State of Maine
132nd Legislature

# Nineteenth Annual Report of the Right to Know Advisory Committee

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Office of Policy and Legal Analysis

**STATE OF MAINE**
**132nd LEGISLATURE**

# Nineteenth Annual Report of the Right to Know Advisory Committee


**Staff:**
**Lindsay Laxon, Legislative Analyst**
**Anne Davison, Legislative Analyst**
**Sam Senft, Legislative Analyst**
**Elena Roig, Legislative Analyst**
**Office of Policy & Legal Analysis**
**13 State House Station**
**Room 215 Cross Office Building**
**Augusta, ME 04333-0013**
**(207) 287-1670**
http://legislature.maine.gov/opla

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## 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 Act (FOAA). 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:

- **Amend certain provisions of law in Titles 25, 26, 27, 30-A and 32 relating to previously-enacted public records exceptions**

- **Establish a new public records exception in Title 5 related to information received by the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations**

- **Review provisions of law relating to state, county and municipal employee personnel records and consider whether establishing consistency among provisions is appropriate**

- **Review Title 1, section 402, subsection 3, paragraph H, relating to records held by emergency medical service units**

- **Request that the State Archivist convene a working group with stakeholders to make recommendations regarding a tiered system of retention for public employee disciplinary records**

- **Request that the Criminal Law Advisory Commission provide guidance related to records that could be used to impeach a witness in a criminal case (so-called *Brady/Giglio* materials)**

- **Amend Title 1, section 408-A, subsections 4 and 4-A, to provide an agency additional time to file an action for protection from a request for inspection or copying that is unduly burdensome or oppressive and specify that a series of requests may be denied as unduly burdensome or oppressive**

- **Continue discussions regarding resources available to entities responsible for responding to FOAA requests and solicit information regarding the resources these entities have for responding to FOAA requests**

- **Continue discussions regarding the development of a formal FOAA dispute mediation process**

- **Amend Title 1, section 412, subsection 4, to include all boards[1] established under Title 5, chapter 379 in the FOAA training requirement and amend Title 1, section 413 to require those boards to designate an existing employee as its public access officer to serve as the contact person with regard to requests for public records**

- **Request information from the Maine Municipal Association and the Maine County Commissioners Association regarding FOAA and record retention trainings each association provides to its members including the number of trainings and information regarding types and numbers of attendees, for consideration by the Advisory Committee next year**

- **Amend Title 1, section 408-A, subsection 4, to require 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**

- **Send a letter to the Maine Press Association and the Maine Association of Broadcasters asking that these groups coordinate with the Maine Chiefs of Police Association, the Maine Sheriffs Association, Maine State Police and the Maine Office of the Attorney General 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**

In 2025, the Right to Know Advisory Committee will continue to discuss the ongoing issues identified in this report, including those related to the retention of disciplinary records of public employees and whether to establish a dispute resolution process for FOAA requests. The Advisory Committee will also solicit input and additional information regarding resource challenges faced by entities that respond to FOAA requests and records retention trainings received by municipal and county employees to help inform its work. 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.

[1] "Board" is defined in Title 5, section 12002, subsection 1, to mean "any authority, board, commission, committee, council and similar organization, including independent organizations, established or authorized by the Legislature to fulfill specific functions the members of which do not serve full time."

## 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 of the Maine Revised Statutes, 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:

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

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

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 advisory body 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 State's 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 Superior Court decision, later affirmed by the Maine Supreme Judicial Court, related to freedom of access issues.

In this case, *Patience P. Sundaresan v. Town of Ogunquit*, the plaintiff, Patience Sundaresan alleged that the Town of Ogunquit did not provide notice of a public proceeding in a manner that meets the requirements of FOAA. The Superior Court (York County, *Mulhern, J.*) determined that the Town provided electronic notice of the public proceeding at issue on its website and physically posted notices at the town hall, post office and transfer station more than 24 hours prior to the meeting. The Superior Court held that the notice was "given in ample time to allow public attendance" and was "disseminated in a manner reasonably calculated to notify the

general public" in the Town of Ogunquit as required by Title 1, section 406 of the Maine Revised Statutes. The plaintiff also alleged that the Town had violated FOAA by failing to produce documents responsive to several records requests the plaintiff had submitted to the Town. The Superior Court noted that the plaintiff's requests were processed in a timely manner by the Town, and the plaintiff was advised that the town did not have any responsive documents. The Superior Court found no evidence to support the plaintiff's argument that the Town was withholding responsive documents. Although the plaintiff's appeal of the denial of records was outside of the 30-day appeal period established by FOAA, the Superior Court held that the Town did not refuse, deny or fail to respond to the plaintiff's requests and, therefore, there was no FOAA violation. The plaintiff appealed from the judgement of the Superior Court to the Maine Supreme Judicial Court, which affirmed the Superior Court's decision.[2]

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

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

| **Recommendation:** | **Action:** |
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| 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. |
| **Recommendation:** 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 | **Action:** Staff sent a letter on behalf of the Advisory Committee to the chairs of the Blue Ribbon Commission providing this explanation. |
| **Recommendation:** Reinforce the importance of following the statutory requirements applicable to public bodies and agencies going into executive session | **Action:** 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 Commissioners Association, the Maine Town and City Clerks' Association as well as the RTKAC interested parties list. |

[2] *Patience P. Sundaresan v. Town of Ogunquit*, Mem-24-87 (July 11, 2024).

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| **Recommendation:**<br>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 | **Action:**<br>A copy of the 18th Annual Report including this recommendation was sent to the Public Access Ombudsman. |
| **Recommendation:**<br>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 | **Action:**<br>Staff sent a letter on behalf of the Advisory Committee sharing this recommendation to the Executive Director of the Maine School Management Association. |
| **Recommendation:**<br>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 | **Action:**<br>Staff distributed a survey requesting this information to state agency FOAA contacts, the Maine School Management Association, Maine Municipal Association, Maine County Commissioners Association, the Maine Town, City and County Management Association and the Maine Town and City Clerks' Association. The Advisory Committee formed the Burdensome FOAA Requests Subcommittee to review the survey responses that were received and stakeholder input was considered by the Advisory Committee in its deliberations for this report. See discussion of the subcommittee process in Part V. |
| **Recommendation:**<br>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 | **Action:**<br>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 did not believe it was the appropriate entity to convene the meeting requested by the Advisory Committee but would be amenable to participating in a meeting if organized by the RTKAC or other appropriate stakeholders. |
| **Recommendation:**<br>Propose that the Joint Standing Committee on Judiciary report out a bill in the Second | **Action:**<br>The Judiciary Committee received a presentation on the 18th Annual Report. The |

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| 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 | Judiciary Committee issued a letter dated May 10, 2024 responding to the Advisory Committee's recommendation. A copy of this letter is included in Appendix J. 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. |

## V. COMMITTEE PROCESS

In 2024, the Advisory Committee formed three 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 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 three 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 and other appropriate entities for information, comments and suggestions with

respect to the administration of the public records exceptions subject to review. 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 or entity's recommendation whether to continue, amend or repeal the exception.

A total of 96 exceptions in Titles 25 to 32 were identified for review: 9 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. Of the 96 exceptions originally identified for review, 3 exceptions were subsequently repealed. The Subcommittee decided to defer the review of 34 of the public records exceptions until 2025 to allow more time for the appropriate responding entities to provide feedback regarding those exceptions. While the members agreed that the majority of the remaining 59 exceptions under review were appropriate and did not need to be discussed further, the members did cull out certain exceptions for discussion before making their recommendation as to whether the exception should continue without change, should be amended or should be repealed.

The Subcommittee recommended that there be no changes to 44 exceptions and that 15 exceptions be amended. Of note, the Subcommittee included a recommended change to Title 30-A, section 503, subsection 1, however, that exception is also included on the list of exceptions to be reviewed in 2025, as the Subcommittee believes additional work is needed, as discussed below.

The Advisory Committee unanimously approved these recommendations which are discussed in Part VI of this report.

*See the proposed amendments to existing exceptions in Appendix C. See also the list of existing exceptions recommended to continue without change in Appendix D.*

- *Types of records requiring additional review: state, county and municipal personnel records and records held by municipal ambulance and rescue units and other emergency medical service units*

In conducting its review of public records exceptions, the Subcommittee noted several statutory provisions that they believe warrant additional review. The Subcommittee observed similar, though not identical, language in the Maine Revised Statutes, Title 5, section 7070, Title 30-A section 503 and Title 30-A, section 2702. 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 the statutes, inconsistencies remain. The Subcommittee recommended minor changes to the provisions governing municipal and county personnel records to mirror the provisions governing state personnel records, but determined that further review was needed to understand why inconsistencies exist and whether additional changes are necessary. The Subcommittee recommended continued discussion of these statutes during 2025, including a full review of the legislative histories of each statute.

The Subcommittee also considered questions raised by the Maine Municipal Association (MMA) in correspondence to Subcommittee staff dated October 15, 2024 regarding the public records exception in Title 1, section 403, subsection 3, paragraph H, of the Maine Revised Statutes relating to medical records and reports of municipal ambulance and rescue units and other emergency medical service units. MMA questioned whether this exception includes the entire report or just medical information contained within the report. The Subcommittee reviewed the exception and agreed that it required more thorough study and recommended review of this public records exception in 2025.

The Advisory Committee unanimously approved these recommendations, which are discussed in Part VI of this report.

- *Consideration of a new proposed public records exception to make confidential the personally identifiable information of an individual whose personally identifiable information is obtained by the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations*

At the request of the Advisory Committee, the Subcommittee was asked to consider whether to recommend that a new public records exception be enacted to protect as confidential personally identifiable information obtained by the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations (the Commission). The Commission's statutory duties include carrying out research necessary to determine the status of historically disadvantaged racial, indigenous and tribal populations. This research includes the study of income levels of and opportunities available to historically disadvantaged racial, indigenous and tribal populations and the examination of quantitative and qualitative data associated with those populations regarding business ownership, household assets, debts and income, housing, employment, education, health care and access to wealth, capital and benefits in conducting research to determine the status of historically disadvantaged racial, indigenous and tribal populations. Ariel Ricci, Executive Director of the Commission, attended the Subcommittee's meetings and explained that this exception is necessary because of the sensitive nature of some of the information collected by the Commission in the course of its work. The Subcommittee recommended that a new public records exception be enacted to make confidential the personally identifiable information of an individual whose personally identifiable information is obtained by the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations in carrying out its research.

The Advisory Committee unanimously approved this recommendation which is discussed in Part VI of this report.

- *Review of Public Law 2023, ch. 618 (LD 1937), An Act Regarding the Transportation of Hazardous Materials by Railroad Companies*

At the request of the Advisory Committee, the Subcommittee reviewed Public Law 2023, ch. 618 (LD 1937), *An Act Regarding the Transportation of Hazardous Materials by Railroad Companies*. This law clarifies the public accessibility of records relating to discharge of hazardous materials. The Subcommittee reviewed the recently enacted law and agreed that its

provisions adequately addressed previous concerns raised by Subcommittee members about the need for statutory language regarding permissible disclosure of information following the derailment of trains carrying hazardous materials.

**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 three times: on September 23, October 17 and November 7. On November 18, the Subcommittee made its report and recommendations to the Advisory Committee.

The Subcommittee was formed to consider issues raised in a letter dated May 10, 2024 from the Judiciary Committee to the Advisory Committee. Specifically, the letter asked the Advisory Committee to consider specific questions related to the appropriate period of time for the retention of state and local government personnel records and how to determine that period of time, including records that could be used to impeach a witness in a criminal case (so-called *Brady/Giglio* materials); the effect of collective bargaining agreements on record retention schedules; and whether legislative action is necessary to ensure that disciplinary actions stored outside of a personnel file are released pursuant to a FOAA records request. A copy of this letter is included in Appendix J.

As the issue of public employee disciplinary records was also considered in 2022 and 2023 by the RTKAC, the Subcommittee began its work by reviewing information from prior years' meetings including a review of examples of collective bargaining agreement language related to disciplinary records and relevant statutory provisions. Current law provides that complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action for state, county and municipal employees are confidential. If, however, disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is rendered if the decision imposes or upholds discipline. Like other state, county and municipal records, final written decisions of disciplinary action must be retained in accordance with record retention schedules set by the Maine State Archivist. The records retention schedules specify how long a given record must be maintained by a public entity before the record may be destroyed, although the general records retention schedules applicable to final written decisions imposing discipline allow for a shorter retention period if a collective bargaining agreement provides for the destruction of a record prior to the expiration of the retention period that would otherwise apply to that type of record.

The Subcommittee members expressed an overall interest in the consistent handling of disciplinary records and the need for clarity in the relationship between records retention schedules and collective bargaining agreements. They noted that collective bargaining agreements generally provide for the removal of records, as opposed to destruction, but where these records are stored when they are removed from a personnel file is not clear. The members also observed that "discipline" may not have a consistent definition across public employers and this inconsistency may raise questions for public entities when responding to FOAA requests.

The Subcommittee members felt that additional perspectives were necessary to fully consider the issues and invited specific stakeholders to provide comment on the questions raised by the Judiciary Committee's letter. The Subcommittee also asked stakeholders to explain what constitutes a "disciplinary action" for their purposes and where a record is stored if it is removed from a personnel file pursuant to a collective bargaining agreement. The Subcommittee invited representatives of the State Office of Employee Relations, the Department of Public Safety, the Maine Chiefs of Police Association, the Maine Sheriffs Association, the Maine School Management Association and the Maine Municipal Association to provide comment to the members. The Subcommittee also solicited public comment at two of the three Subcommittee meetings.[3]

Michael Dunn, the Equal Employment Opportunity Coordinator with the Office of Employee Relations, provided information related to disciplinary records for State employees. Mr. Dunn explained that the State employee bargaining agreements explicitly define discipline; however, he noted that the definitions in these agreements are not identical. Mr. Dunn added that non-disciplinary measures, such as a counseling, are also used by managers as informal tools to address employee conduct. Mr. Dunn explained that the collective bargaining agreements applicable to State employees provide for the removal of disciplinary records upon an employee's request after 3-5 years depending on the type of discipline imposed and, if an employee does not make a request for the physical removal of records, the record is deemed removed after the 3-5-year period even though the physical record has not been removed from the employee's personnel file. The Subcommittee learned that when a disciplinary record for a State employee is removed from the employee's personnel file, the relevant disciplinary record is stored in another file for FOAA compliance purposes, and those removed records related to disciplinary actions are generally not used in connection with that employee's employment. While Mr. Dunn did not take a position with regard to whether records related to certain types of conduct should be retained for longer periods of time, he directed the Subcommittee members' attention to the distinctions in personnel file retention periods made in the State collective bargaining agreements and noted that the Subcommittee could consider longer periods of retention based on the type of discipline imposed.

Lt. Col. Brian P. Scott provided comments to the Subcommittee on behalf of the Maine State Police, within the Department of Public Safety. Lt. Col. Scott explained that disciplinary records for the State Police are stored in two locations: within the Department's Office of Professional Standards (OPS) and with the State's Bureau of Human Resources. He explained that the Bureau of Human Resources has its own records retention schedules, and if a request for removal of a disciplinary record in accordance with a collective bargaining agreement is received by the Maine State Police, the request is forwarded to the Bureau of Human Resources. Even if a record is removed by the Bureau of Human Resources, the record is still maintained by OPS; however, the record is not used in connection with future employment of the employee and is destroyed in accordance with applicable record retention schedules. The Subcommittee learned that external factors over the last few years have made recruitment and retention more challenging for law enforcement, including the development of a perceived anti-law enforcement sentiment at a time when there was a push for the expungement of certain types of convictions

[3] No members of the public provided comment to the Subcommittee at the meetings held on October 17th and November 7th.

and the decriminalization of certain conduct. Lt. Col. Scott believes these factors have resulted in many law enforcement officers who were close to retirement choosing to retire early. Law enforcement agencies have experienced an overall decline in the number of qualified candidates applying for open positions; however, Lt. Col. Scott noted, it is very important to address "bad actors." He shared with the members that the goal of discipline is to modify behavior. The members discussed the challenges posed by so-called *Brady/Giglio* materials, and Lt. Col. Scott explained that it can be unclear which records constitute *Brady/Giglio* materials. Lt. Col. Scott also noted that there isn't a single source of guidance on this issue for law enforcement agencies.

Chief Jason Moffitt provided comments to the Subcommittee on behalf of the Maine Chiefs of Police Association. Chief Moffitt echoed the comments of Lt. Col. Scott regarding retention and recruitment challenges and explained that the goal for law enforcement employers is to use disciplinary actions to identify and correct problematic behavior. Chief Moffitt explained that a disciplinary record that is removed from a personnel file in accordance with a collective bargaining agreement is placed in a specific file with other removed disciplinary records. He commented that increased access to disciplinary records generally could have unintended consequences because supervisors may opt for more informal disciplinary mechanisms to avoid creating a reportable record. Several members noted that this was a new perspective that they had not heard in prior discussions of the issue. Brian MacMaster pointed out that public employers are incentivized to create a written record if the employer chooses to utilize progressive discipline to manage an employee. Like Lt. Col. Scott, Chief Moffitt noted the challenge posed by so-called *Brady/Giglio* materials and explained consistency in the handling of these materials among all law enforcement agencies is a goal for the Maine Chiefs of Police Association.

Steven Bailey, Executive Director of the Maine School Management Association (MSMA), provided comments on behalf of MSMA in answer to the Subcommittee's questions as they relate to school employee disciplinary records. Mr. Bailey explained that MSMA would support prohibiting collective bargaining agreements from impacting record retention schedules because the employment history of an employee is important for evaluating future employment. Mr. Bailey noted that records of an employee's termination are retained for the entirety of that person's employment plus seven years; however, if a school employee transfers to a new school district, that employee's personnel file is not transferred to the new school district. Although these records are not transferred, records relating to misconduct may still be documented elsewhere depending on the nature of the disciplinary matter because certain actions must be reported to the Department of Education. Mr. Bailey stated that a school district seeking a new employee is more likely to rely on background and reference checks in making hiring decisions.

Richard Cromwell, Personnel Services and Labor Relations Director for MMA, and Rebecca Graham, Senior Legislative Advocate for MMA, provided comments on behalf of MMA. MMA provides services, including legal advice, to municipalities, although MMA does not retain records for any member municipalities. Rebecca Graham explained that municipalities use different approaches to progressive discipline and may not use a consistent definition of discipline. For example, a verbal reprimand may or may not have a corresponding written record. MMA commented that using the severity of the discipline to determine the retention period of a record may be challenging, but recommended that if the Subcommittee were to

require shorter retention periods for less serious discipline, the Subcommittee should prioritize establishing uniformity in how "less serious" is defined. Employers have different approaches to how they apply discipline based on the scenario, and MMA noted that non-uniform standards could increase the likelihood of confusion for entities retaining records. MMA added that conduct that could result in disciplinary action for an employee in one position may not be problematic for another employee, and positions of public trust are not limited to a law enforcement context, so consistency among all public employees may be appropriate. MMA explained that even if a disciplinary record is removed from a personnel file, the understanding is that record still must be retained and may be stored in a separate location. MMA suggested that certain records could be subject to a retention requirement that is longer than the period for which the record is available to the public – i.e., a record could be made confidential after a certain period of time. This would maintain the employer's ability to refer back to prior discipline when handling future disciplinary concerns. As is the case with law enforcement disciplinary records, a municipal employee disciplinary record's use for progressive discipline is separate from the retention of the record in the file; removal from a file does not mean that the record is destroyed.

After receiving comments from the various stakeholders, Subcommittee Chair Judy Meyer suggested that the members' recommendations should consider the need to foster recruitment and retention of public employees, as the Subcommittee learned about staffing challenges for public employers, particularly in law enforcement. Ms. Meyer explained that retaining certain disciplinary records for longer periods of time, i.e., a tiered approach, to the retention of disciplinary records could be consistent with the progressive discipline models described by law enforcement representatives and MMA. This approach might also balance the need for employers to modify an employee's behavior through discipline with the concerns that retention and disclosure of minor infractions could impact recruitment and retention as well as an employer's willingness to impose discipline that creates a record. Brian MacMaster shared that disciplinary actions involve different levels of problematic behavior: lower levels of discipline are focused on performance issues while more serious actions are connected with misconduct. Those disciplinary actions related to performance issues may be of less value for public access in the future, while actions related to misconduct are often of more importance. The members discussed the possibility of defining discipline to capture those actions related to misconduct in each of the three statutes regarding public employee disciplinary record to create uniformity for both those individuals seeking records and those entities providing records. Judy Meyer pointed out that public employers have expressed a desire for uniformity; however, what constitutes "less serious" misconduct varies by agency and the type of employment. The members discussed creating a tiered system and how these tiers could be determined, especially in light of the desire from public employers to have uniformity and consistency, but the members felt that the creation of these tiers would require more consideration and participation from interested parties beyond those represented on the Subcommittee. The Subcommittee supported the development of a tiered system of retention for public employee disciplinary records based on the "seriousness" of the misconduct and believed that the determination of which tier a particular disciplinary action falls into should either be tied to the punishment that the employee receives or be left to each agency to determine.

The Advisory Committee's recommendation related to this issue is discussed in Part VI of this report.

While the members supported creating a tiered system of retention for public employee disciplinary records, the members agreed that the treatment of *Brady/Giglio* materials raised unique issues. Jonathan Bolton explained that the determination of whether a given record is *Brady/Giglio* material is case-specific and requires a level of judgment that may be challenging to capture in a record retention schedule. Brian MacMaster added that although there are categories of information that must be reported by law enforcement agencies to district attorneys, all *Brady/Giglio* materials must be retained. While the Subcommittee did not believe that legislative action was warranted to create longer retention periods for disciplinary records generally, because the record retention schedule for local government employee records had been recently changed to create consistency in the retention periods, the members noted that *Brady/Giglio* materials must be retained regardless of the otherwise applicable record retention schedule. The Subcommittee members supported making a recommendation related to this topic based upon the need identified by law enforcement representatives, but the members concluded that a bright-line rule may not be appropriate for a subjective and complex process. Additionally, the members felt that a number of interested parties, including but not limited to the Maine Prosecutors' Association, would need to be involved in developing guidance regarding *Brady/Giglio* materials. The Subcommittee recommended that 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 recommended that any additional efforts to clarify or standardize the handling of *Brady/Giglio* materials involve input from the Maine Prosecutors' Association.

The Advisory Committee's recommendation related to this issue is discussed in Part VI of this report.

The Subcommittee then discussed what recommendation, if any, they wished to make regarding the effect of collective bargaining agreements on record retention schedules. Judy Meyer noted that language prohibiting collective bargaining agreements from altering record retention schedules was included in a legislative proposal during the 131st Legislature (*LD 1397, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Records of Disciplinary Actions Against Public Employees)* and that language was removed before the bill was enacted. Ms. Meyer and Amy Beveridge expressed concern about collective bargaining agreements providing for the confidential treatment of disciplinary records after a period of time, as this is in direct conflict with FOAA and creates inconsistency among public employees. Brian MacMaster added that if a collective bargaining agreement provides for confidential treatment of a record, this has implications for *Brady/Giglio* materials as well. The Subcommittee recommended clarifying that collective bargaining agreements should be prohibited from conflicting with FOAA in a manner that would restrict or limit disclosure of personnel records that would otherwise be available to the public. When this recommendation was raised in discussions with the full Advisory Committee, the members concluded that the other recommendations made by the Subcommittee and supported by the Advisory Committee may

address this issue and the Advisory Committee declined to recommend any legislative action related to this issue at this time.

Lastly, the members discussed whether legislative action was necessary to ensure that, in response to a public record request for a final written disciplinary decision in a personnel file, the responding public body must provide the responsive records retained in its possession or custody regardless of whether the final written decision is located in the employee's personnel file or is stored in another location. The Subcommittee felt that this was no longer an issue based on the responses received from public employers regarding their handling of FOAA requests as well as case law and decided that no further action was necessary.

**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.

In its 18th Annual Report in 2024, the RTKAC recommended distributing a survey to entities responsible for responding to FOAA requests. The survey was distributed to state agency FOAA contacts, the Maine School Management Association, Maine Municipal Association, Maine County Commissioners Association, the Maine Town and City Managers Association and the Maine Town and City Clerks' Association. The survey solicited entities for examples of burdensome public records requests and situations that a responding entity believes represent an abuse of the FOAA process, as well as suggested statutory changes, that could be considered by the Advisory Committee in 2024. Sixteen responses were received. The Burdensome FOAA Requests Subcommittee was formed to consider the survey responses and develop recommendations based on the feedback received from responding entities.

The Subcommittee began its work by reviewing the survey responses in which responding entities shared the types of requests that could be considered burdensome, including, but not limited to, those related to the volume or scope of FOAA records requests they receive; repeated requests for records; difficulties collecting fees for produced records; and requests that appeared to be intended for discovery purposes as part of civil litigation.

The Subcommittee discussed the ways in which potentially burdensome requests may be handled by responding entities under current law. Informal techniques such as communication with the requestor to narrow the scope of a records request were identified as an efficient way to deal with most overly broad requests. The Subcommittee reviewed several other states' processes for resolving public records disputes outside of the judicial system and considered the pros and cons associated with the different approaches. The members also sought additional information regarding how disputes regarding FOAA requests are currently handled in Maine and whether there are existing frameworks in State law or otherwise in use in the State that could be used to formally resolve these disputes.

The Public Access Ombudsman, Brenda Kielty, explained her role in mediating disputes related to FOAA records requests. The Subcommittee learned that the role of the Ombudsman in a dispute or complaint is highly dependent on the level of conflict the parties bring. Often, the role is merely educational; however, Ms. Kielty explained that she engages in an informal mediation process when parties are already in conflict at the time she becomes involved. Ms. Kielty further explained that her primary role is opening a line of communication between the two parties, but she also engages in factfinding and will take a position when it is clear that there has been noncompliance with the requirements of FOAA. The Ombudsman, however, does not have the authority to compel a solution when parties cannot agree. Ms. Kielty noted that those disputes that are highly adversarial are the most challenging, because generally these disputes relate to issues that are quite complex and the parties require more time and attention in order to reach a solution. Ms. Kielty explained to the Subcommittee that, in her experience, an agency's view that a request is burdensome is more likely to be related to the agency's lack of resources for responding to large requests; however, she does see instances where it seems the intent of the requestor is to disrupt agency operations with their requests. The Subcommittee members discussed ways in which the role of the Ombudsman could be expanded, including giving the position more general authority or giving the position a more prominent role in highly adversarial disputes. The Subcommittee also considered what additional questions would need to be addressed if the position were to be expanded to include mediation or adjudicatory functions, such as the need for additional funding or staff support. Currently, the Public Access Ombudsman does not have a dedicated budget aside from the costs associated with the position, nor is there administrative support or separate dedicated space.

The members compared various mediation and adjudicatory models from several states and ultimately determined that they favored a mediation process over a model that involves an administrative or adjudicatory hearing to resolve FOAA disputes. If the Public Access Ombudsman were tasked with overseeing a mediation program, the members noted that they would need to consider whether this program would be mandatory, how it would be staffed and the level of confidentiality that would be appropriate for the mediation process and associated records. Members also discussed the relationship between a mediation program and the court system, including whether mediation would be triggered by an existing court action, if it would be a pre-litigation service or if it would be housed within the Public Access Ombudsman's office. They also discussed how the relationship between a mediation program and the court system might impact the ability for a binding resolution to come out of mediation. Ms. Kielty shared with the Subcommittee that identifying specific problems with the FOAA process may be a good first step for the members in designing an appropriate solution, whether through a mediation program or other method. Ms. Kielty noted that one of the biggest problems she has observed relates to the lack of resources of responding entities. Public access officers in State agencies or municipal offices often have other employment responsibilities in addition to responding to FOAA requests and responding entities may not have the technological resources necessary to efficiently organize and respond to FOAA requests for records. The members acknowledged that developing a recommendation related to a mediation program would require more time than was available to the Subcommittee and noted that additional information regarding what resources are available to responding entities could assist the work of the RTKAC in 2025. The Subcommittee agreed to recommend that the Advisory Committee, in 2025, establish a subcommittee to continue the discussions that took place in 2024 by the

Burdensome FOAA Requests Subcommittee regarding the development of a formal FOAA dispute mediation process. Separately, the Subcommittee also agreed to recommend that the RTKAC form a subcommittee in 2025 to examine and develop recommendations regarding which aspects of the FOAA process would be best served by additional resources. To aid this second subcommittee in its work, the Subcommittee also agreed to recommend that the RTKAC send out a survey to entities that respond to FOAA requests and solicit feedback and data regarding their current capacities for responding to FOAA requests, including information about their staffing levels; their technological or digital platforms used for responding to requests; and whether staff that respond to FOAA requests also have other job duties.

The Advisory Committee unanimously approved these recommendations which are discussed in Part VI of this report.

Outside of informal negotiations with requestors and working with the Public Access Ombudsman, the remaining avenue for a responding entity, if the entity believes a records request is unduly burdensome or oppressive, is to pursue an action for protection in accordance with the Maine Revised Statutes, Title 1, section 408-A, subsection 4-A. The members acknowledged that there are outstanding questions about what type of request would qualify as unduly burdensome under existing law, but believed it would be difficult to establish a definition in statute. Several survey responses indicated requests that may be perceived by a responding entity as burdensome involve a belief that the request is being made in bad faith; however, the members agreed that it is very difficult to prove intent and it may be inappropriate to require the responding entity to make a determination about the intent of the requestor. The members expressed similar concerns regarding ways of addressing the use of FOAA to circumvent the discovery process during litigation. Survey responses indicated that some public records requests appear to be intended to obtain records in connection with civil litigation, when the appropriate mechanism for accessing these records would be through discovery. The Subcommittee members felt that requiring a responding entity to evaluate a requestor's intent would place considerable responsibility on public access officers. The members decided not to pursue a recommendation related to defining "unduly burdensome" or addressing requests that appeared to be for discovery purposes.

The members noted that, although current law allows a responding entity to seek an action for protection from a FOAA request that is unduly burdensome or oppressive, in practice, this process does not appear to be used by responding entities. To better understand the reasons for this, the Subcommittee solicited the perspective of Christopher Taub, Chief Deputy Attorney General. Mr. Taub suggested that one constraint may be the timeframe established in statute for pursuing an action for protection – the statute requires that an agency file for an action for protection within 30 days of receiving the records request and to notify the requestor of the agency's intent to file an action for protection 10 days prior to doing so. Mr. Taub noted that an agency may not be able to determine how many staff hours will be needed to fulfill a request within the 30-day timeframe. Because of this, an agency must weigh whether the agency's resources are best used in a court action or working to fulfill the request at the outset. Several members noted that responding entities, when they receive a request that could be considered unduly burdensome, spend significant time negotiating with the requestor and extending the timeframe for the filing of an action for protection could be helpful. The Subcommittee agreed

to recommend that the timeframe for the filing of an action for protection be extended from 30 days to 60 days.

The Advisory Committee unanimously approved this recommendation which is discussed in Part VI of this report.

While the survey responses indicated that a single FOAA request could be burdensome for a responding entity, the entities reported that repeated requests can also create a burden. Subcommittee members discussed how these repeated requests could be addressed in a way that relieves some of the burden from responding entities but does not unfairly limit a requestor's ability to seek records. Mr. Taub shared that a possible model for protection against repeated, bad faith FOAA requests could be a "*Spickler* order," which is an order issued by a court to an entity that is seeking protection against repeated, vexatious litigation from the same party. The members reviewed information on "*Spickler* orders" prepared by Subcommittee staff. The Subcommittee ultimately determined that a change to the statute to clarify that a series of requests could be considered unduly burdensome would be a reasonable step to help address the issue of repeated requests. The Subcommittee agreed to recommend amending Title 1, section 408-A of the Maine Revised Statutes to specify that it is not just a request that may be unduly burdensome, but it may also be a "series of requests."

The Advisory Committee unanimously approved this recommendation which is discussed in Part VI of this report.

The Subcommittee also discussed whether to amend current law to provide that the prevailing party in an appeal of a denial of a records request, whether the requestor or the responding entity, may recover attorney's fees. Under current law, a plaintiff appealing a denial of records may recover attorney's fees. The members decided not to pursue a recommendation on this issue.

**Full Advisory Committee Discussions**

The Advisory Committee discussed a number of topics and issues as a full committee. Specifically, the Advisory Committee considered the level of training provided to public employees regarding FOAA and record retention requirements; the issues faced by individuals whose FOAA requests are not fulfilled; and a recommendation made by the RTKAC in its 18th Annual Report regarding the sharing of information related to public safety incidents and ongoing criminal investigations by law enforcement. The Advisory Committee made recommendations related to each of the issues, which are discussed in Part IV of this report.

## VI. RECOMMENDATIONS

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

- **Amend certain provisions of law in Titles 25, 26, 27, 30-A and 32 relating to previously-enacted public records exceptions**

The Advisory Committee recommends that the following public records exceptions reviewed in 2024 be amended:

- Title 25, section 2006, subsection 1, relating to concealed handguns permit applications;
- Title 25, section 2006, subsection 2, relating to concealed handguns permit applications;
- Title 26, section 1085, subsection 4, relating to fingerprint-based criminal history record check of applicants, employees and contractors with the Bureau of Labor Standards;
- Title 27, section 86-B, subsection 1, relating to museum draft research, publications and exhibit materials, including scientific, archaeological and historic findings;
- Title 27, section 86-B, subsection 2, relating to 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;
- Title 30-A, section 503, subsection 1, relating to county personnel records;
- Title 30-A, section 2702, subsection 1, relating to municipal personnel records;
- Title 32, section 2105-A, subsection 3, relating to information provided by a health care facility to the State Board of Nursing that identifies a patient;
- Title 32, section 3300-A, relating to Board of Licensure in Medicine personal contact and health information about applicants and licensees;
- Title 32, section 6207-B, relating to the nonbusiness address of a person licensed or certified under the Alcohol and Drug Counselors chapter of law;
- Title 32, section 9418, relating to private security guards;
- Title 32, section 11305, subsection 3, relating to administration of the Maine Commodity Code by the Securities Administrator;
- Title 32, section 16524, relating to personal information of an applicant for restitution from the Securities Restitution Assistance Fund;
- Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act; and
- Title 32, section 18509, subsection 6, relating to information distributed by a board that licenses, regulates or educates physicians in the state.

*See recommended legislation in Appendix C and a list of public records exceptions for which no amendments are recommended in Appendix D.*

- **Establish a new public records exception in Title 5 related to information received by the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations**

The Advisory Committee recommends establishing a new public records exception to protect the personally identifiable information of an individual who is the subject of research carried out by the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations.

*See recommended legislation in Appendix E.*

- **Review provisions of law relating to state, county and municipal employee personnel records and consider whether establishing consistency among provisions is appropriate**

The Advisory Committee recommends that, in 2025, the Advisory Committee review Title 5, section 7070, relating to state personnel records; Title 30-A, section 503, relating to county personnel records; and Title 30-A, section 2702, relating to municipal personnel records. This review should include a full review of the legislative histories of each statute and consideration of whether legislative action is appropriate to create consistency between the provisions.

- **Review Title 1, section 402, subsection 3, paragraph H, relating to records held by emergency medical service units**

The Advisory Committee recommends that, in 2025, the Advisory Committee review Title 1, section 402, subsection 3, paragraph H, which excepts from the definition of a public record medical records and reports of municipal ambulance and rescue units and other emergency medical service units. This review should include consideration of concerns raised by the Maine Municipal Association in 2024 about the scope of the applicability of the definition.

- **Request that the State Archivist convene a working group with stakeholders to make recommendations regarding a tiered system of retention for public employee disciplinary records**

The Advisory Committee recommends sending a letter to the State Archivist asking the Archivist to convene a working group to develop recommendations for a tiered system of retention of public employee disciplinary records based on the "seriousness" of the misconduct involved in the action. The Public Employee Disciplinary Records Subcommittee supported the creation of a tiered system of retention of public employee disciplinary records based on the "seriousness" of the misconduct, but felt that the development of the system was outside the scope of the Subcommittee process and would require the involvement of additional stakeholders. The Advisory Committee concluded that a working group would be an appropriate mechanism for considering this approach more thoroughly. In making this recommendation, the Advisory Committee asks that the working group convened by the State Archivist consider whether the availability of public employee disciplinary records is appropriately governed by the record retention schedule or whether it would be appropriate to limit the amount of time that such records are public pursuant to FOAA. The Advisory Committee directed that the letter request a report on the working group's activities, including any recommendations that are developed by meeting participants, when the Advisory Committee reconvenes in 2025.

*See correspondence in Appendix I.*

- **Request that the Criminal Law Advisory Commission provide guidance related to records that could be used to impeach a witness in a criminal case (so-called *Brady/Giglio* materials)**

The Advisory Committee recommends sending a letter to the Criminal Law Advisory Commission asking the Commission to develop guidance regarding the types of public employee

disciplinary records that could be used to impeach a witness in a criminal case (so-called *Brady/Giglio* materials), including examples if possible, and to make recommendations for the appropriate retention time for such materials. The Advisory Committee directed that the letter include background information regarding the subcommittee discussions that lead to this recommendation and ask the Commission to share any guidance and recommendations it develops with the Judiciary Committee and the Advisory Committee.

*See correspondence in Appendix I.*

- **Amend Title 1, section 408-A, subsections 4 and 4-A, to provide an agency additional time to file an action for protection from a request for inspection or copying that is unduly burdensome or oppressive and specify that a series of requests may be denied as unduly burdensome or oppressive**

The Advisory Committee recommends amending Title 1, section 408-A, subsection 4-A, of the Maine Revised Statutes which provides that an agency must file for an action for protection within 30 days of receiving the records request and must notify the requestor of its intent to file an action ten days prior to filing.

Additionally, both subsection 4-A and subsection 4 of Title 1 provide that an agency may refuse or deny a request for records or seek an action for protection from an unduly burdensome request based on a single request for records. The Advisory Committee believes that allowing an agency to take these actions in response to a single request or a series of requests may benefit responding agencies. The Advisory Committee recommends amending the law to clarify that an agency may refuse or deny a series of requests for records or seek an action for protection based on a series of requests.

*See recommended legislation in Appendix F.*

- **Continue discussions regarding resources available to entities responsible for responding to FOAA requests and solicit information regarding the resources these entities have for responding to FOAA requests**

The Advisory Committee recommends that, in 2025, the Right to Know Advisory Committee establish a subcommittee to continue the discussion that took place in the Burdensome FOAA Requests Subcommittee in 2024 regarding resources that are available to entities responsible for responding to FOAA requests. To assist in its discussions, the Advisory Committee will distribute a survey to entities that respond to FOAA requests to solicit feedback and data regarding the entities' current capacities for responding to FOAA requests, including information about staffing levels, technological or digital platforms used for responding to requests, and whether staff that respond to FOAA requests also have other job duties. This survey will also ask responding entities to provide suggestions for resources that might enable them to better or more efficiently meet their responsibilities under FOAA. The Advisory Committee directed staff to distribute the survey to state agency FOAA contacts, the Maine School Management Association, Maine Municipal Association, Maine County Commissioners Association, the

Maine Town, City and County Managers Association and the Maine Town and City Clerks' Association.

*See correspondence in Appendix I.*

- **Continue discussions regarding the development of a formal FOAA dispute mediation process**

The Advisory Committee recommends that, in 2025, the Right to Know Advisory Committee establish a subcommittee to continue the discussion that took place in the Burdensome FOAA Requests Subcommittee in 2024 regarding the development of a formal FOAA dispute mediation process. In 2024, the Subcommittee compared mediation and adjudicatory models from several different states and ultimately determined that they favored a mediation process over a model that involves an administrative or adjudicatory hearing to resolve FOAA disputes. Following this determination, the Subcommittee faced many questions about what such a process could look like. Although the Subcommittee was not able to arrive at a conclusion, the Advisory Committee believes that this work should continue.

- **Amend Title 1, section 412, subsection 4, to include boards[4] established under Title 5, chapter 379, in the FOAA training requirement and amend Title 1, section 413, to require those boards to designate an existing employee as its public access officer to serve as the contact person for that board with regard to requests for public records**

The Advisory Committee recommends amending FOAA to require FOAA training for members of boards established pursuant to Title 5, chapter 379, and to require each board to designate a public access officer who would be included in FOAA's training requirement.

At the first meeting of the Advisory Committee, the members discussed the question of how public employees are trained regarding the use of personal email addresses and other personal communication methods in light of the obligations established by 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 and decided to consider this issue as a full committee. The members reviewed training materials provided to state employees by the State Archivist regarding record retention obligations as well as materials developed by the Public Access Ombudsman and expressed interest in learning more about training that is provided to municipal and county employees. Several members noted that compliance with record retention requirements may be more difficult when public employees' emails are on non-state email accounts. For example, members of boards and commissions may not be given maine.gov email addresses and are not required to complete FOAA training. For boards and commissions with an executive director or other support staff, the Advisory Committee discussed that the staff may be able to convey FOAA and record retention requirements to board and commission members, although they were not certain that all executive directors and support staff would receive such training without legislative action. The question of whether to expand

[4] "Board" is defined in Title 5, section 12002, subsection 1, to mean "any authority, board, commission, committee, council and similar organization, including independent organizations, established or authorized by the Legislature to fulfill specific functions the members of which do not serve full time."

FOAA training requirements to include boards and commissions was previously considered by the RTKAC in 2019 and, at that time, the RTKAC had sought an incremental approach to expanding the FOAA training requirement. The Public Access Ombudsman, Brenda Kielty, shared her perspective on what may be necessary for training of board and commission members, pointing out that members are often volunteers from nonprofit or private sector backgrounds. They are used to communicating electronically, but may not be familiar or have experience with record retention or FOAA requirements. The members learned that a power dynamic may exist in some cases in which a board or commission member may be unwilling to follow guidance provided by an executive director. Ms. Kielty did not have suggestions for which boards and commissions 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. The members discussed whether specific boards and commissions should be included in the FOAA training requirement and decided to include all boards established pursuant to Title 5, chapter 379. The members were also concerned that boards may not have support staff who are state employees, therefore they may also require training.

*See recommended legislation in Appendix H.*

- **Request information from the Maine Municipal Association and the Maine County Commissioners Association regarding FOAA and record retention trainings each association provides to its members including the number of trainings and information regarding types and numbers of attendees, for consideration by the Advisory Committee next year**

The Advisory Committee recommends sending a letter to the Maine Municipal Association and the Maine County Commissioners Association requesting information regarding FOAA and the records retention trainings each association provides to its members including the number of trainings and information regarding types and numbers of attendees. As discussed above, the Advisory Committee considered what training public employees receive regarding the use of personal email addresses and other personal communication methods in light of the obligations established by FOAA. The members reviewed training materials provided to State employees and guidance developed by the Public Access Ombudsman; however, the members were interested in learning what training is provided to municipal and county employees regarding FOAA and record retention requirements and continuing the discussion in 2025.

*See correspondence in Appendix I.*

- **Amend Title 1, section 408-A, subsection 4 to require 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.**

The Advisory Committee recommends amending Title 1, section 408-A, subsection 4, to require that a written notice of a denial of a request for inspection or copying of a record provided by a body, agency or official include a citation to the statutory authority used for the basis of the denial. At the first meeting of the Advisory Committee, the members formed a subcommittee to

consider responses to a survey distributed to responding entities regarding burdensome FOAA requests. The members also felt it was important to consider challenges and burdens for individuals seeking records under FOAA, particularly FOAA requests that are not fulfilled. The members learned of 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. The members noted that the Advisory Committee has anecdotally heard of instances of unfulfilled requests, but it is difficult to learn more about the circumstances of these requests. The members discussed the challenges of obtaining data related to unfulfilled requests and considered whether the provision of FOAA governing records request denials is specific enough; the Advisory Committee had received anecdotal examples of records requests that were denied without much explanation. Although several members were of the opinion that the existing language in the Maine Revised Statutes, Title 1, section 408-A, subsection 4, is sufficient and responding entities generally provide detail in their denials, other members noted that they have seen records requests to non-agency responders denied for general reasons such as on "privacy grounds" and the lack of specificity in the denials may make it more difficult to appeal.

*See recommended legislation in Appendix G.*

- **Send a letter to the Maine Press Association and the Maine Association of Broadcasters asking that these groups coordinate with the Maine Chiefs of Police Association, the Maine Sheriffs Association, Maine State Police and the Maine Office of the Attorney General 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**

The Advisory Committee recommends sending a letter to the Maine Press Association and the Maine Association of Broadcasters asking that these groups coordinate with the Maine Sheriffs Association, Maine State Police and the Maine Office of the Attorney General 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.

In its 18th Annual Report, the RTKAC recommended sending a letter to the Maine Chiefs 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. When the Advisory Committee reconvened in 2024, the members requested an update from the Maine Chiefs of Police Association regarding the status of the requested meeting. The Advisory Committee learned that the meeting had not taken place and the Maine Chiefs Police Association did not feel it was the appropriate entity to convene the meeting; however, the association was willing to participate if the meeting were hosted by another entity. The members discussed the importance of having these stakeholders come together to discuss the

issue and suggested that media organizations may be able to collaborate to convene the meeting. The Advisory Committee continues to be interested in recommendations for increasing collaboration between law enforcement agencies and representatives of the media in a way that will ensure the public has access to timely, reliable information about significant public safety incidents and criminal investigations. The Advisory Committee directed that the letter to the Maine Press Association and the Maine Association of Broadcasters request a report on the meeting, including any recommendations that are developed by meeting participants, when the Advisory Committee reconvenes in 2025.

*See correspondence in Appendix I.*

## VII. FUTURE PLANS

In 2025, the Right to Know Advisory Committee will continue to discuss the ongoing issues identified in this report, including those related to the retention of disciplinary records of public employees and whether to establish a dispute resolution process for FOAA requests. The Advisory Committee will also solicit input and additional information regarding resource challenges faced by entities that respond to FOAA requests and FOAA and records retention trainings received by municipal and county employees to help inform its work. 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 A

Authorizing Legislation: 1 MRSA §411

# AUTHORIZING LEGISLATION

## TITLE 1
## GENERAL PROVISIONS

## CHAPTER 13
## PUBLIC RECORDS AND PROCEEDINGS

### SUBCHAPTER 1
### FREEDOM OF ACCESS

### §411. Right To Know Advisory Committee

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

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

A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate;

B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House;

C. One representative of municipal interests, appointed by the Governor;

D. One representative of county or regional interests, appointed by the President of the Senate;

E. One representative of school interests, appointed by the Governor;

F. One representative of law enforcement interests, appointed by the President of the Senate;

G. One representative of the interests of State Government, appointed by the Governor;

H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House;

I. One representative of newspaper and other press interests, appointed by the President of the Senate;

J. One representative of newspaper publishers, appointed by the Speaker of the House;

K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House;

L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House;

M. The Attorney General or the Attorney General's designee;

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

O. One representative having legal or professional expertise in the field of data and personal privacy, appointed by the Governor.

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

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

A. Except as provided in paragraph B, members are appointed for terms of 3 years.

B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed.

C. Members may serve beyond their designated terms until their successors are appointed.

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

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

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

A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws;

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

C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the

law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as whom to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws;

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

E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation;

F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released;

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

H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered;

I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records;

J. Shall review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public; and

K. May undertake other activities consistent with its listed responsibilities.

**7. Outside funding for advisory committee activities.** The advisory committee may seek outside funds to fund the cost of public hearings, conferences, workshops, other meetings, other activities of the advisory committee and educational and training materials. Contributions to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring

to make a financial or in-kind contribution shall certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the advisory committee's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory committee.

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

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

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

# APPENDIX B

Membership List: Right to Know Advisory Committee

# Right to Know Advisory Committee

**1 MRSA §411**

## Membership List

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

# APPENDIX C

Recommended legislation to amend public records exceptions

**RECOMMENDED LEGISLATION TO AMEND EXISTING PUBLIC RECORDS EXCEPTIONS REVIEWED IN TITLES 25 - 32**

**Sec. 1. 25 MRSA §2006, sub-§1** is amended to read:

**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.

**Sec. 2. 25 MRSA §2006, sub-§2** is amended to read:

**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.

**Sec. 3. 26 MRSA §1085, sub-§4** is amended to read:

**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.

**Sec. 4 27 MRSA §86-B, sub-§1** is amended to read:

**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.

**Sec. 5. 27 MRSA §86-B, sub-§2** is amended to read:

**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.

**Sec. 6. 30-A MRSA §503, sub-§1** is amended to read:

**§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~~ confidential 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;

**Sec. 7 30-A MRSA §2702, sub-§1** is amended to read:

**§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~~ confidential 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;

**Sec. 8. 32 MRSA §2105-A, sub-§3** is amended to read:

**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.

**Sec. 9. 32 MRSA §3300-A** is amended to read:

**§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.

**Sec. 10. 32 MRSA §6207-B** is amended to read:

**§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. This section does not prohibit 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.

**Sec. 11. 32 MRSA §9418** is amended to read:

**§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.

**Sec. 12. 32 MRSA §11305, sub-§3** is amended to read:

~~**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.

**Sec. 13. 32 MRSA §16524** is amended to read:

**§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.

**Sec. 14. 32 MRSA §16607, sub-§2** is amended to read:

2. ~~Nonpublic~~ Confidential 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.

**Sec. 15. 32 MRSA §18509, sub-§6** is amended to read:

**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.

## SUMMARY

This draft implements statutory changes recommended by the Right to Know Advisory Committee after reviewing certain existing public records exceptions in Titles 25, 26, 27, 30-A and 32.

Sections 1, 2, 3, 4, 5, 10, 11, 12, 13, 14 and 15 amend language in statute to better conform with drafting standards.

Sections 6 and 7 amend public records exceptions related to applicants for county and municipal jobs to clarify that personal contact information of applicants is confidential.

Section 8 amends the existing public records exception to clarify that information included in Board of Nursing consent agreements or other written settlements that identifies or could reasonably lead to identification of a patient is confidential.

Section 9 amends the existing public records exception to clarify that email addresses of applicants to or licensees of the Board of Medicine are confidential, and that the personal residence address and telephone number of the applicant or licensee are not confidential if this information is provided as the public contact.

# APPENDIX D

Existing public records exceptions in Titles 25-32
recommended to continue without change

**PUBLIC RECORDS EXCEPTIONS REVIEWED IN 2024: TITLES 25, 26, 27, 28-A, 29-A, 30-A AND 32 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 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

# APPENDIX E

Recommended legislation to create a new public records exception related to information received by the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations

**RECOMMENDED LEGISLATION TO ESTABLISH A PUBLIC RECORDS EXCEPTION FOR PERSONALLY IDENTIFIABLE INFORMATION RECEIVED BY THE PERMANENT COMMISSION ON THE STATUS OF RACIAL, INDIGENOUS AND TRIBAL POPULATIONS**

**Sec. 1. 5 MRSA §25012** is enacted to read:

**§25012. 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 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.

## SUMMARY

This draft implements statutory changes recommended by the Right to Know Advisory Committee. It enacts a new section of law in Title 5 to make confidential personally identifiable information obtained in furtherance of the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations' duties pursuant to Title 5, section 25007, section 1, paragraph A, to carry out research necessary to determine the status of historically disadvantaged racial, indigenous and tribal populations, 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.

# APPENDIX F

Recommended legislation to amend Title 1, section 408-A, subsections 4 and 4-A

**RECOMMENDED LEGISLATION TO AMEND THE LAWS RELATED TO REFUSALS OR DENIALS OF PUBLIC RECORDS AND ACTIONS FOR PROTECTION**

**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 request or series of requests for inspection or copying may be denied, in whole or in part, on the basis that the request or series of requests 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.

**Sec. 2. 1 MRSA §408-A, sub-§ 4-A** is amended to read:

**4-A. Action for protection.** A body, an agency or an official may seek protection from a request or series of requests for inspection or copying that is unduly burdensome or oppressive by filing an action for an order of protection in the Superior Court for the county where the request or series of requests for records was made within ~~30~~ 60 days of receipt of the request or the point at which a body, agency or official determines that a series of requests is unduly burdensome or oppressive.

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

(1) The terms of the request or series of requests and any modifications agreed to by the requesting party;

(2) A statement of the facts that demonstrate the burdensome or oppressive nature of the request or series of requests, with a good faith estimate of the time required to search for, retrieve, redact if necessary and compile the records responsive to the request or series of requests and the resulting costs calculated in accordance with subsection 8;

(3) A description of the efforts made by the body, agency or official to inform the requesting party of the good faith estimate of costs and to discuss possible modifications of the request or series of requests that would reduce the burden of production; and

(4) Proof that the body, agency or official has submitted a notice of intent to file an action under this subsection to the party requesting the records, dated at least 10 days prior to filing the complaint for an order of protection under this subsection.

B. Any appeal that may be filed by the requesting party under section 409 may be consolidated with an action under this subsection.

C. An action for protection may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require upon the request of any party.

D. If the court finds that the body, agency or official has demonstrated good cause to limit or deny the request or series of requests, the court shall enter an order making such findings and establishing the terms upon which production, if any, must be made. If the court finds that the body, agency or official has not demonstrated good cause to limit or deny the request or series of requests, the court shall establish a date by which the records must be provided to the requesting party.

**SUMMARY**

This draft implements statutory changes recommended by the Right to Know Advisory Committee. It permits a body or agency or official to deny a series of requests for inspection or copying of a public record on the basis that the series of requests is unduly burdensome or oppressive. This draft also allows a body, agency or official to seek protection from a request or series of requests that is unduly burdensome or oppressive by filing an action for an order of protection in the Superior Court for the county where the request or series of requests was made. The action must be filed within 60 days of the receipt of the request or, in the case of a series of requests, within 60 days of the point at which a body, agency or official determines that a series of requests is unduly burdensome or oppressive.

# APPENDIX G

Recommended legislation to amend Title 1, section 408-A, subsection 4

**RECOMMENDED LEGISLATION TO AMEND THE LAW RELATED TO DENIALS OF REQUESTS FOR RECORDS PURSUANT TO FOAA**

**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 implements statutory changes recommended by the Right to Know Advisory Committee to amend a provision of the Freedom of Access Act. It 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.

# APPENDIX H

Recommended legislation to amend Title 1,
sections 412 and 413

**RECOMMENDED LEGISLATION TO AMEND THE LAW RELATED TO INDIVIDUALS WHO MUST COMPLETE FOAA TRAINING AND ENTITIES THAT MUST DESIGNATE PUBLIC ACCESS OFFICERS**

**Sec. 1. 1 MRSA §412** is amended to read:

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

**1. Training required.** A public access officer, board member and an official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official, board member or public access officer shall complete the training not later than the 120th day after the date the official or board member assumes the person's duties as an official or board member 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 official, board member 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, board member or a public access officer 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, board member or public access officer 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 or board member shall keep the record or file it with the public entity to which the official or board member was elected or appointed. 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 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;

D.

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~~.~~ ; and

I. Members of a board established under Title 5, chapter 379.

**Sec. 2. 1 MRSA §413** is amended to read:

**§413. Public access officer**

**1. Designation; responsibility.** Each agency, county, municipality, board established under Title 5, chapter 379, school administrative unit and regional or other political subdivision shall designate an existing employee as its public access officer to serve as the contact person for that agency, county, municipality, board, school administrative unit or regional or other political subdivision with regard to requests for public records under this subchapter. The public access officer is responsible for ensuring that each public record request is acknowledged within 5 working days of the receipt of the request by the office responsible for maintaining the public record requested and that a good faith estimate of when the response to the request will be complete is provided according to section 408-A. The public access officer shall serve as a resource within the agency, county, municipality, board, school administrative unit and regional or other political subdivision concerning freedom of access questions and compliance.

**2. Acknowledgment and response required.** An agency, county, municipality, board, school administrative unit and regional or other political subdivision that receives a request to inspect or copy a public record shall acknowledge and respond to the request regardless of whether the request was delivered to or directed to the public access officer.

**3. No delay based on unavailability.** The unavailability of a public access officer may not delay a response to a request.

**4. Training.** A public access officer shall complete a course of training on the requirements of this chapter relating to public records and proceedings as described in section 412.

## SUMMARY

This draft implements statutory changes recommended by the Right to Know Advisory Committee. Section 1 requires members of boards established under the Maine Revised Statutes, Title 5, chapter 379, to undergo a course of training on the requirements of this chapter relating to public records and proceedings. Section 2 requires a board established under Title 5, chapter 379, to designate a public access officer.

# APPENDIX I

Correspondence related to recommendations from the Advisory Committee to:

- The State Archivist
- The Criminal Law Advisory Commission
- FOAA responding entities
- The Maine Municipal Association
- The Maine County Commissioners Association
- The Maine Press Association and Maine Association of Broadcasters

**STATE OF MAINE**

# RIGHT TO KNOW ADVISORY COMMITTEE

December XX, 2024

Kate McBrien, Maine State Archivist
84 State House Station
Augusta, ME 04333-0084
*Via Email: katherine.mcbrien@maine.gov*

Re: Retention of public employee disciplinary records

Dear Kate McBrien:

I am writing on behalf of the Right to Know Advisory Committee. As you know, the Advisory Committee has considered the issue of access to public employee disciplinary records over the past few years, including the interaction between collective bargaining agreements, record retention schedules applicable to those records and the Freedom of Access Act. During its work in 2024, the Advisory Committee formed the Public Employee Disciplinary Records Subcommittee to gather more information and address specific questions posed by the Judiciary Committee regarding public employee disciplinary records. The Subcommittee received comments from a number of individuals representing public employers and learned more about the challenges faced by these entities in balancing the need to attract and retain qualified employees with the importance of using discipline to identify and correct employee behavior. The Subcommittee supported the creation of a tiered system of retention of public employee disciplinary records based on the "seriousness" of the misconduct; however, the members noted that public employers expressed both a desire for uniformity and concern that the "seriousness" of misconduct may vary depending upon the type of employment. The Subcommittee suggested that the determination of which tier a particular disciplinary action falls into should either be tied to the punishment that the employee receives or be left to each agency to determine.

At its final meeting, the Advisory Committee considered the Subcommittee's recommendations and felt that this issue requires additional investigation. The Advisory Committee identified a number of stakeholders who they felt should be included in this discussion and unanimously voted to accept your offer to convene a working group to develop recommendations regarding the creation of a tiered system of record retention based on the "seriousness" of the misconduct. The Advisory Committee would also like the working group to consider whether the availability of these records is appropriately governed by the record retention schedule or whether it would

be appropriate to limit the amount of time that such records are public pursuant to FOAA. The Advisory Committee recommended including in the working group individuals representing the interests of law enforcement, municipalities, counties, unions, schools, teachers and public access advocates, and representatives of the State Bureau of Human Resources and the Maine Criminal Justice Academy.

We ask that you report on the activities of the working group and any recommendations that are developed by participants when the Advisory Committee reconvenes next year, which we anticipate will occur in late July or August of 2025.

Thank you for your offer of assistance and for your consideration of this request.

Sincerely,

The Honorable Erin Sheehan
Chair Right to Know Advisory Committee

**STATE OF MAINE**

# RIGHT TO KNOW ADVISORY COMMITTEE

December XX, 2024

Criminal Law Advisory Commission
*Via Email: Laura.Yustak@maine.gov*

Re: Public employee disciplinary records

Dear Laura Yustak,

I am writing on behalf of the Right to Know Advisory Committee. To conduct its work this year, the Right to Know Advisory Committee formed several subcommittees, including the Public Employee Disciplinary Records Subcommittee. One of the issues this subcommittee considered was the retention of records that may be used to impeach a witness in a criminal case, so-called *Brady/Giglio* materials. The Subcommittee received comment from several representatives of law enforcement who explained that it can be challenging to identify what records represent *Brady/Giglio* materials, and they expressed a desire for further guidance on this issue. The Subcommittee was also advised that consistency in the handling of these materials is a goal of the Maine Chiefs of Police Association.

At its final meeting, the Right to Know Advisory Committee recommended asking the Criminal Law Advisory Commission to consider this issue to provide guidance regarding the types of public employee disciplinary records that would be considered *Brady/Giglio* materials, including examples if possible, and to make recommendations regarding how these materials should be retained by public employers. We request that the Commission share any guidance and recommendations it develops with the Judiciary Committee and the Right to Know Advisory Committee in 2025.

Thank you for your consideration of this request.

Sincerely,

The Honorable Erin Sheehan, Chair
Right to Know Advisory Committee

**STATE OF MAINE**

# RIGHT TO KNOW ADVISORY COMMITTEE

TO: XX

FROM The Honorable Erin Sheehan, Chair, Right to Know Advisory Committee

DATE: December X, 2024

RE: Survey: Resources for responding to Freedom of Access Act requests

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During its meetings in 2023 and 2024, the Right to Know Advisory Committee considered several topics related to challenges faced by entities responding to public records requests under the Freedom of Access Act (FOAA). To assist in its work in 2023, the Advisory Committee formed a subcommittee which was charged with addressing, among other things, the definition of a "burdensome" FOAA request as used in 1 M.R.S. §408-A(4); issues related to individuals making repeated FOAA requests; and whether the Public Access Ombudsman should be given different or expanded authorities. As a result of the Subcommittee's discussions, the Advisory Committee recommended sending a survey to various entities regarding their experiences with burdensome FOAA requests. In 2024, the Advisory Committee reestablished a subcommittee to review the survey responses it received and made a number of recommendations for changes based on those responses. For a summary of those recommendations, please see the 19th Annual Report of the Right to Know Advisory Committee which is available on the Legislature's website.[1]

As the subcommittee discussed the issues related to burdensome requests, it became clear to members that there is significant variability in the resources available to entities responsible for responding to FOAA requests. While some respondents may have institutional capacity to manage a large number of requests, other, smaller entities may lack any dedicated resources for FOAA-related tasks.

To better understand the scope of the resources available to entities responsible for responding to FOAA requests, the subcommittee recommended to the Advisory Committee that it distribute a survey to those entities to determine resource capacity as well as any gaps in resources. The Advisory Committee voted to accept this recommendation. Therefore, the Advisory Committee

[1] Available at: https://legislature.maine.gov/right-to-know-advisory-committee-annual-reports

requests the following information from your organization by July 1, 2025. **Please note that information provided to the Right to Know Advisory Committee in response to this survey will be distributed to Advisory Committee members and is public information.**

1. Please describe your organization, including the type of organization (state, local, county, school, etc.) and total number of employees.

2. Please provide the approximate number of FOAA requests that you have received annually since 2021.

3. Please provide the number of individuals in your organization responsible for responding to FOAA requests. Are these individuals tasked with FOAA work part time or full time, or is FOAA an extra task that is not specifically accounted for?

4. Do you feel your organization has sufficient resources to respond to FOAA requests?

5. If you do not feel that you have sufficient resources, what resources would be necessary to meet your organization's needs?

Thank you for your attention to this matter. You may provide your responses by email to Lindsay.Laxon@legislature.maine.gov or via mail to:

Right to Know Advisory Committee
c/o Office of Policy and Legal Analysis
13 State House Station Cross Office Building,
Room 215 Augusta, Maine 04333-0013

If you have any questions or concerns about our request, please do not hesitate to reach out to Advisory Committee staff, Lindsay Laxon or Colleen McCarthy Reid, at (207) 287-1670.

**STATE OF MAINE**

# RIGHT TO KNOW ADVISORY COMMITTEE

December X, 2024

Kate Dufour
Maine Municipal Association
60 Community Drive
Augusta, Maine 04330
*Via Email: kdufour@memun.org*

Re: Training and education regarding FOAA and record retention requirements

Dear Kate 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).[1] Pursuant to this responsibility, the Advisory Committee has been engaged in discussions regarding the availability of training opportunities for individuals in positions responsible for complying with and responding to FOAA requests and plans to continue these discussions during the next legislative interim. While information regarding the training of state employees is available from their respective agencies, the Advisory 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 Advisory 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, the Advisory Committee requests 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

[1] See 1 M.R.S.A. §411, sub-§6(D).

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.

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

Thank you for your time and attention to this matter.

The Honorable Erin Sheehan, Chair
Right to Know Advisory Committee

**STATE OF MAINE**

# RIGHT TO KNOW ADVISORY COMMITTEE

December X, 2024

Lauren Haven
Maine County Commissioners Association
4 Gabriel Drive, Suite 2
Augusta, Maine 04330
*Via Email: lauren.haven@mainecounties.org*

Re: Training and education regarding FOAA and record retention requirements

Dear Lauren Haven:

I am writing on behalf of the Right to Know Advisory Committee. As you may 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).[1] Pursuant to this responsibility, the Advisory Committee has been engaged in discussions regarding the availability of training opportunities for individuals in positions responsible for complying with and responding to FOAA requests and plans to continue these discussions during the next legislative interim. While information regarding the training of state employees is available from their respective agencies, the Advisory Committee is also interested in learning about training opportunities available to county employees. We are reaching out to the Maine County Commissioners Association (MCCA) to gain a better understanding of the training currently offered to its members.

The Advisory Committee understands that MCCA does offer training opportunities. We were hoping to learn more about any trainings related to the FOAA offered by MCCA. To this end, the Advisory Committee requests the following information:

1. A list of courses/trainings offered by MCCA 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 county employees that attend these courses/trainings broken down by title/role within their organization if possible; and

[1] See 1 M.R.S.A. §411, sub-§6(D).

4. Information regarding any future courses MCCA is developing related to FOAA or records retention requirements.

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

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

Thank you for your time and attention to this matter.

The Honorable Erin Sheehan, Chair
Right to Know Advisory Committee

**STATE OF MAINE**

# RIGHT TO KNOW ADVISORY COMMITTEE

December XX, 2024

Maine Press Association
Diane Norton, Executive Director
P.O. Box 336
Camden, ME 04843
*Via Email: mainepressmail@gmail.com*

Maine Association of Broadcasters
Tim Moore, President & CEO
91 Auburn Street, Suite J #1150
Portland, ME 04103
*Via Email: tmoore@mab.org*

Re: Meeting between representatives of the press and representatives of law enforcement to share concerns regarding the prompt release of information during critical public safety incidents

To Whom it May Concern:

I am writing on behalf of the Right to Know Advisory Committee. As you may know, in 2023 the Advisory Committee formed a subcommittee which discussed, among other things, 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. Representatives of the media asked the Advisory Committee to develop recommendations for facilitating the prompt release by law enforcement of information about public safety incidents or criminal investigations, especially those that occur on the weekend, without the delays incident to submission of formal public records requests under the Freedom of Access Act (FOAA). The Advisory Committee subsequently sent a letter to the Maine Chiefs of Police Association requesting that it coordinate with the Maine Sheriffs Association, the Maine State Police, the Maine Office of the Attorney General, the Maine Press Association and the Maine Association of Broadcasters to convene a meeting to share information among stakeholders regarding these issues.

During the course of its work in 2024, the Advisory Committee learned that this meeting has not taken place. At its final meeting, members of the Advisory Committee representing broadcasting and press interests suggested that their respective associations may be able to convene a meeting for this purpose. As such, the Advisory Committee recommended sending a letter to your organizations, asking that you coordinate with the Maine Chiefs of Police Association, the Maine Sheriffs Association, the Maine State Police and the Maine Office of the Attorney General to convene this meeting, with the aim of increasing understanding between members of the law enforcement and media communities regarding each other's concerns in an effort to enhance collaboration during and immediately after public safety incidents.

The Advisory Committee hopes that you will be willing to facilitate a meeting with stakeholders to address this issue, as was discussed at the final meeting of the Advisory Committee.
We hope that, with the assistance of an experienced facilitator, meeting participants will:

- Share information about the pressures and constraints experienced by members of the media when gathering and timely reporting information regarding public safety incidents and ongoing criminal investigations; and the deadlines, staffing issues, complex legal issues and other challenges facing law enforcement during these incidents; and

- Develop recommendations for increasing collaboration between law enforcement agencies and representatives of the media in a way that will ensure the public has access to timely, reliable information about significant public safety incidents and criminal investigations.

If possible, we ask that you report on the meeting and any recommendations that are developed by meeting participants when the Advisory Committee reconvenes next year.

Thank you for your offer of assistance and for your consideration of this request.

Sincerely,

The Honorable Erin Sheehan, Chair
Right to Know Advisory Committee

# APPENDIX J

Copy of letter from the Judiciary Committee to the RTKAC
dated May 10, 2024

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

May 10, 2024

Representative Erin Sheehan, Chair
Right to Know Advisory Committee

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

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

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

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

1) Whether the Legislature should direct the State Archivist to revise the record retention schedules applicable to state and local government personnel records—which currently direct that disciplinary records for state employees be retained for up to 5 years of active service and that disciplinary records for local government employees be retained for 60 years after separation—to provide:

   a) A default retention period for final written decisions relating to disciplinary action taken against a public employee, regardless of the level of government service—and, if so, what length of time is appropriate;

   b) A shorter retention period for final written decisions involving "less serious misconduct"—and, if so, whether the severity of the misconduct should be measured by focusing either (A) on the type of misconduct committed, which would require a detailed description of the types of misconduct that should be considered "less serious" and careful consideration whether an employee's job description influences this calculus; or (B) on the type of discipline imposed, with longer retention schedules applicable to more serious sanctions under a progressive discipline model; and

   c) A longer retention period for final written decisions imposing discipline on certain types of public employees whose positions involve greater degrees of public trust and for whom restricted public access to disciplinary records raises constitutional concerns—for example, law enforcement officers

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

2) Whether the Legislature should enact legislation prohibiting a collective bargaining agreement from impacting records retention schedules; and

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

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

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

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

Sincerely,

Anne Carney

Sen. Anne M. Carney
Senate Chair

Matt Moonen

Rep. Matthew W. Moonen
House Chair

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