

# RIGHT TO KNOW ADVISORY COMMITTEE

**Monday, August 12, 2024**  
**1:00 p.m.**

Location: State House, Room 228 (Hybrid Meeting)  
Public access also available through the Maine Legislature's livestream:  
<https://legislature.maine.gov/Audio/#228>

1. Introductions
2. Election of Chair
3. Review Advisory Committee duties and remote participation policy
4. Review and discussion of the Eighteenth Annual Report of the Right to Know Advisory Committee (January 2024) and actions related to those recommendations
5. Review of new public records exceptions enacted or amended in 2024
6. Discussion of issues and topics for 2024
  - a. Review of existing public records exceptions in Titles 25 - 32
  - b. Public records exception for the Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations
  - c. Survey responses with examples of burdensome public records requests
  - d. Letter from Judiciary Committee regarding retention of and public access to public employee disciplinary records
  - e. Other suggested issues and topics?
  - f. Formation of subcommittees?
7. Public Comment: focused on suggested topics for RTKAC to consider in 2024
8. Confirm meetings schedule
  - Monday, September 23, at 1pm
  - Monday, October 7, at 1pm
  - Monday, October 21, at 1pm
  - *November meeting*
9. Adjourn

## Right to Know Advisory Committee

### 1 MRSA §411

#### Membership List as of August 1, 2024

Name	Representation
Rep. Erin Sheehan	House member of Judiciary Committee, appointed by the Speaker of the House
Sen. Anne Carney	Senate member of Judiciary Committee, appointed by the President of the Senate
Amy Beveridge	Representing broadcasting interests, appointed by the President of the Senate
Jonathan Bolton	Attorney General's designee
Jen Lancaster	Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House
Justin Chenette	Representing the public, appointed by the President of the Senate
Lynda Clancy	Representing newspaper and other press interests, appointed by the President of the Senate
Linda Cohen	Representing municipal interests, appointed by the Governor
Julie Finn	Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court
Betsy Fitzgerald	Representing county or regional interests, appointed by the President of the Senate
Brian MacMaster	Representing law enforcement interests, appointed by the President of the Senate
Kevin Martin	Representing state government interests, appointed by the Governor
Judy Meyer	Representing newspaper publishers, appointed by the Speaker of the House
Tim Moore	Representing broadcasting interests, appointed by the Speaker of the House
Kim Monaghan	Representing the public, appointed by the Speaker of the House
Eric Stout	A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor
Cheryl Saniuk-Heinig	A member with legal or professional expertise in the field of data and personal privacy, appointed by the Governor
Connor P. Schratz	Representing school interests, appointed by the Governor

**§411. Right To Know Advisory Committee**

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

[PL 2005, c. 631, §1 (NEW).]

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

A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

C. One representative of municipal interests, appointed by the Governor; [PL 2005, c. 631, §1 (NEW).]

D. One representative of county or regional interests, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

E. One representative of school interests, appointed by the Governor; [PL 2005, c. 631, §1 (NEW).]

F. One representative of law enforcement interests, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

G. One representative of the interests of State Government, appointed by the Governor; [PL 2005, c. 631, §1 (NEW).]

H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

I. One representative of newspaper and other press interests, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

J. One representative of newspaper publishers, appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; [PL 2015, c. 250, Pt. A, §1 (AMD).]

M. The Attorney General or the Attorney General's designee; [PL 2021, c. 313, §2 (AMD).]

N. One member with broad experience in and understanding of issues and costs in multiple areas of information technology, including practical applications concerning creation, storage, retrieval and accessibility of electronic records; use of communication technologies to support meetings, including teleconferencing and Internet-based conferencing; databases for records management and reporting; and information technology system development and support, appointed by the Governor; and [PL 2021, c. 313, §3 (AMD).]

O. One representative having legal or professional expertise in the field of data and personal privacy, appointed by the Governor. [PL 2021, c. 313, §4 (NEW).]

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

[PL 2021, c. 313, §§2-4 (AMD).]

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

A. Except as provided in paragraph B, members are appointed for terms of 3 years. [PL 2005, c. 631, §1 (NEW).]

B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed. [PL 2005, c. 631, §1 (NEW).]

C. Members may serve beyond their designated terms until their successors are appointed. [PL 2005, c. 631, §1 (NEW).]

[PL 2005, c. 631, §1 (NEW).]

**4. First meeting; chair.** The Executive Director of the Legislative Council shall call the first meeting of the advisory committee as soon as funding permits. At the first meeting, the advisory committee shall select a chair from among its members and may select a new chair annually.

[PL 2005, c. 631, §1 (NEW).]

**5. Meetings.** The advisory committee may meet as often as necessary but not fewer than 4 times a year. A meeting may be called by the chair or by any 4 members.

[PL 2005, c. 631, §1 (NEW).]

**6. Duties and powers.** The advisory committee:

A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws; [PL 2005, c. 631, §1 (NEW).]

B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for agencies and public officials. The advisory committee shall also provide general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries; [RR 2005, c. 2, §1 (COR).]

C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as whom to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws; [RR 2005, c. 2, §1 (COR).]

D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section 412, subsection 3 and for making that information publicly available; [PL 2007, c. 576, §1 (AMD).]

E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation; [PL 2005, c. 631, §1 (NEW).]

F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released; [PL 2005, c. 631, §1 (NEW).]

G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations; [PL 2005, c. 631, §1 (NEW).]

H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered; [PL 2005, c. 631, §1 (NEW).]

I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records; [PL 2005, c. 631, §1 (NEW).]

J. Shall review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public; and [PL 2005, c. 631, §1 (NEW).]

K. May undertake other activities consistent with its listed responsibilities. [PL 2005, c. 631, §1 (NEW).]

[PL 2007, c. 576, §1 (AMD).]

**7. Outside funding for advisory committee activities.** The advisory committee may seek outside funds to fund the cost of public hearings, conferences, workshops, other meetings, other activities of the advisory committee and educational and training materials. Contributions to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution shall certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the advisory committee's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory committee.

[PL 2005, c. 631, §1 (NEW).]

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

[PL 2005, c. 631, §1 (NEW).]

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

[PL 2005, c. 631, §1 (NEW).]

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

[PL 2005, c. 631, §1 (NEW).]

#### SECTION HISTORY

RR 2005, c. 2, §1 (COR). PL 2005, c. 631, §1 (NEW). PL 2007, c. 576, §1 (AMD). PL 2015, c. 250, Pt. A, §§1, 2 (AMD). PL 2021, c. 313, §§2-4 (AMD).

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## **Right to Know Advisory Committee Policy on Remote Participation**

In accordance with Title 1, Section 403-B of the Maine Revised Statutes, it is the policy of the Right to Know Advisory Committee (“the Advisory Committee”) to allow Advisory Committee members to participate remotely in Advisory Committee meetings, including subcommittee meetings, under certain circumstances and using certain methods of remote participation.

### **1. Notice of Advisory Committee Meetings**

The Advisory Committee will notify the public of the date, time and location of each Advisory Committee meeting on the Advisory Committee’s webpage, <https://legislature.maine.gov/right-to-know-advisory-committee>, and on the Maine Legislature’s calendar, <https://legislature.maine.gov/Calendar>. If applicable, the notice will specify the means by which members of the public may access the meeting remotely. Members of the public may also sign up to receive notices of upcoming meetings through email by subscribing to the interested parties list for the Advisory Committee at <https://lists.legislature.maine.gov/sympa/>. Notice of meetings will generally be provided at least one week before each meeting unless the Advisory Committee is meeting due to an emergency or urgent issue.

### **2. Remote Participation by Advisory Committee Members**

Advisory Committee members are expected to be physically present for Advisory Committee meetings except when it is not practicable for a member to attend a meeting in person. Except as permitted by this Policy, only those Advisory Committee members who are physically present at the physical location of an Advisory Committee meeting may participate in the meeting.

### **3. Circumstances and Conditions Under Which Remote Participation is Permissible**

#### **A. Existence of an emergency or urgent issue.**

- (1) If, as determined by the Advisory Committee chair, an emergency or urgent issue arises that requires the Advisory Committee to immediately schedule a meeting to address the emergency or urgent issue, one or more Advisory Committee members may participate in the meeting from a remote location.
- (2) If, as determined by the Advisory Committee chair, an emergency or urgent issue arises that requires the entire Advisory Committee to meet remotely, the Advisory Committee chair may authorize the Advisory Committee to conduct a virtual meeting without a physical location. Advisory Committee members would participate in such a virtual meeting from remote locations, and the public would be permitted to attend remotely.

#### **B. Circumstances in which physical presence of Advisory Committee member is not practicable. An Advisory Committee member may participate in an Advisory Committee meeting from a remote location under the following circumstances:**

- (1) When the Advisory Committee member has an illness or other physical or mental condition that causes the member to face significant difficulties traveling to and attending the Advisory Committee meeting or that is contagious and would pose a substantial health risk to others if the Advisory Committee member attended in person, or when the Advisory Committee member does not satisfy health or safety screening requirements applicable to the noticed meeting location;
- (2) When there is a reasonable chance that the Advisory Committee member’s health or safety will be compromised by attending the Advisory Committee meeting in person;

- (3) When the Advisory Committee member will be absent from the State at the time of a meeting and face significant difficulties traveling to and attending the Advisory Committee meeting in person;
- (4) When the time or distance for an Advisory Committee member to travel one way to a meeting exceeds the lesser of 60 minutes or 60 miles;
- (5) When the Advisory Committee member's residence is on an island that is not connected to the mainland by a bridge;
- (6) When events or occurrences out of the control of the Advisory Committee member or the effects of such events or occurrences make travel by the Advisory Committee member to the physical location not practicable; or
- (7) When an emergency or urgent issue, as determined by the Advisory Committee chair, requires the Advisory Committee to meet remotely.

If an Advisory Committee member determines it is not practicable for them to participate in a meeting in person, the member shall notify the Advisory Committee staff as soon as possible. If the Advisory Committee chair determines that an emergency or urgent issue requires the Advisory Committee to meet remotely, the Chair shall notify Advisory Committee staff as soon as possible.

#### **4. Form of Remote Participation**

When one or more Advisory Committee members will be participating remotely or the Advisory Committee will be conducting a virtual meeting, the Advisory Committee will schedule a meeting using an internet-based virtual meeting platform (e.g., Zoom) that provides simultaneous audio and video reception for all participants. The Advisory Committee will provide access to the virtual meeting to Advisory Committee members and the public.

#### **5. Responsibilities of Advisory Committee Members Who Participate Remotely**

Any Advisory Committee member who participates remotely must:

- A. Have the technology, including Internet access, in their remote location sufficient to be seen and heard during the meeting and participate in the same capacity as those members physically present and be responsible for any costs associated with obtaining and maintaining the technology and equipment necessary to participate remotely.
- B. Maintain decorum to the same extent as those Advisory Committee members physically present. The Advisory Committee Chair, in consultation with the Advisory Committee Administrator and after an oral or written warning, may deny an Advisory Committee member the option to participate remotely pursuant to this Policy if the member has failed to comply with this subsection on more than one occasion.

#### **6. Procedures Applicable When Advisory Committee Members Participate Remotely**

- A. A member of the Advisory Committee who participates from a remote location in accordance with this Policy is present for purposes of a quorum and voting.
- B. If any Advisory Committee member is participating in an Advisory Committee meeting from a remote location, all votes taken by the Advisory Committee during the meeting must be taken by roll call vote that can be seen and heard by the other members of the Advisory Committee and the public.

C. If any Advisory Committee member is participating from a remote location, the Advisory Committee shall make all non-confidential documents and other materials, electronic or otherwise, considered by it during the meeting available to the public who attend by remote means to the same extent customarily available to members of the public who attend Advisory Committee meetings in person, so long as no additional costs are incurred by the Advisory Committee.

#### **7. Accessibility to the Public**

It is the policy of the Advisory Committee to make its meetings as accessible as possible to all members of the public. In addition to remote attendance as permitted under section 4, members of the public may appear at a location designated in the public notice to attend any Advisory Committee meeting. When an emergency or urgent issue requires the Advisory Committee to meet remotely and the Advisory Committee chair determines that allowing any in-person attendance is not practicable, remote attendance by the public must be permitted.

The Advisory Committee will provide reasonable accommodations as necessary to allow members of the public with disabilities to access its meetings. A member of the public seeking a particular accommodation for a disability should request this by contacting the Advisory Committee staff at (207) 287-1670.

This Policy was adopted by the Advisory Committee on **October 26, 2021** following a public hearing held on **October 26, 2021**.

**New Public Records Exception Reviews ~ Judiciary Committee  
131st Legislature, Second Regular Session**

LD	Policy Committee	Subject	Statute	Request Date	Review Date	JUD Recommendation	Report Date	Final Disposition
227	HCIFS	Records possessed by relevant licensing boards or authorities reflecting criminal, civil or professional discipline penalties imposed on certain licensed professionals for engaging in legally protected health care activity or aiding and assisting legally protected health care activity	10 M.R.S. § 8012(3)	4/2/24	4/3/24	Approved (6-1); but recommended not including records that are public under other state law in the proposed confidentiality provision	4/5/24	<a href="#">P.L. 2023, ch. 648</a> <i>(includes change recommended by Judiciary Committee)</i>
1498	HCIFS	Provider complaints against insurance carriers and records, correspondence and reports of investigation (before final discipline, if any, is issued) held by Bureau of Insurance.	24-A M.R.S. § 4329(5)	3/7/24	3/12/24	Approved (7-1)	3/18/24	<a href="#">P.L. 2023, ch. 590</a>
1537	ENR	Proprietary information submitted to the Department of Environmental Protection by manufacturers of products containing intentionally added PFAS	38 M.R.S. § 1614(12)	4/2/24	4/3/24	Approved (8-0)	4/5/24	<a href="#">P.L. 2023, ch. 630</a>

**New Public Records Exception Reviews ~ Judiciary Committee  
131st Legislature, Second Regular Session**

LD	Policy Committee	Subject	Statute	Request Date	Review Date	JUD Recommendation	Report Date	Final Disposition
1742	CJPS	Records identifying emergency care or response service providers receiving assistance from a peer team	25 M.R.S. § 4202(1)	3/15/24	3/28/24	Approved (7-0)	4/2/24	Carried over on the Special Appropriations Table
1777	VLA	(1) Criminal history information, including fingerprint-based, of internet gaming license applicants; (2) Abnormal wagering activity information disclosed to director of Gambling Control Unit; and (3) Information obtained by DHHS/child support registry operator about outstanding liquidated child support debts and information from an internet gaming operator about winning patrons	8 M.R.S. § 1404(3)(H);  8 M.R.S. § 1413(3); and  8 M.R.S. § 1415(10)	4/3/24	4/3/24	Approved (7-0)	4/5/24	Died Between Houses
1937	JUD	Train, rail, rail safety equipment and rail corridor inspection reports submitted to Commissioner of Transportation (a/k/a prevention and response plans).	1 M.R.S. § 403(3)(U)	n/a	3/28/24	Approved (7-0)	n/a	<a href="#">P.L. 2023, ch. 618</a>

**New Public Records Exception Reviews ~ Judiciary Committee  
131st Legislature, Second Regular Session**

LD	Policy Committee	Subject	Statute	Request Date	Review Date	JUD Recommendation	Report Date	Final Disposition
1977	JUD	Controller's internal data protection assessments of processing activities presenting a heightened risk of harm to consumers disclosed to the Attorney General when relevant to an investigation by the Attorney General	10 M.R.S. § 9608(3)	n/a	4/3/24	Approved (8-0)	n/a	Died Between Houses
2080	VLA	Records and information, including identifying information, obtained by the Gambling Control Board for creation of a universal list of persons who voluntarily request exclusion from different forms of gambling in the State	8 M.R.S. § 1006(8)	4/3/24	4/3/24	Approved (7-0) although there was some question whether this bill truly proposed a <i>new</i> public records exception	4/5/24	<a href="#">P.L. 2023, ch. 635</a>
2112	HCIFS	Certain information held by Superintendent of Consumer Credit Protection about an applicant or licensee or related to an investigation under the Maine Money Transmission Modernization Act	32 M.R.S. § 6080	3/8/24	3/12/24	Approved (8-0)	3/18/24	<a href="#">P.L. 2023, ch. 662</a>

**New Public Records Exception Reviews ~ Judiciary Committee  
131st Legislature, Second Regular Session**

LD	Policy Committee	Subject	Statute	Request Date	Review Date	JUD Recommendation	Report Date	Final Disposition
2215	JUD <i>(this bill was recommended by RTKAC)</i>	Personally identifiable information of applicants to the Maine Health Insurance Marketplace	22 M.R.S. § 5409(3)	n/a	3/28/24	Approved (7-0)	n/a	<a href="#">P.L. 2023, ch. 637</a>
2274	VLA	Data (including personal, military service and health information) collected by the Maine Bureau of Veterans' Services regarding individuals who choose to be included in a registry of state residents who trained at the military support base in Gagetown, New Brunswick, Canada	37-B M.R.S. § 518(4)	4/3/24	4/3/24	Approved (7-0); but recommended more narrowly tailoring exception by permitting the individual on the registry (or next of kin if individual is deceased) to access data in the registry related to the individual	4/5/24	Held by Governor <i>(does not include change recommended by Judiciary Committee)</i>

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STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-FOUR

—  
H.P. 1245 - L.D. 1937

**An Act Regarding the Transportation of Hazardous Materials by Railroad Companies**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** records provided by railroad companies describing hazardous materials transported in the 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, fire department or other first responder are not subject to public disclosure; and

**Whereas,** this legislation makes those records subject to public disclosure when those records are related to a train carrying hazardous materials that has derailed at any point from a main line train track; and

**Whereas,** this legislation needs to take effect before the expiration of the 90-day period because the potential for discharge of hazardous materials transported by a railroad company poses a threat to public health, safety and welfare; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 1 MRSA §402, sub-§3, ¶U,** as amended by PL 2019, c. 667, Pt. B, §4, is further amended to read:

U. Records provided by a railroad company pursuant to Title 23, section 7311, subsection 5 and records 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, fire department or other first responder, except that records related to a train carrying hazardous materials that has derailed at any point from a main line train track or related to a discharge of

hazardous materials transported by a railroad company that poses a threat to public health, safety and welfare are subject to public disclosure after that discharge. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5; and

**Sec. 2. 23 MRSA §5003**, as enacted by PL 1987, c. 141, Pt. A, §4, is amended to read:

**§5003. Collection of judgment against foreign railroad company lessee**

When any foreign railroad company, ~~which~~ that is or has been doing business in this State as the lessee of any railroad; refuses or neglects for 60 days after demand to pay and discharge any judgment recovered by any person against the railroad company owning that leased road for damages to the property of the person by the doings, misdoings or neglects of the foreign railroad company, its agents or servants, ~~which and that~~ judgment belongs to the foreign railroad company to pay and discharge, the Superior Court, on complaint, may compel payment thereof of the judgment by the foreign ~~corporation~~ railroad company and make, pass and enforce all necessary orders, decrees and processes for the purpose. Nothing in this section allows for nonparticipation by foreign railroad company lessees.

**Sec. 3. 23 MRSA §7015** is enacted to read:

**§7015. Prevention and response plans and environmental impact analysis**

Within 180 days of the effective date of this section, a railroad company shall submit to the Commissioner of Environmental Protection a prevention and response plan including the environmental impact analysis submitted to the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration. The railroad company shall also provide any updates submitted to the Pipeline and Hazardous Materials Safety Administration to the Commissioner of Environmental Protection.

**Sec. 4. 23 MRSA §7311, sub-§2-A** is enacted to read:

**2-A. State, county, municipal notice.** In the event of a main line train derailment involving hazardous materials, a railroad company shall make a 9-1-1 call, as defined in Title 25, section 2921, subsection 17, to alert first responders, including municipal and county fire chiefs in the jurisdiction, and provide timely notice to the Department of Public Safety, the Department of Environmental Protection and the Maine Emergency Management Agency. The Maine Emergency Management Agency may notify the Department of Transportation and the municipal and county fire chiefs located within the affected area of the accident.

**Sec. 5. 23 MRSA §7311, sub-§2-B** is enacted to read:

**2-B. Public notice.** In the event of a main line train derailment involving hazardous materials, the Maine Emergency Management Agency shall, if requested by a municipal or county fire chief serving as incident commander, issue an alert through an emergency alert system or wireless emergency alert system for the area identified by the incident commander.

**Sec. 6. 23 MRSA §7311, sub-§2-C** is enacted to read:

**2-C. Failure to issue notice.** If a railroad company fails to provide timely notice as required under subsection 2-A, the Commissioner of Transportation may assess a fine up

to \$25,000 per failed notice per day in the event of a main line train derailment involving hazardous materials.

**Sec. 7. 23 MRSA §7311, sub-§5** is enacted to read:

**5. Routine inspections.** Upon request of the Commissioner of Transportation, a railroad company shall submit reports of inspections conducted pursuant to federal agency requirements under 49 Code of Federal Regulations, Subtitle B, Chapter II by a railroad company of trains, rails, rail safety equipment and rail corridors. Records under this subsection are not public records pursuant to Title 1, section 402, subsection 3, paragraph U.

**Sec. 8. 23 MRSA §7313** is enacted to read:

**§7313. Mandatory training offered by railroad companies to fire and emergency medical services**

**1. Training.** A railroad company shall offer training to each fire department, each local organization for emergency management and each organization that has a mutual aid agreement with each fire department and each local organization for emergency management along routes over which the railroad company transports oil or other hazardous materials. Additional training must be offered to each fire department and each local organization for emergency management at least once every 3 years after the initial training provided for under this subsection.

**2. Hazardous materials; techniques to assess hazards.** The training under subsection 1 must address the general hazards of oil and hazardous materials that travel through the jurisdiction or mutual aid agreement jurisdiction of each fire department and local organization for emergency management; techniques to assess hazards to the environment and to the safety of first responders and the public; factors that an incident commander must consider in determining whether to attempt to suppress a fire or to evacuate the public and first responders from an area; and other strategies for initial response by first responders.

**3. Suggested protocols.** The training under subsection 1 must include suggested protocols or practices for first responders to safely respond to a derailment; methods to identify railroad cars and hazardous material contents; first responder safety issues; railroad response tactics; public notification and evacuation considerations; environmental contamination response; railroad response personnel and resources coordination at an accident; and any other protocols and practices for safe initial local response, including the notification requirements and the responsibilities of an incident commander during any rail accident involving oil or other hazardous materials.

**Sec. 9. 23 MRSA §7314** is enacted to read:

**§7314. Post-accident reporting requirements**

**1. Post-accident review.** After an accident involving hazardous materials subject to review by the applicable federal agency or when an accident is not reviewed by the applicable federal agency but review is considered necessary by the Commissioner of Transportation, the commissioner shall ensure that a post-accident review and analysis is performed in a timely manner. The commissioner's review and analysis must be undertaken

under an agreement with an entity having relevant knowledge and experience that is fully independent of the railroad carrier's companies.

**2. Evaluation requirements.** The Commissioner of Transportation's review and analysis process must include an after-action review and must evaluate, at a minimum, processes occurring during the accident for emergency assessment, hazard operations, population protection and accident management. The review and analysis must be designed to minimize disruption of the federal review of the accident.

**3. Report.** By March 1st following any calendar year in which one or more post-accident reviews and analyses are performed, the Commissioner of Transportation shall submit a report to the joint standing committees of the Legislature having jurisdiction over railroads and public records matters. The report must:

A. Provide a summary of the accidents, as long as the information provided does not include information excluded from the definition of "public records" pursuant to Title 1, section 402, subsection 3, paragraph U;

B. Identify findings, conclusions and process changes;

C. Include any costs associated with accidents; and

D. Make recommendations for changes to laws and rules, if any.

**Sec. 10. Appropriations and allocations.** The following appropriations and allocations are made.

**TRANSPORTATION, DEPARTMENT OF**

**Multimodal Transportation Fund Z017**

Initiative: Provides allocations for accident reviews and analyses regarding hazardous materials performed by a qualified entity.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2023-24</b>	<b>2024-25</b>
All Other	\$0	\$40,000
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$40,000</b>

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

**RIGHT TO KNOW ADVISORY COMMITTEE  
RECOMMENDATIONS FROM 18th ANNUAL REPORT**

For August 12, 2024

- Amend certain provisions of law in Title 22 relating to previously-enacted public records exceptions**  
LD 2215, *An Act to Implement the Recommendations of the Right to Know Advisory Committee Regarding Public Records Exceptions* was enacted as Public Law 2023, ch. 637.
- Provide an explanation to the Blue Ribbon Commission to Study Emergency Medical Services in the State of why the RTKAC did not recommend amending Title 32, section 98, to establish a public records exception for financial information provided by applicants for Emergency Medical Services Stabilization and Sustainability Program grants**  
Staff sent a letter on behalf of the Advisory Committee to the chairs of the Blue Ribbon Commission providing this explanation.
- Reinforce the importance of following the statutory requirements applicable to public bodies and agencies going into executive session**  
Staff sent a letter on behalf of the Advisory Committee sharing this recommendation to the state FOAA contacts, the Maine School Management Association, Maine Municipal Association, Maine County Commissioner's Association, the Maine Town and City Clerks' Association as well as the RTKAC interested parties list.
- Request that the Public Access Ombudsman include more guidance regarding the Freedom of Access Act's (FOAA) requirements for public bodies and agencies going into executive session on the Maine Freedom of Access Act website**  
A copy of the 18<sup>th</sup> Annual Report including this recommendation was sent to the Public Access Ombudsman.
- Send a letter to Maine School Management Association confirming that FOAA allows a public body to create an internal form for responding to public records requests and that the Public Access Ombudsman can assist in the development of such a form**  
Staff sent a letter on behalf of the Advisory Committee sharing this recommendation to the Executive Director of the Maine School Management Association.
- Solicit from entities within the State responsible for responding to public records requests examples of burdensome public records requests and situations that the entity believes represent an abuse of the FOAA process, as well as suggested statutory changes, for consideration by the Advisory Committee next year**  
Staff distributed a survey requesting this information to state agency FOAA contacts, the Maine School Management Association, Maine Municipal Association, Maine County Commissioner's Association, the Maine Town and City Manager Association and the Maine Town and City Clerks' Association. Many responses have been received.
- Send a letter to Maine Chiefs of Police Association requesting that it coordinate with the Maine Sheriffs Association, Maine State Police, Maine Office of the Attorney General, Maine Press Association and Maine Association of Broadcasters to convene a meeting to share information among stakeholders regarding the pressures and**

**RIGHT TO KNOW ADVISORY COMMITTEE  
RECOMMENDATIONS FROM 18th ANNUAL REPORT**

For August 12, 2024

**constraints experienced by both members of the media and law enforcement when reporting on or releasing information related to public safety incidents and ongoing criminal investigations**

Staff sent a letter on behalf of the Advisory Committee to the Executive Director of the Maine Chiefs of Police Association sharing this recommendation.

- Propose that the Joint Standing Committee on Judiciary report out a bill in the Second Regular Session of the 131st Legislature to create a legislative study group to develop recommendations related to public employee disciplinary records, taking into consideration progressive discipline structures and employee incentives across different types of public employment**

The Judiciary Committee received a presentation on the 18<sup>th</sup> Annual Report. The Judiciary Committee issued a letter dated May 10, 2024 responding to the Advisory Committee's recommendation.

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-FOUR

—  
H.P. 1421 - L.D. 2215

**An Act to Implement the 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. 22 MRSA §2425-A, sub-§12**, as amended by PL 2023, c. 365, §8, is repealed.

**Sec. 2. 22 MRSA §2425-A, sub-§14** is enacted to read:

**14. Confidentiality.** This subsection governs confidentiality.

A. For purposes of this subsection, "personal contact information" has the same meaning as in Title 1, section 402, subsection 3, paragraph O, subparagraph (1) and "caregiver exempt from registration" means a caregiver who is not required to register pursuant to section 2423-A, subsection 3, paragraph C.

B. Information that identifies a qualifying patient, a visiting qualifying patient or a registered patient under this chapter is confidential and may not be disclosed by the department, except:

- (1) With the written consent of the patient; or
- (2) Pursuant to a court order or a subpoena.

C. Information that identifies a caregiver exempt from registration is confidential and may not be disclosed by the department, except:

- (1) With the written consent of the caregiver; or
- (2) Pursuant to a court order or a subpoena or as provided in paragraph F.

D. Except as provided in this paragraph and in paragraphs B and C, applications, supporting information and other information regarding a registered caregiver, including any address where the registered caregiver cultivates, manufactures, tests, packages, stores or sells cannabis plants or harvested cannabis under this chapter, are not confidential. The personal contact information of a registered caregiver or of an applicant for registration as a registered caregiver is confidential and may not be disclosed by the department, except:

(1) With the written consent of the registered caregiver or applicant for registration as a registered caregiver;

(2) Pursuant to a court order or a subpoena;

(3) As provided in paragraph F; or

(4) If a registered caregiver resides at the same address where the registered caregiver cultivates, manufactures, tests, packages, stores or sells cannabis plants or harvested cannabis under this chapter, the department may disclose that address to a state, county or municipal employee responsible for the administration of this chapter or of rules, ordinances or warrant articles authorized under this chapter, including, but not limited to, law enforcement officers and code enforcement officers. Any information received by a state, county or municipal employee under this subparagraph is confidential and may not be further disclosed or disseminated, except as otherwise provided by law.

E. Except as provided in this paragraph and in paragraphs B and C, applications, supporting information and other information regarding a dispensary, manufacturing facility, cannabis testing facility and an assistant, officer or director of a registered caregiver, dispensary, manufacturing facility or cannabis testing facility under this chapter are not confidential. The personal contact information of a cardholder who is an assistant, officer or director of a registered caregiver, dispensary, manufacturing facility or cannabis testing facility and an applicant for a registry identification card as an assistant, officer or director of a registered caregiver, dispensary, manufacturing facility or cannabis testing facility or registration certificate for a dispensary, manufacturing facility or cannabis testing facility is confidential and may not be disclosed by the department, except:

(1) With the written consent of the cardholder or applicant; or

(2) Pursuant to a court order or a subpoena.

F. Notwithstanding any provision of this subsection to the contrary, the department may, when necessary to protect the public from a threat to public health or safety, notify the public of the following:

(1) The identity of a caregiver exempt from registration, a registered caregiver, a dispensary, a manufacturing facility or a cannabis testing facility associated with the threat to public health or safety and that person's status as a caregiver exempt from registration, registered caregiver, dispensary, manufacturing facility or cannabis testing facility; and

(2) The location where any cannabis plants or harvested cannabis associated with the threat to public health or safety were cultivated, manufactured, tested, packaged, stored or sold.

G. Notwithstanding any provision of this subsection to the contrary, the department shall comply with Title 36, section 175. Information provided by the department pursuant to this paragraph may be used by the department's Bureau of Revenue Services only for the administration and enforcement of taxes imposed under Title 36.

H. A final written decision of the department pursuant to section 2430-I imposing an administrative penalty; ordering forfeiture and destruction of cannabis plants, cannabis

or cannabis products; or suspending or revoking a registry identification card or registration certificate is not confidential.

I. A caregiver, dispensary, manufacturing facility or cannabis testing facility or an officer, director or assistant of a caregiver, dispensary, manufacturing facility or cannabis testing facility may not be required to disclose to a law enforcement officer information that could reasonably identify an individual's identity without a warrant requiring the disclosure.

J. A person who accompanies a patient to obtain cannabis plants or harvested cannabis may not be required to disclose to a law enforcement officer information that could reasonably identify an individual patient's identity without a warrant requiring the disclosure.

**Sec. 3. 22 MRSA §3022, sub-§8**, as amended by PL 2017, c. 475, Pt. A, §33, is further amended to read:

**8. Certain information confidential.** The following records ~~in the possession or custody of a medical examiner or the Office of Chief Medical Examiner are not public records within the meaning of Title 1, section 402, subsection 3 and~~ are confidential:

- A. Medical records relating to a medical examiner case;
- B. Law enforcement agency reports or records relating to a medical examiner case;
- C. Communications with the Department of the Attorney General relating to a medical examiner case;
- D. Communications with the office of a district attorney relating to a medical examiner case;
- E. Death certificates and amendments made to the certificates, except for the information for which the medical examiner is responsible, as listed in section 2842, subsection 3, and not ordered withheld by the Attorney General relating to a medical examiner case or missing person;
- F. Photographs and transparencies, histological slides, videotapes and other like items relating to a medical examiner case; and
- G. Written or otherwise recorded communications that express or are evidence of suicidal intent obtained under section 3028, subsections 4 and 5.

**Sec. 4. 22 MRSA §3294**, as enacted by PL 1987, c. 714, §2, is amended to read:

**§3294. Confidential information provided to professional and occupational licensing boards**

If confidential information regarding a person subject to or seeking licensure, certification or registration by a licensing board indicates that the person may have engaged in unlawful activity, professional misconduct or conduct ~~which~~ that may be in violation of the laws or rules relating to the licensing board, the director may release this information to the appropriate licensing board. Confidential information ~~shall~~ must be disclosed and used in accordance with section 3292 and may also be disclosed to members, employees and agents of a licensing board who are directly related to the matter at issue.

**1. Notice to the licensee or applicant.** Notice of the release of confidential information ~~shall~~ must be provided by the board to the licensee or applicant in accordance with the law and rules relating to the licensing board. If the law or rules relating to a licensing board do not provide for notice to licensees or applicants subject to or seeking licensure, certification or registration, the licensing board shall provide notice to the licensee or applicant upon determination of the board to take further action following its investigation.

**2. Licensing board requests for confidential information.** Any licensing board pursuing action within the scope of the board's authority or conducting an investigation of any person subject to or seeking licensure, certification or registration by the board for engaging in unlawful activity, professional misconduct or conduct ~~which~~ that may be in violation of the laws or rules relating to the board may request confidential information from the bureau. Any information provided to the board for an investigation ~~shall be~~ is governed by section 3292 and this section.

**3. Use of confidential information in proceedings and investigations.** The use of confidential information in proceedings, informal conferences and adjudicatory hearings ~~shall be~~ is governed by Title 5, section 9057, subsection 6. The use of confidential information in investigations is governed by Title 10, section 8003-B, subsection 2, paragraph G as long as any confidential information disclosed under that paragraph is not further disclosed by any person for purposes other than an investigation by a licensing board.

**Sec. 5. 22 MRSA §5409**, as enacted by PL 2019, c. 653, Pt. A, §1, is amended to read:

**§5409. Records**

Except as provided in this section or by other provision of law, information obtained by the marketplace under this chapter is a public record within the meaning of Title 1, chapter 13, subchapter 1.

**1. Financial information.** Any personally identifiable financial information, supporting data or tax return of any person obtained by the marketplace under this chapter is confidential ~~and not open to public inspection~~ pursuant to 26 United States Code, Section 6103 and Title 36, section 191.

**2. Health information.** Health information obtained by the marketplace under this chapter that is covered by the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, or information covered by ~~Title 22~~, section 1711-C is confidential ~~and not open to public inspection~~.

**3. Personally identifiable information.** Personally identifiable information not otherwise described in subsection 1 or 2 that is obtained by the marketplace under this chapter is confidential. As used in this subsection, "personally identifiable information" means information that permits the identity of an individual to whom the information applies to be able to be reasonably inferred or known by either direct or indirect means.

**Sec. 6. 36 MRSA §191, sub-§3-B**, as amended by PL 2017, c. 452, §29, is further amended to read:

**3-B. Additional restrictions for certain information provided by the Department of Administrative and Financial Services.** Information provided to the assessor by the Department of Administrative and Financial Services pursuant to section 175 and Title 22, section 2425-A, subsection ~~12~~ 14, paragraph ~~E~~ G may be used by the bureau only for the administration and enforcement of taxes imposed under this Title. These restrictions are in addition to those imposed by subsection 1.

## SENATE

ANNE M. CARNEY, DISTRICT 29, CHAIR  
DONNA BAILEY, DISTRICT 31  
ERIC BRAKEY, DISTRICT 20

JANET STOCCO, LEGISLATIVE ANALYST  
ELIAS MUPHY, LEGISLATIVE ANALYST  
SUSAN PINETTE, COMMITTEE CLERK



## HOUSE

MATTHEW W. MOONEN, PORTLAND, CHAIR  
STEPHEN W. MORIARTY, CUMBERLAND  
ERIN R. SHEEHAN, BIDDEFORD  
ADAM R. LEE, AUBURN  
AMY D. KUHN, FALMOUTH  
MATTHEW S. BECK, SOUTH PORTLAND  
JENNIFER L. POIRER, SKOWHEGAN  
JOHN ANDREWS, PARIS  
DAVID G. HAGGAN, HAMPDEN  
RACHEL HENDERSON, RUMFORD  
AARON M. DANA, PASSAMAQUODDY TRIBE

### STATE OF MAINE ONE HUNDRED AND THIRTY-FIRST LEGISLATURE COMMITTEE ON JUDICIARY

May 10, 2024

Representative Erin Sheehan, Chair  
Right to Know Advisory Committee

*Re: Retention of and public access to public employee disciplinary records*

Dear Chair Sheehan and members of the Right to Know Advisory Committee,

The Judiciary Committee deeply appreciates the Right to Know Advisory Committee's longstanding dedication to the principles of open government and its annual recommendations for improving the State's freedom of access laws.

This session, we carefully considered the recommendation from the Right to Know Advisory Committee's Eighteenth Annual Report that the Judiciary Committee report out a bill to establish a legislative study group to examine several issues related to public employee disciplinary records. As we understand it, the following issues require further consideration and exploration:

- 1) Whether the Legislature should direct the State Archivist to revise the record retention schedules applicable to state and local government personnel records—which currently direct that disciplinary records for state employees be retained for up to 5 years of active service and that disciplinary records for local government employees be retained for 60 years after separation—to provide:
  - a) A default retention period for final written decisions relating to disciplinary action taken against a public employee, regardless of the level of government service—and, if so, what length of time is appropriate;
  - b) A shorter retention period for final written decisions involving “less serious misconduct”—and, if so, whether the severity of the misconduct should be measured by focusing either (A) on the type of misconduct committed, which would require a detailed description of the types of misconduct that should be considered “less serious” and careful consideration whether an employee's job description influences this calculus; or (B) on the type of discipline imposed, with longer retention schedules applicable to more serious sanctions under a progressive discipline model; and
  - c) A longer retention period for final written decisions imposing discipline on certain types of public employees whose positions involve greater degrees of public trust and for whom restricted public access to disciplinary records raises constitutional concerns—for example, law enforcement officers

who are responsible for preserving public safety and whose disciplinary records could be used to impeach the credibility of the officer who appears as a witness in a criminal case.

- 2) Whether the Legislature should enact legislation prohibiting a collective bargaining agreement from impacting records retention schedules; and
- 3) Whether the Legislature should amend the laws governing access to state, county and municipal employee personnel records to require that, in response to a public record request for a final written disciplinary decision, the responding public body must provide all of the records retained in its possession or custody regardless of whether the final written decision is located in the employee's personnel file or (perhaps as the result of a settlement agreement in the underlying disciplinary proceeding) is stored by the public body in another location.

We understand the difficulty in answering these questions in a way that strikes the appropriate balance between ensuring transparency and accountability of governmental business and avoiding the negative impacts greater disclosure may have on attracting and retaining employees, especially given that our increasingly polarized and digital world can facilitate the weaponization of disciplinary records against government employees. We believe that the Right to Know Advisory Committee, which includes representatives of the press and broadcasting interests, representatives of school and municipal interests, members with expertise in information technology, data and personal privacy, and advocates for freedom of access, is uniquely positioned to thoroughly study and tackle these complex issues.

Accordingly, we respectfully request that the Right to Know Advisory Committee reexamine the issues outlined above, drawing on the expertise of its members and, as necessary, gathering additional input from stakeholders with relevant expertise in law enforcement; labor law and collective bargaining agreements; progressive discipline and the impact of employee discipline on promotion and merit pay increases across different categories of public employees; and any existing constitutional and statutory requirements for retention or disclosure of specific types of employee disciplinary records to specific recipients, for example criminal defendants or professional licensing boards, in certain circumstances. If the Right to Know Advisory Committee is unable to develop final recommendations on these issues, we request that the committee provide guidance in its Nineteenth Annual Report on the establishment of a commission to meet between the First and Second Regular Sessions of the 132nd Legislature—including recommendations on the desired qualifications of commission members and the best way to frame the issues that the commission should be charged with examining.

Thank you in advance for your time and attention to these matters. We look forward to reviewing your recommendations. Please do not hesitate to reach out to us if you have any questions.

Sincerely,



Sen. Anne M. Carney  
Senate Chair



Rep. Matthew W. Moonen  
House Chair

cc: Members, Joint Standing Committee on Judiciary  
Members, Right to Know Advisory Committee

Ariel Ricci  
Executive Director  
ariel.ricci@maine.gov



**Permanent  
Commission**  
**RACIAL, INDIGENOUS  
& TRIBAL POPULATIONS**

**To:** Right to Know Advisory Committee

**From:** Ariel Ricci, Executive Director of the Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations

**Date:** August 6, 2024

**Subject:** Personally Identifiable Information exemption

The Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations is mandated by statute to conduct research on historically disadvantaged populations, which includes sensitive individual data on finances, employment, education, and healthcare. The following page includes an extract of our statutory duties.

As we increase our capacity to conduct primary research, we have identified a barrier to fulfilling our mandate in a way that protects individual privacy. Protection of personally identifiable information is crucial to both conducting ethical research and to building trust in state agencies. We therefore request that the Right to Know Advisory Committee consider an exemption to the Free of Access Act related to personally identifiable information that we may obtain through our research and community engagement work.

I have prepared draft language after reviewing similar exemptions for other agencies, for the Committee's consideration.

### **Draft amendment**

#### **5 MRSA §25012 is enacted to read:**

**Confidentiality.** Personally identifiable information obtained in connection with the commission's duties pursuant to section 25007, subsection 1(A) and (B) and the commission's powers pursuant to subsection 2(C) are confidential and exempt from disclosure pursuant to Title 1, chapter 13. "Personally identifiable information" means information that permits the identity of an individual to whom the information applies to be able to be reasonably inferred or known by either direct or indirect means.

## **Current statutory duties**

### **§25007. Duties and powers**

#### **1. Commission duties.** The commission shall:

- A. Carry out research necessary to determine the status of historically disadvantaged racial, indigenous and tribal populations, including the study of income levels of and opportunities available to historically disadvantaged racial, indigenous and tribal populations and the examination of quantitative and qualitative data associated with those populations regarding business ownership, household assets, debts and income, housing, employment, education, health care and access to wealth, capital and benefits; [PL 2019, c. 457, §2 (NEW).]
- B. Seek public input by conducting public hearings annually to obtain information about the needs of and solutions to the problems faced by historically disadvantaged racial, indigenous and tribal populations; and [PL 2019, c. 457, §2 (NEW).]
- C. Beginning March 1, 2022, and annually thereafter, report to the Governor and the Legislature concerning the work and interests of the commission, including a summary of public comments obtained pursuant to paragraph B. [PL 2021, c. 398, Pt. RRRR, §1 (AMD).] [PL 2021, c. 398, Pt. RRRR, §1 (AMD).]

#### **2. Commission powers.** The commission may:

- A. Promote and coordinate activities on state and local levels designed to meet the problems faced by historically disadvantaged racial, indigenous and tribal populations; [PL 2019, c. 457, §2 (NEW).]
- B. Inform the public about the presence or absence of opportunities for historically disadvantaged racial, indigenous and tribal populations; [PL 2019, c. 457, §2 (NEW).]
- C. Conduct additional public hearings, conferences, workshops and other such meetings to obtain information about, discuss and publicize the needs of and solutions to the problems faced by historically disadvantaged racial, indigenous and tribal populations; [PL 2019, c. 457, §2 (NEW).]
- D. Submit to the Legislature such legislation as the commission determines appropriate for improving opportunities and eliminating disparities for historically disadvantaged racial, indigenous and tribal populations in the State; [PL 2021, c. 436, §6 (AMD).]
- E. Advise and consult with the Chief Justice of the Supreme Judicial Court and other officials of the State and the Federal Government with respect to state and federal policies, programs and other activities affecting or relating to historically disadvantaged racial, indigenous and tribal populations; and [PL 2019, c. 457, §2 (NEW).]
- F. Advise and consult with the Governor and the Legislature about, and assist them in improving, opportunities for historically disadvantaged racial, indigenous and tribal populations. [PL 2019, c. 457, §2 (NEW).] [PL 2021, c. 436, §6 (AMD).]

## Laxon, Lindsay

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**From:** Pat OBrien <pob@securespeed.us>  
**Sent:** Tuesday, July 23, 2024 12:30 PM  
**To:** Laxon, Lindsay  
**Subject:** Fwd: State FOAA Omsbudsman

This message originates from outside the Maine Legislature.

Hello, Ms. Laxon,

On the remote chance of getting my attached response to the Chair of the Right to Know Committee, please see the following directed to Mr. Christopher Taub after his review of my complaint regarding the FOAA ombudsman, Ms. Keilty. Redefining what occurred is really not going to prevent it from happening again. The very idea offends the mind. Caring about open government is the only thing the system cannot produce.  
Pat O'Brien



**Pat O'Brien** <patobemail@gmail.com>  
to Christopher ▾

11:55 AM (20 minutes ago) ☆ 😊

Thank you for your email, Mr. Taub. I disagree with your internal review process and particularly the findings. Given the professional power of office to redefine the problems, address them, evaluate them, and remedy them. Your review becomes "a hall of mirrors". You really don't need an opinion or likely, welcome it.

For what your observations are worth, it is correct that I had connected the Ombudsman for two reasons. One for a neutral reference list of attorneys as a way to improve the FOAA service to the public, as you state, and two, for assistance with a municipality (the Town of Norway was noncompliant with my FOAA request. At that point, in order to avoid possible litigation, Ms. Keilty had within her role multiple options for assistance, she simply declined to do her job or be helpful in any form of public service...more in the order of an annual personnel review item you put my complaint in her personnel file with your finding?

The irony of open government becomes ever so clear when these kinds of concerns are voiced from the public. Of course, the number of law suits doubles as the popular sense of injustice multiplies. Unfortunately for all, these types of responses and reviews will spread a sense of despair even in your Office and no one will dare tell you.

POB



Begin forwarded message:

**From:** "Laxon, Lindsay" <[Lindsay.Laxon@legislature.maine.gov](mailto:Lindsay.Laxon@legislature.maine.gov)>  
**Subject:** RE: State FOAA Omsbudsman  
**Date:** July 12, 2024 at 8:55:20 AM EDT  
**To:** Pat OBrien <[pob@securespeed.us](mailto:pob@securespeed.us)>, "McCarthyReid, Colleen" <[Colleen.McCarthyReid@legislature.maine.gov](mailto:Colleen.McCarthyReid@legislature.maine.gov)>, "Stocco, Janet" <[Janet.Stocco@legislature.maine.gov](mailto:Janet.Stocco@legislature.maine.gov)>, "Davison, Anne" <[Anne.Davison@legislature.maine.gov](mailto:Anne.Davison@legislature.maine.gov)>

Good morning,

Thank you for your email. I will forward it to the Chair of the Advisory Committee.

Sincerely,

Lindsay J. Laxon, Esq.  
Legislative Analyst  
Office of Policy and Legal Analysis  
Maine State Legislature  
(207) 287-1670

---

**From:** Pat OBrien <[pob@securespeed.us](mailto:pob@securespeed.us)>  
**Sent:** Thursday, July 11, 2024 11:28 AM  
**To:** McCarthyReid, Colleen <[Colleen.McCarthyReid@legislature.maine.gov](mailto:Colleen.McCarthyReid@legislature.maine.gov)>; Laxon, Lindsay <[Lindsay.Laxon@legislature.maine.gov](mailto:Lindsay.Laxon@legislature.maine.gov)>; Stocco, Janet <[Janet.Stocco@legislature.maine.gov](mailto:Janet.Stocco@legislature.maine.gov)>; Davison, Anne <[Anne.Davison@legislature.maine.gov](mailto:Anne.Davison@legislature.maine.gov)>  
**Subject:** State FOAA Ombudsman

**This message originates from outside the Maine Legislature.**

Dear Right to Know Advisory Committee Staff,

Please share the following complaint with the Committee Members to the Attorney General regarding Ms. Kielty.

**Pat O'Brien** <[patobemail@gmail.com](mailto:patobemail@gmail.com)>

to attorney.general

Mr. Attorney General,

Please consider this email as a complaint relative to Ms. Brenda Keilty's unwillingness to fulfill her responsibilities as the State's FOAA ombudsman. I must say, this lack of responsiveness to a citizen seeking services from her office gives other hard working State employees a black eye. In addition to simply ignoring me, my emails to her reflect the following:

Brenda ,

What are you involved in Brenda as an ombudsman?

You are aware of a specific noncompliance complaint issue with the Town of Norway before any litigation and have decided to have nothing to do with it.

I assume you report to the Attorney General and / or others? Please define.

Pat O'Brien

Brenda, You are avoiding doing your job. No litigation has been filed in the matter and you know it. POB

PATIENCE P. SUNDARESAN

v.

TOWN OF OGUNQUIT

Submitted on Briefs June 26, 2024  
Decided July 11, 2024

Panel: STANFILL, C.J., and MEAD, HORTON, LAWRENCE, and DOUGLAS, JJ.

#### MEMORANDUM OF DECISION

Patience Sundaresan appeals from a judgment of the Superior Court (York County, *Mulhern, J.*), affirming two of the Town of Ogunquit's decisions made in response to Sundaresan's Maine Freedom of Access Act requests. On appeal, Sundaresan first contends that the Superior Court abused its discretion by improperly limiting the evidence in the case to the record and briefs with affidavits. Sundaresan further contends that the Superior Court erred by finding that notice given by the Town for a Select Board meeting was sufficient under the FOAA. Finally, Sundaresan argues that factual findings made by the Superior Court were clearly erroneous and that the court erred by determining that the Town's responses to Sundaresan's FOAA requests complied with the FOAA.

The Superior Court did not exceed its broad authority or otherwise abuse its discretion by specifying the evidence that it would consider in Sundaresan's FOAA appeal. *See* 1 M.R.S. § 409 (2024); *Dubois v. Office of Att'y Gen.*, 2018 ME 67, ¶ 13, 185 A.3d 734. We further conclude that the Town's notice of the hearing, which Sundaresan, her attorney, and members of the public attended, was sufficient. *See* 1 M.R.S. § 406 (2024); *Crispin v. Town of*

*Scarborough*, 1999 ME 112, ¶¶ 24-27, 736 A.2d 241. Finally, as to Sundaresan’s third contention, we conclude that the Superior Court did not err in finding that the Town’s responses to Sundaresan’s requests were adequate. *See* 1 M.R.S. § 408-A (2024); *Fairfield v. Me. State Police*, 2023 ME 12, ¶ 9, 288 A.3d 1220.

The entry is:

Judgment affirmed.

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David A. Lourie, Esq., Cape Elizabeth, for appellant Patience P. Sundaresan

Daniel J. Murphy, Esq., Bernstein, Shur, Sawyer & Nelson, P.A., Portland, for appellee Town of Ogunquit

York County Superior Court docket number AP-2021-19  
FOR CLERK REFERENCE ONLY

STATE OF MAINE  
YORK, ss.

SUPERIOR COURT  
Civil Action  
Docket No. AP-2021-19

PATIENCE PESCOTT SUNDARESAN, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TOWN OF OGUNQUIT, ET ALS, )  
 )  
 Defendant. )

ORDER

The only remaining claims pending before the Court are Counts II and III of Plaintiff's Second Amended Complaint, both of which are based on Maine's Freedom of Access Act, 1M.R.S. §§ 400 et seq. ('FOAA'). Count II claims that that the Town's public posting notice for the meeting of September 22, 2021 did not take place in a manner reasonably calculated to provide notice to the public under 1 M.R.S. § 403-A and 406. Count III sets forth a FOAA claim based on the assertion that the Town has failed to produce documents in response to the FOAA requests of Plaintiff's counsel on or about June 22 and June 24, 2021, and renewed and related requests on or about September 20, 2021.

The relevant parts of FOAA are as follows:

**1 M.R.S. § 406**

Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a

manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.

**1 M.R.S. § 409(1)**

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.

The record in this case consists of “the Agreed upon Record” filed pursuant to the Court’s Order dated February 21, 2023, as well as the briefs and supporting affidavits submitted by the parties pursuant to the Order dated July 6, 2023. The Plaintiff submitted the affidavit of her counsel, Attorney Lourie. In that affidavit, Attorney Lourie’s averments as to the alleged FOAA violations are based on information and belief. That contrasts with the affidavit of

Town Clerk Christine Murphy, submitted by the Town, that is based entirely on Ms. Murphy's personal knowledge. The Court finds that the speculative averments of Attorney Lourie are not legally sufficient to establish any facts.

## **Count II**

The September 22, 2021 meeting was originally called as a pre-disciplinary meeting in Executive Session. FOAA Record at p. 4-7. On or about September 17, 2021, Plaintiff informed the Town that she wanted the meeting to be a public meeting and not held in Executive Session. FOAA Record at p. 6, 27-28. The Town then provided electronic notice on its website and physically posted notices at the Town Hall, Post Office and Transfer Station more than 24 hours prior to the September 22, 2021 meeting. Murphy Aff. at Par. 4-6.

The Court finds that the notice for the September 22, 2021, meeting was "given in ample time to allow public attendance" and was "disseminated in a manner reasonably calculated to notify the general public" in Town of the meeting. Accordingly, the Court does not find a FOAA violation under Count II.

## **Count III**

Plaintiff contends that the Town has violated FOAA based on a completely unsubstantiated allegation that the Town has documents that are responsive to her requests of June 2021 and September 2021. The June 22 and 24 requests were timely processed by the Town, which responded that it did not have any responsive documents. Murphy Aff Par. 7-10; FOAA Record at 1-3, 67-73. Plaintiff did not appeal from the Town's response to the June request within 30-calendar days of the receipt of written notice, as required by 1 M.R.S. § 409(1). Thus, Plaintiff's appeal concerning the June 22 and June 24 requests fails on the basis of timing. But even if the appeal had been timely filed, the Court finds that there was no refusal, denial, or failure to respond, such that there was no violation of FOAA.

In September 2021, Plaintiff's counsel renewed the June 24, 2021 request from Plaintiff, and also requested "any records containing any reference to complaints or concerns about (or against) Patience Sundaresan since that date." FOAA Record at 72. Attorney Lourie further asked "[s]o there is no e-mail or other correspondence relating to Wednesday's schedule meetings with Val and Patience?" *Id.* The Town responded in an email "the Town does not have any documents relative to complaints for Val Kaufman or Patience Sundaresan." *Id.* The Town also responded through a letter to counsel for Plaintiff that in response to the September FOAA Request, "I am not able to locate the documents(s) that you requested below, i.e., email, text, letter, etc." FOAA Record at p. 74.

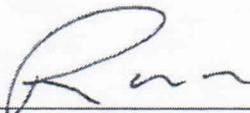
Concerning the September 2021 FOAA requests, the Court finds that the Town responded in a timely fashion that it did not have the referenced documents. There was no "refusal, denial or failure." As such, the Town complied with its FOAA obligations in response to the September 2021 requests.

The ORDER will be:

Judgment GRANTED against Plaintiff and in favor of Defendant on Counts II and III of Plaintiff's Second Amended Complaint. The Appeal is DENIED.

The clerk may enter this Order on the docket by reference pursuant to M.R. Civ. P. 79(a).

Dated: October 17, 2023

  
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Hon. Richard Mulhern  
Justice, Superior Court

ENTERED ON THE DOCKET ON: 10/12/23