

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

AGENDA

August 17, 2016

10:00 a.m.

Room 438, State House, Augusta

Convene

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

Adjourn

PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE

Maine Freedom of Access Act - public records exceptions

Enacted 2005 - 2012

(Revised 8/16/2016)

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

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

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

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

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

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

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

STATUTE: 1 MRSA § 402, sub-§3

AGENCY: Dept. of Corrections

CONTACT PERSON: Jody Breton

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

QUESTIONS

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

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

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

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

Paragraph Q. concerns "Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the general public." This is cited once in a while.

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

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

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

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

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

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

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

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

4. Does your agency recommend changes to this exception?

Answer: No.

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

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

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

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

§402. DEFINITIONS

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.

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

1-A. Legislative subcommittee. "Legislative subcommittee" means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.

[1991, c. 773, §1 (NEW) .]

2. Public proceedings. The term "public proceedings" as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:

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

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Community College System and any of its committees and subcommittees; [1989, c. 358, §1 (AMD); 1989, c. 443, §1 (AMD); 1989, c. 878, Pt. A, §1 (RPR); 2003, c. 20, Pt. 00, §2 (AMD); 2003, c. 20, Pt. 00, §4 (AFF) .]

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

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1995, c. 608, §1 (AMD) .]

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees; [2009, c. 334, §1 (AMD) .]

F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and [2009, c. 334, §2 (AMD) .]

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

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

(2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.

P. Geographic information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information; [2011, c. 149, §1 (AMD).]

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

Q. (REALLOCATED FROM T. 1, §402, sub-§3, ¶P) Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the general public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials or the Department of Corrections under conditions that protect the information from further disclosure; [2015, c. 335, §1 (AMD).]

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

S. E-mail addresses obtained by a political subdivision of the State for the sole purpose of disseminating noninteractive notifications, updates and cancellations that are issued from the political subdivision or its elected officers to an individual or individuals that request or regularly accept these noninteractive communications; [2015, c. 161, §1 (AMD).]

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

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

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

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

A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of furlough and dates of furlough; [2013, c. 267, Pt. B, §1 (AMD).]

B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of residence and dates of supervision; and [2013, c. 267, Pt. B, §1 (AMD).]

C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information. [2013, c. 267, Pt. B, §1 (AMD).]

[2013, c. 267, Pt. B, §1 (AMD) .]

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

§1541. POWERS AND DUTIES RELATING TO ACCOUNTING

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

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

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

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

[2005, c. 3, Pt. L, §1 (AMD) .]

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

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

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

[2007, c. 466, Pt. A, §10 (AMD) .]

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

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

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

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

[1993, c. 410, Pt. C, §1 (AMD) .]

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

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

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

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

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

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

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

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

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

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

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

[2005, c. 490, §1 (AMD) .]

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

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

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

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

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

[2007, c. 539, Pt. S, §1 (NEW) .]

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

[1967, c. 427, §3 (NEW) .]

12. Central data procession service.

[1975, c. 322, §2 (RP) .]

12-A. Conference fee accounts.

[1995, c. 316, §1 (RP) .]

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

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

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

[1997, c. 601, §1 (AMD) .]

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

[1997, c. 90, §1 (NEW) .]

SECTION HISTORY

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

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

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

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

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

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

§10110. Confidentiality

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

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

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

SUMMARY

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

STATUTE: 17-A MRSA § 1176, sub-§1

AGENCY: Office of the Attorney General

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

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

QUESTIONS

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

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

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

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

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

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

4. Does your agency recommend changes to this exception?

No.

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

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

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

Maine Revised Statutes
Title 17-A: MAINE CRIMINAL CODE

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

§1176. CONFIDENTIALITY OF VICTIM RECORDS

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

[2007, c. 475, §13 (NEW) .]

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

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

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

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

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

[2007, c. 475, §13 (NEW) .]

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

[2007, c. 475, §13 (NEW) .]

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

[2007, c. 475, §13 (NEW) .]

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

[2007, c. 475, §13 (NEW) .]

SECTION HISTORY

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

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

§2153-A. CONFIDENTIALITY OF CERTAIN INFORMATION

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

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

[2009, c. 393, §9 (NEW) .]

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

[2009, c. 393, §9 (NEW) .]

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

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

§2153. POWERS OF COMMISSIONER

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

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

SECTION HISTORY

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

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

§1-A. DEFINITIONS

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

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

[2007, c. 539, Pt. N, §9 (NEW) .]

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

[2007, c. 539, Pt. N, §9 (NEW) .]

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

[2011, c. 542, Pt. A, §23 (NEW) .]

SECTION HISTORY

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

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