of animus not only against abortion providers,
16 but against Planned Parenthood in general was revealed when an arsonist set fire to a Planned
17 Parenthood health center in Pullman, Washington, forcing it to close for six months. This arson
18 was committed in a similar manner to other arsons of Planned Parenthood health centers across
19 the country at the time: arsonists smashed windows and threw fire accelerants and flaming
20 materials through the broken windows.

21 13. Other forms of vandalism and harassment have increased as well since the release
22 of the CMP videos. In Washington State, the number of reported incidents of vandalism of
23 Planned Parenthood health centers doubled, from nine in 2014 to 18 in 2015. During that time
24 period, Washington health centers also saw an increase in reported incidents of physical
25 obstruction, from zero to seven, and in harassment, from 33 incidents to 44.

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DECLARATION OF ELLEN GERTZOG - 4

1 14. Planned Parenthood employees experience harassment due to their employment,
2 both at their workplaces and in their homes and neighborhoods. As the National Director for
3 Affiliate Security, I routinely assess the risk to personal safety for Planned Parenthood
4 employees. Based on my expertise with security risks, I believe that if personally identifying
5 information for people associated with fetal tissue donation and research and the Birth Defects
6 Research Lab at the University of Washington is publicly released, those persons will be at
7 particular risk due to the nature of their work and the publicity surrounding the fetal tissue
8 donation.
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DECLARATION OF ELLEN GERTZOG - 5

1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct.
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4 SIGNED this 2nd day of August 2016, at _____, New York.
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6 _____
7 ELLEN GERTZOG
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DECLARATION OF ELLEN GERTZOG - 6

West's Annotated Code of Maryland
General Provisions (Refs & Annos)
Title 4. Public Information Act (Refs & Annos)
Subtitle 3. Denials of Inspection (Refs & Annos)
Part III. Required Denials for Specific Information (Refs & Annos)

MD Code, General Provisions, § 4-333
Formerly cited as MD CODE, SG, § 10-617

§ 4-333. Licensing records

Effective: October 1, 2014
Currentness

In general

(a) Subject to subsections (b) through (d) of this section, a custodian shall deny inspection of the part of a public record that contains information about the licensing of an individual in an occupation or a profession.

Required inspection

(b) A custodian shall allow inspection of the part of a public record that gives:

- (1) the name of the licensee;
- (2) the business address of the licensee or, if the business address is not available, the home address of the licensee after the custodian redacts any information that identifies the location as the home address of an individual with a disability as defined in § 20-701 of the State Government Article;
- (3) the business telephone number of the licensee;
- (4) the educational and occupational background of the licensee;
- (5) the professional qualifications of the licensee;
- (6) any orders and findings that result from formal disciplinary actions; and
- (7) any evidence that has been provided to the custodian to meet the requirements of a statute as to financial responsibility.

Permissible inspection

(c) A custodian may allow inspection of other information about a licensee if:

- (1) the custodian finds a compelling public purpose; and
- (2) the rules or regulations of the official custodian allow the inspection.

Required inspection by person in interest

(d) Except as otherwise provided by this section or other law, a custodian shall allow inspection by the person in interest.

Required omission from list on request

(e) A custodian who sells lists of licensees shall omit from the lists the name of any licensee, on written request of the licensee.

Credits

Added by Acts 2014, c. 94, § 2, eff. Oct. 1, 2014.

Editors' Notes

LEGISLATIVE NOTES

Revisor's Note (Acts 2014, c. 94):

This section is new language derived without substantive change from former SG § 10-617(h) and (b)(1).

In subsection (b)(2) of this section, the reference to redacting "any information" is substituted for the former reference to redacting "all information, if any" for brevity.

Defined terms: "Custodian" § 4-101

"Person in interest" § 4-101

"Public record" § 4-101

MD Code, General Provisions, § 4-333, MD GEN PROVIS § 4-333

Current through all legislation from the 2016 Regular Session of the General Assembly in effect through July 1, 2016

Maine Revised Statutes

Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES

Chapter 5: SECRETARY OF STATE

§90-B. ADDRESS CONFIDENTIALITY PROGRAM

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

A. "Address" means a residential street, school or work address of an individual, including any geographically specific description or coordinate that identifies a residential address, as specified on the individual's application to be a program participant under this section. [2011, c. 195, §1 (AMD) .]

B. "Application assistant" means an employee of a state or local agency, or of a nonprofit program that provides counseling, referral, shelter or other specialized service to victims of domestic abuse, rape, sexual assault or stalking and who has been designated by the respective agency, and trained, accepted and registered by the secretary to assist individuals in the completion of program participation applications. [2001, c. 539, §1 (NEW) .]

C. "Designated address" means the address assigned to a program participant by the secretary pursuant to this section. [2001, c. 539, §1 (NEW) .]

D. "Mailing address" means an address that is recognized for delivery by the United States Postal Service. [2001, c. 539, §1 (NEW) .]

E. "Program" means the Address Confidentiality Program established in this section. [2001, c. 539, §1 (NEW) .]

F. "Program participant" means a person certified by the Secretary of State to participate in the program. [2001, c. 539, §1 (NEW) .]

G. "Secretary" means the Secretary of State. [2001, c. 539, §1 (NEW) .]

[2011, c. 195, §1 (AMD) .]

2. Program established. The Address Confidentiality Program is established to protect victims of domestic violence, stalking or sexual assault by authorizing the use of designated addresses for such victims. The program is administered by the secretary under the following application and certification procedures.

A. Upon recommendation of an application assistant, an adult person, a parent or guardian acting on behalf of a minor or a guardian acting on behalf of an incapacitated person may apply to the secretary to have a designated address assigned by the secretary to serve as the person's address or the address of the minor or incapacitated person. [2001, c. 539, §1 (NEW) .]

B. The secretary may approve an application only if it is filed with the office of the secretary in the manner established by rule and on a form prescribed by the secretary. A completed application must contain:

(1) The application preparation date, the applicant's signature and the signature and registration number of the application assistant who assisted the applicant in applying to be a program participant;

(2) A designation of the secretary as agent for purposes of service of process and for receipt of first-class mail;

(3) The mailing address where the applicant may be contacted by the secretary or a designee and the telephone number or numbers where the applicant may be called by the secretary or the secretary's designee; and

(4) One or more addresses that the applicant requests not be disclosed for the reason that disclosure will jeopardize the applicant's safety or increase the risk of violence to the applicant or members of the applicant's household. [2001, c. 539, §1 (NEW) .]

C. Upon receipt of a properly completed application, the secretary may certify the applicant as a program participant. A program participant is certified for 4 years following the date of initial certification unless the certification is withdrawn or invalidated before that date. The secretary shall send notification of lapsing certification and a reapplication form to a program participant at least 4 weeks prior to the expiration of the program participant's certification. [2001, c. 539, §1 (NEW) .]

D. The secretary shall forward first-class mail to the appropriate program participants. [2001, c. 539, §1 (NEW) .]

E. A person who violates this paragraph commits a Class E crime.

(1) An applicant may not file an application knowing that it:

(a) Contains false or incorrect information; or

(b) Falsely claims that disclosure of the applicant's address or mailing address threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made.

(2) An application assistant may not assist or participate in the filing of an application that the application assistant knows:

(a) Contains false or incorrect information; or

(b) Falsely claims that disclosure of the applicant's address or mailing address threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made. [2001, c. 2, Pt. A, §4 (COR) .]

[2001, c. 2, Pt. A, §4 (COR) .]

3. Cancellation. Certification for the program may be canceled if one or more of the following conditions apply:

A. If the program participant obtains a name change, unless the program participant provides the secretary with documentation of a legal name change within 10 business days of the name change; [2001, c. 539, §1 (NEW) .]

B. If there is a change in the residential street address from the one listed on the application, unless the program participant provides the secretary with notice of the change in such manner as the secretary provides by rule; or [2001, c. 539, §1 (NEW) .]

C. The applicant or program participant violates subsection 2, paragraph E, subparagraph (1). [2001, c. 539, §1 (NEW) .]

[2001, c. 539, §1 (NEW) .]

4. Use of designated address. Upon demonstration of a program participant's certification in the program, state and local government agencies and the courts shall accept and use only the designated address as a program participant's address unless the secretary has approved an exemption pursuant to subsection 5-A.

A. [2015, c. 313, §1 (RP) .]

B. [2015, c. 313, §1 (RP) .]

[2015, c. 313, §1 (AMD) .]

5. Disclosure to law enforcement and state agencies.

[2015, c. 313, §2 (RP) .]

5-A. Disclosure to law enforcement and to other state and local agencies. If the secretary determines it appropriate, the secretary may make a program participant's address or mailing address available for use by granting an exemption under the following circumstances:

A. Upon request to the secretary by:

- (1) A law enforcement agency in the manner provided for by rule; or
- (2) A commissioner or other chief administrator of a state or local government agency or the commissioner's or administrator's designee in the manner provided for by rule; and [2015, c. 313, §3 (NEW) .]

B. Upon a finding by the secretary that:

- (1) An agency under paragraph A has a bona fide statutory, administrative or law enforcement requirement for use of the program participant's address or mailing address such that the agency is unable to fulfill its statutory duties and obligations without the address or mailing address; and
- (2) The program participant's address or mailing address will be used only for those statutory, administrative or law enforcement purposes and otherwise will be kept under seal and excluded from public inspection. [2015, c. 313, §3 (NEW) .]

[2015, c. 313, §3 (NEW) .]

6. Disclosure pursuant to court order or canceled certification. If the secretary determines appropriate, the secretary shall allow a program participant's address and mailing address to be made available for use under the following circumstances:

A. To a person identified in a court order, upon the secretary's receipt of that court order that specifically orders the disclosure of a particular program participant's address and mailing address and the reasons stated for the disclosure; or [2001, c. 539, §1 (NEW) .]

B. If the certification has been canceled because the applicant or program participant violated subsection 2, paragraph E, subparagraph (1). [2001, c. 539, §1 (NEW) .]

[2013, c. 478, §1 (AMD) .]

7. Confidentiality. The program participant's application, supporting materials and the program's state e-mail account are not a public record and must be kept confidential by the secretary.

[2011, c. 195, §2 (AMD) .]

8. Rules. The secretary shall adopt rules to carry out this section. These rules are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[2001, c. 539, §1 (NEW) .]

SECTION HISTORY

RR 2001, c. 2, §A4 (COR). 2001, c. 539, §1 (NEW). 2011, c. 195, §§1, 2 (AMD). 2013, c. 478, §1 (AMD). 2015, c. 313, §§1-3 (AMD).

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