

# RIGHT TO KNOW ADVISORY COMMITTEE

**Monday, November 18, 2024**  
**1:00 p.m.**

*AGENDA MAY BE SUBJECT TO CHANGE*

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. Reports of Subcommittees and Subcommittee Recommendations
  - Public Records Exceptions (Chair: Cheryl Saniuk-Heinig)
  - Public Employee Disciplinary Records (Chair: Judy Meyer)
  - Burdensome FOAA Requests (Chair: Kevin Martin)
3. Consideration of Other Advisory Committee Recommendations
  - Use of personal email and other communication methods under FOAA and record retention schedules
  - Unfulfilled records requests
  - Recommendation from 18<sup>th</sup> Annual Report of RTKAC related to meeting between representatives of law enforcement and representatives of the press
4. Review Outline of Draft Report
5. Adjourn

## Additional Recommendations of the Public Records Exceptions Subcommittee

In addition to recommending changes to a number of existing public records sections, the Public Records Exceptions Subcommittee recommends the following:

1. At the request of the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations, and after discussion with the executive director of that entity, the subcommittee recommends adoption of the following exception. This language is intended to protect that personally identifiable information of an individual who is the subject of research carried out by the Commission.

*5 MRSA §25012 is enacted to read:*

**Confidentiality.** *Personally identifiable information obtained in furtherance of the commission's duties pursuant to section 25007, subsection 1, paragraph A is confidential, except that the executive director may authorize disclosure of personally identifiable information if the executive director has obtained the consent of the individual to whom the personally identifiable information applies. "Personally identifiable information" includes, but is not limited to, name, address, date of birth, email address, internet protocol address and any other personal demographic 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.*

2. As regards Title 32, section 3300-H, subsection 2, relating to the Board of Licensure in Medicine's ability to redact applicant or licensee records for potential risks to personal safety, the subcommittee recommends that the Board of Licensure in Medicine work with the Maine Board of Osteopathic Licensure and the Maine Board of Nursing, which have similar provisions appearing at Title 32, section 33, section 2600-E and Title 32, section 2109-A, respectively, to review these provisions. The subcommittee heard from the Board of Medicine that the language allowing licensees to review records prior to disclosure had created confusion among licensees and added an administrative burden for the Board. However, the subcommittee declined to recommend changes to the statutes, noting that the language is relatively new in statute, had been subjected to public hearing and legislative debate, and implicated policy that was beyond the scope of the subcommittee.
3. As regards Title 30-A, section 2702, relating to municipal personnel records, the subcommittee noted that similar, though not identical language appears at Title 5, section 7070, relating to state personnel records, and at Title 30-A, section 503, relating to county personnel records. While LD 1397, *An Act to Implement the Recommendations of the*

*Right To Know Advisory Committee Concerning Records of Disciplinary Actions Against Public Employees* made some changes to allow for better conformity between statutes, there remain inconsistencies. The subcommittee recommended minor changes to the municipal and county records language, so as to mirror the state records language, but determined that further review was needed to understand why inconsistencies exist and whether additional changes are necessary. The subcommittee recommends continued discussion of these statutes during the next interim, including a full review of the legislative histories of each statute.

4. As regards PL 2023, ch. 618, the subcommittee recommends no change. This enacted law clarifies the requirements around public records relating to discharge of hazardous materials. The subcommittee determined that the law adequately addresses prior concerns regarding the availability of such records.
5. The subcommittee recommends future review of Title 1 section 402, subsection 3, paragraph H, which defines records held by municipal ambulance and rescue units and other emergency medical service units as public records. The Maine Municipal Association raised concerns about the scope of the applicability of the definition.

## Exceptions Reviews Tabled until next Interim

- Title 25, section 1577, subsection 1, relating to the state DNA data base and the state DNA data bank
- Title 25, section 2806-A, subsection 10, relating to complaints, charges or accusation of misconduct at the Maine Criminal Justice Academy
- Title 26, section 685, subsection 3, relating to substance abuse testing by an employer
- Title 27, section 10, subsection 6, relating to personally identifiable information relating to parents and children participating in the Imagination Library of Maine Program
- Title 28-B, section 114, relating to personal contact information of applicants for adult use cannabis establishment license and employees of those establishments
- Title 28-B, section 204, subsection 7, relating to criminal history record check information for cannabis license applicants
- Title 28-B, section 511, subsection 4, relating to record keeping, inspection of records, and audits of cannabis establishment licensee documents
- Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles
- Title 29-A, section 251, subsection 4, relating to an email address submitted as part of the application process for a license or registration under Title 29-A
- Title 29-A, section 253, relating to motor vehicle records concerning certain nongovernmental vehicles
- Title 29-A, section 255, subsection 1, relating to motor vehicle records when a protection order is in effect
- Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system
- Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles
- Title 29-A, section 1258, subsection 7, relating to the competency of a person to operate a motor vehicle
- Title 29-A, section 1301, subsection 6-A, relating to the social security number of an applicant for a driver license or nondriver identification card
- Title 29-A, section 1401, subsection 6, relating to driver's license digital images
- Title 29-A, section 1410, subsection 5, relating to nondriver identification card digital images
- Title 29-A, section 2117, subsection 1, relating to recorded images or audio produced by traffic surveillance cameras on a school bus
- Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in State Police accident report database
- Title 29-A, section 2601, subsection 3-A, relating to personally identifiable information in the Department of Public Safety's electronic citation and warning database
- Title 30-A, section 503, subsection 1, relating to county personnel records
- Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force
- Title 32, section 85, subsection 3, relating to criminal history record information for an applicant seeking initial licensure by the Emergency Medical Services Board

- Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee
- 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
- Title 32, section 91-B, subsection 1, paragraph B, relating to confidential information as part of application for credentialing by Emergency Medical Services Board
- Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board
- Title 32, section 91-B, subsection 1, paragraphs E and F, relating to health care information or records provided to the Emergency Medical Services Board
- Title 32, section 1092-A, subsections 1 and 2, relating to privileged communications of dentists and dental hygienists' patients
- Title 32, section 2111 relating to background check results received by the State Board of Nursing
- Title 32, section 2571-A relating to background check results received by the Board of Osteopathic Licensure for licensing through the Interstate Medical Licensure Compact
- Title 32, section 2599, relating to medical staff reviews and hospital reviews - osteopathic physicians
- Title 32, section 2600-A, relating to personal contact and health information of osteopathic physician applicants and licensees
- Title 32, section 2600-E, relating to the board's ability to redact applicant or licensee records for potential risks to personal safety
- Title 32, section 6080, relating to information held by Bureau of Consumer Credit Protection about applicant or licensee related to investigation under Maine Money Transmission Modernization Act
- Title 32, section 6115, subsection 1, relating to financial information provided to the Superintendent of the Bureau of Consumer Credit Protection, Department of Professional and Financial Regulation concerning money transmitters
- Title 32, section 16808 relating to records provided by a broker-dealer or investment adviser to the Department of Health and Human Services and law enforcement agencies regarding financial exploitation of an eligible adult.

**PUBLIC RECORDS EXCEPTIONS REVIEWED IN 2024: EXCEPTIONS RECOMMENDED TO  
BE CONTINUED WITHOUT CHANGE**

The following public records exceptions were reviewed in Titles 25, 26, 27, 28-A, 29-A, 30-A and 32 should remain in law as written:

- Title 25, section 2929, subsections 1, 2, 3 and 4, relating to emergency services communications
- Title 25, section 2929, subsection 2, relating to public safety answering point records
- Title 25, section 2957, relating to Maine Drug Enforcement Agency investigative records
- Title 25, section 4202, subsection 1, relating to proceedings, communications and records of critical incident stress management team
- Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor
- Title 26, section 43, relating to the names of persons, firms and corporations providing information to the Department of Labor, Bureau of Labor Standards
- Title 26, section 665, subsection 1, relating to records submitted to the Director of Labor Standards within the Department of Labor by an employer concerning wages
- Title 26, section 850-D, subsection 4, relating to medical or health information submitted to administrator of paid family and medical leave program
- Title 26, section 934, relating to a report of the State Board of Arbitration and Conciliation in labor dispute
- Title 26, section 939, relating to information disclosed by a party to the State Board of Arbitration and Conciliation
- Title 26, section 965, subsection 2, relating to information disclosed by either party to a dispute to the Maine Labor Relations Board in context of mediation
- Title 26, section 975, subsection 2, paragraph B, relating to information about municipal employees and communications with bargaining agent
- Title 26, section 979-D, subsection 2, relating to information disclosed by either party to a dispute to the Maine Labor Relations Board in context of mediation
- Title 26, section 979-T, subsection 2, paragraph B, relating to information about state employees and communications with bargaining agent
- Title 26, section 979-D, subsection 2, relating to information disclosed by either party to a dispute to a mediator in context of mediation
- Title 26, section 1026, subsection 2, relating to information disclosed by either party to a dispute to a mediator in context of mediation
- Title 26, section 1037, subsection 2, paragraph B, relating to information about university, academy and community college employees and communications with bargaining agent
- Title 26, section 1047, relating to information transmitted to the Bureau of Unemployment Compensation

- Title 26, section 1082, subsection 7, relating to employers' unemployment compensation records concerning individual information
- Title 26, section 1285, subsection 2, relating to information disclosed by either party to a dispute in context of mediation
- Title 26, section 1295, subsection 2, paragraph B, relating to information about Judicial Branch employees and communications with bargaining agent
- Title 27, section 121, relating to library records concerning identity of patrons and use of books and materials
- Title 27, section 377, relating to the location of a site for archeological research
- Title 28-A, section 755, relating to liquor licensees' business and financial records
- Title 29-A, section 2117-A, subsection 4, relating to data collected or retained through the use of an automatic license plate recognition system
- Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force
- Title 30-A, section 4353, subsection 4-A, relating to records submitted to a municipal code enforcement officer relating to disability of an applicant for a variance
- Title 30-A, section 4353-A, relating to records submitted to a municipal board of appeals relating to disability of an applicant for a variance
- Title 30-A, section 4706, subsection 1, relating to municipal housing authorities
- Title 30-A, section 4706, subsection 5, relating to municipal personnel records
- Title 30-A, section 5242, subsection 13, relating to tax increment financing districts
- Title 32, section 2109, relating to personal contact and health information of nurse applicants and licensees
- Title 32, section 2109-A relating to the board's ability to redact applicant or licensee records for potential risks to personal safety
- Title 32, section 3121, subsection 1, paragraph F, relating to fingerprint-based criminal history record check information for applicants for multistate licenses under Physical Therapy Licensure Compact
- Title 32, section 3275-A relating to background check results received by the Board Licensure in Medicine for licensing through the Interstate Medical Licensure Compact
- Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees
- Title 32, section 3300-H, subsection 2, relating to the board's ability to redact applicant or licensee records for potential risks to personal safety
- Title 32, section 7032, relating to the address and telephone number of social worker licensee or applicant for licensure
- Title 32, section 7365, subsection 3, relating to polygraph examination for pre-employment screening or law enforcement investigation
- Title 32, section 7365, subsection 4, paragraph A, relating to information concerning polygraph applicant or licensee and paragraph B, relating to information of a minor to whom a polygraph has been administered
- Title 32, section 7365, subsection 4, paragraph B, relating to information of a minor to whom a polygraph has been administered

- Title 32, section 8124, relating to the home address and home telephone number of a professional investigator or investigative assistant
- Title 32, section 13006, relating to real estate grievance and professional standards committee hearings
- Title 32, section 13725, subsection 8, relating to records identifying an individual seeking access to Insulin Safety Net program held by the Pharmacy Board
- Title 32, section 14021, subsection 7, relating to criminal history records provide to the Board of Real Estate Appraisers to determine eligibility of applicant for licensure



## Right to Know Exceptions Subcommittee Recommended Language

### Reference #2

25 MRSA §2006, sub-§1

**1. Application, refusals and collected information; proceedings.** All applications for a permit to carry concealed handguns and documents made a part of the application, refusals and any information of record collected by the issuing authority during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 2003 and 2005 are confidential ~~and are not public records for the purposes of Title 1, chapter 13, subchapter 1.~~ The applicant may waive this confidentiality by written notice to the issuing authority. All proceedings relating to the issuance, refusal, suspension or revocation of a permit to carry concealed handguns are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant.

### Reference #3

25 MRSA §2006, sub-§2

**2. Permanent record of permit.** The issuing authority shall make a permanent record of each permit to carry concealed handguns in a suitable book or file kept for that purpose. The record must include the information contained in the permit itself. The record is confidential except that the following information about each permit holder is not confidential ~~and is a public record:~~

- A. The municipality of residence;
- B. The date the permit was issued; and
- C. The date the permit expires.

This subsection does not limit disclosure of confidential information for criminal justice purposes or permitting purposes to law enforcement officers and issuing authorities.

### Reference #25

26 MRSA §1085, sub-§4

**4. Confidentiality.** All information obtained by the bureau pursuant to this section is confidential ~~and not a public record as defined in Title 1, section 402, subsection 3.~~ The information may be used only for making decisions regarding the suitability of an affected person for new or continued employment with the bureau, to provide services to the bureau under an identified contract or to access federal tax information obtained from the bureau.

Reference #29

27 MRSA §86-B, sub-§1

**1. Draft research and materials.** Museum draft research, publications and exhibit materials, including scientific, archaeological and historical findings, are confidential ~~and not public records for the purposes of Title 1, chapter 13, subchapter 1~~ until complete and presented to the public. The Museum Director may authorize disclosure before publication or presentation to the public.

Reference #30

27 MRSA §86-B, sub-§2

**2. Personal history research and materials.** Personal information contained in any record about the individual that is obtained by the Maine State Museum in the course of a historical research project is confidential ~~and not a public record for the purposes of Title 1, chapter 13, subchapter 1~~ until:

- A. The individual authorizes the release of the personal information as a public record; or
- B. The death of the individual, except that the Museum Director may, at the request of the individual, designate in writing that personal information about the individual remain confidential for a specified period, not to exceed 25 years after the death of the individual, to protect the privacy of the individual or the privacy of the parent or child of the individual.

Reference #53

30-A MRSA §2702, sub-§1

**§2702. Personnel records**

**1. Confidential records.** The following records are confidential and not open to public inspection. They are not "public records" as defined in Title 1, section 402, subsection 3. These records include:

- A. Except as provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the municipality for use in the examination or evaluation of applicants for positions as municipal employees.

- (1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the

applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

(2) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(3) This paragraph does not preclude union representatives from access to personnel records that may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this subsection must remain confidential and are not open to public inspection;

30-A MRSA §503, sub-§1

§2702. Personnel records

**1. Confidential records.** The following records are confidential and not open to public inspection. They are not "public records" as defined in Title 1, section 402, subsection 3. These records include:

A. Except as provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the county for use in the examination or evaluation of applicants for positions as county employees.

(1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

(2) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(3) This paragraph does not preclude union representatives from access to personnel records which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection;

Reference #67

32 MRSA §2105-A, sub-§3

**3. Confidentiality of information.** Reports, information or records provided to the board by a health care facility pursuant to this chapter are confidential insofar as the reports,

information or records identify or permit identification of a patient, except that the board may disclose confidential information:

A. In an adjudicatory hearing or informal conference before the board or in a subsequent formal proceeding to which the information is relevant; and

B. In a consent agreement or other written settlement when the information constitutes or pertains to the basis of board action, except that any information that identifies or could reasonably lead to identification of a patient is confidential.

A copy of a report, information or record received by the board under this subsection must be provided to the licensee.

#### Reference #78

32 MRSA §3300-A

#### **§3300-A. Confidentiality of personal information of applicant or licensee**

An applicant or licensee shall provide the board with a current professional address and telephone number, which will be their public contact address, and a personal residence address, ~~and~~ telephone number and email address. An applicant's or licensee's personal residence address, ~~and~~ telephone number and email address ~~is are~~ confidential information and may not be disclosed except as permitted by this section or as required by law, ~~unless~~. However, if the personal residence address and telephone number have been provided as the public contact address, the personal residence address and telephone number are not confidential. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted by this section or as required by law. The personal health information and personal residence address, ~~and~~ telephone number and email address may be provided to other governmental licensing or disciplinary authorities or to any health care providers located within or outside this State that are concerned with granting, limiting or denying a physician's employment or privileges.

#### Reference #82

32 MRSA §6207-B

#### **§6207-B. Confidential information**

~~The nonbusiness address of a person licensed or certified under this chapter is confidential, not open to the public and not a public record as defined in Title 1, section 402, subsection 3.~~

The address and telephone number of an applicant for licensure or a person licensed under this chapter that are in the possession of the board are confidential. Nothing in this section prohibits the board and its staff from using and disclosing the address and telephone number of an applicant or licensee as necessary to perform the duties and functions of the board.

Reference #88

32 MRSA §9418

**§9418. Confidentiality of application and information collected by the commissioner**

Notwithstanding Title 1, chapter 13, subchapter 1, all applications for a license to be a contract security company and any documents made a part of the application, refusals and any information of record collected by the commissioner during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 9405 and 9411-A, and all information of record collected by the commissioner during the process of ascertaining whether a natural person meets the requirements of section 9410-A, are confidential ~~and may not be made available for public inspection or copying.~~ The applicant or natural person may waive this confidentiality by written notice to the commissioner. All proceedings relating to the issuance of a license to be a contract security company are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant.

The commissioner or his designee shall make a permanent record of each license to be a contract security company in a suitable book or file kept for that purpose. The record shall include a copy of the license and shall be available for public inspection. Upon a specific request, the commissioner or his designee shall provide a list of names and current addresses of security guards employed by licensed contract security companies.

Reference #89

32 MRSA §11305, sub-§3

~~**3. Public information.** Notwithstanding any other provision of law, except as provided in paragraph A, all information collected, assembled or maintained by the administrator is public information and is available for the examination of the public.~~

~~A. The following are exceptions to this subsection:~~

~~(1) Information obtained in private investigations pursuant to section 11301;~~

~~(2) Information made confidential by rule or order of the administrator; or~~

~~(3) Information obtained from federal agencies which may not be disclosed under federal law.~~

**3. Public Information.** The following information collected, assembled, or maintained by the administrator is confidential:

A. Information obtained in private investigations pursuant to section 11301;

B. Information made confidential by rule or order of the administrator; and

C. Information obtained from federal agencies which may not be disclosed under federal law.

Reference #93

32 MRSA §16524

§16524. Confidentiality of personal information

Personal information contained in an application for restitution assistance under this subchapter is ~~not subject to disclosure to the extent the information is designated as not a public record by section 16607, subsection 2, paragraph E~~ is confidential.

Reference #94

32 MRSA §16607, sub-§2

2. Nonpublic records. The following records are ~~not public records and are not available for public examination under subsection 1~~ confidential:

A. A record obtained by the administrator in connection with an audit or inspection under section 16411, subsection 4 or an investigation under section 16602;

B. A part of a record filed in connection with a registration statement under section 16301 and sections 16303 to 16305 or a record under section 16411, subsection 4 that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

C. A record that is not required to be provided to the administrator or filed under this chapter and is provided to the administrator only on the condition that the record ~~will not be subject to public examination or disclosure~~ is confidential;

D. A record received from a person specified in section 16608, subsection 1 that has been designated as confidential by the agency furnishing the record;

E. Any social security number, residential address unless used as a business address and residential telephone number unless used as a business telephone number contained in a record that is filed;

F. A record obtained by the administrator through a designee of the administrator that, pursuant to a routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A, or an order under this chapter, has been:

(1) Expunged from the administrator's records by the designee; or

(2) Determined to be nonpublic or nondisclosable by that designee if the administrator finds the determination to be in the public interest and for the protection of investors;

G. Records to the extent that they relate solely to the administrator's internal personnel rules and practices, including, but not limited to, protocols, guidelines, manuals and memoranda of procedure for employees of the Office of Securities;

H. Interagency or intra-agency memoranda or letters, including generally records that reflect discussions between or consideration by the administrator and employees of the Office of Securities of any action taken or proposed to be taken by the administrator or employees of the Office of Securities, including, but not limited to, reports, summaries, analyses, conclusions or other work product of the administrator or employees of the Office of Securities, except those that by law would routinely be discoverable in litigation; and

I. Records to the extent that disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Reference #96

32 MRSA §18509, sub-§6

6. Confidentiality. Information provided to the interstate commission or distributed by a member board is confidential ~~within the meaning of Title 1, section 402, subsection 3, paragraph A~~ and may be used only for investigatory or disciplinary matters under sections 18510 and 18511.





Right to Know Advisory Committee – Public Employee Disciplinary Records Subcommittee  
Report on Recommendations from November 7, 2024 Meeting

At its final meeting, the Public Employee Disciplinary Records Subcommittee addressed each question from the Judiciary Committee one at a time, either with a recommendation or a determination that the question is moot or has been sufficiently addressed in another venue. Each recommendation had unanimous support from Subcommittee members present at its final November 7 meeting. The Subcommittee’s responses to these questions are as follows:

- 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; -- *See response under question 1b.***
  - 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 disciplinary model; and – *Based on its discussions and the information it has received from various stakeholders, the Subcommittee supports the development of a tiered system of retention based on the “seriousness” of the misconduct. The Subcommittee heard testimony that the “seriousness” of an action varies widely across agencies; therefore, the Subcommittee suggested that the determination of which tier a particular disciplinary action falls into should be tied to the punishment that the employee receives or be left to each agency to determine on their own.***
  - 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 speaks as a witness to a criminal case. – *The Subcommittee noted that the local government record retention schedule applicable to personnel records was revised in 2024 and feels that legislative action is not warranted to increase the retention period for disciplinary records generally. The Subcommittee does recommend that an explicit clarification***

*be added to records retention schedules relating to records that may be considered Brady/Giglio material that those records are retained in some manner to preserve their availability in criminal cases in accordance with constitutional requirements. The Subcommittee believes that any additional efforts to clarify or standardize the handling of Brady/Giglio materials must involve input from the Maine Prosecutors' Association.*

- 2) **Whether the Legislature should enact legislation prohibiting a collective bargaining agreement from impacting records retention schedules; and** – *The Subcommittee does not feel that legislation prohibiting a collective bargaining agreement from impacting records retention schedules is necessary, rather, the Subcommittee recommends clarifying that collective bargaining agreements should be prohibited from conflicting with the Freedom of Access Act in a manner that would restrict the or limit disclosure of personnel records that would otherwise be available to the public.*
  
- 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.”** – *The Subcommittee feels that legislative action is not necessary because this question is moot based on case law (*Harding v. Wal-Mart Stores, Inc.* 2001 ME 13) and information the Subcommittee received from responding entities regarding the handling of records requests. The Subcommittee has determined that it is standard practice across many agencies that, when a request is made for a final written disciplinary decision, the agency will produce that final written decision regardless of whether it has been removed from the employee's personnel file and is being stored in another location.*



**Maine State Legislature**  
**OFFICE OF POLICY AND LEGAL ANALYSIS**  
[www.mainelegislature.gov/opla](http://www.mainelegislature.gov/opla)  
13 State House Station, Augusta, Maine 04333-0013  
(207) 287-1670

**MEMORANDUM**

**TO:** Members, Right to Know Advisory Committee  
**FROM:** Advisory Committee Staff  
**DATE:** November 18, 2024  
**RE:** Committee Discussion

**Topic: Use of personal email and other communication methods under FOAA and record retention schedules**

**Ideas discussed by the Advisory Committee:**

- Request information regarding FOAA and record management trainings provided by Maine Municipal Association to its members including the number of trainings and information regarding types and numbers of attendees.
  - *See draft provided in materials.*
  - *Does the committee wish to also request county training information?*
- Amend 1 MRSA §412(4) to include statutory board and commission members and their staff in the list of individuals required to complete a course of training on the requirements of FOAA relating to public records and proceedings.
  - *See draft provided in materials.*

**Topic: Unfulfilled records requests**

**Ideas discussed by the Advisory Committee:**

- Amend 1 MRSA §408-A(4) to require greater specificity in the denial reason using language similar to that in §405(4) applicable to motions to go into executive session.
  - *See draft provided in materials.*

**Topic: Recommendation from 18th Annual Report of RTKAC related to meeting between representatives of law enforcement and representatives of the press**

**Meeting options the committee could consider:**

- The RTKAC could schedule a meeting prior to the start of the 132<sup>nd</sup> Legislature, with staff assistance, and invite the various parties. The meeting would be open to the public and require notice in accordance with FOAA.
- The RTKAC could seek to have the meeting during the legislative session; however, OPLA staff would be unable to assist. The committee could request that one of the participating entities serve as the organizer – the organizer could request to use a legislative committee room for the meeting or use an outside location.

Danielle D. Fox, Director  
Room 215 Cross State Office Building

Representative Erin Sheehan, Chair  
Senator Anne Carney  
Amy Beveridge  
Jonathan Bolton  
Hon. Justin Chenette  
Lynda Clancy  
Linda Cohen  
Brian MacMaster



Julie Finn  
Betsy Fitzgerald  
Jen Lancaster  
Kevin Martin  
Judy Meyer  
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Tim Moore  
Cheryl Saniuk-Heinig  
Eric Stout  
Connor P. Schratz

## STATE OF MAINE

### RIGHT TO KNOW ADVISORY COMMITTEE

Kate Dufour  
Maine Municipal Association  
60 Community Drive  
Augusta, Maine 04330

Dear Ms. Dufour:

I am writing on behalf of the Right to Know Advisory Committee. As you know, one of the statutory charges of the Right to Know Advisory Committee is to support training and education regarding Maine's Freedom of Access Act (FOAA)<sup>1</sup>. Pursuant to this responsibility, the Committee has been engaged in ongoing discussions regarding the availability of training opportunities for individuals in positions responsible for complying with and responding to FOAA requests. While information regarding the training of state employees is available from their respective agencies, the Committee is also interested in learning about training opportunities available to municipal employees. We are reaching out to Maine Municipal Association (MMA) to gain a better understanding of the training currently offered to its members.

The Committee understands that MMA offers a webinar training on FOAA. We were hoping to learn more about this course and any other relevant trainings offered by MMA. To this end, we would appreciate the following information:

1. A list of courses/trainings offered by MMA from 2021 to present regarding FOAA or records retention requirements and the dates these courses were conducted;
2. Syllabi for these courses/trainings or a detailed course description;
3. The number of municipal employees that attend these courses/trainings broken down by title/role within their organization if possible; and
4. Information regarding any future courses MMA is developing related to FOAA or records retention requirements.

In addition to the above information, we would welcome any suggestions or feedback MMA may wish to provide regarding the availability and accessibility of FOAA training, particularly for non-state employees.

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<sup>1</sup> See 1 M.R.S.A. §411, sub-§6(D).

Because the interim session is drawing to a close, we expect that we will be taking this issue up following the first legislative session of the 132<sup>nd</sup> Legislature. Therefore, we request a response to this letter by July 1, 2025.

Thank you for your time and attention to this matter.

Representative Erin Sheehan, Chair  
Right to Know Advisory Committee

**DRAFT LEGISLATION TO AMEND THE LAW RELATED INDIVIDUALS WHO  
MUST COMPLETE FOAA TRAINING**

*For RTKAC discussion 11/18/24*

**§412. Public records and proceedings training for certain officials and public access officers**

**1. Training required.** ~~A public access officer and an official subject to this section~~ An individual subject to the requirements of this section in accordance with subsection 4 shall complete a course of training on the requirements of this chapter relating to public records and proceedings. ~~The official or public access officer shall complete the training not later than the 120th day after the date the official individual assumes the person's~~ the individual's duties as an official, board member or staff person or the person is designated as a public access officer pursuant to section 413, subsection 1.

**2. Training course; minimum requirements.** The training course under subsection 1 must be designed to be completed by an individual ~~official or a public access officer~~ in less than 2 hours. At a minimum, the training must include instruction in:

- A. The general legal requirements of this chapter regarding public records and public proceedings;
- B. Procedures and requirements regarding complying with a request for a public record under this chapter; and
- C. Penalties and other consequences for failure to comply with this chapter.

~~An official or a public access officer~~ individual meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

**3. Certification of completion.** Upon completion of the training course required under subsection 1, the ~~official or public access officer~~ individual shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The ~~official individual~~ shall keep the record or file it with the public entity to which the ~~official~~ individual was elected or appointed. Staff employed by or associated with a board as defined in Title 5, section 12002, subsection 1, shall file the record with the board. A public access officer shall file the record with the agency or official that designated the public access officer.

**4. Application.** This section applies to the following individuals ~~a public access officer and the following officials~~:

- A. The Governor;
- B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

- C. Members of the Legislature elected after November 1, 2008;
- E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;
- F. Municipal officers; municipal clerks, treasurers, managers or administrators, assessors and code enforcement officers and deputies for those positions; and planning board members and budget committee members of municipal governments;
- G. Superintendents, assistant superintendents and school board members of school administrative units; ~~and~~
- H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or chapter 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2-;
- I. Public access officers designated pursuant to section 413, subsection 1; and
- J. Appointed members of and staff employed by or associated with a board established under Title 5, chapter 379.

#### **SUMMARY**

This bill amends the list of public officials that are required to undergo training related to public records access to include appointed members and staff of boards that are established under Title 5, chapter 379.

**DRAFT LEGISLATION TO AMEND THE LAW RELATED TO DENIALS OF  
REQUESTS FOR RECORDS PURSUANT TO FOIA**  
*For RTKAC discussion 11/18/24*

**Sec. 1.** 1 MRSA §408-A, sub-§4 is amended to read:

**4. Refusals; denials.** If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide, within 5 working days of the receipt of the request for inspection or copying, written notice of the denial, stating the reason for the denial or the expectation that the request will be denied in full or in part following a review. A written notice of a denial must contain a citation to the statutory authority used as the basis for the denial. A request for inspection or copying may be denied, in whole or in part, on the basis that the request is unduly burdensome or oppressive if the procedures established in subsection 4-A are followed. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

**Summary**

This draft legislation requires that a written notice of a denial of a request for inspection or copying of a record provided by a body, agency or an official include a citation to the statutory authority used for the basis of the denial.



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- IV. Actions Related to Recommendations Contained in Eighteenth Annual Report
- V. Committee Process
- VI. Recommendations
- VII. Future Plans

Appendices

**EXECUTIVE SUMMARY**

This is the nineteenth annual report of the Right to Know Advisory Committee (RTKAC or Advisory Committee). The Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine’s freedom of access laws. The members are appointed by the Governor, the Chief Justice of the Supreme Judicial Court, the Attorney General, the President of the Senate and the Speaker of the House of Representatives.

As in previous annual reports, this report includes a brief summary of the legislative actions taken in response to the Advisory Committee’s January 2024 recommendations and a summary of relevant Maine court decisions from 2024 related to the freedom of access laws. This report also summarizes several topics discussed by the Advisory Committee that did not result in a recommendation or further action.

For its nineteenth annual report, the Advisory Committee makes the following recommendations:

- Recommendations to be added here following the meeting on November 18
- ...
- ...
- ...
- ...

In 2025, the Right to Know Advisory Committee will [...]. The Advisory Committee will also continue to provide assistance to the Joint Standing Committee on Judiciary relating to proposed legislation affecting public access. The Advisory Committee looks forward to another year of

activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations in this report.

## I. INTRODUCTION

This is the nineteenth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine’s freedom of access laws. The Advisory Committee’s authorizing legislation, located at Title 1, section 411, is included in Appendix A.

More information on the Advisory Committee, including meeting agendas, meeting materials and summaries of meetings and its previous annual reports can be found on the Advisory Committee’s webpage at <http://legislature.maine.gov/right-to-know-advisory-committee>. The Office of Policy and Legal Analysis provides staffing to the Advisory Committee when the Legislature is not in regular or special session.

The Right to Know Advisory Committee has 18 members. The chair of the Advisory Committee is elected by the members. Current Advisory Committee members are:

Rep. Erin Sheehan, Chair	<i>House member of Judiciary Committee, appointed by the Speaker of the House</i>
Sen. Anne Carney	<i>Senate member of Judiciary Committee, appointed by the President of the Senate</i>
Amy Beveridge	<i>Representing broadcasting interests, appointed by the President of the Senate</i>
Jonathan Bolton	<i>Attorney General’s designee</i>
Justin Chenette	<i>Representing the public, appointed by the President of the Senate</i>
Lynda Clancy	<i>Representing newspaper and other press interests, appointed by the President of the Senate</i>
Linda Cohen	<i>Representing municipal interests, appointed by the Governor</i>
Julie Finn	<i>Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court</i>
Betsy Fitzgerald	<i>Representing county or regional interests, appointed by the President of the Senate</i>
Jen Lancaster	<i>Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House</i>

Brian MacMaster	<i>Representing law enforcement interests, appointed by the President of the Senate</i>
Kevin Martin	<i>Representing state government interests, appointed by the Governor</i>
Judy Meyer	<i>Representing newspaper publishers, appointed by the Speaker of the House</i>
Tim Moore	<i>Representing broadcasting interests, appointed by the Speaker of the House</i>
Kim Monaghan	<i>Representing the public, appointed by the Speaker of the House</i>
Eric Stout	<i>A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor</i>
Cheryl Saniuk-Heinig	<i>A member with legal or professional expertise in the field of data and personal privacy, appointed by the Governor</i>
Connor P. Schratz	<i>Representing school interests, appointed by the Governor</i>

The complete membership list of the Advisory Committee is included in **Appendix B**.

By law, the Advisory Committee must meet at least four times per year. During 2024, the Advisory Committee met five times: on August 12, September 23, October 7, October 21 and November 18. In accordance with the Advisory Committee's remote participation policy, Advisory Committee meetings were conducted in a hybrid manner. Meetings were remotely accessible to the public through the Legislature's website.

## II. COMMITTEE DUTIES

The Right to Know Advisory Committee was created to serve as a resource and advisor about Maine's freedom of access laws. The Advisory Committee's specific duties include:

- Providing guidance in ensuring access to public records and public proceedings;
- Serving as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know;
- Supporting the provision of information about public access to records and proceedings via the Internet;
- Serving as a resource to support training and education about Maine's freedom of access laws;
- Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the

state of Maine’s freedom of access laws and the public’s access to public proceedings and records;

- Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;
- Examining inconsistencies in statutory language and proposing clarifying standard language; and
- Reviewing 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.

In carrying out these duties, the Advisory Committee may conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss and consider solutions to problems concerning access to public proceedings and records. The Advisory Committee may make recommendations for changes in 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 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. The Advisory Committee is pleased to work with the Public Access Ombudsman, Brenda Kielty. Ms. Kielty is a valuable resource to the public and to public officials and agencies.

### III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES

By law, the Advisory Committee serves as the central source and coordinator of information about Maine’s freedom of access laws and the people’s right to know. In carrying out this duty, the Advisory Committee believes it is useful to include in its annual reports a digest of recent developments in case law relating to Maine’s freedom of access laws. For this annual report, the Advisory Committee has identified and summarized the following Maine Supreme Judicial Court decisions related to freedom of access issues.

To be added later.

### IV. ACTIONS RELATED TO COMMITTEE RECOMMENDATIONS CONTAINED IN EIGHTEENTH ANNUAL REPORT

The Advisory Committee made the following recommendations in its Eighteenth Annual Report. The legislative actions taken in 2024 as a result of those recommendations are summarized below.

<b>Recommendation:</b> Amend certain provisions of law in Title 22 relating to previously enacted public records exceptions	<b>Action:</b> <i>LD 2215, An Act to Implement the Recommendations of the Right to Know Advisory Committee Regarding Public</i>
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	<i>Records Exceptions</i> was enacted as Public Law 2023, ch. 637.
<p><b>Recommendation:</b> 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</p>	<p><b>Action:</b> Staff sent a letter on behalf of the Advisory Committee to the chairs of the Blue Ribbon Commission providing this explanation.</p>
<p><b>Recommendation:</b> Reinforce the importance of following the statutory requirements applicable to public bodies and agencies going into executive session</p>	<p><b>Action:</b> 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.</p>
<p><b>Recommendation:</b> 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</p>	<p><b>Action:</b> A copy of the 18th Annual Report including this recommendation was sent to the Public Access Ombudsman.</p>
<p><b>Recommendation:</b> 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</p>	<p><b>Action:</b> Staff sent a letter on behalf of the Advisory Committee sharing this recommendation to the Executive Director of the Maine School Management Association.</p>
<p><b>Recommendation:</b> 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</p>	<p><b>Action:</b> 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. The input from stakeholders was considered by the Advisory Committee in its deliberations for this report.</p>

<p><b>Recommendation:</b> 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 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</p>	<p><b>Action:</b> Staff sent a letter on behalf of the Advisory Committee to the Executive Director of the Maine Chiefs of Police Association sharing this recommendation. The Maine Chiefs of Police Association responded that the Association lacked the resources necessary to follow through on the Advisory Committee’s request but would be amenable to participating in a meeting if organized by the RTKAC or other appropriate stakeholders.</p>
<p><b>Recommendation:</b> 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</p>	<p><b>Action:</b> The Judiciary Committee received a presentation on the 18th Annual Report. The Judiciary Committee issued a letter dated May 10, 2024 responding to the Advisory Committee’s recommendation. The Advisory Committee formed the Public Employee Disciplinary Records Subcommittee to review the issues cited in the letter further. See discussion of subcommittee process in Part V.</p>

**V. COMMITTEE PROCESS**

In 2024, the Advisory Committee formed 3 subcommittees to assist in its work: the Public Records Exceptions Subcommittee, the Public Employee Disciplinary Records Subcommittee and the Burdensome FOAA Requests Subcommittee. Each subcommittee discussed its assigned topics and issues thoroughly and determined whether to make recommendations for consideration by the full Advisory Committee. More information on the subcommittee activities, including meeting agenda and materials, can be found on the Advisory Committee’s webpage at <http://legislature.maine.gov/right-to-know-advisory-committee>.

The deliberations of each subcommittee are summarized below. Part VI of this report contains the specific recommendations from the subcommittees that were adopted by the full Advisory Committee. Unless otherwise noted, subcommittee recommendations were unanimously approved by those subcommittee members present.

**Public Records Exceptions Subcommittee**

The Public Records Exceptions Subcommittee was chaired by Cheryl Saniuk-Heinig. Jonathan Bolton, Lynda Clancy, Jen Lancaster and Representative Erin Sheehan served as members of the

Subcommittee. The Subcommittee met 3 times: on September 30, October 24 and October 31. On November 18, the Subcommittee made its report and recommendations to the Advisory Committee.

The focus of the Public Records Exceptions Subcommittee is to review and evaluate public records exceptions as required of the Advisory Committee pursuant to 1 MRSA, section 433, subsection 2-A. The guidelines in the law require the Advisory Committee to review all public records exceptions in Titles 25, 26, 27, 28-A, 29-A, 30, 30-A, 31 and 32 by 2027. During 2024, the Subcommittee began its review of public records exceptions in Titles 25, 26, 27, 28-A, 28-B, 29-A, 30-A and 32 and, at the request of the Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations, considered whether to recommend a new proposed public records exception for “personally identifiable information.”

- *Review of exceptions in Titles 25-32*

As a first step to the review of existing public records exceptions, the Subcommittee contacted state agencies for information, comments and suggestions with respect to the relevant public records exceptions administered by that body. Subcommittee members reviewed the agency responses to the questionnaires and also had available a chart that included the following information: the statutory citation for each exception and links to the statutory language; the agency that is responsible for administering each exception; and each agency’s recommendation whether to continue, amend or repeal the exception.

A total of 95 exceptions in Titles 25 to 32 were identified for review: the Subcommittee reviewed 8 exceptions in Title 25; 18 exceptions in Title 26; 5 exceptions in Title 27; 1 exception in Title 28-A; 3 exceptions in Title 28-B; 14 exceptions in Title 29-A; 9 exceptions in Title 30-A; and 37 exceptions in Title 32.

[More to be added after November 18<sup>th</sup> meeting.]

### **Public Employee Disciplinary Records Subcommittee**

The Public Employee Disciplinary Records Subcommittee was chaired by Judy Meyer. Senator Anne Carney, Amy Beveridge, Jonathan Bolton, Julie Finn, Brian MacMaster and Cheryl Saniuk-Heinig served as members of the Subcommittee. The Subcommittee met 3 times: on September 23, October 17 and November 7. On November 18, the Subcommittee made its report and recommendations to the Advisory Committee.

[More to be added after November 18<sup>th</sup> meeting.]

### **Burdensome FOAA Requests Subcommittee**

The Burdensome FOAA Requests Subcommittee was chaired by Kevin Martin. Julie Finn, Betsy Fitzgerald, Brian MacMaster, Judy Meyer, Kim Monaghan, Cheryl Saniuk-Heinig and Eric Stout served as members of the Subcommittee. The Subcommittee met 4 times: on September 23, October 7, October 21 and November 18.

The Subcommittee was formed to consider responses to the Right to Know Advisory Committee survey regarding examples of burdensome public records requests and situations that the responding entity believes represent an abuse of the FOAA process, as well as recommendations these entities have for statutory changes to FOAA.

[More to be added after November 18<sup>th</sup> meeting.]

## **VI. RECOMMENDATIONS**

The Advisory Committee makes the following recommendations. Unless otherwise noted, the following recommendations were unanimously approved by those members present.

[Recommendations to be added here after November 18<sup>th</sup> meeting.]

## **VII. FUTURE PLANS**

In 2025, the Right to Know Advisory Committee will continue to discuss the ongoing issues identified in this report. **More to go here based on discussions and recommendations made at the final meeting, November 18.** The Advisory Committee will also continue to provide assistance to the Joint Standing Committee on Judiciary relating to proposed legislation affecting public access. The Advisory Committee looks forward to another year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations included in this report.



*Appendix materials*

- A. Authorizing Legislation: 1 MRSA §411
- B. Membership List: Right to Know Advisory Committee
- C.
- D.
- E.

DRAFT

**Right to Know Advisory Committee**  
August 12, 2024 (Hybrid: Zoom and Room 228)  
Meeting Summary

Convened 1:09 p.m. in person and remote on Zoom; public access on Legislature's website at:  
<https://legislature.maine.gov/audio/#228?event=91619&startDate=2024-08-12T13:00:00-04:00>

**Present in Room 228:**

Rep. Erin Sheehan  
Sen. Anne Carney  
Julie Finn  
Brian MacMaster  
Kevin Martin  
Eric Stout

**Remote:**

Lynda Clancy  
Betsy Fitzgerald  
Jen Lancaster  
Judy Meyer  
Kim Monaghan  
Tim Moore  
Cheryl Saniuk-Heinig

**Absent:**

Amy Beveridge  
Jon Bolton  
Justin Chenette  
Linda Cohen  
Connor P. Schratz

**Staff:**

Lindsay Laxon  
Anne Davison  
Elena Roig  
Sam Senft (vacation)

**Welcome and introductions**

Rep. Erin Sheehan convened the meeting and all members introduced themselves and identified the interests they were appointed to represent on the Advisory Committee. Kate McBrien, the Maine State Archivist, was also present and introduced herself.

**Election of chair**

Sen. Anne Carney nominated Rep. Erin Sheehan to continue as chair. The motion was seconded by Julie Finn. Rep. Sheehan agreed to continue in the role. She was unanimously elected by all present members.

**Review of duties**

Staff reviewed the Advisory Committee's statutory duties and the annual written report due date (January 15<sup>th</sup>).

**Remote participation policy**

Staff reviewed the Advisory Committee's Remote Participation Policy, adopted October 26, 2021.

**Review and discussion of the Eighteenth Annual Report of the Right to Know Advisory Committee and actions related to those recommendations**

Staff reviewed the recommendations of the Advisory Committee that are contained in the 18th Annual Report from January 2024.

These recommendations are as follows:

- 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 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 131<sup>st</sup> 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.*

### **Review of new public records exceptions enacted or amended in 2024**

Staff directed committee members to a chart of exceptions enacted or amended in 2024.

### **Discussion of issues and topics for 2024**

- **Review of existing public records exceptions**

Staff summarized the Advisory Committee's role in reviewing all existing exceptions in Titles 25 to 32 during the 132<sup>nd</sup> Legislature.

Staff have begun preparing for the review. Consistent with past practice, FOAA contact persons for each agency or governmental entity will be asked to submit input, through a questionnaire, on each of the FOAA exceptions pertaining to their agency/entity. September 20<sup>th</sup> is the proposed deadline for contacts to return the surveys.

As in past years, staff noted that the review of the exceptions may be initially completed through a subcommittee. The Advisory Committee decided to form a public records exception subcommittee to address this topic. Lynda Clancy suggested that the subcommittee also discuss the public records exception amended by Public Law 2023, ch. 618 (LD 1937), An Act Regarding the Transportation of Hazardous Materials by Railroad Companies.

- **Public records exception for the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations**

Staff suggested that if the committee opts to form a subcommittee on public records exceptions, the committee may wish to refer this exception to the subcommittee. The members agreed to refer this item to the public records exception subcommittee.

- **Survey responses with examples of burdensome public records requests**

Staff, who are in the process of compiling responses, noted that responses were received from 22 agencies and more than 20 Maine Municipal Association members, and that some responders included recommendations for statutory changes in their responses. The Advisory Committee decided to form a subcommittee to consider the survey responses and discuss this topic.

- **Letter from Judiciary Committee regarding retention of and public access to public employee disciplinary records**

Staff drew the Advisory Committee's attention to the Judiciary Committee's request that the RTKAC reconsider some of the issues that the Advisory Committee previously referred to the Judiciary Committee. The Advisory Committee decided to form a subcommittee to discuss this topic.

- **Other suggested issues and topics**

The members discussed other issues that could be considered through a subcommittee or by the full committee. This included the results of the recommendation from the 18<sup>th</sup> Annual Report asking the Maine Chiefs of Police Association to convene a meeting related to the release of information regarding public safety incidents and ongoing criminal investigations. The members also discussed challenges and

burdens faced by persons making FOAA requests, particularly FOAA requests that are not fulfilled. Though membership has not been finalized and Rep. Sheehan suggested that other subcommittees could be formed if necessary, the committee formed three subcommittees; chairs were chosen for each. Subcommittees and chairs are as follows:

- 1) Public records exceptions (Cheryl Saniuk-Heinig)
- 2) Public employee disciplinary records (Judy Meyer)
- 3) Abusive and burdensome requests (Kevin Martin)

Staff will follow up by email to provide members, including those who were not present at the meeting, with the opportunity to volunteer to participate in one or more of the subcommittees.

### **Public comment**

The Advisory Committee heard public comment from three individuals.

### **Future meeting dates and requests**

The Advisory Committee confirmed the proposed meeting schedule.

- Monday, September 23, 2024 @ 1:00 p.m., location State House, Room 228
- Monday, October 7, 2024 @ 1:00 p.m., location State House, Room 228
- Monday, October 21, 2024 @ 1:00 p.m., location State House, Room 228

Rep. Sheehan suggested that the members consider Monday, November 18, 2024 @ 1:00 p.m. as a 5<sup>th</sup> meeting date (TBD).

Rep. Sheehan expressed interest in hearing from the Maine Chiefs of Police Association as well as Public Access Ombudsman, Brenda Kielty, at the Advisory Committee's next meeting. Kevin Martin requested that when Ms. Kielty comes to present, she bring examples of unfulfilled FOAA requests with her.

Rep. Sheehan also raised the issue of personal email usage under FOAA and suggested this be a discussion point at a future meeting.

The meeting was adjourned at 3:11 p.m.

**Right to Know Advisory Committee**  
September 23, 2024 (Hybrid: Zoom and Room 228)  
Meeting Summary

Convened 1:02 p.m. in person and remote on Zoom; public access on Legislature's website at:  
<https://legislature.maine.gov/audio/#228?event=91783&startDate=2024-09-23T13:00:00-04:00>

**Present in Room 228:**

Rep. Erin Sheehan  
Jon Bolton  
Lynda Clancy  
Julie Finn  
Kevin Martin  
Judy Meyer  
Connor Schratz  
Eric Stout

**Absent:**

Sen. Anne Carney  
Linda Cohen  
Betsy Fitzgerald

**Staff:**

Lindsay Laxon  
Anne Davison  
Elena Roig  
Sam Senft

**Remote:**

Amy Beveridge  
Justin Chenette  
Jen Lancaster  
Brian MacMaster  
Kim Monaghan  
Tim Moore  
Cheryl Saniuk-Heinig

**Welcome and introductions**

Rep. Erin Sheehan convened the meeting and all members introduced themselves and identified the interests they were appointed to represent on the Advisory Committee.

**Subcommittees and topics for full committee review**

Staff reviewed the subcommittees established at the last Advisory Committee meeting and noted that members are still able to participate in subcommittees if they wish. Two of the subcommittees, Public Employee Disciplinary Records Subcommittee and the Burdensome FOAA Requests Subcommittee held their first meetings in the morning on September 23<sup>rd</sup>.

Regarding issues and topics for the full committee review, staff also advised that they had contacted the Maine Chiefs of Police Association regarding the recommendation in last year's report on the reporting on or releasing information related to public safety incidents and ongoing criminal investigations, but they had not yet been able to schedule an update to the Advisory Committee from the Association. Staff will follow up with the Association to see if someone would be available for the Advisory Committee's next meeting.

**Statutory requirements and guidance regarding public employee use of personal email**

Staff reviewed a memo to the Advisory Committee regarding the use of personal email and other personal communication methods by public employees under FOAA. The members discussed concerns about the level of familiarity individuals subject to FOAA's requirements may have with their obligations to retain public records. Rep. Sheehan asked to see materials for trainings on this topic that public employees may

receive to see if personal emails and devices and personal communication technologies are addressed. Jon Bolton asked if there are public officials who are not provided with maine.gov email accounts and noted that compliance with record retention requirements may be more difficult when emails are on non-state email accounts. Eric Stout responded that there are many boards and commissions that do not have maine.gov email addresses and in those cases, members use their personal or professional email accounts to conduct their board or commission-related business. He added that the State of Maine has policies in place prohibiting the use of personal email accounts and violations of that policy could result in the employee being subject to a disciplinary process. Rep. Sheehan expressed interest in finding out whether boards and commissions receive training regarding FOAA/record retention and what is contained in those materials; staff will look into this question.

### **Update from Brenda Kielty**

Brenda Kielty, the Public Access Ombudsman, shared her annual report with the Advisory Committee members and explained her role as the Ombudsman. Her role involves getting involved early in the process and providing an informal dispute resolution process, but she noted that she does not adjudicate disputes or provide advocacy for one party or the other. Ms. Kielty specifically directed members' attention to the chart on page 10 of her report which provides data on FOAA records requests that have response times in excess of 6 months or a year. This data is provided by responding agencies and Ms. Kielty shared some specific comments from these agencies regarding the longer response times. In several cases, the requestor did not respond for a period of time to agency questions or time and cost estimates, which increased the overall time that the request was considered open. She shared that the Department of Public Safety (DPS) had noted an increase in the complexity of the requests it had received for the prior year. Judy Meyer commented that the shooting in Lewiston, Maine may have caused an increase in the number and complexity of the FOAA records requests received by DPS.

In connection with the Advisory Committee's prior discussion of training for employees, Ms. Kielty noted the distinction between the requirements of FOAA and the record retention schedules. While the FOAA trainings she provides touch on record retention requirements, she explained that private individuals such as those serving on boards or commissions may not be used to retaining records or having their records subject to public inspection in the same way as state employees.

Lynda Clancy asked if Ms. Kielty needs additional resources for her work. Ms. Kielty explained that while she is a part of the Office of the Attorney General (OAG), she is the only one doing this work and if her role were to be expanded, she would need additional resources. Eric Stout asked what an expansion of the role of the Public Access Ombudsman would look like. Ms. Kielty explained that her current role does not provide for subpoena power or other authorities that one may associate with the OAG and she believes she would need an additional statutory grant to exercise such authority. Jon Bolton noted that the OAG has authority under FOAA to commence civil actions, but that has traditionally been used in only exceptional circumstances.

### **Committee discussion of unfulfilled requests**

This issue was raised at the first Advisory Committee meeting, as members were concerned about requests for public records that go unfulfilled. Rep. Sheehan shared with the Advisory Committee a situation in which an individual submitted a request for records pursuant to FOAA, received the acknowledgement and, after not receiving a response for a period of time, followed up and was told that the records were not public. Judy Meyer commented that the Advisory Committee has anecdotally heard of instances of unfulfilled requests, but the challenge is in getting more information about the circumstances of these requests. Rep. Sheehan asked if the RTKAC has requested specific information on this topic in the past; staff will look back at past meeting records for any historical data that may be useful. Tim Moore suggested that agencies could send a survey regarding unfulfilled requests and Rep. Sheehan commented that there may be resource challenges that make that difficult to implement. Eric

Stout added that the statute may not be specific enough with requiring a reason for a denial of a request for records. Brian MacMaster indicated that there is a Maine Law Court decision that addresses denial reasons. Staff will share this decision with the members.

**Public comment**

The Advisory Committee had invited public comment, written and/or oral, at the meeting regarding additional topics the Advisory Committee could consider in 2024. No members of the public provided comment.

**November meeting date**

At the last meeting, the Advisory Committee had discussed the possible need for a fifth meeting date. Rep. Sheehan asked members if they are available for a November 18<sup>th</sup> meeting. Staff will send out an email to members to see who will be unavailable on that date in the event that Advisory Committee decides to hold five meetings.

Lynda Clancy asked that the Advisory Committee discuss possible expansion of the Public Access Ombudsman's role at the next meeting and asked for information regarding funding. Staff will look to find funding information and include this topic on the agenda for the next meeting.

The meeting was adjourned at 2:27 p.m.



**Right to Know Advisory Committee**  
October 7, 2024 (Hybrid: Zoom and Room 228)  
Meeting Summary

Convened 1:01 p.m. in person and remote on Zoom; public access on Legislature's website at:  
<https://legislature.maine.gov/audio/#228?event=91835&startDate=2024-10-07T13:00:00-04:00>

**Present in Room 228:**

Rep. Erin Sheehan  
Jon Bolton  
Lynda Clancy  
Kevin Martin  
Eric Stout

**Remote:**

Amy Beveridge  
Sen. Anne Carney  
Julie Finn  
Betsy Fitzgerald  
Jen Lancaster  
Brian MacMaster  
Judy Meyer  
Tim Moore  
Cheryl Saniuk-Heinig  
Connor Schratz

**Absent:**

Justin Chenette  
Linda Cohen  
Kim Monaghan

**Staff:**

Lindsay Laxon  
Elena Roig

**Welcome and introductions**

Rep. Erin Sheehan convened the meeting and all members introduced themselves and identified the interests they were appointed to represent on the Advisory Committee.

**Subcommittee updates**

Rep. Sheehan asked the subcommittee chairs to provide an update regarding the subcommittees' recent meetings.

*Public Employee Disciplinary Records Subcommittee.*

Staff provided an update on behalf of Subcommittee Chair Judy Meyer. Staff advised that the subcommittee met on September 23<sup>rd</sup> and will hold its next meeting on October 17<sup>th</sup>. For its second meeting, the subcommittee has requested that representatives of the Office of Employee Relations, the Department of Public Safety, and local law enforcement attend the meeting to discuss the questions raised in the Judiciary Committee's letter to the RTKAC and other issues.

*Public Records Exception Subcommittee.*

Subcommittee Chair Cheryl Saniuk-Heinig explained that the subcommittee met on September 30<sup>th</sup> and has reviewed the agency responses regarding public records exceptions that have been received to date. The subcommittee also discussed the proposed public records exception for "personally identifiable information" received by the Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations. The subcommittee's next meeting is scheduled for October 24<sup>th</sup>.

*Burdensome FOAA Requests Subcommittee.*

Subcommittee Chair Kevin Martin explained that the subcommittee has met twice: September 23<sup>rd</sup> and October 7<sup>th</sup>. He explained that the subcommittee has reviewed responses to the survey sent out last year and an overview document prepared by subcommittee staff. The subcommittee is now considering possible processes for mediation or other forms of alternative dispute resolution related to FOAA records requests that could be established in conjunction with the work of the Public Access Ombudsman. The subcommittee will hold its next meeting on October 21<sup>st</sup>.

The Advisory Committee had requested that a representative of the Maine Chiefs of Police Association attend the meeting to provide an update regarding the recommendation in last year's report on the reporting on or releasing information related to public safety incidents and ongoing criminal investigations. Staff advised that a representative of the Association could not attend the meeting on October 7<sup>th</sup>, but could be available for the Advisory Committee's next meeting on October 21<sup>st</sup>.

### **Use of personal email and other communication methods under FOAA and record retention schedules**

At the last Advisory Committee meeting, members requested more information regarding the training that state employees receive regarding records management as well as any trainings that are provided to members of boards and commissions. Staff shared with members records management training materials provided by State Archivist, Kate McBrien, including the acknowledgement form that state employees must sign after completing the training. Staff also shared a memo from the Public Access Ombudsman, Brenda Kielty, that provides examples of policies and procedures for managing records created by local or state boards, commissions and committee/subcommittees. Staff explained that there does not appear to be a uniform required training for boards and commission members. For additional background, staff also provided the members with materials from 2019 Advisory Committee subcommittee meetings in which a subcommittee considered expanding the training requirements in 1 MRSA §412 to include boards and commissions.

Rep. Sheehan commented that public officials should understand what types of records are meant to be retained. For boards and commissions with an executive director or other support staff, the members discussed those individuals' ability to convey FOAA and record retention requirements to board and commission members. Eric Stout pointed out that during the subcommittee discussions in 2019, the members had sought an incremental approach to expanding the FOAA training requirement, and Rep. Sheehan wondered if the Advisory Committee should prioritize expanding training requirements for certain boards and commissions.

The Advisory Committee asked the Public Access Ombudsman, Brenda Kielty, to share her perspective on what may be necessary for training for boards and commissions. Ms. Kielty explained that there are often volunteer members coming from nonprofit or private sector backgrounds who are used to communicating electronically, but not used to record retention or FOAA requirements. She mentioned that a power dynamic may exist in some cases, as the Advisory Committee has discussed at a previous meeting, in which a member may be unwilling to follow guidance provided by an executive director. She did not have suggestions for which boards and commission the Advisory Committee should prioritize; however, she expressed that ensuring that an executive director of a board or commission receives training would be a good place to start.

Lynda Clancy referred to the materials from the subcommittee's 2019 meetings and asked if all boards and commission on the list conduct public business. She noted that the training materials provided by the State Archivist seem appropriate for board and commission members. Eric Stout shared that, if the executive director is a state employee, they would receive this training. He added that last year the compliance rate for completing the training was 93%. Rep. Sheehan asked Mr. Stout if there are any boards or commissions without an associated state employee; he was unsure, but added that some may

have part time staff support. Rep. Sheehan questioned which boards and commissions have the greatest issues with members' compliance with records management and FOAA requirements and Judy Meyer added that she would like to hear from Ms. Kielty's on this question. Kevin Martin added that FOAA may not apply to all boards and commissions and he would be concerned about placing a burden on the board or commission to make that determination, as these issues may be more complex at the local level. Eric Stout shared with the Advisory Committee language on the Attorney General's website that explains the Professional/Financial Regulation Division's role, including providing legal advice to the Office of Professional and Occupational Regulation which consists of 37 licensing boards, commissions, and registration programs. The members discussed that these boards and commissions may be a place to start if they recommend expanding training requirements.

### **Role of the Public Access Ombudsman**

Staff shared a copy of the authorizing statute for the Public Access Ombudsman and, in response to a member question at the last meeting, explained that the total costs associated with the position are approximately \$185,000. Lynda Clancy asked Ms. Kielty if, given her increasing workload, she needs additional assistance. Kevin Martin explained that the Burdensome FOAA Requests Subcommittee discussed the role of the Public Access Ombudsman in its meeting that morning. The subcommittee is discussing providing the position with additional authority and developing a formal dispute resolution process which might result in an increase in the duties associated with the position. Rep. Sheehan noted that it seems that the current resources are adequate, but would need to be increased if the role were expanded. She suggested that the Advisory Committee defer conversations about this topic until the subcommittee returns with its recommendations. Sen. Carney shared that the explanation Ms. Kielty provided at the subcommittee meeting of the different levels of conflict was helpful and that expanding her role in situations of higher conflict (e.g., bad faith) may necessitate more resources.

### **Committee discussion of unfulfilled records requests**

At the last Advisory Committee meeting, members had requested any specific data or information from past Advisory Committee meetings on the topic of unfulfilled requests. Staff did not locate any specific information to share, although the issue has come up in various contexts many times. Staff directed members to a copy of a Maine Supreme Judicial Court case *MaineToday Media, Inc. v. State*, 82 A.3d 104 (2013) mentioned by Brian MacMaster at the last Advisory Committee meeting. In the case, the state had denied a FOAA records request based on the grounds that the records were "intelligence and investigative information" in a pending criminal matter and were confidential pursuant to the Criminal History Records Information Act. The Court found that the state failed to meet its burden for establishing just a proper cause for the denial of the FOAA request, specifically that the requested records met a statutory public records exception under the Criminal History Records Information Act.

Rep. Sheehan commented that it might be useful to think about how the *MaineToday Media, Inc.* case might be drafted into a recommendation to ensure that the statute makes clear that it is the agency's responsibility to explain why a particular record is not a public record. She noted that the provision of FOAA related to a public body going into executive session requires a specific citation. She also raised the possibility of sending out a survey regarding unfulfilled requests to gather more specific examples. Tim Moore asked if there a larger state agency that keeps track of FOAA records requests made to state agencies. Staff advised that they were unaware of any central repository for this information. Betsy Fitzgerald suggested that the Advisory Committee could consider creating a generic checklist to assist responding entities in determining whether a records request is requesting a public record. Rep. Sheehan noted that the public records statute provides a list of exceptions that address what is confidential, but the Advisory Committee had received anecdotal examples of records requests that were denied without much explanation. Eric Stout said that the statutory requirements for going into executive session would be easy to add to the denial language in section 408-A(4). He noted, however, that there are many statutory public records exceptions, so it may be challenging at times for a responding entity to determine which are

applicable. Kevin Martin commented that the language in section 408-A(4) already requires the responder state the reason for the denial and that agencies likely provide more detail in their denials. Judy Meyer explained that she has often seen records requests to non-agency responders denied for general reasons such as on “privacy grounds” and those denials do may be harder to appeal; Lynda Clancy shared Ms. Meyer’s concerns. Rep. Sheehan asked staff to provide a summary of the Advisory Committee’s discussions for the next meeting. The members then discussed methods for obtaining more specific data on this issue and Kevin Martin suggested that members of the press may have examples that they can share. Judy Meyer said that not all requestors track their requests based on length of time for a response, but she thinks it is worth looking into gathering more information. Rep. Sheehan suggested that the Advisory Committee could seek more information and specific examples from the Maine Press Association and the Maine Association of Broadcasters.

**November meeting date**

At the last meeting, the Advisory Committee had discussed the possible need for a fifth meeting date. Rep. Sheehan confirmed that the members should plan on a fifth meeting on November 18<sup>th</sup>.

The meeting was adjourned at 2:29 p.m.

DRAFT

**Right to Know Advisory Committee**  
October 21, 2024 (Hybrid: Zoom and Room 228)  
Meeting Summary

Convened 1:03 p.m. in person and remote on Zoom; public access on Legislature’s website at:  
<https://legislature.maine.gov/audio/#228?event=91945&startDate=2024-10-21T13:00:00-04:00>

**Present in Room 228:**

Rep. Erin Sheehan  
Sen. Anne Carney  
Lynda Clancy  
Kevin Martin  
Judy Meyer

**Remote:**

Amy Beveridge  
Justin Chenette  
Julie Finn  
Brian MacMaster  
Kim Monaghan  
Tim Moore  
Cheryl Saniuk-Heinig  
Connor Schratz  
Eric Stout

**Absent:**

Linda Cohen  
Betsy Fitzgerald  
Jen Lancaster

**Staff:**

Lindsay Laxon  
Elena Roig  
Sam Senft  
Anne Davison

**Welcome and introductions**

Advisory Committee members introduced themselves and the interests they were appointed to represent.

**Maine Chiefs of Police Association update – Chief Jason Moen, Interim President**

The Advisory Committee heard a status update from Maine Chiefs of Police Association (MCPA) Interim President, Chief Jason Moen. Chief Moen explained that the meeting the RTKAC requested in a letter last year has not taken place<sup>1</sup>. Senator Carney asked Chief Moen what the barriers were to holding a meeting and he explained that resources are limited. When Senator Carney asked if the MCPA would still be willing to participate in a meeting if the RTKAC were able to organize it, Chief Moen responded affirmatively.

Near the end of the meeting, the committee returned to this topic and Senator Carney asked for committee members’ input about how to proceed. Advisory Committee members suggested that the RTKAC could again make a recommendation that the Maine Chiefs of Police Association hold a meeting. Senator Carney stressed the importance of a facilitator and suggested that perhaps someone would be willing to facilitate on a voluntary basis (so a fiscal note could be avoided). Judy Meyer noted that Brian MacMaster has conducted FOAA trainings in the past and may be able to help the committee identify someone to facilitate a meeting. Mr. MacMaster responded that he can probably help with this.

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<sup>1</sup> In 2023, the RTKAC sent a letter to the MCPA 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 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.

## **Subcommittee updates**

Senator Carney asked the subcommittee chairs to provide an update regarding the subcommittees' recent meetings.

### *Burdensome FOAA Requests*

Subcommittee Chair Kevin Martin provided an update from the most recent subcommittee meeting which took place the morning of October 21<sup>st</sup>, prior to the full RTKAC meeting. Mr. Martin noted that at the morning meeting the subcommittee heard from Chief Deputy Attorney General Christopher Taub and discussed recommendations the subcommittee might make to the full committee. Specifically, Mr. Martin mentioned that the subcommittee discussed the following:

- Actions for protection under 1 MRSA §408-A(4-A) and ways of making these actions more useful;
- The possibility of developing a mediation or arbitration process to resolve FOAA disputes; and
- The use of FOAA as a substitute for the discovery process.

Mr. Martin indicated that these discussions would continue at the next meeting which will take place on November 21<sup>st</sup>.

### *Public Employee Disciplinary Records*

Subcommittee Chair Judy Meyer provided an update of the subcommittee's last meeting which took place on October 17<sup>th</sup>. Ms. Meyer noted that the subcommittee heard from the following organizations: the Office of Employee Relations; the Department of Public Safety; and the Maine Chiefs of Police Association. The subcommittee had questions about where records go when they are removed from personnel files under collective bargaining agreements. The subcommittee learned that the records are moved to a separate location but are often maintained; however, some records may be destroyed and Ms. Meyer noted that this was a topic the subcommittee needed to investigate further. Ms. Meyer noted that the subcommittee also discussed police officer recruitment, retention and morale, and the risk that if access to public records is expanded, supervisors may not discipline officers who should be disciplined in order to avoid a disciplinary record being created for that officer's file. Ms. Meyer noted that discussions centered on police records; the subcommittee still needs to consider municipal, county and school records. The subcommittee hope to hear from municipal, county and school representatives at their next meeting.

### *Public Records Exceptions*

Subcommittee Chair Cheryl Saniuk-Heinig conveyed that there were no updates from the public records exceptions subcommittee because the subcommittee has not met since the last full meeting. Ms. Saniuk-Heinig noted that the subcommittee would be meeting on October 24<sup>th</sup>.

## **Committee discussion: use of personal email and other communication methods under FOAA and record retention schedules**

Staff presented a memo on discussion topics from the third RTKAC meeting on October 7, 2024.

The first topic presented is the *use of personal email and other communication methods under FOAA and record retention schedules*. Ideas discussed by the Advisory Committee were:

- 1) Record Retention/Record Management; and
- 2) FOAA Training Requirement pursuant to 1 MRSA §412(4).

The Advisory Committee heard from Kate McBrien, the Maine State Archivist. Ms. McBrien answered questions about the content and distribution of training materials and noted that these are sent out annually to anyone with a ".gov" email address in the executive and legislative branches; however, Ms.

McBrien cautioned that they might not reach those employees with a Legislature email address. Ms. McBrien noted that, at most, training materials could be reviewed in 30 minutes.

Next, the Advisory Committee heard from Brenda Kielty, the Public Access Ombudsman. Ms. Kielty stressed how important it is to have adequate training regarding both FOAA and records retention schedules especially because many people who take government jobs come from the private sector. Ms. Kielty reiterated that texting is difficult from a records retention standpoint because of capture and presentation issues.

Senator Carney asked for Advisory Committee members' input: Where do we want to go with this topic? Kevin Martin responded that the RTKAC was on the right track at the last meeting, trying to identify bodies that should receive these trainings. Lynda Clancy articulated a desire to have a standardized, "baseline" training program.

Senator Carney suggested the Advisory Committee elicit input from the Maine Municipal Association (MMA) and the Maine County Commissioners Association. Senator Carney suggested that these organizations could put suggestions into a letter to the RTKAC to take up next year. Staff explained that some training information is available on MMA's website and the members discussed the need to understand who is receiving this training. Staff advised that they will draft a letter to MMA for the Advisory Committee's review at the next meeting.

### **Committee discussion: unfulfilled records requests**

The second topic presented in the memo is *unfulfilled records requests*. Ideas discussed by the Advisory Committee were:

- 1) The idea of amending §408-A(4) to require greater specificity in the denial reason; and
- 2) Obtaining more specific examples/data related to unfulfilled requests.

Staff gave a brief recap of past meeting discussions on this topic including the idea of sending a survey out to media representatives asking for examples and data related to unfulfilled freedom of access requests. Staff suggested that if the Advisory Committee wishes to go this route and survey media representatives it would be helpful to consider the following:

- What is meant by "unfulfilled request"? Does this refer to requests that have been denied or something broader, such as requests made that fall through the cracks and are never responded to?
- The information the RTKAC would like to receive from survey respondents.

Representative Erin Sheehan said she thought it would be helpful to learn more about why requests are denied. Tim Moore inquired how many FOAA requests are received each year, including those that are filled, and suggested that all FOAA requests should go to one place and then be distributed so that it is easier to track a request's status and so that request data can be collected, tracked and maintained more easily.

The Advisory Committee heard again from Brenda Kielty, the Public Access Ombudsman. Ms. Kielty said she would support revising language in Section 408-A(4); she said the language in statute could be clearer and she would support revising statutory language to state that the legal basis for the denial must be provided. The Advisory Committee supported Ms. Kielty's suggestion and asked staff to prepare language for a recommendation to this effect, stating that a responding agency must provide a citation when a request is denied, stating the reason for the denial.

### **Additional requests**

FOAA Training Requirements: The Advisory Committee asked staff to draft amendment language for the next meeting to expand training requirements so that members of statutory boards that are subject to FOAA as well as executive analysts for those boards are included.

The meeting was adjourned at 2:43pm.

The next meeting will take place on Monday, November 18<sup>th</sup> at 1pm in AFA (State House, Rm. 228).

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## GUIDELINES FOR THE RELEASE OF INTELLIGENCE AND INVESTIGATIVE RECORD INFORMATION

The release of intelligence and investigative information is governed by the limitations outlined in 16 M.R.S. § 804. The release of such information requires discretion, and such information is confidential if there is a reasonable possibility that public dissemination would interfere with an investigation, the trial process, or the personal privacy of victims, complainants, witnesses, or suspects. Other considerations also preclude dissemination. If an investigation or prosecution is pending, consultation with the prosecuting attorney before disseminating information is imperative.

### Examples of information that MAY BE RELEASED in connection with an investigation, incident or crime include:

The fact of an investigation and the identity of the investigating agency and the locality.

The type and nature of the incident or crime. A crime is believed to have been committed and a brief description of the crime. Only that which is known; do not speculate.

Names of all persons arrested, including age, gender, residence, employment, and marital status – except in the case of juveniles when only the age, gender and hometown of the juvenile may be released – a description of the crime(s) for which the person was arrested including the date and geographic location where the crime is alleged to have occurred, the date, time and place of the arrest, and the circumstances of the arrest including, when applicable, the physical force used in making the arrest, the resistance made to the arrest, what weapons were involved, the arrested person's refusal to submit and the pursuit by the arresting officers. *Special care is required if identifying the person arrested, the charge, and/or the person's address or town of residence may make the identity of the victim obvious. In such cases, the agency may choose to provide only the name of the defendant and the charge.*

The names of officers and departments involved, except the names of any undercover law enforcement officer.

The scheduling of any judicial proceeding and place of defendant's detention.

A warning to the public of any dangers.

Examples of information that SHOULD NOT BE RELEASED in connection with an investigation, incident or crime include:

The identity of a suspect prior to the issuance of a complaint or warrant or prior to arrest if there is no warrant or the complaint or warrant is impounded, except to the extent necessary to assist in the apprehension of a suspect and/or to warn the public of any dangers. (In some cases, this may mean naming the suspect absolutely and warning that the suspect is likely armed, where the suspect was last seen, and what the suspect looks like.)

The identity of complainants or witnesses.

The identity of victims, particularly in crimes of a sensitive nature involving domestic violence, sexual assault, or children. This includes address and location information of victims and their immediate family members. There may be limited situations in which victims have waived privacy interests or the public interest in the workings of government outweighs personal privacy.

The identity of critically injured or deceased persons prior to notification of the next of kin.

**Do not comment on the evidence!**

The results of any investigative procedures, such as blood alcohol tests, polygraph tests, fingerprint comparisons, or lineups, or the suspect's refusal or failure to submit to any such procedures.

Existence of the contents of any confession, admission or statement of a defendant, or the defendant's failure or unwillingness to make a statement.

Statements as to the character or reputation of the defendant.

Specific cause of death, unless officially determined by the Office of the Chief Medical Examiner.

The possibility of a plea of guilty to the offense charged or a lesser charge.

The defendant's guilt or innocence or other matters relating to the merits of the case or the evidence.