RIGHT TO KNOW ADVISORY COMMITTEE

DRAFT AGENDA
May 30, 2012
9:30 a.m.
Room 438, State House, Augusta

Convene

1. Welcome and Introductions
   Senator David R. Hastings III, Chair
   Representative Joan M. Nass

2. Summary of Second Regular Session, 125th Legislature's FOA actions in 2012
   - RTK AC recommendations
     - LD 1465, An Act to Amend the Laws Governing Freedom of Access
     - LD 1804, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Public Records Exceptions
     - LD 1805, An Act to Implement Recommendations of the Right To Know Advisory Committee Concerning a Public Records Exception for Proposed Legislation, Reports and Working Papers of the Governor
   - Proposed public records exceptions

3. Existing exceptions review process
   - Title 22, section 8754, reporting of sentinel events, tabled
   - Titles 26 – 39-A, recommendations due January 2013

4. Continuing projects
   - PL c. 264: email and other communications of elected/public officials (2011)
   - Use of technology in public proceedings (participation from remote locations)
   - Training and education for public officials - expansion to include appointed, others?
   - Templates for drafting specific confidentiality statutes
   - Application of FOA laws to Maine Public Broadcasting Network

5. Criminal History Record Information Act (CHRIA) --- update

6. Bulk records --- update

7. Law School Externship – update

8. Suggested topics and projects to discuss
   - Letter from Freedom of Information Coalition related to encryption of radio transmissions between law enforcement and public safety personnel
   - Letter from Rep. Nelson related to parental privacy in Maine schools
   - Penalties for release of confidential information

9. Subcommittees: chairs, members, duties

10. Scheduling future meetings, subcommittee meetings

11. Other?

Adjourn

APPROVED CHAPTER

MAY 21 '12 662

BY GOVERNOR PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND TWELVE

S.P. 456 - L.D. 1465

An Act To Amend the Laws Governing Freedom of Access

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 1 MRSA §400 is enacted to read:

§400. Short title

This subchapter may be known and cited as "the Freedom of Access Act."

Sec. 2. 1 MRSA §402, sub-§3, ¶M, as amended by PL 2005, c. 381, §1, is further amended to read:

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure ~~and~~, systems and software. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;

Sec. 3. 1 MRSA §402, sub-§§5 and 6 are enacted to read:

5. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.

6. Reasonable office hours. "Reasonable office hours" includes all regular office hours of an agency or official.

Sec. 4. 1 MRSA §408, as amended by PL 2009, c. 240, §4, is repealed.

Sec. 5. 1 MRSA §408-A is enacted to read:

§408-A. Public records available for inspection and copying

Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record.

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

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

A. A request need not be made in person or in writing.

B. The agency or official shall mail the copy upon request.

3. Acknowledgment; clarification; time estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within a reasonable period of time, and may request clarification concerning which public record or public records are being requested. The agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request. The agency or official shall make a good faith effort to fully respond to the request within the estimated time.

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 written notice of the denial, stating the reason for the denial, within 5 working days of the request for inspection or copying.

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

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

7. Electronically stored public records. An agency or official having custody or control of a public record subject to a request under this section shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency

or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

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

B. This subsection does not require an agency or official to provide a requester with access to a computer terminal.

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

A. The agency or official may charge a reasonable fee to cover the cost of copying.

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.

C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format.

D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies.

E. The agency or official may charge for the actual mailing costs to mail a copy of a record.

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

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

A. The estimated total cost exceeds $100; or

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.

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

A. The requester is indigent; or

B. The agency or official considers release of the public record requested to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

Sec. 6. 1 MRSA §409, sub-§1, as amended by PL 2009, c. 240, §5, is further amended to read:

1. Records. ~~If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person.~~ Any person aggrieved by a refusal or denial to inspect or copy a record under section 408-A may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

Sec. 7. 1 MRSA §412, as amended by PL 2007, c. 576, §2, is further amended to read:

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

1. Training required. ~~Beginning July 1, 2008,~~ A public access officer and an elected 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 or public access officer shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official or the person is designated as a public access officer pursuant to section 413, subsection 1. ~~For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.~~

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

A. The general legal requirements of this chapter regarding public records and public proceedings;

B. Procedures and requirements regarding complying with a request for a public record under this chapter; and

C. Penalties and other consequences for failure to comply with this chapter.

An elected official 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 elected official 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 elected official shall keep the record or file it with the public entity to which the official was elected. 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 elected officials:

A. The Governor;

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

C. Members of the Legislature elected after November 1, 2008;

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

G. Officials of school administrative units ~~and school boards~~; 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 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.

Sec. 8. 1 MRSA §§413 and 414 are enacted to read:

§413. Public access officer

1. Designation; responsibility. Each agency, county, municipality, 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, school administrative unit and 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 a reasonable period of time 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, 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, 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.

§414. Public records; information technology

An agency shall consider, in the purchase of and contracting for computer software and other information technology resources, the extent to which the software or technology will:

1. Maximize public access. Maximize public access to public records; and

2. Maximize exportability; protect confidential information. Maximize the exportability of public records while protecting confidential information that may be part of public records.

Sec. 9. 6 MRSA §174, sub-§5, as enacted by PL 2007, c. 563, §1, is amended to read:

5. Organization; conduct of business; employees. Within one week after each annual election or appointment, the directors shall meet for the purpose of electing a chair, treasurer and clerk to serve for the ensuing year and until their successors are appointed and qualified. The directors from time to time may choose and employ and fix the compensation of any other necessary officers and agents, who serve at the pleasure of the directors. The treasurer shall furnish bond in the sum and with sureties approved by the directors. The airport authority shall pay the cost of the bond.

The directors may adopt and establish bylaws consistent with the laws of this State and necessary for the convenience and the proper management of the affairs of the airport authority and perform other acts within the powers delegated by law to the directors.

The directors must be sworn to the faithful performances of their duties, including the duties of a member who serves as clerk or clerk pro tem. The directors shall publish an annual report that includes a report of the treasurer.

The directors shall appoint and fix the salary of an airport manager who may not be a director. The airport manager has such power and authority as the directors in their bylaws or by resolution specify and delegate to the airport manager. Subject to approval of or authorization from the directors, the airport manager may appoint any other

employees necessary to carry out the corporate purposes of the airport authority and may fix their salaries.

Business of the airport authority must be conducted in accordance with the applicable provisions of the ~~freedom of access laws, Title 1, sections 401 to 412~~ Freedom of Access Act.

Sec. 10. 12 MRSA §8424, sub-§2, as amended by PL 1981, c. 278, §4, is further amended to read:

2. Application for spray project eligibility. Forest land owners may apply to the director prior to December 1st of any year to be eligible to participate in the spray projects for the following 5 years. The application ~~shall~~ must show:

A. The name and address of the applicant and its agent, if any;

B. The number and location on maps prescribed by the director of the acres of forest land for which application is being made;

C. The location on maps prescribed by the director of the timber types, timber ages and proportions of spruce, fir and non-host species within such forest land;

D. The location on maps of private and public road access to such forest land;

E. The location on maps of all residences within that forest land;

F. A 5-year cutting plan for such forest land showing plans for timber cutting, road construction and other planned land utilizations; and

G. Any other information pertinent to the description, utilization and management of such forest land as the director may require for purposes of spray project and management program planning.

The date for submission of the information required under subsection 2, paragraph C, may be extended by the director upon a showing that such information is not then available.

Cutting plans accompanying the application may be utilized by the Bureau of Forestry for planning purposes, and may be shared with other government agencies, but ~~shall~~ do not constitute records available for public inspection or disclosure pursuant to Title 1, section ~~408~~ 408-A.

For excise tax purposes, such application must designate one person who ~~shall~~ must be billed and notified of any lien recorded under this subchapter. When a tax bill or notice of lien is sent to this person, it ~~shall constitute~~ constitutes notice to all other landowners listed on the application. Each forest ~~landowner shall be~~ land owner is jointly and severally liable for any tax, penalty or interest imposed under this subchapter.

Sec. 11. 21-A MRSA §22, sub-§3, as amended by PL 2009, c. 564, §1, is further amended to read:

3. Confidential information. Notwithstanding subsection 1 and Title 1, section ~~408~~ 408-A, if a registered voter meets certain conditions, the voter's information must be kept confidential as provided in this subsection.

A. For a voter who is certified by the Secretary of State as a program participant in the Address Confidentiality Program pursuant to Title 5, section 90-B, all records maintained by the registrar pertaining to that voter must be kept confidential and must be excluded from public inspection.

B. For a voter who submits to the registrar a signed statement that the voter has a good reason to believe that the physical safety of the voter or a member of the voter's immediate family residing with the voter would be jeopardized if the voter's residence address were open to public inspection, that voter's residence address and mailing address, if the mailing address is the same as or discloses the voter's residence address, must be kept confidential and must be excluded from public inspection. The remainder of the information in that voter's record that is designated as public information in section 196-A remains a public record and may be made available to the public according to the use and distribution requirements provided in that section. The voter's signed statement is also a public record. A voter's address that is excluded from public inspection under this paragraph may be made available free of charge to a law enforcement officer or law enforcement agency that makes a written request to use the information for a bona fide law enforcement purpose or to a person identified by a court order if directed by that order.

Sec. 12. 21-A MRSA §22, sub-§5, as enacted by PL 2003, c. 584, §1, is amended to read:

5. Signature and identification number of registered voter. Notwithstanding subsection 1 and Title 1, section ~~408~~ 408-A, the voter's signature and identification number on the voter registration application and associated records in electronic format are designated as nonpublic records and the registrar shall exclude those items from public inspection. Voter signatures on voter registration applications and associated records in a printed hard-copy format are public records in accordance with subsection 1 and Title 1, section ~~408~~ 408-A.

Sec. 13. 21-A MRSA §22, sub-§7, as enacted by PL 2011, c. 342, §5, is amended to read:

7. Incoming voting list. After the incoming voting list is unsealed following the election, the list must be made available for public inspection and copying in accordance with Title 1, section ~~408~~ 408-A.

Sec. 14. 21-A MRSA §1104, as enacted by PL 1989, c. 802, §1, is amended to read:

§1104. Public records

The commission shall retain for public inspection all completed code forms accepted by the commission under section 1103. A code subscribed to by a candidate is a public record under Title 1, section ~~408~~ 408-A.

Sec. 15. 25 MRSA §2006, first ¶, as amended by PL 2011, c. 298, §11, is further amended to read:

Notwithstanding Title 1, ~~sections 401 to 410~~ chapter 13, subchapter 1, 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 agency 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 may not be made available for public inspection or copying. The applicant may waive this confidentiality by written notice to the issuing authority. All proceedings relating to the issuance, refusal 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. 16. 25 MRSA §2929, sub-§3, as enacted by PL 1997, c. 291, §3, is amended to read:

3. Disclosure required. The restrictions on disclosure provided under subsection 2 apply only to those portions of databases, reports, audio recordings or other records of the bureau or a public safety answering point that contain confidential information. Other information that appears in those records and other records, except information or records declared to be confidential under other law, is subject to disclosure pursuant to Title 1, section ~~408~~ 408-A. The bureau shall develop procedures to ensure protection of confidential records and information and public access to other records and information. Procedures may involve developing edited copies of records containing confidential information or the production of official summaries of those records that contain the substance of all nonconfidential information.

Sec. 17. 25 MRSA §2957, as repealed and replaced by PL 1999, c. 790, Pt. A, §33, is amended to read:

§2957. Confidentiality

Notwithstanding any other provisions of law, the investigative records of the agency are confidential and all meetings of the board are subject to Title 1, ~~sections 401 to 410~~ chapter 13, subchapter 1, except that those meetings may be held in executive session to discuss any case investigations or any disciplinary actions.

Sec. 18. 29-A MRSA §2251, sub-§7, as amended by PL 2011, c. 390, §1, is further amended to read:

7. Report information. An accident report made by an investigating officer or a report made by an operator as required by subsection 2 is for the purposes of statistical analysis and accident prevention.

A report or statement contained in the accident report, or a report as required by subsection 2, a statement made or testimony taken at a hearing before the Secretary of State held under section 2483, or a decision made as a result of that report, statement or testimony may not be admitted in evidence in any trial, civil or criminal, arising out of the accident.

A report may be admissible in evidence solely to prove compliance with this section.

Notwithstanding subsection 7-A, the Chief of the State Police may disclose the date, time and location of the accident and the names and addresses of operators, owners, injured persons, witnesses and the investigating officer. On written request, the chief may furnish a photocopy of the investigating officer's report at the expense of the person making the request. The cost of furnishing a copy of the report is not subject to the limitations of Title 1, section ~~408, subsection 3~~ 408-A.

Sec. 19. 29-A MRSA §2251, sub-§7-A, ¶C, as enacted by PL 2011, c. 390, §2, is amended to read:

C. The Department of Public Safety, Bureau of State Police may publicly disseminate nonpersonally identifying accident report data that are contained in an accident report database maintained, administered or contributed to by the Bureau of State Police. The cost of furnishing a copy of such data is not subject to the limitations of Title 1, section ~~408~~ 408-A.

Sec. 20. 32 MRSA §9418, first ¶, as enacted by PL 1987, c. 170, §19, is amended to read:

Notwithstanding Title 1, ~~sections 401 to 410~~ 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.

Sec. 21. 33 MRSA §651, last ¶, as enacted by PL 2009, c. 575, §1, is amended to read:

Notwithstanding Title 1, section ~~408, subsection 3~~ 408-A, this chapter governs fees for copying records maintained under this chapter.

Sec. 22. 34-A MRSA §1216, sub-§1, as amended by PL 2005, c. 487, §§2 to 4, is further amended to read:

1. Limited disclosure. All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any person receiving services from the department must be kept confidential and may not be disclosed by any person, except that public records must be disclosed in accordance with Title 1, section ~~408~~ 408-A; criminal history record information may be disseminated in accordance with Title 16, chapter 3, subchapter 8; and documents other than those documents pertaining to information obtained by the department for the purpose of evaluating a client's ability to participate in a community-based program or from informants in a correctional or detention facility for the purpose of determining whether

facility rules have been violated or pertaining to a victim's request for notice of release may, and must upon request, be disclosed:

A. To any person if the person receiving services, that person's legal guardian, if any, and, if that person is a minor, that person's parent or legal guardian give informed written consent to the disclosure of the documents referred to in this subsection after being given the opportunity to review the documents sought to be disclosed;

B. To any state agency if necessary to carry out the statutory functions of that agency;

C. If ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503;

D. To any criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile criminal justice or for criminal justice agency employment;

E. To persons engaged in research if:

(1) The research plan is first submitted to and approved by the commissioner;

(2) The disclosure is approved by the commissioner; and

(3) Neither original records nor identifying data are removed from the facility or office that prepared the records.

The commissioner and the person doing the research shall preserve the anonymity of the person receiving services from the department and may not disseminate data that refer to that person by name or number or in any other way that might lead to the person's identification;

F. To persons who directly supervise or report on the health, behavior or progress of a juvenile, to the superintendent of a juvenile's school and the superintendent's designees and to agencies that are or might become responsible for the health or welfare of a juvenile if the information is relevant to and disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation, including reintegration into the school; or

G. To any state agency engaged in statistical analysis for the purpose of improving the delivery of services to persons who are or might become mutual clients if:

(1) The plan for the statistical analysis is first submitted to and approved by the commissioner; and

(2) The disclosure is approved by the commissioner.

The commissioner and the state agency requesting the information shall preserve the anonymity of the persons receiving services from the department and may not disseminate data that refer to any person by name or number or that in any other way might lead to a person's identification.

Notwithstanding any other provision of law, the department may release the names, dates of birth and social security numbers of juveniles receiving services from the department and, if applicable, eligibility numbers and the dates on which those juveniles received

services to the Department of Health and Human Services for the sole purpose of determining eligibility and billing for services under federally funded programs administered by the Department of Health and Human Services and provided by or through the department. The department may also release to the Department of Health and Human Services information required for and to be used solely for audit purposes, consistent with federal law, for those services provided by or through the department. Department of Health and Human Services personnel must treat this information as confidential in accordance with federal and state law and must return the records when their purpose has been served.

Sec. 23. 35-A MRSA §6410, sub-§5, as enacted by PL 1995, c. 616, §10, is amended to read:

5. Water districts; organization; conduct of business. Within one week after each annual appointment or election, the trustees of a water district shall meet for the purpose of electing a chair, treasurer and clerk from among them to serve for the ensuing year and until their successors are elected or appointed and qualified. The trustees, from time to time, may choose and employ and fix the compensation of any other necessary officers and agents who serve at the pleasure of the trustees. The treasurer shall furnish bond in the sum and with sureties approved by the trustees. The water district shall pay the cost of the bond.

The trustees may adopt and establish bylaws consistent with the laws of this State and necessary for the convenience and the proper management of the affairs of the water district, and perform other acts within the powers delegated by law to the trustees.

The trustees ~~shall~~ must be sworn to the faithful performances of their duties including the duties of a member who serves as clerk or clerk pro tem. The trustees shall publish an annual report that includes a report of the treasurer.

Business of the district must be conducted in accordance with the applicable provisions of the ~~freedom of access laws, Title 1, sections 401 to 410~~ Freedom of Access Act.

Sec. 24. 38 MRSA §640, sub-§4, as enacted by PL 1989, c. 453, §2, is amended to read:

4. Release of public information. All information submitted to the agencies by the applicants for a license under the Federal Power Act ~~shall constitute~~ constitutes a public record pursuant to Title 1, section 402, unless such information is otherwise exempted from public disclosure by state law. Release of this information to members of the public ~~shall be~~ is governed by Title 1, section ~~408~~ 408-A.

Sec. 25. Appropriations and allocations. The following appropriations and allocations are made.

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General 0310

Initiative: Provides funds to increase one part-time Assistant Attorney General position to full-time to serve as a Public Access Ombudsman.

GENERAL FUND	2011-12	2012-13
POSITIONS - LEGISLATIVE COUNT	0.000	0.500
Personal Services	$0	$38,889
All Other	$0	$5,178
GENERAL FUND TOTAL	$0	$44,067

Public Law 2011
C. 655

GENERAL FUND	2011-12	2012-13
POSITIONS - LEGISLATIVE COUNT	0.000	(1.000)
Personal Services	$0	($76,592)
All Other	$0	($10,000)
GENERAL FUND TOTAL	$0	($86,592)

OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
All Other	$0	($99,359)
OTHER SPECIAL REVENUE FUNDS TOTAL	$0	($99,359)

AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF DEPARTMENT TOTALS	2011-12	2012-13
GENERAL FUND	**$0**	**($2,646)**
FEDERAL EXPENDITURES FUND	**$0**	**($18,429)**
OTHER SPECIAL REVENUE FUNDS	**($156,113)**	**($249,322)**
DEPARTMENT TOTAL - ALL FUNDS	**($156,113)**	**($270,397)**

Sec. A-3. Appropriations and allocations. The following appropriations and allocations are made.

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General 0310

Initiative: Establishes one part-time Assistant Attorney General position to serve as an ombudsman and assist in compliance with the State's freedom of access laws in accordance with the Maine Revised Statutes, Title 5, section 200-I.

GENERAL FUND	2011-12	2012-13
POSITIONS - LEGISLATIVE COUNT	0.000	0.500
Personal Services	$0	$36,531
GENERAL FUND TOTAL	$0	$36,531

Administration - Attorney General 0310

Initiative: Adjusts funding to align allocations with projected available resources approved by the Revenue Forecasting Committee on March 1, 2012.

APPROVED CHAPTER

STATE OF MAINE MAR 16 '12 524

BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD

TWO THOUSAND AND TWELVE

H.P. 1330 - L.D. 1804

An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions

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

Sec. 1. 22 MRSA §1555-D, sub-§1, as enacted by PL 2003, c. 444, §2, is repealed.

Sec. 2. 22 MRSA §3034, sub-§2, as enacted by PL 1991, c. 339, §5, is amended to read:

2. Confidentiality; disclosure. ~~All~~ Except as provided in subsection 5, all information and materials gathered and retained pursuant to this section must be used solely for the purposes of identification of deceased persons and persons found alive who are unable to identify themselves because of mental or physical impairment. The files and materials are confidential, except that compiled data that does not identify specific individuals may be disclosed to the public. Upon the identification of a deceased person, those records and materials used for the identification may become part of the records of the Office of Chief Medical Examiner and may then be subject to public disclosure as pertinent law provides.

Sec. 3. 22 MRSA §3034, sub-§5 is enacted to read:

5. Release to assist in search. The Office of Chief Medical Examiner may release confidential information and materials about a missing person that are gathered and retained pursuant to this section if the Chief Medical Examiner determines that such release may assist in the search for the missing person.

Sec. 4. 22 MRSA §8707, sub-§4, as amended by PL 2007, c. 466, Pt. A, §44, is further amended to read:

4. Certain confidential information. ~~The rules must determine to be confidential or privileged information all data designated or treated as confidential or privileged by the former Maine Health Care Finance Commission. Information regarding discounts off charges, including capitation and other similar agreements, negotiated between a payor or purchaser and a provider of health care that was designated as confidential only for a~~

2-3

~~limited time under the rules of the former Maine Health Care Finance Commission is confidential to the organization, notwithstanding the termination date for that designation specified under the prior rules.~~ The board may determine financial data submitted to the organization under section 8709 to be confidential information if the public disclosure of the data will directly result in the provider of the data being placed in a competitive economic disadvantage. This section may not be construed to relieve the provider of the data of the requirement to disclose such information to the organization in accordance with this chapter and rules adopted by the board.

Sec. 5. 23 MRSA §63, as repealed and replaced by PL 2001, c. 158, §1, is repealed and the following enacted in its place:

§63. Confidentiality of records held by the department and the Maine Turnpike Authority

1. Confidential records. The following records in the possession of the department and the Maine Turnpike Authority are confidential and may not be disclosed, except as provided in this section:

A. Records and correspondence relating to negotiations for and appraisals of property; and

B. Records and data relating to engineering estimates of costs on projects to be put out to bid.

2. Engineering estimates. Engineering estimates of total project costs are public records after the execution of project contracts.

3. Records relating to negotiations and appraisals. The records and correspondence relating to negotiations for and appraisals of property are public records beginning 9 months after the completion date of the project according to the record of the department or Maine Turnpike Authority, except that records of claims that have been appealed to the Superior Court are public records following the award of the court.

Sec. 6. 23 MRSA §8115, as amended by PL 2005, c. 312, §9, is further amended to read:

§8115. Obligations of authority

All expenses incurred in carrying out this chapter must be paid solely from funds provided to or obtained by the authority pursuant to this chapter. Any notes, obligations or liabilities under this chapter may not be deemed to be a debt of the State or a pledge of the faith and credit of the State; but those notes, obligations and liabilities are payable exclusively from funds provided to or obtained by the authority pursuant to this chapter. Pecuniary liability of any kind may not be imposed upon the State or any locality, town or landowner in the State because of any act, agreement, contract, tort, malfeasance, misfeasance or nonfeasance by or on the part of the authority or its agents, servants or employees. ~~The records and correspondence relating to negotiations, trade secrets received by the authority, estimates of costs on projects to be put out to bid and any~~

~~documents or records solicited or prepared in connection with employment applications are confidential. The authority is deemed to have a lawyer-client privilege.~~

Sec. 7. 23 MRSA §8115-A is enacted to read:

§8115-A. Authority records

1. Confidential records. The following records of the authority are confidential:

A. Records and correspondence relating to negotiations of agreements to which the authority is a party or in which the authority has a financial or other interest. Once entered into, an agreement is not confidential;

B. Trade secrets;

C. Estimates prepared by or at the direction of the authority of the costs of goods or services to be procured by or at the expense of the authority; and

D. Any documents or records solicited or prepared in connection with employment applications, except that 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. Lawyer-client privilege. The authority may claim the lawyer-client privilege in the same manner and circumstances as a corporation is authorized to do so.

Sec. 8. 24 MRSA §2505, as amended by PL 2007, c. 380, §1, is further amended to read:

§2505. Committee and other reports

Any professional competence committee within this State and any physician licensed to practice or otherwise lawfully practicing within this State shall, and any other person may, report the relevant facts to the appropriate board relating to the acts of any physician in this State if, in the opinion of the committee, physician or other person, the committee or individual has reasonable knowledge of acts of the physician amounting to gross or repeated medical malpractice, habitual drunkenness, addiction to the use of drugs, professional incompetence, unprofessional conduct or sexual misconduct identified by board rule. The failure of any such professional competence committee or any such physician to report as required is a civil violation for which a fine of not more than $1,000 may be adjudged.

Except for specific protocols developed by a board pursuant to Title 32, section 1073, 2596-A or 3298, a physician, dentist or committee is not responsible for reporting misuse of alcohol or drugs or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol or drugs discovered by the physician, dentist or committee as a result of participation or membership in a professional review committee or with respect to any information acquired concerning misuse of alcohol or drugs or professional incompetence or malpractice as a result of physical or mental

infirmity or by the misuse of alcohol or drugs, as long as that information is reported to the professional review committee. Nothing in this section may prohibit an impaired physician or dentist from seeking alternative forms of treatment.

The confidentiality of reports made to a board under this section is governed by this chapter.

Sec. 9. 24 MRSA §2510, sub-§1, ¶¶D and E, as enacted by PL 1977, c. 492, §3, are amended to read:

D. Pursuant to an order of a court of competent jurisdiction; ~~or~~

E. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any patient or physician is first deleted.; or

Sec. 10. 24 MRSA §2510, sub-§1, ¶F is enacted to read:

F. To other state or federal agencies when the information contains evidence of possible violations of laws enforced by those agencies.

Sec. 11. 24-A MRSA §2393, sub-§2, ¶D, as corrected by RR 1995, c. 2, §52, is amended to read:

D. The initial surcharges must be paid in accordance with the following provisions.

(1) Beginning July 1, 1995 every insurer writing workers' compensation insurance in the State shall collect from workers' compensation insurance policyholders and pay to the pool a surcharge on all surchargeable premiums received by the insurer for those policies. During the initial surcharge period, the surcharge is at a fixed rate of 6.32% of the surchargeable premium. The surcharge may be applied only to policies with an effective date on or after 12:01 a.m., July 1, 1995. All surcharges received by each insurer during the preceding calendar quarter must be remitted to the pool within 15 days following the end of each calendar quarter, except that servicing carriers shall remit on February 15th, May 15th, August 15th and November 15th of each year. Any surcharge proceeds not remitted on a timely basis accrue interest at the rate of 10% per annum from the due date until paid in full. The pool is entitled to reimbursement from any insurer failing to remit surcharge proceeds on a timely basis for the pool's costs of collection of those amounts, including all collection costs and fees, reasonable attorney's and paralegal's fees and any other professional fees and expenses associated with the pool's collection efforts. The surcharges described in this subparagraph do not apply to reinsurance recognized by the superintendent pursuant to ~~chapter~~ Chapter 250, section 2, paragraph G or section 3, paragraph G, procured by an individual self-insured employer or a self-insured employer group.

(2) Self-insured employers that secured their obligation to provide workers' compensation benefits under the Workers' Compensation Act through issuance or renewal at any point during the fresh start period of an insurance policy for any

portion of any of the policy years 1988 to 1992 are subject to a surcharge as provided in the following.

(a) During the initial surcharge period the rate of surcharge is 6.32% of the surchargeable premium as adjusted pursuant to this paragraph for the self-insured employer's current plan year utilizing estimated payroll as submitted with the self-insured employer's renewal application for authority to self-insure, in accordance with Chapter 250, section 2, paragraph C, subparagraph 1, division c or Chapter 250, section 3, paragraph C, subparagraph 1, division g as applicable, subject to audit pursuant to division (d), subdivision (iii). If the plan year in which a surcharge is collected or a credit is distributed is shorter than 12 months, due to a change in accounting period or termination of self-insurance authorization, the surcharge or credit for that plan year must be based upon the final audited payroll for the short plan year.

(b) All surcharges must be collected or distributed on a plan year basis. In each plan year, the percentage of the surchargeable premium to be surcharged is the same percentage as is applied to an insured employer whose policy period coincided with the plan year.

(c) Except for a successor self-insured employer, each self-insured employer shall pay surcharges relating to only that portion of the policy years 1988 to 1992 in which the self-insured employer insured its workers' compensation obligations. The surcharge factor, as determined by the board under this chapter, must be adjusted to take into consideration the policy years or portions of policy years 1988 to 1992 in which a self-insured employer was self-insured.

The self-insured employer adjustment is determined as follows. The surcharge factor must be multiplied by the factor attributed to each of the years 1988 to 1992, as set forth in the table below. If a self-insured employer was insured only during a portion of a policy year, then the factor for that year is prorated based on the ratio of the number of days in the policy year during which the self-insured employer was insured to 365 days.

Policy Year	Factor
1988	28.48%
1989	30.70%
1990	23.26%
1991	11.55%
1992	6.01%

(d) The board shall administer the surcharges on self-insured employers as follows.

(i) The board shall issue surcharge billings to self-insured employers, pursue collection of all invoiced surcharges, initiate legal proceedings as necessary to collect surcharges and maintain records adequate to administer the surcharge process. The records of the board and of the

bureau form the basis for identifying self-insured employers who are subject to this paragraph.

(ii) Annual surcharges may be paid in a single lump sum within 30 days of the receipt of the pool's invoice or in quarterly installments at the self-insured employer's option. The board shall issue a yearly invoice as soon as practicable after the self-insured employer's plan approval or renewal date and receipt of all necessary supporting information from the superintendent. Each invoice must contain a schedule of dates when quarterly installments are due and clearly state the policy year or years for which the surcharge is imposed, the surcharge percentage multiplied by the factor applicable to each policy year and the amount of the surchargeable premium.

(iii) Each individual self-insured employer shall report final audited payrolls to the pool not later than 60 days after the end of each plan year and each self-insured employer that is a member of a self-insured group or the group's administrator, as the group may select, shall report final audited payrolls to the pool not later than 120 days after the end of each plan year and shall remit with the audit information any additional surcharges resulting from the audit.

(iv) Upon the request of a self-insured employer, including a successor self-insured employer or an administrator of a self-insurance group, the board may determine whether there was a factual inaccuracy in the information underlying a surcharge billing issued by the board for the fresh start period or whether the surcharge calculated by the board is consistent with the provisions of this subparagraph. The request must be filed within 180 days from the date on which the final payment is due and must be in writing, including a statement of the reason for the request and the amount, if known, of the alleged overcharge. If an appeal based upon an alleged overcharge is sustained, the board shall refund the overcharge, together with any investment earnings on those amounts. If a self-insured employer is aggrieved by the final action or decision of the board, or if the board does not act on the written request within 60 days, the self-insured employer may appeal to the superintendent within 60 days of such action or decision of the board. Notwithstanding a pending appeal, a self-insured employer must pay any surcharge billing issued by the board.

(e) Self-insured employers have the following obligations with respect to the surcharge process.

(i) As a condition of continuing authorization to self-insure, each self-insured employer and each group self-insurance administrator shall assist the board and the superintendent in the calculation, billing and collection of any applicable surcharge. The required assistance includes maintaining and providing, upon request of the board or the superintendent, actual premium history and all payroll and experience information necessary to calculate self-insured employer premiums, as

specified in this subparagraph. Information provided by the self-insured employer is subject to audit by the pool and the superintendent at any time and self-insured employers shall provide to the pool, or its designee, and to the superintendent full and complete access to all books and records relating in any way to the audit. Group self-insurance administrators shall give prompt notice to the superintendent of any changes in group membership.

(ii) Information provided by self-insured employers to the board pursuant to this paragraph is confidential. The board shall protect the confidentiality of all self-insured employer information in its possession, whether the information is obtained directly from the self-insured employer or from the superintendent or a group administrator. All information relating to a self-insured employer provided pursuant to this paragraph and in the possession of the board or superintendent continues to be confidential until that information is destroyed.

(iii) A self-insurance group may act as the collection agent for its members. Any group so electing shall notify the board. The board shall bill the group on a consolidated basis. The group shall remit its entire quarterly payment to the board within 30 days after receiving the invoice, whether or not any members remain in default and notify the board and the superintendent of any delinquency.

(iv) Each self-insured employer shall make provisions for possible surcharges in the normal course of operations and pay the full amount of any surcharge installment within 30 days after receiving an invoice from the board or the self-insured employer's self-insurance group. Late payments are subject to interest at the rate of 10% per annum.

(v) The failure of any self-insured employer or self-insurance group to comply with its duties under this paragraph constitutes grounds for suspension, revocation, termination of the option to self-insure, expulsion from a self-insurance group or other appropriate sanctions authorized under section 12-A, in addition to all procedures for the collection of past-due accounts otherwise available by law to the board or the governing body of the self-insurance group.

(f) The superintendent has the following responsibilities with respect to the surcharge process.

(i) The superintendent shall furnish to the board, on a monthly basis, a list of all self-insurance plan approvals, renewals and anniversaries that have occurred since the last report or for any other reason were not included in any previous report, including all approvals, terminations and membership changes for group self-insurers. For each employer listed, the superintendent shall provide all available information necessary for the board's imputed calculations under this paragraph, including: the date the new plan year began; the self-insurance group, if any, to which the self-insured employer belongs; the dates of coverage under each policy issued or renewed in policy years 1988 to 1992; the rating information

for the current plan year, including estimated payroll by classification, premium rate for each classification, experience modification and other applicable rating adjustments; information relating to changes of ownership or control, changes of operations, changes of name or organizational structure; and other information necessary to determine successorship.

(ii) The superintendent shall supplement promptly the initial report as necessary, including any revision to the self-insured employer's rating information on audit, any other additions or corrections to incomplete or inaccurate information provided in the initial report and the length of the plan year, if shorter than 12 months.

(g) A successor self-insured employer is subject to surcharge on the same basis as the predecessor employer would be if still actively doing business and self-insured. If a self-insured employer is the successor to more than one employer, then the successor employer's self-insured employer adjustment is the sum of each predecessor employer's self-insured employer adjustment multiplied by the ratio of the employer's surchargeable premium for the 12-month period immediately preceding the succession transaction to the combined surchargeable premium of all predecessor employers for that 12-month period.

(i) If one or more of the predecessor employers was insured at the time of the succession transaction, its self-insured employer adjustment is calculated pursuant to division (c), (h) or (i) as if it had become self-insured at the time of the succession transaction.

(ii) If business operations that were covered under a single workers' compensation policy or certificate of self-insurance authority are subsequently separately owned by virtue of any succession transaction, dissolution, reincorporation or other transaction or series of transactions, for purposes of this subparagraph each business is treated as a distinct employer, subject to surcharge as either an insured employer or a self-insured employer.

(iii) If substantial changes in operations during the 12-month period immediately preceding the succession transaction make the 12-month surchargeable premium an inappropriate measure of a predecessor employer's workers' compensation exposure prior to the transaction, the board may adopt procedures for calculating an annualized premium in a manner consistent with the intent of this subparagraph.

(h) A self-insured employer that secured its obligation to provide workers' compensation benefits under the Workers' Compensation Act through a self-insurance program approved by the superintendent for the entirety of that self-insured employer's policy years 1988 to 1992, in which the self-insured employer actually had an obligation to secure benefits under the Workers' Compensation Act is not subject to the surcharge.

(i) Except for any successor self-insured employer, self-insured employers that commence operations in the State on or after July 1, 1995 are subject to surcharge under this subparagraph on the same basis as self-insured employers that secured compensation under the Workers' Compensation Act by the purchase of an insurance policy throughout the entire fresh start period.

(3) An employer may, as specified in this subparagraph, prepay all of its surcharges for a period of 10 consecutive policy years or plan years. The 10-year period starts with the employer's first renewal date or plan year following July 1, 1995. Within 30 days after the inception of the first plan year or first policy renewal date following July 1, 1995, if the employer intends to exercise this option, the employer must file with the pool written notice electing to make a lump-sum payment of surcharges and shall include with the notice the employer's full lump-sum payment. If the election is not made within 30 days after the first day of the first plan year or policy year following July 1, 1995, the option expires and is no longer available. The pool shall implement such procedures for administering this option as the board determines necessary. An employer that elects this option shall reimburse the pool for its expenses of administering this option for that employer, including the cost of individually allocating those costs to individual employers, in accordance with billing procedures developed and implemented by the board. This subparagraph does not eliminate or limit the employer's liability to pay adjusted surcharges or supplemental surcharges pursuant to paragraph E or section 2394.

For purposes of this subparagraph, "lump-sum payment" is the surcharge for the first year multiplied by 10 and discounted to net present value using:

(a) A 5% discount rate;

(b) The first day of the first plan year or policy year starting on or after July 1, 1995; and

(c) An assumption that the surcharge for each of the 10 plan years or policy years would have been paid on the first day of each subsequent plan year or policy year.

Report A

Amy ROFS

L.D. 1805

Date: 4/2/12 Report A (Filing No. H-882)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE

HOUSE OF REPRESENTATIVES

125TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1331, L.D. 1805, Bill, "An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning a Public Records Exception for Proposed Legislation, Reports and Working Papers of the Governor"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'**Sec. 1. 1 MRSA §402, sub-§1-B** is enacted to read:

1-B. Internal staff of the Governor. "Internal staff of the Governor" means the Governor's chief of staff, legal counsel, director of policy and employees under their direct supervision. "Internal staff of the Governor" does not include any other person employed in any other executive agency, including those designated by state law as housed in or transferred to the Office of the Governor. This subsection is repealed December 31, 2013.

Sec. 2. 1 MRSA §402, sub-§3, ¶C-2 is enacted to read:

C-2. Records relating to the deliberative process of the Governor, until:

(1) The records are made available to any person or agency outside the internal staff of the Governor;

(2) The records are publicly distributed in accordance with legislative rules;

(3) Adjournment of the session of the Legislature for which the records were prepared occurs; or

(4) Six months from the creation of the records has passed.

This paragraph is repealed December 31, 2013;

Sec. 3. 1 MRSA §402, sub-§5 is enacted to read:

5. Records relating to the deliberative process of the Governor. "Records relating to the deliberative process of the Governor" means all records containing

predecisional advice, opinions, deliberations or recommendations created by the Governor or the internal staff of the Governor, maintained within the exclusive custody and control of the Governor or the internal staff of the Governor and in which the subject matter of the decision or policy under consideration requires legislative action or records concerning budgeting proposals or requests. This subsection is repealed December 31, 2013.'

SUMMARY

This amendment is the majority report of the Joint Standing Committee on Judiciary. It replaces the bill. It provides a temporary public records exception for records relating to the deliberative process of the Governor for legislative proposals and budgeting proposals and requests.

"Records relating to the deliberative process of the Governor" is defined to mean all records containing predecisional advice, opinions, deliberations or recommendations created by the Governor or the internal staff of the Governor and maintained within the exclusive custody and control of the Governor or the internal staff of the Governor. The internal staff of the Governor consists of the chief of staff, legal counsel, director of policy and employees under their direct supervision. The records become public when the first of the following occurs:

1. The records are made available to any person or agency outside the internal staff of the Governor;

2. The records are publicly distributed in accordance with legislative rules;

3. Adjournment of the Legislature for which the records were prepared occurs; or

4. Six months from the creation of the records has passed.

This amendment provides that the public records exception for the records relating to the deliberative process of the Governor is repealed December 31, 2013.

Report C

ROFS

L.D. 1805

Date: 4/2/12 Report C (Filing No. H-883)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE

HOUSE OF REPRESENTATIVES

125TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 1331, L.D. 1805, Bill, "An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning a Public Records Exception for Proposed Legislation, Reports and Working Papers of the Governor"

Amend the bill by striking out the title and substituting the following:

'An Act Concerning the Public Records Exception for Legislative Working Papers'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'**Sec. 1. 1 MRSA §402, sub-§3, ¶C,** as amended by PL 1991, c. 773, §2, is repealed.

Sec. 2. 4 MRSA §1701, sub-§7, as enacted by PL 1995, c. 451, §1, is amended to read:

7. Meeting; quorum; concurrence. The Executive Director of the Legislative Council shall call the first meeting of the commission no later than 5 days after the appointments are made. For all subsequent meetings, the commission shall meet, either in person or by teleconference, on the call of the chair or on the request of at least 2 members. The presence of at least 2 members is required to conduct a meeting. The concurrence of at least 2 members is required for any formal action taken by the commission. ~~The working papers, draft reports and other papers of the commission in the possession of a legislative employee are excepted from the definition of public records in accordance with Title 1, section 402, subsection 3, paragraph C.~~

Sec. 3. Appropriations and allocations. The following appropriations and allocations are made.

LEGISLATURE

Legislature 0081

Initiative: Provides funds for one additional clerical position to handle the projected increase in the number of requests for information resulting from the repeal of confidentiality for certain legislative records.

GENERAL FUND	2011-12	2012-13
POSITIONS - LEGISLATIVE COUNT	0.000	1.000
Personal Services	$0	$44,239
All Other	$0	$1,500
GENERAL FUND TOTAL	$0	$45,739

SUMMARY

This amendment is a minority report of the Joint Standing Committee on Judiciary.

This amendment replaces the bill. It repeals the public records exception that applies to working papers and other records of Legislators. Its also adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)

Revised: 03/22/12 mac

125th MAINE LEGISLATURE

LD 1805 **LR 2687(03)**

An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning a Public Records Exception for Proposed Legislation, Reports and Working Papers of the Governor

Fiscal Note for Bill as Amended by Committee Amendment "B" (H-883)
Committee: Judiciary
Fiscal Note Required: Yes

Fiscal Note

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
Net Cost (Savings)				
General Fund	$0	$45,739	$63,434	$66,531
Appropriations/Allocations				
General Fund	$0	$45,739	$63,434	$66,531

Fiscal Detail and Notes

The Legislature will incur additional costs and require additional clerical staff to respond to requests for certain legislative documents. The bill includes an appropriation of $45,739 in fiscal year 2012-13 for one additional clerical position and related All Other expenses to handle the increased workload.

L.D. 1805

Date: 4-10-12 (Filing No. S-544)

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

125TH LEGISLATURE

SECOND REGULAR SESSION

SENATE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to H.P. 1331, L.D. 1805, Bill, "An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning a Public Records Exception for Proposed Legislation, Reports and Working Papers of the Governor"

Amend the amendment in section 1 in subsection 1-B by striking out all of the last underlined sentence (page 1, lines 20 and 21 in amendment)

Amend the amendment in section 2 in paragraph C-2 by striking out all of the last 2 lines (page 1, lines 29 and 30 in amendment) and inserting the following:

'(4) Six months from the creation of the records has passed;'

Amend the amendment in section 3 in subsection 5 by striking out all of the last underlined sentence (page 2, lines 5 and 6 in amendment)

Amend the amendment by adding after section 3 the following:

'**Sec. 4. Effective date.** This Act takes effect January 1, 2015.'

SUMMARY

This amendment provides an effective date of January 1, 2015 and removes repealing provisions inconsistent with that change.

SPONSORED BY:

(Senator HASTINGS)

COUNTY: Oxford

SENATE AMENDMENT

L.D. 1805

Date: 4-5-12 (Filing No. S-531)

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

125TH LEGISLATURE

SECOND REGULAR SESSION

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1331, L.D. 1805, Bill, "An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning a Public Records Exception for Proposed Legislation, Reports and Working Papers of the Governor"

Amend the amendment by inserting after the title the following:

'Amend the bill by striking out the title and substituting the following:

'An Act Concerning the Public Records Exception for Gubernatorial and Legislative Working Papers' '

Amend the amendment by inserting after section 1 the following:

'Sec. 2. 1 MRSA §402, sub-§3, ¶C, as amended by PL 1991, c. 773, §2, is repealed.'

Amend the amendment by inserting after section 3 the following:

'Sec. 4. 4 MRSA §1701, sub-§7, as enacted by PL 1995, c. 451, §1, is amended to read:

7. Meeting; quorum; concurrence. The Executive Director of the Legislative Council shall call the first meeting of the commission no later than 5 days after the appointments are made. For all subsequent meetings, the commission shall meet, either in person or by teleconference, on the call of the chair or on the request of at least 2 members. The presence of at least 2 members is required to conduct a meeting. The concurrence of at least 2 members is required for any formal action taken by the commission. ~~The working papers, draft reports and other papers of the commission in the possession of a legislative employee are excepted from the definition of public records in accordance with Title 1, section 402, subsection 3, paragraph C.~~

Sec. 5. Appropriations and allocations. The following appropriations and allocations are made.

LEGISLATURE

Legislature 0081

SENATE AMENDMENT

Initiative: Provides funds for one additional clerical position to handle the projected increase in the number of requests for information resulting from the repeal of confidentiality for certain legislative records.

GENERAL FUND	2011-12	2012-13
POSITIONS - LEGISLATIVE COUNT	0.000	1.000
Personal Services	$0	$44,239
All Other	$0	$1,500
GENERAL FUND TOTAL	$0	$45,739

Amend the amendment by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment maintains the provisions of Committee Amendment "A" and repeals the public records exception that applies to legislative working papers and other records. It also adds an appropriations and allocations section.

SPONSORED BY: _____

(Senator DILL)

COUNTY: Cumberland

FISCAL NOTE REQUIRED
(See attached)

SENATE AMENDMENT

Approved: 04/04/12 mac

125th MAINE LEGISLATURE

LD 1805 **LR 2687(05)**

An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning a Public Records Exception for Proposed Legislation, Reports and Working Papers of the Governor

Fiscal Note for Senate Amendment "A" to Committee Amendment "A" S-531
Sponsor: Sen. Dill of Cumberland
Fiscal Note Required: Yes

Fiscal Note

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
Net Cost (Savings)				
General Fund	$0	$45,739	$63,434	$66,531
Appropriations/Allocations				
General Fund	$0	$45,739	$63,434	$66,531

Fiscal Detail and Notes

The Legislature will incur additional costs and require additional clerical staff to respond to requests for certain legislative documents. This amendment includes an appropriation of $45,739 in fiscal year 2012-13 for one additional clerical position and related All Other expenses to handle the increased workload.

APPROVED CHAPTER

MAR 16 '12 511

BY GOVERNOR PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND TWELVE

S.P. 537 - L.D. 1627

An Act Regarding the Filing of Birth, Death and Marriage Data

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

Sec. 1. 19-A MRSA §651, sub-§2, as amended by PL 1997, c. 537, §12 and affected by §62, is further amended to read:

2. Application. The parties wishing to record notice of their intentions of marriage shall submit an application for recording notice of their intentions of marriage. The application must include a signed certification that the information recorded on the application is correct and that the applicant is free to marry according to the laws of this State. The applicant's signature must be acknowledged before an official authorized to take oaths. ~~Applications recording notice of intentions to marry must be open for public inspection in the office of the clerk. When the application is submitted, the applicant shall provide the clerk with the social security numbers of the parties. The application must include a statement that the social security numbers of the parties have been provided to the clerk. The clerk shall record the social security numbers provided by each applicant. The record of the social security numbers is confidential and is not open for public inspection.~~ An application recording notice of intention to marry is not open for public inspection for 50 years from the date of the application except that:

A. The names of the parties for whom intentions to marry are filed and the intended date of marriage are public records and open for public inspection; and

B. A person with a researcher identification card under Title 22, section 2706, subsection 8 is permitted to inspect records and may be issued a noncertified copy of an application.

Sec. 2. 22 MRSA §2702, sub-§3, as amended by PL 2009, c. 601, §6, is further amended to read:

3. Transmittal of certificates to other municipalities. Except as authorized by the state registrar or except if the birth is registered or will be registered on the electronic birth registration system implemented by the state registrar, when the parents of any child born are residents of any other municipality in this State, the clerk of the municipality where that live birth occurred shall transmit a copy of the certificate of the live birth to the clerk of the municipality where the parents reside.

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Sec. 3. 22 MRSA §2703, as amended by PL 2009, c. 601, §8, is further amended to read:

§2703. Birth in unincorporated place

When a birth occurs in an unincorporated place, it must be reported to ~~the~~ a municipal clerk ~~in the municipality that is nearest to the place at which the birth took place~~ as specified by the state registrar and must be recorded, or registered in the electronic birth registration system, by the municipal clerk to whom the report is made. All such reports and records must be ~~made and recorded and returned~~ forwarded to the state registrar.

Sec. 4. 22 MRSA §2704, as amended by PL 2009, c. 601, §9, is further amended to read:

§2704. Registration of births and deaths at Togus

Certificates of live births, deaths and fetal deaths occurring at the ~~United States Department of Veterans Affairs at~~ federal facility known as Togus must be filed directly with the state registrar. The state registrar shall forward copies of all such certificates of live birth, death and fetal death to the clerk of the municipality where the parents of the child reside.

Sec. 5. 22 MRSA §2706, sub-§8, as amended by PL 2011, c. 58, §1, is further amended to read:

8. Genealogical research. Custodians of certificates and records of birth, marriage and death, including applications regarding notice of intentions to marry, shall permit inspection of records by and issue noncertified copies to researchers engaged in genealogical research who hold researcher identification cards, as specified by rule adopted by the department. The department shall adopt rules to implement this subsection. Rules adopted by the department pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

Sec. 6. 22 MRSA §2763, first ¶ is amended to read:

Whoever assumes the custody of a child of unknown parentage shall immediately report to the ~~local town or city clerk~~ Office of Data, Research and Vital Statistics in writing:

Sec. 7. 22 MRSA §2764, sub-§§1 and 2 are amended to read:

1. Certificate of live birth. A certificate of live birth on the prescribed form ~~shall~~ must be filed with the ~~clerk of the municipality where birth occurred~~ Office of Data, Research and Vital Statistics if the date of filing is more than 7 days but not more than ~~7 years~~ one year after the date of birth. The state registrar may prescribe the evidence of the facts of birth to be presented in the event none of the persons specified in section 2761 are available to sign the certificate.

2. Delayed registration of birth. When the birth occurred more than ~~7 years~~ one year prior to the date of filing, it ~~shall~~ must be registered on a form entitled "Delayed Registration of Birth." The form ~~shall~~ must provide for the following information and such other data as may be required by the department:

A. A statement by the applicant including the name and sex of the person whose birth is to be registered, the place and date of birth, the name and birthplace of the father~~,~~ and the maiden name and birthplace of the mother;

B. The signature of the registrant, or a parent or guardian if the registrant is under 15 years of age or is mentally incompetent;

C. The signature of the registrant ~~shall~~ must be acknowledged before an official authorized to take oaths;

D. A description of each document submitted in support of the delayed birth registration; and

E. The date of filing.

Sec. 8. 22 MRSA §2764, sub-§3, ¶A is amended to read:

A. If the birth occurred more than ~~7~~ one year but less than 15 years prior to the date of filing, the facts of birth stated by the applicant ~~shall~~ must be supported by at least 2 documents, only one of which may be an affidavit of personal knowledge; or

Sec. 9. 22 MRSA §2764, sub-§5 is amended to read:

5. Attested copy to municipality. After the delayed birth registration has been accepted, the state registrar shall forward ~~a certified~~ an attested copy to the clerk of the municipality where the birth occurred or, in case of a birth in an unincorporated place, to the municipal clerk specified by the state registrar.

APPROVED CHAPTER

STATE OF MAINE APR 12 '12 618

BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD

TWO THOUSAND AND TWELVE

H.P. 844 - L.D. 1138

An Act To Amend the Maine Tree Growth Tax Law and the Open Space Tax Law

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 36 MRSA §573, sub-§6-A is enacted to read:

6-A. Residential structure. "Residential structure" means a building used for human habitation as a seasonal or year-round residence. It does not include structures that are ancillary to the residential structure, such as a garage or storage shed.

Sec. 2. 36 MRSA §574-B, as amended by PL 2009, c. 434, §15, is further amended to read:

§574-B. Applicability

An owner of a parcel containing forest land may apply at the landowner's election by filing with the assessor the schedule provided for in section 579, except that this subchapter does not apply to any parcel containing less than 10 acres of forest land. For purposes of this subchapter, a parcel is deemed to include a unit of real estate, notwithstanding that it is divided by a road, way, railroad or pipeline, or by a municipal or county line. The election to apply requires the written consent of all owners of an interest in a parcel except for the State. For applications submitted on or after August 1, 2012, the size of the exclusion from classification under this subchapter for each structure located on the parcel and for each residential structure located on the parcel in shoreland areas is determined pursuant to section 574-C.

A parcel of land used primarily for growth of trees to be harvested for commercial use ~~shall be~~ is taxed according to this subchapter, ~~provided that~~ as long as the landowner complies with the following requirements:

2-6

1. Forest management and harvest plan. A forest management and harvest plan must be prepared for each parcel and updated every 10 years. The landowner shall file a sworn statement with the municipal assessor for a parcel in a municipality or with the State Tax Assessor for a parcel in the unorganized territory that a forest management and harvest plan has been prepared for the parcel;

2. Evidence of compliance with plan. The landowner must comply with the plan developed under subsection 1, and must submit, every 10 years to the municipal assessor in a municipality or the State Tax Assessor for parcels in the unorganized territory, a statement from a licensed professional forester that the landowner is managing the parcel according to schedules in the plan required under subsection 1; ~~and~~

3. Transfer of ownership. When land taxed under this subchapter is transferred to a new owner, within one year of the date of transfer, the new landowner must file with the municipal assessor or the State Tax Assessor for land in the unorganized territory one of the following:

A. A sworn statement indicating that a new forest management and harvest plan has been prepared; or

B. A statement from a licensed professional forester that the land is being managed in accordance with the plan prepared for the previous landowner.

The new landowner may not harvest or authorize the harvest of forest products for commercial use until a statement described in paragraph A or B is filed with the assessor. A person owning timber rights on land taxed under this subchapter may not harvest or authorize the harvest of forest products for commercial use until a statement described in paragraph A or B is filed with the assessor.

Parcels of land subject to section 573, subsection 3, paragraph B or C are exempt from the requirements under this ~~section~~ subsection.

For the purposes of this subsection, "transferred to a new owner" means the transfer of the controlling interest in the fee ownership of the land or the controlling interest in the timber rights on the land~~.~~; and

4. Attestation. Beginning August 1, 2012, when a landowner is required to provide to the assessor evidence that a forest management and harvest plan has been prepared for the parcel or updated pursuant to subsection 1, or when a landowner is required to provide evidence of compliance pursuant to subsection 2, the landowner must provide an attestation that the landowner's primary use for the forest land classified pursuant to this subchapter is to grow trees to be harvested for commercial use or that the forest land is land described in section 573, subsection 3, paragraphs A, B, C or E. The existence of multiple uses on an enrolled parcel does not render it inapplicable for tax treatment under this subchapter, as long as the enrolled parcel remains primarily used for the growth of trees to be harvested for commercial use.

Sec. 3. 36 MRSA §574-C is enacted to read:

§574-C. Reduction of parcels with structures; shoreland areas

If a parcel of land for which an owner seeks classification under this subchapter on or after August 1, 2012 contains a structure for which a minimum lot size is required under state law or by municipal ordinance, the owner in the schedule under section 579 shall apply the following reduction to the land to be valued under this subchapter.

1. Structures. For each structure located on the parcel for which a minimum lot size is required under state law or by municipal ordinance, the owner in the schedule under section 579 shall exclude from the forest land subject to valuation under this subchapter the area of land in the parcel containing the structure or structures, which may not be less than 1/2 acre.

2. Shoreland areas. For each residential structure located within a shoreland area, as identified in Title 38, section 435, the owner in the schedule under section 579 shall exclude from the forest land subject to valuation under this subchapter the area of land in the parcel containing the structure or structures, which may not be less than 1/2 acre, and the excluded parcel must include 100 feet of shoreland frontage or the minimum shoreland frontage required by the applicable minimum requirements of the zoning ordinance for the area in which the land is located, whichever is larger. If the parcel has less than 100 feet of shoreland frontage, the entire shoreland frontage must be excluded. This subsection does not apply to a structure that is used principally for commercial activities related to forest products that have commercial value as long as any residential use of the structure is nonrecreational, temporary in duration and purely incidental to the commercial use.

Sec. 4. 36 MRSA §581, sub-§1-A, as enacted by PL 2009, c. 577, §2, is amended to read:

1-A. Notice of compliance. No earlier than 185 days prior to a deadline established by section 574-B, if the landowner has not yet complied with the requirements of that section, the assessor must provide the landowner with written notice by certified mail informing ~~the landowner that failure to comply will result in the withdrawal of the property from taxation under this subchapter. The notice, at a minimum, must inform~~ the landowner of the statutory requirements that need to be met to comply with section 574-B and the date of the deadline for compliance ~~and that the consequences of withdrawal could include the assessment of substantial financial penalties against the owner~~ or by which the parcel may be transferred to open space classification pursuant to subchapter 10. The notice must also state that if the owner fails to meet the deadline for complying with section 574-B or transferring the parcel to open space classification, a supplemental assessment of $500 will be assessed and that continued noncompliance will lead to a subsequent supplemental assessment of $500. If the notice is issued less than 120 days before the deadline, the owner has 120 days from the date of the notice to provide the assessor with the documentation to achieve compliance with section 574-B or transfer the parcel to open space classification, and the notice must specify the date by which the owner must comply.

~~At the expiration of the deadline for compliance with section 574-B or 120 days from the date of the notice, whichever is later, if the landowner has failed to meet the requirements~~

~~of section 574-B, the assessor must withdraw the parcel from taxation under this subchapter and impose a withdrawal penalty under subsection 3.~~

If the landowner fails to provide the assessor with the documentation to achieve compliance with section 574-B or transfer the parcel to open space classification pursuant to subchapter 10 by the deadline specified in the notice, the assessor shall impose a $500 penalty to be assessed and collected as a supplemental assessment in accordance with section 713-B. The assessor shall send notification of the supplemental assessment by certified mail and notify the landowner that, no later than 6 months from the date of the 2nd notice, the landowner must comply with the requirements of section 574-B or transfer the parcel to open space classification pursuant to subchapter 10 and that failure to comply will result in an additional supplemental assessment of $500 and the landowner will have an additional 6-month period in which to comply with these requirements before the withdrawal of the parcel and the assessment of substantial financial penalties against the landowner.

At the expiration of 6 months, if the landowner has not complied with section 574-B or transferred the parcel to open space classification under subchapter 10, the assessor shall assess an additional $500 supplemental assessment. The assessor shall send notification of the 2nd supplemental assessment by certified mail and notify the landowner that, no later than 6 months from the date of the notice, the landowner must comply with the requirements of section 574-B or transfer the parcel to open space classification pursuant to subchapter 10 or the land will be withdrawn from the tree growth tax program.

If the landowner has not complied within 6 months from the date of the 2nd supplemental assessment, the assessor shall remove the parcel from taxation under this subchapter and assess a penalty for the parcel's withdrawal pursuant to subsection 3.

This subsection does not limit the assessor from issuing other notices or compliance reminders to property owners at any time in addition to the notice required by this subsection.

Sec. 5. 36 MRSA §1102, sub-§§4-A and 4-B are enacted to read:

4-A. Forest management and harvest plan. "Forest management and harvest plan" means a written document that outlines activities to regenerate, improve and harvest a standing crop of timber. A plan must include the location of water bodies and wildlife habitat as identified by the Department of Inland Fisheries and Wildlife. A plan may include, but is not limited to, schedules and recommendations for timber stand improvement and harvesting plans and recommendations for regeneration activities. A plan must be prepared by a licensed professional forester or a landowner and be reviewed and certified by a licensed professional forester as consistent with sound silvicultural practices.

4-B. Forested land. "Forested land" means land that is used in the growth of trees but does not include ledge, marsh, open swamp, bog, water and similar areas that are unsuitable for growing trees.

Sec. 6. 36 MRSA §1106-A, sub-§2, ¶E is enacted to read:

E. Managed forest open space land is eligible for the reduction set in paragraphs A, B and D and an additional 10%.

Sec. 7. 36 MRSA §1106-A, sub-§3, as amended by PL 2003, c. 414, Pt. B, §50 and affected by c. 614, §9, is further amended to read:

3. Definition of land eligible for additional percentage reduction. The following categories of open space land are eligible for the additional percentage reduction set forth in subsection 2, paragraphs B, C ~~and~~, D and E.

A. Permanently protected open space is an area of open space land that is eligible for an additional cumulative percentage reduction in valuation because that area is subject to restrictions prohibiting building development under a perpetual conservation easement pursuant to Title 33, chapter 7, subchapter ~~VIII-A~~ 8-A or as an open space preserve owned and operated by a nonprofit entity in accordance with section 1109, subsection 3, paragraph H.

B. Forever wild open space is an area of open space land that is eligible for an additional cumulative percentage reduction in valuation because it is permanently protected and subject to restrictions or committed to uses by a nonprofit entity in accordance with section 1109, subsection 3, paragraph H that ensure that in the future the natural resources on that protected property will remain substantially unaltered, except for:

(1) Fishing or hunting;

(2) Harvesting shellfish in the intertidal zone;

(3) Prevention of the spread of fires or disease; or

(4) Providing opportunities for low-impact outdoor recreation, nature observation and study.

C. Public access open space is an area of open space land, whether ordinary, permanently protected or forever wild, that is eligible for an additional cumulative percentage reduction in valuation because public access is by reasonable means and the applicant agrees to refrain from taking action to discourage or prohibit daytime, nonmotorized and nondestructive public use. The applicant may permit, but is not obligated to permit as a condition of qualification for public access status, hunting, snowmobiling, overnight use or other more intensive outdoor recreational uses. The applicant, without disqualifying land from status as public access open space, may impose temporary or localized public access restrictions to:

(1) Protect active habitat of endangered species listed under Title 12, chapter 925, subchapter 3;

(2) Prevent destruction or harm to fragile protected natural resources under Title 38, chapter 3, subchapter 1, article 5-A; or

(3) Protect the recreational user from any hazardous area.

D. Managed forest open space land is an area of open space land whether ordinary, permanently protected pursuant to paragraph A or public access pursuant to paragraph C containing at least 10 acres of forested land that is eligible for an

additional cumulative percentage reduction in valuation because the applicant has provided proof of a forest management and harvest plan. A forest management and harvest plan must be prepared for each parcel of managed forest open space land and updated every 10 years. The landowner must comply with the forest management and harvest plan and must submit every 10 years to the municipal assessor for parcels in a municipality or the State Tax Assessor for parcels in the unorganized territory a statement from a licensed professional forester that the landowner is managing the parcel according to the forest management and harvest plan. Failure to comply with the forest management and harvest plan results in the loss of the additional cumulative percentage reduction under this paragraph for 10 years. The assessor or the assessor's duly authorized representative may enter and examine the forested land and may examine any information in the forest management and harvest plan submitted by the owner. A copy of the forest management and harvest plan must be made available to the assessor to review upon request. For the purposes of this paragraph, "to review" means to see or possess a copy of a forest management and harvest plan for a reasonable amount of time to verify that the forest management and harvest plan exists or to facilitate an evaluation as to whether the forest management and harvest plan is appropriate and is being followed. Upon completion of a review, the forest management and harvest plan must be returned to the owner or an agent of the owner. A forest management and harvest plan provided in accordance with this section is confidential and is not a public record as defined in Title 1, section 402, subsection 3.

Sec. 8. 36 MRSA §1112, 3rd ¶, as amended by PL 2011, c. 404, §2, is further amended to read:

A penalty may not be assessed at the time of a change of use from the farmland classification of land subject to taxation under this subchapter to the open space classification of land subject to taxation under this subchapter. A penalty may not be assessed upon the withdrawal of open space land from taxation under this subchapter if the owner applies for the land to be classified as and the land is accepted for classification as timberland under subchapter 2-A. There also is no penalty imposed when land classified as timberland is accepted for classification as open space land. A penalty may not be assessed upon withdrawal of open space land from taxation under this subchapter if the owner applies for the land to be classified as and the land is accepted for classification as farmland under this subchapter. A penalty may not be assessed upon withdrawal of land enrolled under the Maine Tree Growth Tax Law if the owner applies for the land to be classified as and the land is accepted for classification as farmland under this chapter. The recapture penalty for withdrawal from farmland classification within 10 years of a transfer from either open space tax classification or timberland tax classification is the same imposed on withdrawal from the prior tax classification, open space or tree growth. The recapture penalty for withdrawal from farmland classification more than 10 years after such a transfer will be the regular farmland recapture penalty provided for in this section. In the event a penalty is later assessed under subchapter 2-A, the period of time that the land was taxed as farmland or as open space land under this subchapter must be included for purposes of establishing the amount of the penalty. The recapture penalty for withdrawal from open space classification within 10 years of a transfer from tree growth classification occurring on or after August 1, 2012 is the same

that would be imposed if the land were being withdrawn from the tree growth classification. The recapture penalty for withdrawal from open space classification more than 10 years after such a transfer will be the open space recapture penalty provided for in this section.

Sec. 9. Unorganized territory property withdrawn between September 20, 2007 and July 1, 2010. Any property within the unorganized territory that was withdrawn from classification under the Maine Tree Growth Tax Law between September 20, 2007 and July 1, 2010 and returned to classification under the Maine Tree Growth Tax Law pursuant to Public Law 2009, chapter 577, section 3 is for all purposes deemed not to have been withdrawn from the Maine Tree Growth Tax Law classification during that period of time.

APPROVED CHAPTER

APR 12 '12 619

BY GOVERNOR PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND TWELVE

S.P. 459 - L.D. 1470

An Act To Evaluate the Harvesting of Timber on Land Taxed under the Maine Tree Growth Tax Law

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

Sec. 1. 36 MRSA §575-A, as enacted by PL 2001, c. 603, §5, is repealed and the following enacted in its place:

§575-A. Determining compliance with forest management and harvest plan

1. Assistance to assessor. Upon request of a municipal assessor or the State Tax Assessor and in accordance with section 579, the Director of the Bureau of Forestry within the Department of Conservation may provide assistance in evaluating a forest management and harvest plan to determine whether the plan meets the definition of a forest management and harvest plan in section 573, subsection 3-A. Upon request of a municipal assessor or the State Tax Assessor, the Director of the Bureau of Forestry may provide assistance in determining whether a harvest or other silvicultural activity conducted on land enrolled under this subchapter complies with the forest management and harvest plan prepared for that parcel of land. When assistance is requested under this section and section 579, the Director of the Bureau of Forestry or the director's designee may enter and examine forest land for the purpose of determining compliance with the forest management and harvest plan.

2. Random sampling and report. The Director of the Bureau of Forestry within the Department of Conservation is authorized to conduct periodic random sampling of land enrolled under this subchapter to identify any differences in compliance with forest management and harvest plans based on location or type of parcel and to assess overall compliance with the requirements of this subchapter. For the purposes of this subsection, the Director of the Bureau of Forestry or the director's designee may:

A. With appropriate notification to the landowner, enter and examine forest land for the purpose of determining compliance with the forest management and harvest plan pursuant to section 574-B;

B. Request and review a forest management and harvest plan required under section 574-B, which must be provided by a landowner or the landowner's agent upon request; and

C. Request and review an expired forest management and harvest plan, which must be provided by a landowner or the landowner's agent upon request, if the expired plan is in the possession of the landowner or the landowner's agent.

A forest management and harvest plan provided to the Director of the Bureau of Forestry or the director's designee under this subsection is confidential. Information collected pursuant to this subsection is confidential and is not a public record as defined in Title 1, section 402, subsection 3, except that the director shall publish at least one summary report, which may not reveal the activities of any person and that is available as a public record. This subsection is repealed on December 31, 2014.

Sec. 2. Report. The Director of the Bureau of Forestry within the Department of Conservation shall provide a report to the joint standing committee of the Legislature having jurisdiction over taxation matters no later than March 1, 2014. The report must include: findings from the periodic random sampling of land enrolled under the Maine Tree Growth Tax Law performed pursuant to the Maine Revised Statutes, Title 36, section 575-A, subsection 2, including any findings related to any differences in compliance issues based on the location of parcels, such as coastal and waterfront properties as compared to other parcels; a summary of data concerning violations and enforcement activities; an assessment of the effectiveness of the Maine Tree Growth Tax Law in promoting the harvesting of fiber for commercial purposes and its impact on the fiber industry; and recommendations to address any problems identified and to ensure that parcels enrolled under the Maine Tree Growth Tax Law meet the requirements of the law.

Passed by legislature 5/16/12

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND TWELVE

H.P. 702 - L.D. 958

Resolve, To Authorize the Legislature To Contract for an Independent Review To Evaluate the Essential Programs and Services Funding Act

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

Whereas, since enactment of the Essential Programs and Services Funding Act established under the Maine Revised Statutes, Title 20-A, chapter 606-B, the Legislature has debated both incremental and comprehensive funding reform proposals to remedy perceived flaws in the school funding formula and the state subsidy distribution mechanism; and

Whereas, in order to obtain information in a timely manner to make informed policy decisions, the Legislature should provide for an independent review of education finance policies and practices associated with the Essential Programs and Services Funding Act; and

Whereas, the Legislature should promptly contract with a qualified research entity to conduct an objective evaluation of the Essential Programs and Services Funding Act as it relates to the best practices of other states' school funding systems that are considered to be fair and equitable; and

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

Sec. 1. Legislature to contract for independent review of the essential programs and services model. Resolved: That the Legislature, through the Joint Standing Committee on Education and Cultural Affairs, may contract with a qualified research entity to conduct pursuant to sections 5 and 6 an independent review of the Essential Programs and Services Funding Act established under the Maine Revised Statutes, Title 20-A, chapter 606-B; and be it further

Sec. 2. Assistance; request for proposals process. Resolved: That, at the direction of the Joint Standing Committee on Education and Cultural Affairs, referred to

in this resolve as "the joint standing committee," the Office of Program Evaluation and Government Accountability, referred to in this resolve as "the office," shall develop and administer a request for proposals process to permit the Legislature, through the joint standing committee, to award a contract pursuant to section 1. The office, with the advice and assistance of the Independent Review Advisory Committee, established under section 4 and referred to in this resolve as "the advisory committee," and in consultation with and with the approval of the joint standing committee, shall:

1. Develop and administer a request for proposals process in accordance with section 3;

2. Administer the contract entered into pursuant to section 1, including monitoring the research entity's performance in meeting deadlines, providing deliverables pursuant to sections 5 and 6 and complying with other terms of the contract; and

3. Within available resources, provide other assistance to the joint standing committee relating to the contract and the purposes of this resolve; and be it further

Sec. 3. Request for proposals; standards and selection process. Resolved: That the office, with the advice and assistance of the advisory committee, and in consultation with and with the approval of the joint standing committee, shall administer a request for proposals process in accordance with this section.

1. The qualifications of a research entity providing proposals must include, but are not limited to, the financial, technical and operational capacity of the entity to conduct state-level education policy research and fiscal analysis, as demonstrated by the entity's professional experience and expertise.

2. With the approval of the joint standing committee, the office shall issue a request for proposals and publish notice of the request on the Legislature's publicly accessible website and through advertisements in 2 or more public newspapers circulated wholly or in part in the State and may provide any further notice of the request to any other media or entities, as approved by the joint standing committee. The notice must provide that the office will accept, for 30 days after the first date of publication, proposals from qualified research entities that meet the standards approved by the joint standing committee.

3. After proposals have been received and the period for accepting proposals has expired, the office, with the advice and counsel of the advisory committee, shall evaluate the proposals and present a ranking of or recommendations regarding the proposals to the joint standing committee. The joint standing committee shall review the recommendations and choose the proposal it wishes to accept. The joint standing committee shall notify the Executive Director of the Legislative Council of its selection of a proposal. The executive director shall execute a contract with the selected research entity on behalf of the Legislature.

4. Notwithstanding the Maine Revised Statutes, Title 1, section 402, except for the name and mailing address of a research entity that submits a proposal, the proposal and all other materials prepared, used or submitted in connection with the proposal are

confidential and are not subject to public review until the period for accepting proposals has expired; and be it further

Sec. 4. Independent Review Advisory Committee. Resolved: That the Independent Review Advisory Committee is established to advise the office and joint standing committee on matters related to developing a request for proposals and administering the contract entered into pursuant to this resolve. The advisory committee consists of the following members:

1. The Commissioner of Education or the commissioner's designee;

2. The Chair of the State Board of Education or the chair's designee;

3. A Co-director of the Education Research Institute established pursuant to the Maine Revised Statutes, Title 20-A, section 10;

4. The Executive Director of the Maine School Management Association or the executive director's designee; and

5. The Director of the Margaret Chase Smith Policy Center at the University of Maine or the director's designee who is a faculty researcher, research associate or policy fellow at the Margaret Chase Smith Policy Center.

The advisory committee shall elect a chair from among its members. The office shall provide to the members of the joint standing committee notice of the meetings of the office with the advisory committee so that members of the joint standing committee may attend; and be it further

Sec. 5. Scope of the review. Resolved: That the contract entered into pursuant to section 1 must require an objective evaluation of the Essential Programs and Services Funding Act and must require a review of the school funding formula. The evaluation must include, but is not limited to, comparisons between municipalities within this State and between this State and other comparable states and must address the following issues:

1. Whether the school funding formula and the subsidy distribution method in the laws of the State are fair and equitable and how the Essential Programs and Services Funding Act compares to other states' school funding systems that are considered to be fair and equitable;

2. The various ways that school funding systems in other states determine and calculate the costs and components of a comprehensive education system and the advantages and disadvantages of those different approaches;

3. The percentage of the total cost of public education that is provided by the state in other states' school funding systems and how the state share is funded in the other states;

4. The advantages and disadvantages of calculating state aid to school administrative units based on student enrollment count and property valuation;

5. How other states define a municipality's ability to pay for public education and what the arguments are in favor of and against those definitions;

6. The effectiveness of state aid provided by other states' school funding systems to support economically disadvantaged students in local school districts as compared to the support provided to economically disadvantaged students in school administrative units under the laws of the State; and

7. Changes that should be made to the definitions of the cost components and to the funding distribution method in the Essential Programs and Services Funding Act to provide adequate resources for a comprehensive education system and to more accurately determine the percentage of essential programs and services funding levels that each school administrative unit should receive from the State; and be it further

Sec. 6. General requirements of the review. Resolved: That the contract entered into pursuant to section 1 must require:

1. A review of previous studies and available data related to the State's school funding laws; a review of school funding systems in comparable states; an assessment of each of the issues in section 5, including the arguments in favor of and against the provisions of the State's school funding laws; recommended alternatives to the Essential Programs and Services Funding Act; and a review of:

A. The existing studies of the Essential Programs and Services Funding Act, including research that was conducted to develop the State's school funding system and research conducted since the enactment of the Essential Programs and Services Funding Act;

B. The existing school finance data collected by the Department of Education and state and local tax revenue data collected by the Department of Administrative and Financial Services, Bureau of Revenue Services related to the education finance system under the Essential Programs and Services Funding Act; and

C. The education finance systems in comparable states with an emphasis on other states in New England and states committed to education quality, student equity and taxpayer equity; and

2. An in-depth analysis of the recommended alternatives to the Essential Programs and Services Funding Act included in subsection 1 and an evaluation of:

A. The recommended alternatives necessary to provide adequate resources for a comprehensive education system and to more accurately determine the percentage of essential programs and services funding levels that each school administrative unit should receive from the State;

B. The recommended alternatives to the definitions of the cost components and to the funding distribution method in the Essential Programs and Services Funding Act; and

C. The costs and benefits of the recommended alternatives, including comparative analyses and calculations related to education quality, student equity and taxpayer equity.

The Department of Education, the Department of Administrative and Financial Services, Bureau of Revenue Services and the Education Research Institute established pursuant to the Maine Revised Statutes, Title 20-A, section 10 shall provide the qualified research entity selected with access to previous reports on school funding in the State and access to database information necessary to carry out the evaluation.

The contract entered into pursuant to section 1 must require the qualified research entity selected to provide opportunities for input from education stakeholder groups in the State as part of its evaluation; and be it further

Sec. 7. Disqualification. Resolved: That the Education Research Institute established pursuant to the Maine Revised Statutes, Title 20-A, section 10, due to its prior involvement with the development, review and analysis of the essential programs and services funding model, is disqualified from being considered or selected to enter into the contract pursuant to section 1; and be it further

Sec. 8. Preliminary and final reports. Resolved: That the qualified research entity selected to conduct the independent review pursuant to this resolve shall present a preliminary report of the results of the review under section 6, subsection 1 to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs no later than April 1, 2013. The research entity shall present the final report, including the results of the review under section 6, subsection 2, to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs by December 1, 2013. The joint standing committee of the Legislature having jurisdiction over education and cultural affairs may submit a bill relating to the final report to the Second Regular Session of the 126th Legislature; and be it further

Sec. 9. Suspension of contract to review essential programs and services components. Resolved: That, notwithstanding the Maine Revised Statutes, Title 20-A, section 15689-A, subsection 3, for fiscal year 2011-12 and fiscal year 2012-13, the Commissioner of Education may not contract with a statewide education research institute to review certain cost components of the Essential Programs and Services Funding Act in accordance with the schedule established in Title 20-A, section 15686-A; and be it further

Sec. 10. Contract to compile and analyze education data. Resolved: That, notwithstanding the Maine Revised Statutes, Title 20-A, section 15689-A, subsection 6, for fiscal year 2011-12 and fiscal year 2012-13, the Commissioner of Education and the Legislature may contract with a statewide education research institute for the compilation and analysis of education data in accordance with Title 20-A, section 10, except that the contract for these 2 fiscal years may not exceed the balance of funds remaining after funds allocated for this purpose are transferred pursuant to this resolve to the Legislature to fund the contract authorized under section 1; and be it further

Sec. 11. Committee meetings authorized. Resolved: That the joint standing committee may meet up to 4 times to carry out its responsibilities under this resolve; and be it further

Sec. 12. Appropriations and allocations. Resolved: That the following appropriations and allocations are made.

EDUCATION, DEPARTMENT OF

General Purpose Aid for Local Schools 0308

Initiative: Deappropriates funds no longer required for the contract to review the cost components of the Essential Programs and Services Funding Act pursuant to the Maine Revised Statutes, Title 20-A, section 15689-A, subsection 3 and for a portion of the contract with a statewide education policy research institute for the compilation and analysis of education data in accordance with the provisions established pursuant to Title 20-A, section 10.

GENERAL FUND	**2011-12**	**2012-13**
All Other	($150,000)	($300,000)
GENERAL FUND TOTAL	($150,000)	($300,000)

EDUCATION, DEPARTMENT OF DEPARTMENT TOTALS	**2011-12**	**2012-13**
GENERAL FUND	**($150,000)**	**($300,000)**
DEPARTMENT TOTAL - ALL FUNDS	**($150,000)**	**($300,000)**

LEGISLATURE

Legislature 0081

Initiative: Provides funds for a contract to conduct an independent review of the school funding formula and related state subsidy distribution method in the Essential Programs and Services Funding Act. Funds appropriated for this purpose may not lapse but must be carried forward to be used to complete the independent review authorized by this resolve.

GENERAL FUND	**2011-12**	**2012-13**
All Other	$150,000	$300,000
GENERAL FUND TOTAL	$150,000	$300,000

LEGISLATURE DEPARTMENT TOTALS	2011-12	2012-13
GENERAL FUND	$150,000	$300,000
DEPARTMENT TOTAL - ALL FUNDS	$150,000	$300,000

SECTION TOTALS	2011-12	2012-13
GENERAL FUND	$0	$0
SECTION TOTAL - ALL FUNDS	$0	$0

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

SENATE

EARLE L. MCCORMICK, District 21, Chair
NICHI S. FARNHAM, District 32
MARGARET M. CRAVEN, District 16

JANE ORBETON, Legislative Analyst
ANNA BROOME, Legislative Analyst
LISA M. COTE, Committee Clerk

HOUSE

MEREDITH N. STRANG BURGESS, Cumberland, Chair
LESLIE T. FOSSEL, Alna
RICHARD S. MALABY, Hancock
BETH A. O'CONNOR, Berwick
DEBORAH J. SANDERSON, Chelsea
HEATHER W. SIROCKI, Scarborough
MARK W. EVES, North Berwick
MATTHEW J. PETERSON, Rumford
LINDA F. SANBORN, Gorham
PETER C. STUCKEY, Portland

State of Maine
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
COMMITTEE ON HEALTH AND HUMAN SERVICES

January 25, 2012

Senator David R. Hastings, III, Chair
Right to Know Advisory Committee
13 State House Station
Augusta, ME 04333

Re: Questions referred to the Health and Human Services Committee from the work of the Public Records Exceptions Subcommittee

Dear Senator Hastings:

The Health and Human Services Committee has considered three questions referred by the Right to Know Advisory Committee resulting from the work of the Public Records Exceptions Subcommittee. The HHS Committee has voted on all three questions and reports the following:

1. With regard to the Community-Right-to-Know Act, Title 22, sections 1696-D and 1696-F, the HHS Committee defers to the expertise and broader knowledge of the Environment and Natural Resources Committee.

2. With regard to the Maine Managed Care Insurance Plan, Title 22, section 3188, and the Community Health Access Program, Title 22, section 3192, the HHS Committee recommends that both sections be repealed in their entirety.

3. With regard to the Attorney General maintaining lists of licensed and unlicensed tobacco retailers pursuant to Title 22, section 1555-D, subsection 1, the HHS Committee recommends that subsection 1 be repealed.

Thank you for requesting the recommendations of the HHS Committee.

Sincerely,

Sen. Earle L. McCormick
Senate Chair

Rep. Meredith N. Strang Burgess
House Chair

c: Members, Health and Human Services Committee
Sen. Thomas B. Saviello, Senate Chair, ENR Committee
Rep. James M. Hamper, House Chair, ENR Committee
Peggy Reinsch, OPLA
Colleen McCarthy Reid, OPLA

22 §8754. DIVISION DUTIES

The division has the following duties under this chapter. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

1. Initial review; other action. Upon receipt of a notification or report of a sentinel event, the division shall complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. Upon receipt of a notification or report of a suspected sentinel event the division shall determine whether the event constitutes a sentinel event and complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. The division may conduct on-site reviews of medical records and may retain the services of consultants when necessary to the division.

A. The division may conduct on-site visits to health care facilities to determine compliance with this chapter. [2009, c. 358, §4 (NEW).]

B. Division personnel responsible for sentinel event oversight shall report to the division's licensing section only incidences of immediate jeopardy and each condition of participation in the federal Medicare program related to the immediate jeopardy for which the provider is out of compliance. [2009, c. 358, §4 (NEW).]

[2009, c. 358, §4 (AMD) .]

2. Procedures. The division shall adopt procedures for the reporting, reviewing and handling of information regarding sentinel events. The procedures must provide for electronic submission of notifications and reports.

[2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

3. Confidentiality. Notifications and reports filed pursuant to this chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are confidential and privileged information.

A. Privileged and confidential information under this subsection is not:

(1) Subject to public access under Title 1, chapter 13, except for data developed from the reports that do not identify or permit identification of the health care facility;

(2) Subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity; or

(3) Admissible as evidence in any civil, criminal, judicial or administrative proceeding. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

B. The transfer of any information to which this chapter applies by a health care facility to the division or to a national organization that accredits health care facilities may not be treated as a waiver of any privilege or protection established under this chapter or other laws of this State. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

C. The division shall take appropriate measures to protect the security of any information to which this chapter applies. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

D. This section may not be construed to limit other privileges that are available under federal law or other laws of this State that provide for greater peer review or confidentiality protections than the peer review and confidentiality protections provided for in this subsection. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

E. For the purposes of this subsection, "privileged and confidential information" does not include:

(1) Any final administrative action;

(2) Information independently received pursuant to a 3rd-party complaint investigation conducted pursuant to department rules; or

(3) Information designated as confidential under rules and laws of this State. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

This subsection does not affect the obligations of the department relating to federal law.

[2009, c. 358, §5 (AMD) .]

4. Report. The division shall submit an annual report by February 1st each year to the Legislature, health care facilities and the public that includes summary data of the number and types of sentinel events of the prior calendar year by type of health care facility, rates of change and other analyses and an outline of areas to be addressed for the upcoming year.

[2009, c. 358, §6 (AMD) .]

SECTION HISTORY
2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2009, c. 358, §§4-6 (AMD).

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 26 – 39-A

Revised 5/29/2012 8:38 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION
1	26	3		Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor
2	26	43		Title 26, section 43, relating to the names of persons, firms and corporations providing information to the Department of Labor, Bureau of Labor Standards
3	26	665	1	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
4	26	685	3	Title 26, section 685, subsection 3, relating to substance abuse testing by an employer
5	26	934		Title 26, section 934, relating to report of the State Board of Arbitration and Conciliation in labor dispute
6	26	939		Title 26, section 939, relating to information disclosed by a party to the State Board of Arbitration and Conciliation
7	26	1082	7	Title 26, section 1082, subsection 7, relating to employers' unemployment compensation records concerning individual information
8	27	121		Title 27, section 121, relating to library records concerning identity of patrons and use of books and materials
9	27	377		Title 27, section 377, relating to the location of a site in possession of a state agency for archeological research
10	28-A	755		Title 28-A, section 755, relating to liquor licensees' business and financial records
11	29-A	152	3	Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles
12	29-A	253		Title 29-A, section 253, relating to motor vehicle records concerning certain nongovernmental vehicles
13	29-A	255	1	Title 29-A, section 255, subsection 1, relating to motor vehicle records when a protection order is in effect
14	29-A	257		Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system
15	29-A	517	4	Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles
16	29-A	1258	7	Title 29-A, section 1258, subsection 7, relating to the competency of a person to operate a motor vehicle
17	29-A	1401	6	Title 29-A, section 1401, subsection 6, relating to driver's license digital images
18	30-A	503	1-A	Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force
19	30-A	503	1	Title 30-A, section 503, subsection 1, relating to county personnel records
20	30-A	2702	1	Title 30-A, section 2702, subsection 1, relating to municipal personnel records
21	30-A	2702	1-A	Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force
22	30-A	4706	1	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities
23	30-A	5242	13	Title 30-A, section 5242, subsection 13, relating to tax increment financing districts
24	32	85	3	Title 32, section 85, subsection 3, relating to criminal history record information for an applicant seeking initial licensure by the Emergency Medical Services Board
25	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee

	TITLE	SECTION	SUB-SECTION	DESCRIPTION
26	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board
27	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to confidential information as part of application for credentialing by Emergency Medical Services Board
28	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 87-B
29	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board
30	32	2105-A	3	Title 32, section 2105-A, subsection 3, relating to information provided by a health care facility to the State Board of Nursing that identify a patient
31	32	2109		Title 32, section 2109, relating to personal contact and health information of nurse applicants and licensees
32	32	2599		Title 32, section 2599, relating to medical staff reviews and hospital reviews – osteopathic physicians
33	32	2600-A		Title 32, section 2600-A, relating to personal contact and health information of osteopathic physician applicants and licensees
34	32	3296		Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees
35	32	3300-A		Title 32, section 3300-A, relating to Board of Licensure in Medicine personal contact and health information about applicants and licensees
36	32	6115	1	Title 32, section 6115, subsection 1, relating to financial information provided to the Director of the Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation: money transmitters
37	32	9418		Title 32, section 9418, relating to applications for private security guard license
38	32	11305	3	Title 32, section 11305, subsection 3, relating to administration of the Maine Commodity Code by the Securities Administrator
39	32	13006		Title 32, section 13006, relating to real estate grievance and professional standards committees hearings
40	32	16607	2	Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act
41	33	1971	4	Title 33, section 1971, subsection 4, relating to information derived from unclaimed property reports
42	34-A	1212		Title 34-A, section 1212, relating to personal information of Department of Corrections employees and contractors
43	34-A	1216	1	Title 34-A, section 1216, subsection 1, relating to orders of commitment, medical and administrative records, applications and reports pertaining to any person receiving services from Department of Corrections
44	34-A	1216	6	Title 34-A, section 1216, subsection 6, relating to documents used to screen or assess clients of the Department of Corrections
45	34-A	5210	4	Title 34-A, section 5210, subsection 4, relating to the State Parole Board report to the Governor
46	34-A	9877	4	Title 34-A, section 9877, subsection 4, relating to the release by the Interstate Commission for Adult Offender Supervision of records that adversely affect personal privacy rights or proprietary interests
47	34-A	9903	8	Title 34-A, section 9903, subsection 8, relating to the release by the Interstate Commission for Juveniles of records that adversely affect personal privacy rights or proprietary interests
48	34-B	1207	1	Title 34-B, section 1207, subsection 1, relating to mental health and mental retardation orders of commitment and medical and administrative records, applications and reports pertaining to any DHHS client

	TITLE	SECTION	SUB-SECTION	DESCRIPTION
49	34-B	1223	10	Title 34-B, section 1223, subsection 10, relating to information about a person with mental retardation or autism accessed by the Maine Developmental Services Oversight and Advisory Board
50	34-B	1931	6	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board
51	34-B	3864	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification
52	34-B	3864	5	Title 34-B, section 3864, subsection 5, relating to mental health involuntary commitment hearings
53	34-B	5005	6	Title 34-B, section 5005, subsection 6, relating to records and accounts related to request for action by Office of Advocacy for person with mental retardation or autism
54	34-B	5475	3	Title 34-B, section 5475, subsection 3, relating to mental retardation judicial certification hearings
55	34-B	5476	6	Title 34-B, section 5476, subsection 6, relating to mental retardation judicial commitment hearings
56	34-B	5605	15	Title 34-B, section 5605, subsection 15, relating to records of persons receiving mental retardation or autism services
57	34-B	7014	1	Title 34-B, section 7014, subsection 1, relating to court proceedings concerning sterilization
58	35-A	114	1	Title 35-A, section 114, subsection 1, relating to utility personnel records, not open to PUC
59	35-A	704	5	Title 35-A, section 704, subsection 5, relating to utility records concerning customer information, Consumer Assistance Division
60	35-A	1311-A		Title 35-A, section 1311-A, relating to Public Utilities Commission protective orders
61	35-A	1311-B	1, 2, 4	Title 35-A, section 1311-B, subsections 1, 2 and 4, relating to public utility technical operations information
62	35-A	1316-A		Title 35-A, section 1316-A, relating to Public Utilities Commission communications concerning utility violations
63	35-A	8703	5	Title 35-A, section 8703, subsection 5, relating to telecommunications relay service communications
64	35-A	9207	1	Title 35-A, section 9207, subsection 1, relating to information about communications service providers
65	36	575-A	2	Title 36, section 575-A, subsection 2, relating to forest management and harvest plan provided to Bureau of Forestry and information collected for compliance assessment for Tree Growth Tax Law
66	36	579		Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans
67	36	581-G	3	Title 12, section 8611, subsection 3, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres
68	36	841	2	Title 36, section 841, subsection 2, relating to property tax abatement application information and proceedings
69	36	1106-A	3	Title 36, section 1106-A, subsection 3, paragraph D, relating to forest management and harvest plan made available for Farm and Open Space Tax Law
70	36	4315	1-A	Title 36, section 4315, subsection 1-A, relating to the transportation of wild blueberries
71	36	4316	4	Title 36, section 4316, subsection 4, relating to wild blueberries audits by Department of Agriculture
72	36	6760		Title 36, section 6760, relating to employment tax increment financing
73	37-B	506		Title 37-B, section 506, relating to Department of Defense, Veterans and Emergency Management, Bureau of Maine Veterans' Services benefits

Existing Public Records Exceptions, Titles 26 – 39-A

Revised 5/29/2012 8:38 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION
74	37-B	708	3	Title 37-B, section 708, subsection 3, relating to documents collected or produced by the Homeland Security Advisory Council
75	37-B	797	7	Title 37-B, section 797, subsection 7, relating to Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency reports of hazardous substance transportation routes
76	38	100-A	1	Title 38, section 100-A, subsection 1, relating to complaints and investigative records concerning vessel pilots
77	38	345-A	4	Title 38, section 345-A, subsection 4, relating to information submitted to the Department of Environmental Protection and Board of Environmental Protection concerning trade secrets
78	38	414	6	Title 38, section 414, subsection 6, relating to records and reports obtained by the Board of Environmental Protection in water pollution control license application procedures
79	38	470-D		Title 38, section 470-D, relating to individual water withdrawal reports
80	38	585-B	6	Title 38, section 585-B, subsection 6, paragraph C, relating to mercury reduction plans for air emission source emitting mercury
81	38	585-C	2	Title 38, section 585-C, subsection 2, relating to the hazardous air pollutant emissions inventory
82	38	1310-B	2	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans
83	38	1610	6-A	Title 38, section 1610, subsection 6-A, paragraph F, relating to annual sales data on the number and type of computer monitors and televisions sold by the manufacturer in this State over the previous 5 years
84	38	1661-A	4	Title 38, section 1661-A, subsection 4, relating to information submitted to the Department of Environmental Protection concerning mercury-added products
85	38	2307-A	1, 5	Title 38, section 2307-A, subsections 1 and 5, relating to information submitted to the Department of Environmental Protection concerning toxics use and hazardous waste reduction (REPEALED 7/1/12)
86	39-A	153	5	Title 39-A, section 153, subsection 5, relating to the Workers' Compensation Board abuse investigation unit
87	39-A	153	9	Title 39-A, section 153, subsection 9, relating to the Workers' Compensation Board audit working papers
88	39-A	355-B	11	Title 39-A, section 355-B, subsection 11, relating to records and proceedings of the Workers' Compensation Supplemental Benefits Oversight Committee concerning individual claims
89	39-A	403	3	Title 39-A, section 403, subsection 3, relating to workers' compensation self-insurers proof of solvency and financial ability to pay
90	39-A	403	15	Title 39-A, section 403, subsection 15, relating to records of workers' compensation self-insurers
91	39-A	409		Title 39-A, section 409, relating to workers' compensation information filed by insurers concerning the assessment for expenses of administering self-insurers' workers' compensation program

APPROVED CHAPTER

JUN 08 '11 264

BY GOVERNOR PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND ELEVEN

H.P. 817 - L.D. 1082

An Act Concerning the Protection of Personal Information in Communications with Elected Officials

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

Sec. 1. 1 MRSA §402, sub-§3, ¶C-1 is enacted to read:

C-1. Information contained in a communication between a constituent and an elected official if the information:

(1) Is of a personal nature, consisting of:

(a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(b) Credit or financial information;

(c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;

(d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or

(e) An individual's social security number; or

(2) Would be confidential if it were in the possession of another public agency or official;

Sec. 2. Right To Know Advisory Committee. The Right To Know Advisory Committee, as established in the Maine Revised Statutes, Title 1, section 411, subsection 1, shall examine the benefit of public disclosure of elected officials' e-mails and other records balanced with the availability of technology and other systems necessary to maintain the records and to provide public access. The Right To Know Advisory Committee's findings and any recommendations must be included in its 2012 annual report pursuant to Title 1, section 411, subsection 10.

4-1

Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Using technology to conduct public proceedings

PART A

Sec. A-1. 1 MRSA § 403-A is enacted to read:

§403-A. Public proceedings through other means of communication

This section governs public proceedings, including executive sessions, during which public or governmental business is discussed or transacted through telephonic, video, electronic or other means of communication.

1. Requirements. A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other means of communication only if the following requirements are met.

A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other means of communication in accordance with this section.

B. Notice of the public proceeding has been given in accordance with section 406.

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406.

D. The physical attendance by each member who is participating from another location is not reasonably practical. The reason that each member's physical attendance is not reasonably practical must be stated in the record of the public proceeding.

E. Each member of the body participating in the public proceeding is able to simultaneously hear each other and speak to each other during the public proceeding. Members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations.

F. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication identifies the persons present in the location from which the member is participating.

4-2

G. All votes taken during the public proceeding are taken by roll call vote.

H. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available.

I. The public proceeding is not a public hearing.

2. Voting. A member of a body who is not physically present and who is participating in the public proceeding through telephonic, video, electronic or other means of communication may not vote:

A. On any issue for which materials providing additional information that may influence the member's decision are presented at the public proceeding but have not been provided to the member by the time of the vote; or

B. On any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.

3. Exception to quorum requirement. A body may convene a public proceeding by telephonic, video, electronic or other means of communication without a quorum assembled physically at one location if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

B. The public proceeding is necessary to take action to address the emergency; and

C. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.

4. Annual meeting. If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other means of communication from a different location.

Seek input of agencies before making legislative changes to statutory procedures below.

PART B

Finance Authority of Maine

Sec. B-1. 10 MRSA §971 is amended to read:

§971. Actions of the members

Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. No vacancy in the membership of the authority may impair the right of the quorum to exercise all powers and perform all duties of the members.

Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with Title 1, section 403-A and the following.

1. Placement of call. A conference call to the members must be placed by ordinary commercial means at an appointed time.

2. Record of call. The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.

3. Notice of emergency meeting. Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.

Ethics Commission *(any changes?)*

Sec. B-2. 21-A MRSA §1002 is amended to read:

§1002. Meetings of commission

1. Meeting schedule. The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held and every 2 weeks in the 60 days preceding an election. In the 28 days preceding an

election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

2. Telephone meetings. The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

A. During the 28 days prior to an election when the commission is required to meet within 24 hours of the filing of any complaint or question with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

3. Other meetings. The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

4. Office hours before election. The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election and from 8 a.m. until at least 8 p.m. on election day.

Emergency Medical Services Board

Sec. B-3. 32 MRSA §88, sub-§1, ¶D is amended to read:

§88. Emergency Medical Services' Board

The Emergency Medical Services' Board, as established by Title 5, section 12004-A, subsection 15, is responsible for the emergency medical services program.

1. Composition; rules; meetings. The board's composition, conduct and compensation are as follows.

A. The board has one member representing each region and 11 persons in addition. Of the additional persons, one is an emergency physician, one a representative of emergency medical dispatch providers, 2 representatives of the public, one a representative of for-profit ambulance services, one an emergency professional nurse, one a representative of nontransporting emergency medical services, one a representative of hospitals, one a representative of a statewide association of fire chiefs, one a municipal emergency medical services provider and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, nontransporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members are appointed by the Governor. The state medical director is an ex officio nonvoting member of the board.

B. The board shall elect its own chair to serve for a 2-year term. The board may adopt internal rules that may include, but are not limited to, termination of board membership as a consequence of irregular attendance. If a board member does not serve a full term of appointment, the Governor shall appoint a successor to fill the vacancy for the remainder of the term. Any board member may be removed by the Governor for cause. The board may have a common seal. The board may establish subcommittees as it determines appropriate.

C. The board shall meet at least quarterly, and at the call of its chair or at the request of 7 members. When the board meets, members are entitled to compensation according to the provisions of Title 5, chapter 379.

D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. The board may use video conferencing and other technologies in compliance with Title 1, chapter 13, subchapter 1, to conduct its business ~~but is not exempt from Title 1, chapter 13, subchapter 1~~. Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

Workers' Compensation Board

Sec. B-4. 39-A MRSA §151, sub-§5 is amended to read:

5. Voting requirements; meetings. The board may take action only by majority vote of its membership. The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology in compliance with Title 1, chapter 13, subchapter 1. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

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Sec. X. XX MRSA §XXX-X, as amended by PL XXXX, c. XXX, §XX and affected by §XX, is repealed.

Sec. X. XX MRSA §XXX-X is enacted to read:

§ XXX-X. Freedom of access; confidentiality of records

The records of the *[board, agency, authority, etc.]* are public records, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential:

A. Records containing any information acquired by the *[board, agency, authority, etc.]* or a member, officer, employee or agent of the *[board, agency, authority, etc.]* from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the *[board, agency, authority, etc.]* is confidential for purposes of Title 1, section 402, subsection 3, paragraph A if the applicant or recipient is an individual.

B. A record obtained or developed by the *[board, agency, authority, etc.]* that:

(1) A person, including the *[board, agency, authority, etc.]*, to whom the record belongs or pertains has requested be designated confidential; and

(2) The *[board, agency, authority, etc.]* has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains.

C. A financial statement or tax return.

D. A record that contains an assessment by a person who is not employed by the *[board, agency, authority, etc.]* of the credit worthiness or financial condition of any person or project.

E. A record obtained or developed by the *[board, agency, authority, etc.]* prior to receipt of a written application or proposal if the application or proposal is for financial assistance to be provided by or with the assistance of the *[board, agency, authority, etc.]*, or in connection with a transfer of property to or from the *[board, agency, authority, etc.]*. After receipt by the *[board, agency, authority, etc.]* of the application or proposal, a record pertaining to the application or proposal is

not to be considered confidential unless it meets the requirements of the other paragraphs of the subsection.

The *[board, agency, authority, etc.]* shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

2. Exceptions. Notwithstanding subsection 1, the following are public records and are not confidential:

A. Any otherwise confidential information the confidentiality of which the *[board, agency, authority, etc.]* determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

3. Disclosure prohibited; further exceptions. A person may not knowingly divulge or disclose records designated confidential by this section, **except that the *[board, agency, authority, etc.]*, in its discretion and in conformity with legislative freedom of access criteria** in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. Information requested by a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the *[board, agency, authority, etc.]* has or may have an interest;

E. In any litigation or proceeding in which the *[board, agency, authority, etc.]* has appeared, introduction for the record of any information obtained from records designated confidential by this section;

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority; and

G. If necessary in connection with acquiring, maintaining, or disposing of property.

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APRIL 12, 2011

Margaret Reinsch
Senior Legal Analyst
Judiciary Committee
Right to Know Advisory
Committee

The Maine Public Broadcasting Network is Maine's largest statewide news and public affairs organization with administrative offices and production facilities for radio and television in Lewiston, Bangor, Augusta and Portland. The station's transmitters and translators are located throughout the state delivering programs to nearly all of Maine citizens. The organization employs 119 staff members. According to the organization's IRS 990 Form ending 6/30/10, MPBN net assets were $15,473,227. According to MPBN's own audit ending June 30, 2010 it received government support of $1,954,235 from the State of Maine, $1,574,366 from the Corporation for Public Broadcasting and government grants of $33,016.

MPBN comes under the FOA Act as "the board of directors of a non-profit, non-stock private corporation that provides statewide noncommercial public broadcasting services and any

4-4

of its committees and subcommittees" and as such under FOA's public proceedings "means the transaction of any functions affecting any and all citizens of the state."

Cove Writers, Inc. and Hometown News Service are news companies producing columns for Maine and other state's newspapers. Hometown News Service is the longest serving continuous member of the State House Newspersons, the press corps with offices in the Cross Building. Both news organizations have as its president and chief journalist, Allen D. (Mike) Brown.

On December 15, 2010, Cove Writers, Inc. filed a FOA request to MPBN President James Dowe for certain financial information. **(See Copy Enclosed)**. A FOA request is mandated by a reply within five working days. No reply came within that period or in subsequent weeks although several attempts to reach President Dowe were futile until February 2011with a phone call from John F. Isacke, Vice President and Chief Financial Officer which was 45 days from the original request and 40 days in violation of the FOA Act. I requested of Mr. Isacke to put his response in writing which he did with letter dated 2/311. **(See Copy Enclosed).** Although certain MPBN financials were forwarded, two items (1) a copy of MPBN's current roster of full-time employees with their job titles and ranges for pay grades, and (2) a current copy listing part-time and/or contract employees who received IRS Form 1099 including the amounts they received were omitted.

According to Mr. Isacke the two omitted items do not apply under the FOA Act.

On March 25, 2011, Cove Writers, Inc. filed a FOA to P. James Dowe, President, MPBN, requesting a copy of MPBN's IRS Form 1099-Misc. listing persons and/or companies or other individuals /entities including the amounts received. There was no response after five days. In fact, there was no response at all.

After searching the relevant history files of the FOA Act and the Right to Know Advisory Committee which was created by Public Law 2005, chapter 631, and which has the oversight and responsibility of recommending changes to the Judiciary Committee, I can find no exception that any of the requests in the original letter of December 15, 2010 to Mr. Dowe are confidential and therefore exempt as stated by Mr. Isacke.

However, if Mr. Isacke's presumption is correct, then there is a gross conflict in that although MPBN comes under FOA's "Proceedings" as Mr. Isacke admits, it does not under "Public Records." Therefore, it challenges the general purpose of the Maine FOA as "transactions of any functions affecting any and all citizens of the state" and specifically and effectively labeling all MPBN public records as confidential. Mr. Isacke did respond to requests for some information under "Public Records "but chose to withhold other information under "Public Records" therefore "picking and choosing" what public records to reveal to the public.

MPBN is Maine's only "non-profit corporation that provides statewide noncommercial public broadcasting services" and therefore specifically under Maine's Freedom of Access Act.

The Right to Know Advisory Committee should review MPBN"s proprietary stance on Public Records in view of its tremendous media influence in Maine and as the recipient of nearly two million annually of taxpayer funds. If Mr. Isacke is correct then MPBN is under Maine's FOA Act in name only and escapes public access to all of its public records or whatever it chooses to reveal.

On February 17, 2011 a column bylined by Mike Brown was printed in the Ellsworth American (**See Copy enclosed**) revealing financials of MPBN ending June 2009 with the questions of MPBN's cavalier illegal time responses and why if the State of Maine taxpayers were contributing nearly $2 million to a non-profit, private news corporation then why it did not come fully under the FOA Act?

Efforts are current and continuing to obtain full compliance from MPBN but so far it refuses to release requested information under Maine's Freedom of Information law claiming confidentially of personnel records.

Enclosures:

Allen D. (Mike) Brown, President

Hometown News Service

State House Station 162

Augusta, ME 04333

Phone 287-4899

E-mail brown@midcoast.com

COVE WRITERS, INC.
INDEPENDENT SYNDICATION
78 CLIFF ROAD, SATURDAY COVE
NORTHPORT, MAINE 04849

TELEPHONE (207) 338-3419
FAX (207) 338-4992

December 15, 2010

Jim Dowe, President
Maine Public Broadcasting Network
1450 Lisbon Street
Lewiston, Maine

Dear Mr. Dowe:

Pursuant to Title 1, MRSA, Chap. 13, Maine's Freedom of Access Law, I am requesting the following information:

1.) The most recent audited financial statement of MPBC.
2.) A copy of MBPC's latest filed IRS 990 form.
3.) A copy of MPBC's current roster of full-time employees with their job titles and ranges for pay grades.
4.) A current copy listing MPBC's part-time and/or contract employees who received IRS Form 1099 including the amounts they received.
5.) The names of current MPBC Board of Trustees and their terms of office.

Than you Mr. Dowe for your past cooperation and prompt reply to the above requests. Also if you have any comment on content and activity of your organization please include it your reply.

Sincerely,

Allen D. (Mike) Brown, President
Cove Writers, Inc.
Hometown News Service

Maine Public Broadcasting Network

1450 Lisbon Street, Lewiston, Maine 04240-3595 · 800-884-1717 · 207-783-9101 · Fax 207-783-5193

February 3, 2011

Allen D. Brown
Cove Writers, Inc.
78 Cliff Road, Saturday Cove
Northport, Maine 04849

Re: Your request of December 15, 2010

Dear Mr. Brown,

It was nice speaking with you on the phone yesterday. As I stated during our conversation, I do not believe that the items you have requested are all subject to Title 1, MRSA, Chapter 13 – Maine's Freedom of Access law. My beliefs in that regard are as follows:

- As I told you, I am not a lawyer, but my simple reading of Chapter 13 is that it pertains to Public Proceedings and to Public Records.
  - With respect to Public Proceedings, the work of MPBN's Board of Directors, its committees and subcommittees are specifically included in §402 2. E. MPBN maintains a public file of all such meetings and those files are available for review, upon request, in our Lewiston office as provided under the Freedom of Access law.
  - As it pertains to Public Records, it is my belief that MPBN is neither an agency of the state nor are its employees public officials. As such, it is my belief that the Public Records provisions of Chapter 13 do not apply to MPBN.

Within that context, my response to each of your questions follows:

1. Enclosed, for your convenience, is a copy of MPBN's audited financial statements for the years ended June 30, 2010 and 2009. This document is made available to the public on our website, www.mpbn.net .
2. Enclosed, for your convenience, is a copy of MPBN's draft Form 990 for the year ended June 30, 2010. I will let you know if any substantive changes are made prior to its filing which is due February 15, 2011. This document is also made available to the public through both the IRS website and on MPBN's website, www.mpbn.net .
3. The roster of full-time employees, their job titles and salary ranges is not a document we normally share and is not enclosed. However, the Form 990

referred to above discloses for all employees who are compensated at $100,000 or higher, their name, title and total compensation.

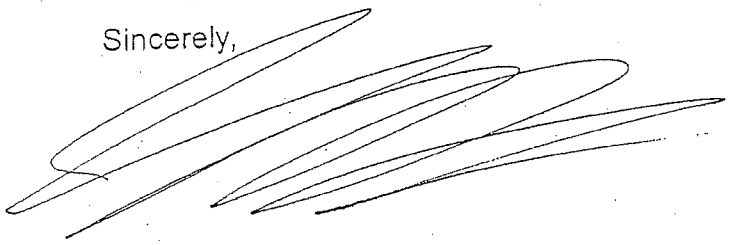
4. The listing of part-time and/or contract employees who received an IRS Form 1099 and the amounts they received is not a document we normally share and is not enclosed.
5. A listing of our Board of Trustees is also made available to the public on our website, www.mpbn.net . A listing, including their terms of office is enclosed for your convenience.

I again apologize for the tardiness of my reply to your request.

If there is anything else I can do for you, do not hesitate to contact me directly. I have enclosed one of my business cards. It contains my direct contact information.

When and if an article results from this information response, I would appreciate receiving a copy. Thank you.

Sincerely,



John F. Isacke
Vice President and Chief Financial Officer

Cc: Alan L. Baker, Publisher, The Ellsworth American (w/o Enc)
P. James Dowe, President, Maine Public Broadcasting Network (w/o Enc)

Ellsworth American/State of Maine Column/Mike Brown/Issue 2/17/11

MPBN's Violation of the Maine FOA Act

The Maine Freedom of Access Act lies at the heart of a democratic government. It grants the people of this state a broad right of access to public records with transparency, a fundamental principle of the Act. Within its many statute definitions is the right to a filer's response within five days.

On December 15, 2010 filer Hometown News Service requested of James Dowe, president of Maine Public Broadcasting Network, certain financial records of MPBN under the Freedom of Access Act. The response date was overdue on January 7, 2011 and the filer contacted the MPBN office and was informed that the request had been forwarded to the financial department. On January 17, there was still no response. As the filer contemplated court action under the Act there was a phone response on 2/3/11/ from John F. Isacke, MPBN vice president and chief financial officer, which was 45days from the original response and some forty days in violation of the Freedom of Access Act.

MPBN comes under the Act's public proceedings definitions as "the board of directors of a non-profit, non-stock, private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees."

Although VP Isacke provided hard copy duplicates of certain financials–IRS 990 for 2099 and Audited Report, 2010 - he wrote in a cover letter that,"I do not believe that all the items requested are subject to the FOA Act." He further stated,"I am not a lawyer, but my simple reading of Chapter 13 as it pertains to Public Records is that neither is MPBN an agency of the state nor are its employees public officials."

What VP Isacke was referring to in the filers request was (1) a copy of MPBN's full-time employees with their job titles and ranges for pay grade and (2) a listing of contract employees who received IRS Form 1099 and the amounts they received. These two items have been in the filer's request to MPBN for nearly a decade and fully furnished even with specific names and specific salary although only a salary range was requested.

MPBN is one of the largest media corporations in Maine employing 119 employees and therefore has considerable impact on information, ideas and news content in programs provided to nearly all of Maine citizens through transmitters throughout the state.

MPBN is a $15.5 million tax-exempt corporation according to its 2009 IRS report. A substantial revenue stream is public support, that is, taxpayer funds. In its 2010 revenue, the State of Maine, via taxpayers, contributed $1,954,235 and the Corporation for Public Broadcasting, via taxpayers, $1,574,366, other government grants of $33,016, via taxpayers, for a total of $3,561,617. The MPBN membership revenue was $3,566,370 or only $4,753 more than public taxpayer support.

According to its 2010 audit, the reported 118 anonymous (so stated VP Isacke) employees received $5,001,699 in salaries and benefits. The only employee identified in the IRS 990 Form was President James Dowe with a salary of $156,325 plus $7,328 in retirement and other deferred compensation.

Phone conversations with VP Isacke indicated that the reason for the "delay" of response - he did not admit to violation of the Act - was that he was "too busy." Also, he objected to sending hard copy data when the internet was available. However, in its self-praising organization overview on its IRS 2009 Form it states precisely, "Any member of the general public can also request either verbally or in writing that these documents be sent to them."

As to VP Isacke's "simple reading" of the FOA Act that MPBN is not subject to Public Proceedings and Public Records under the Act in regard to employee salaries and pay ranges - that private opinion appears to be in conflict with the term "public proceedings meaning the transactions of any function affecting any and all citizens of the state." The fact that Maine citizens contributed $1,954,235 to support MPBN salaries and benefits in 2010 should be considered a function.

Apparently there has been some shading in the transparency of MBPN since the open and full cooperation of MPBN President Jim Dowe through the years. The fact that MPBN was 45 days late and in violation of the FOA Act should be of considerable concern of all citizens and

especially the state legislature which appropriates millions in support of MPBN programming when the state itself has financial concerns of providing its citizens with basic needs of subsistence livability with the challenge of declining revenues.

Nothing so darkens the transparency of government and its ancillary providers of public information than the shadows of silence.

-30-

MacImage of Maine, LLC, et al. v. Androscoggin County, et al., 2012 ME 44
Decided March 27, 2012

Parties:

MacImage of Maine, LLC
John Simpson

Androscoggin County
Aroostook County
Cumberland County
Knox County
Penobscot County
York County

Filing Amicus briefs

Franklin County and Sagadahoc County
American Civil Liberties Union Foundation of Maine
Maine Freedom of Information Coalition

MacImage of Maine, LLC and its principal, John Simpson, asked six Maine counties to provide, in a specified digital format, copies of every document contained in the counties' registries of deeds, including the indices to the recorded documents. All documents are available for reviewing in the registries and online and are available for individual copying. MacImage seeks a bulk digital delivery of all documents and indices in order to create a private database with a proprietary search engine through which it would offer what it describes as improved, consolidated search and retrieval services to the public for a profit. The counties are willing to provide the documents and indices, but the fees that the counties may charge for the requested electronic information are in dispute.

Conclusions:

1. The real estate records held by the county registries of deeds, along with the indices, are available to the public pursuant to Title 33 §651.
2. Reasonable fees for responding to the bulk requests for records and indices, including the transfer of electronic data, have been established by the Legislature through recent legislation (PL 2011, c. 378).
3. PL 2011, c. 378 is applicable to the dispute before the Law Court.
4. The responses of all but two of the counties that are parties, agreeing to provide the requested records in bulk and setting the costs for transferring the data, fall within the applicable law's parameters for reasonable fees.

Judgment:

Superior Court judgment vacated, remanded for entry of judgment for Androscoggin, Cumberland, Knox and York Counties (fees are reasonable), and remanded for further proceedings for Aroostook and Penobscot Counties (to provide for digital indices).

FOAA issues:

- The law Court found that the specific legislation regarding the registries found in Title 33 – not the more general language of FOAA – controls the resolution of the dispute regarding the reasonableness of the fees charged by the counties. The Law Court did not discuss the FOAA further. (pages 13-14)

- The Court mentioned in a footnote that other states have begun adopting legislation addressing efforts by private entities to obtain digital records in bulk and for commercial use. It notes that the RTK AC has begun to consider such issues and references the 2012 Annual report. (footnote page 14)

MAINE SUPREME JUDICIAL COURT
Decision: 2012 ME 44
Docket: Cum-11-127
Argued: December 13, 2011
Decided: March 27, 2012

Reporter of Decisions

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

MacIMAGE OF MAINE, LLC, et al.

v.

ANDROSCOGGIN COUNTY et al.

SAUFLEY, C.J.

[¶1] In this appeal, we are presented with a question of first impression regarding the bulk copying of county registry documents. Specifically, MacImage of Maine, LLC, and its principal, John P. Simpson, have asked the six Maine counties involved in this appeal to provide to them, in a specified digital format, copies of every document contained in the counties' registries of deeds, including the indexes to the recorded documents. The recorded documents are already available to MacImage and the public for viewing in the registries and online, and they are available for individual copying. MacImage, however, seeks a bulk, digital delivery of all such documents and all indexes in order to create a private database with a proprietary search engine through which it would offer what it describes as improved, consolidated search and retrieval services to the public for a

profit. The counties have agreed to provide electronic copies of the registries' recorded documents, but disputes over the fees that the counties may charge for the requested electronic information precipitated this litigation and the appeals by the counties and the cross-appeals by MacImage and Simpson. We have consolidated all pending appeals.

[¶2] The counties argue that the Superior Court (Cumberland County, *Warren J.*) erred in determining that they may not charge the fees that they proposed in their responses to the MacImage and Simpson requests. We reach the following conclusions: the real estate records held by county registries of deeds, along with the indexes to those records, are available to the public pursuant to 33 M.R.S. § 651 (2011);[1] reasonable fees for responding to bulk requests for records and indexes,[2] including the transfer of electronic data, have been established by the Legislature through recent legislation, *see* P.L. 2011, ch. 378 (effective June 16, 2011); that legislation is applicable to the dispute before us; and the responses of all but two of the six counties before us, agreeing to provide the requested records in bulk and setting the costs for transferring the data, fall within the applicable law's parameters for reasonable fees. Accordingly, we vacate the

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[1] The records were equally available to the public pursuant to the statute as it existed at the time of the MacImage and Simpson requests. *See* 33 M.R.S. § 651 (2009).

[2] Although the fee provisions of title 33 discuss copies and abstracts of "records," without specific reference to indexes, we read those provisions to apply equally to requests for copies of index pages.

judgment of the Superior Court, which entered its judgment before the most recent legislation was passed, and we remand for entry of judgment in favor of Androscoggin, Cumberland, Knox, and York Counties and for further proceedings regarding Aroostook and Penobscot Counties.[3]

I. BACKGROUND

A. Electronic Records in the Registries of Deeds

[¶3] As state and local governments have become more sophisticated in their electronic recordkeeping, the ease of effectuating electronic transfers has led to requests for the bulk delivery of complete compilations of various types of government records. Bulk requests were rarely received in a purely paper-based system, given the labor and costs required to reproduce large quantities of paper documents.

[¶4] In response to the technological advances that have enabled a more efficient flow of public information, and the resulting increased interest in obtaining that electronic information at low cost for private commercial use, some states have preemptively legislated the conditions for allowing bulk access. For example, in New Mexico, a copy of a database will be provided if the recipient agrees, among other things, "not to use the database for any . . . commercial

[3] Both the appellants and the appellees have raised procedural challenges, primarily related to the timeliness of particular filings. *See generally* 1 M.R.S. § 409(1) (2011); 5 M.R.S. § 11002(3) (2011). We are unpersuaded, and we do not discuss those challenges further.

purpose unless the purpose and use is approved in writing by the state agency that created the database." N.M. Stat. Ann. § 14-3-15.1(C)(2) (LexisNexis 2012). In Michigan, the Legislature acted more broadly to confer on registers of deeds the discretion to satisfy information requests "using a medium selected by the register of deeds." Mich. Comp. Laws Serv. § 565.551(2)(a) (LexisNexis 2011). About fifteen to forty percent of counties in the United States require users of bulk online records to enter into a contract agreeing not to use the records for commercial purposes. U.S. Gov't Accountability Office, GAO-08-1009R, *Social Security Numbers in Bulk and Online Records* 22 (2008).

[¶5] In Maine, it appears that the Legislature was made aware of the policy considerations related to registry records, *see* 33 M.R.S. § 651, only after MacImage made its requests and alerted county and state government to the potential for disputes over the availability of the electronic documents in bulk and the fees that could be charged for bulk transfers.[4] Accordingly, when MacImage made its requests for digital copies of every document contained in each county's registry, the statutes addressing fees for copies of registry records were still written in terms that were designed for a paper-based county registry system. That registry system, which calls for the recording and indexing of land-transfer records in each

[4] In contrast, Maine's Freedom of Access Act (FOAA) has, since it was enacted in its present form, defined "public records" to include an "electronic data compilation." P.L. 1975, ch. 758 (effective July 29, 1976) (codified at 1 M.R.S. § 402(3) (2011)).

county, has existed in Maine since 1821. *See* P.L. 1821, ch. 36 (effective Feb. 20, 1821); P.L. 1821, ch. 98 (effective Mar. 19, 1821). Pursuant to long-existing statutes, Maine's counties provide the public service of recording private and public land transactions and making the information publicly available for a reasonable fee. *See* P.L. 1821, ch. 98, § 3; *see also* 33 M.R.S. § 751(14) (2009); 33 M.R.S. § 751(14-B), (14-C) (2011).

[¶6] The purpose of Maine's registries of deeds, as in other states, is to provide a common base of information regarding the ownership and configuration of real estate in Maine. *See* 33 M.R.S. § 651 (2011) (requiring the registers of deeds to record and index instruments conveying real property interests). All of the documents recorded within the counties' registries are, by statute, always available to the public for reasonable fees, and the parties do not dispute the public availability of the registry records in this case. Rather, as the following procedural history demonstrates, the issue before us relates to the reasonableness of the fees charged by the county registries for providing bulk transfers of electronic copies.

B. Procedural History

[¶7] The following facts are not in dispute. In September 2009, MacImage sent requests to several Maine counties seeking "[a]ccess to inspect and copy all land records available on the Registry [of Deeds] website" and "[c]opies of all the electronic data files used by the Registry's document recording system and the

Registry's website." At the time, the county commissioners were authorized by statute to determine "a reasonable fee" to charge for making copies and abstracts from the registries' records. 33 M.R.S. § 751(14) (2009). The statute did not expressly address bulk information requests or the electronic indexes. *See id.* MacImage requested both the electronic document images of the registries' land records and the grantor-grantee indexes. Simpson also personally requested electronic copies of the counties' land records and indexes.

[¶8] At the time that the counties responded to MacImage's and Simpson's requests, the relevant statute governing the copying of records at the county registries provided in full:

> Except as provided in any other provision of law, registers of deeds shall receive the following fees for:
>
> . . . .
>
> **14. Abstracts and copies.** Making abstracts and copies from the records, a reasonable fee as determined by the county commissioners.

33 M.R.S. § 751 (2009).

[¶9] It appears that the counties had not previously been asked to provide such bulk data from their relatively recently digitalized document systems. Each county ultimately agreed to provide the requested land records in an electronic format, though two of the counties—Aroostook and Penobscot—failed to offer

electronic copies of the index pages for a fee. The fees identified in several of the counties' responses included costs for the specific formatting of the documents in the format requested by MacImage, including payment to the database contractors who administered the counties' digital systems for technological support in handling the requests.[5]

[¶10] All of the counties at issue offered to make electronic copies of the land records available to the public for specified fees:

- Androscoggin County offered to provide the copies at a rate of $0.12 per image, plus $3,600 for recorded documents and $15,000 for indexes to cover costs owed to its database contractor. It also offered access to the digital information through its website for $350 per year with no charge for downloads.
- Aroostook County offered to provide electronic copies of land records through its website for $200 per year for a subscription plus a $0.50-per-page download charge that is reduced to $0.05 per page for users who download 1,000 pages or more per month in a calendar year. Aroostook County did not offer to transfer copies of its indexes.

[5] Simpson had himself become familiar with the county registries when he provided contract computer services to Hancock County to create their digitalized system.

- Cumberland County offered to provide a bulk download at a rate of $0.02 per document for indexes and $0.025 per image for land records.
- Knox County offered to provide the information in several ways, including by bulk download at a rate of $0.02 per document for the index and $0.025 per image for the land records.
- Penobscot County offered to provide electronic copies through its website for a subscription fee of $35 per month with a $1-per-page charge for downloads. Penobscot County did not offer to provide electronic copies of its index pages, and it did not offer a bulk download rate.
- York County offered a bulk download rate of $0.024 per image.

[¶11] Unsatisfied with the counties' requested fees, in November 2009, MacImage filed a complaint in the Superior Court pursuant to the Maine Freedom of Access Act (FOAA), 1 M.R.S. § 409(1) (2011), and M.R. Civ. P. 80B, in which it alleged a constructive denial of access to the public records by the counties.[6] MacImage sought declaratory and injunctive relief. It also sought to recover costs and attorney fees.

[6] The complaint was filed against several counties in addition to the six at issue here, but the claims against those other counties were dismissed before trial.

[¶12] The parties proceeded to a five-day trial from October 4 through 8, 2010, and the court entered a judgment on February 22, 2011, in which it concluded that each of the counties had denied access, including by charging unreasonable fees for providing the information identified in the requests from MacImage and Simpson.[7] The court concluded that certain legislation enacted after the requests were denied, *see* P.L. 2009, ch. 575 (effective July 12, 2010) (codified at 33 M.R.S. §§ 651, 751(14) (2010)), did not apply retroactively. It rejected the counties' fee schedules for including costs beyond those associated with making an electronic transfer of information onto storage media. The court articulated its own version of specific fees that it found would be reasonable for each county to charge to transfer the information to MacImage electronically. The court also provided some guidance regarding future requests under the then new statute, which provided, effective July 12, 2010, that specific expenses could be considered in determining a reasonable fee:

> Except as provided in any other provision of law, registers of deeds shall receive the following fees for:
>
> . . . .

[7] Because we vacate that determination, we do not discuss further the Superior Court's conclusion that the counties may not include in their fees any of the costs of gathering the documents, creating the counties' digital systems, and other costs of doing business. The court's determination that fees may be based only on the limited costs of copying the documents has been superseded by legislative action. *See* P.L. 2011, ch. 378 (effective June 16, 2011).

> **14. Abstracts and copies.** Making abstracts and copies from the records, a reasonable fee as determined by the county commissioners for each category of abstracts and copies, such as paper copies, attested copies, copies obtained online and bulk transfers of copies. In setting a reasonable fee for each category of abstracts and copies, the commissioners shall consider factors relating to the cost of producing and making copies available, which may include, but are not limited to: the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs or other transmitting costs; amortized infrastructure costs; any direct equipment operating and maintenance costs; costs associated with media processing time; personnel costs, including actual costs paid to private contractors for copying services; contract and contractor costs for database maintenance and for online provision and bulk transfer of copies in a manner that protects the security and integrity of registry documents; and a reasonable rate for the time a computer server is dedicated to fulfilling the request.

33 M.R.S. § 751 (2010).

[¶13] Each of the six remaining county defendants timely appealed, and MacImage and Simpson jointly cross-appealed.[8]

[¶14] After the counties commenced their appeals, the Legislature enacted Public Law 2011, chapter 378, which repealed section 751(14), replaced that subsection with new statutory language, and provided a retroactive explanation of what qualified as a reasonable fee between September 1, 2009, and the effective date of the Act:

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[8] MacImage and Simpson did not separately argue their grounds for appealing from the judgment in their brief, and we do not address the cross-appeals further. *See* M.R. App. P. 9(d).

An Act Concerning Fees for Users of County Registries of Deeds

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

Whereas, the registry of deeds offices provide a valuable public service in recording and maintaining the land records of the State; and

Whereas, current law allows the county commissioners to set fees for copying at only the cost of providing the copies; and

Whereas, the cost to the counties to maintain the information and to make it accessible cannot be adequately reimbursed by fees defined by copying cost; and

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

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

Sec. 1. 33 MRSA §751, sub-§14, as amended by PL 2009, c. 575, §2, is repealed.

Sec. 2. 33 MRSA §751, sub-§§14-B and 14-C are enacted to read:

14-B. Abstracts and copies. Making abstracts and copies of records at the office of the register of deeds as follows:

A. Five dollars per page for paper abstracts and copies of plans;

B. One dollar per page for other paper abstracts and copies; and

C. Fifty cents per page for digital abstracts and copies, except that the fee is 5¢ per page for copies of 1,000 or more digital abstracts and copies of consecutive records.

This subsection is repealed July 31, 2012;

14-C. Abstracts and copies. Beginning August 1, 2012, making abstracts and copies from the records, a reasonable fee as determined by the county commissioners for each category of abstracts and copies, such as paper copies, attested copies, copies obtained online and bulk transfers of copies. In setting a reasonable fee for each category of abstracts and copies, the commissioners shall consider factors relating to the cost of producing and making copies available, which may include, but are not limited to: the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs or other transmitting costs; amortized infrastructure costs; any direct equipment operating and maintenance costs; costs associated with media processing time; personnel costs, including actual costs paid to private contractors for copying services; contract and contractor costs for database maintenance and for online provision and bulk transfer of copies in a manner that protects the security and integrity of registry documents; and a reasonable rate for the time a computer server is dedicated to fulfilling the request; and

Sec. 3. Legislative intent; retroactivity. The Legislature finds that the following fees charged by an office of a register of deeds for making abstracts and copies from records, whether in paper or digital form, including for bulk copies or transfers of such copies, between September 1, 2009 and the effective date of this Act are reasonable and in accordance with the legislative intent of Public Law 2009, chapter 575, section 2 and are expressly authorized: a fee of up to $1.50 per page for paper copies and a fee of up to $1.50 per page for digital copies. Nothing in this section may be interpreted as a legislative finding that a higher fee charged by an office of a register of deeds between September 1, 2009 and the effective date of this Act to persons who were not subscribers to the online services of a register of deeds is unreasonable. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this section applies retroactively to September 1, 2009.

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

P.L. 2011, ch. 378 (effective June 16, 2011). With this new legislation to consider, we now address the parties' arguments on appeal.

II. DISCUSSION

A. Applicability of the Freedom of Access Laws

[¶15] MacImage argues that its claims fall under Maine's Freedom of Access Act and that all statutory interpretation must be viewed in light of FOAA's broad definition of public records that are open and available for public inspection. *See* 1 M.R.S. §§ 402(3), 408 (2011). We conclude that the applicability of FOAA is not dispositive here.

[¶16] The Legislature has chosen to establish county registries of deeds, to require that all records be made available to the public, and to allow the counties to charge reasonable fees for the services made available through the registries. *See generally* 33 M.R.S. §§ 651-670, 751-752 (2011). Thus, there is no dispute that the records at issue are always open for public inspection and copying, and the counties agree that they have that responsibility.

[¶17] The dispute that brings the parties before us relates only to the fees that may be charged by the counties for the bulk electronic transfer of the records. The specific legislation regarding the registries found in title 33—not the more general language of FOAA—controls the resolution of the dispute regarding the

reasonableness of the fees charged by the counties. The Legislature has recently clarified that FOAA is not intended to govern fees for copying records from the registries of deeds. *See* P.L. 2009, ch. 575, § 1 (effective July 12, 2010) (codified at 33 M.R.S. § 651 (2011) (stating that, notwithstanding FOAA, "this chapter governs fees for copying records maintained under this chapter")); *see also* 1 M.R.S. § 408(1) (2011) (stating that the FOAA provisions regarding the right to inspect and copy public records apply "[e]xcept as otherwise provided by statute").

[¶18] Moreover, the purpose of FOAA is not offended by the independent statute governing the fees that may be charged by the registries of deeds. *See* 1 M.R.S. § 401 (2011) (stating the purpose of FOAA to promote the openness of government activities and the records of those activities).[9] Because we conclude that the more specific statutes governing registry functions govern the determination of the reasonableness of the fees imposed, we do not discuss FOAA further.

[9] Other states have amended their freedom-of-access laws more generally to address private entities' efforts to obtain digital records in bulk and for commercial use. *See, e.g.*, Ky. Rev. Stat. Ann. § 61.874 (LexisNexis 2011) (permitting electronic copying for noncommercial use upon payment for the actual cost of reproduction and permitting public agencies to charge a contracted fee to provide records to be used for a commercial purpose). Maine's Legislature has not yet adopted such standards for general application to FOAA requests, but the Right to Know Advisory Committee has begun to consider such issues and has made some recommendations. *See* Right to Know Advisory Committee, Sixth Annual Report to the 125th Legislature 9-11, 16-17 (Jan. 2012).

B. Applicability of Changes to Title 33 During Litigation

[¶19] When this litigation began, the statute governing fees for copies of recorded deeds provided only that the county commissioners were entitled to establish "a reasonable fee" to be charged for copies. 33 M.R.S. § 751(14) (2009). While the suit was pending, but before trial, the Legislature amended the statute to set forth factors that the county commissioners could consider when determining reasonable fees for paper copies, attested copies, online copies, or copies delivered through bulk transfers. *See* P.L. 2009, ch. 575, § 2 (effective July 12, 2010) (codified at 33 M.R.S. § 751(14) (2010)). The 2010 legislation did not indicate that it was to be applied retroactively. *See id.* The parties proceeded to trial, and the court concluded that the statute in existence at the time that the original requests were made was applicable: 33 M.R.S. § 751(14) (2009).

[¶20] After the Superior Court entered its judgment and the counties appealed from the court's decision, however, the Legislature enacted new legislation. P.L. 2011, ch. 378 (effective June 16, 2011) (codified in part at 33 M.R.S. § 751(14-B), (14-C) (2011)). A portion of that legislation was explicitly enacted to apply "retroactively to September 1, 2009," which encompasses the time within which the MacImage and Simpson requests were submitted. P.L. 2011, ch. 378, § 3. In that section, the Legislature approved the imposition of fees of up to $1.50 per page for digital copies. P.L. 2011, ch. 378, § 3.

[¶21] We review de novo whether a statutory amendment will be applied retroactively or prospectively. *See In re Guardianship of Jeremiah T.*, 2009 ME 74, ¶ 17, 976 A.2d 955. Regarding the particular legislation at issue here, the counties argue that the most recent legislation—particularly P.L. 2011, ch. 378, § 3—retroactively governs the fees chargeable to MacImage and Simpson to satisfy their requests. To determine whether the new statute applies, we will examine (1) whether the Legislature expressed the intent to make the statute retroactive in its application and (2) whether that retroactive application violates any provisions of the Maine Constitution.

1. Retroactivity

[¶22] The Legislature has adopted a rule of construction that "[a]ctions and proceedings pending at the time of the passage, amendment or repeal of an Act or ordinance are not affected thereby." 1 M.R.S. § 302 (2011). The general rule of statutory construction set forth in section 302 may be overcome, however, by "[l]egislation expressly citing section 302, or explicitly stating an intent to apply a provision to pending proceedings." *Bernier v. Data Gen. Corp.*, 2002 ME 2, ¶ 16, 787 A.2d 144; *see Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, ¶ 20, 856 A.2d 1183, *cert. denied*, 544 U.S. 906 (2005); *see also Sinclair v. Sinclair*, 654 A.2d 438, 439-40 (Me. 1995) (holding that legislative intent—not a classification of legislation as procedural or substantive—determines the

applicability of new legislation to a *pending* claim); *Riley v. Bath Iron Works Corp.*, 639 A.2d 626, 628-29 (Me. 1994) (distinguishing between the application of section 302 to pending claims and the application of the procedural-substantive distinction in determining "the temporal application of legislation to preexisting, inchoate interests").

[¶23] Thus, the Legislature may appropriately amend a statute and have it take effect immediately, and it may, within the bounds of the Maine Constitution,[10] "make such a change retroactive and thereby undo what it perceives to be the undesirable past consequences of a misinterpretation of its work product." *State v. L.V.I. Group*, 1997 ME 25, ¶ 13, 690 A.2d 960 (quotation marks omitted). A pending proceeding may be affected if the Legislature has expressed an intention that the statute apply retroactively notwithstanding the general rule of construction set forth in section 302. *Bernier*, 2002 ME 2, ¶ 16, 787 A.2d 144.

[¶24] Here, the Legislature determined that, for digital copies of registry records, fees of up to $1.50 per page were reasonable when charged between September 1, 2009, and the effective date of the legislation, June 16, 2011. P.L.

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[10] Giving statutes retroactive effect may be unconstitutional in a variety of circumstances, including when the legislation would substantially impair a contractual relationship in violation of the Contract Clause, Me. Const. art. I, § 11; *see Windham Land Trust v. Jeffords*, 2009 ME 29, ¶ 16, 967 A.2d 690, or would constitute an ex post facto law in violation of the Ex Post Facto Clause, Me. Const. art. I, § 11; *see, e.g., State v. Letalien*, 2009 ME 130, 985 A.2d 4.

2011, ch. 378, § 3.[11] The Legislature explicitly stated, "Notwithstanding the Maine Revised Statutes, Title 1, section 302, this section applies retroactively to September 1, 2009." *Id.*

[¶25] In the 2011 enactment, the Legislature unequivocally expressed an intent for the statute to apply retroactively, *see Morrill v. Me. Tpk. Auth.*, 2009 ME 116, ¶ 5, 983 A.2d 1065, and the period of retroactivity includes the pending litigation regarding the September 2009 requests submitted by MacImage and Simpson. Thus, unless there is some constitutional impediment to its enforcement, the new legislation requires us to consider this matter based on the standard set forth in P.L. 2011, ch. 378, § 3.

2. Constitutional Challenges

[¶26] If there is a reasonable interpretation of a statute that will satisfy constitutional requirements, we will avoid construing the statute in a way that renders it unconstitutional. *Bagley v. Raymond Sch. Dep't*, 1999 ME 60, ¶ 14, 728 A.2d 127. With this rule of construction in mind, we now consider whether the legislation violates (a) the constitutional separation of powers, (b) the Due Process Clause, (c) the Equal Protection Clause, (d) the Takings Clause, or (e) the Special Legislation Clause.

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[11] The Superior Court concluded that the counties were limited in setting reasonable fees to the actual costs of preparing the data for transfer and the "copying" or transfer costs. The Legislature rejected this limited approach to fee-setting in both of its enactments that followed the initial request of MacImage. *See* P.L. 2011, ch. 378 (effective June 16, 2011); P.L. 2009, ch. 575 (effective July 12, 2010).

a. Separation of Powers

[¶27] The constitutional separation of powers is not always undermined when the Legislature passes legislation that "affects cases that are pending in the judicial system." *Bernier*, 2002 ME 2, ¶ 17 n.7, 787 A.2d 144; *see* Me. Const. art. III, § 2. Although MacImage and Simpson contend that P.L. 2011, ch. 378, § 3 usurps the judicial function by retroactively interpreting the meaning of a repealed statute, 33 M.R.S. § 751(14) (2009), and attempting to overturn a decision in a private dispute, this argument underestimates the *public interests* at stake.

[¶28] To determine whether conduct violates the constitutional separation of powers in Maine, we ask a narrow question: "[H]as the power in issue been explicitly granted to one branch of state government, and to no other branch?" *State v. Hunter*, 447 A.2d 797, 800 (Me. 1982). The Maine Constitution vests in the Legislature the "full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to this Constitution, nor to that of the United States." Me. Const. art. IV, pt. 3, § 1. In exercising this power and authority, the Legislature may properly consider issues regarding the funding of county government services.

[¶29] Although MacImage and Simpson argue that the Legislature's actions constitute an attempt to overturn a decision in a private dispute, the Public Law at issue served more broadly to balance the public and private interests involved in

fee-setting for counties' electronic copying of registry land records and indexes—a technological reality that was not addressed in preexisting legislation. P.L. 2011, ch. 378, Emergency Preamble. The Legislature acted to balance competing interests by legislating the reasonableness of fees that could be charged during the time period when the county registries were acting without legislative guidance, enacting prospective legislation to set specific fees for a limited period of time, and finally requiring the county commissioners to establish fees by taking into account statutory criteria by August 1, 2012. P.L. 2011, ch. 378. The Legislature "establish[ed] . . . reasonable laws and regulations for the defense and benefit of the people of this State," Me. Const. art. IV, pt. 3, § 1, by establishing certain limits on fees in the short term to allow counties time to develop their fee schedules autonomously in compliance with 33 M.R.S. § 751(14-C) (2011) and by requiring the implementation of those fee schedules on August 1, 2012. The Legislature did not, by enacting this policy-based legislation, usurp the adjudicatory power of the courts. *See* Me. Const. art. III, § 2; Me. Const. art. IV, pt. 3, § 1; Me. Const. art. VI, § 1.

b. Due Process

[¶30] "When the State exercises its police power to regulate for the general welfare and a fundamental right is not at issue, statutes are subjected to rational basis review." *State v. Haskell*, 2008 ME 82, ¶ 5, 955 A.2d 737. We defer to the

Legislature in its balancing of competing interests to regulate social and economic issues. *Id.* The party challenging a statute's constitutionality therefore bears the burden of proving a constitutional deficiency and "must establish the complete absence of any state of facts that would support the need for [the statute's] enactment." *Id.* (quotation marks omitted).

[¶31] When conducting this "rational basis" review, we review whether (1) "the police powers [were] exercised to provide for the public welfare; (2) the legislative means employed [were] appropriate to achieve the ends sought; and (3) the manner of exercising the power [was] not . . . unduly arbitrary or capricious." *Id.* ¶ 6 (quotation marks omitted). "The Legislature need not provide the facts upon which its rationale rests, so long as *some* theoretical explanation exists." *Id.*

[¶32] The requests made by MacImage and Simpson alerted the Legislature to the novel issue before the counties, and the resulting public law sought to bring legislatively established standards to an area of generally applicable law that lacked definition at the time of MacImage's and Simpson's requests. The Legislature was required to balance the public's interest in access to the records with the governmental costs of making those records available. It has done so in an area of evolving technology and varied fiscal considerations, and it has acknowledged the need for attention to the emerging issues through the sunset

provision that will require the issues to be revisited by the counties' commissioners. We conclude that the Legislature had a rational basis for acting to resolve an issue of important public interest. *See id.* The means employed to address the issue may have resulted in reduced anticipated revenues for MacImage and Simpson, but the Legislature could have balanced their private interests with the counties' and the public's interests to design its legislative solution, and this type of exercise of its legislative power is neither arbitrary nor capricious. *See id.* There was no due process violation.

c. Equal Protection

[¶33] To succeed in an equal protection challenge where, as here, the challenging party is not a member of a suspect class, a party challenging a statute must show (1) "that similarly situated persons are not treated equally under the law," and (2) that the statute is not "rationally related to a legitimate state interest." *Town of Frye Island v. State*, 2008 ME 27, ¶ 14, 940 A.2d 1065. "When a statute is reviewed under the rational basis standard, it bears a strong presumption of validity." *Bagley*, 1999 ME 60, ¶ 28, 728 A.2d 127. It will be deemed unconstitutional on equal protection grounds only if the discriminatory legislative classification is "arbitrary, unreasonable or irrational." *McBreairty v. Comm'r of Admin. & Fin. Servs.*, 663 A.2d 50, 53 (Me. 1995) (quotation marks omitted).

[¶34] Regarding the first of the factors for our consideration, MacImage and Simpson have failed to establish that their situation differs from others similarly situated. *See Town of Frye Island*, 2008 ME 27, ¶ 14, 940 A.2d 1065. The maximum rates that may be charged to MacImage are no greater than the maximum rates that may be charged to others seeking either individual copies or bulk data during the same time period.

[¶35] Moreover, in considering the second part of the equal protection analysis, the staggered timing of the statute is "rationally related to a legitimate state interest" in balancing the interests of the registers of deeds, the interests of the requestors, and the interests of the public. *See id.* There is a rational relationship between the provisions of P.L. 2011, ch. 378, § 3 and the legislative purpose to provide guidance on how high a fee would have to be to be unreasonable within the meaning of title 33 during the time before the Legislature acted to clarify its intended meaning. Pursuant to section 3, all digital copy rates of $1.50 or less per page set between September 1, 2009, and the legislation's June 16, 2011, effective date are deemed reasonable. This portion of the legislation demonstrates an effort to provide some limited guidance regarding decisions made by counties when the statute provided only a vague reasonableness standard, and other portions of the Act give the counties direction for setting fees in the future. Because the legislation does not treat similarly situated parties differently and bears a rational

relationship to a legitimate state interest, it does not violate the Equal Protection Clause. *Town of Frye Island*, 2008 ME 27, ¶ 14, 940 A.2d 1065.

d. Takings Clause

[¶36] The government may not take private property for public use without providing just compensation. U.S. Const. amend. V; Me. Const. art. I, § 21. "Although both tangible and intangible property may be the subject of an impermissible taking, there is no property right to potential or future profits." *Me. Beer & Wine Wholesalers Ass'n v. State*, 619 A.2d 94, 97 (Me. 1993). Thus, although MacImage and Simpson requested digital copies of the registry records, their planned commercial enterprise does not create an existing property interest in obtaining those records without paying a reasonable fee. Accordingly, no governmental taking has been effectuated through the enactment of P.L. 2011, ch. 378.

e. Special Legislation Clause

[¶37] "The Legislature shall, from time to time, provide, as far as practicable, by general laws, for all matters usually appertaining to special or private legislation." Me. Const. art. IV, pt. 3, § 13. The enacted legislation does not offend this Special Legislation Clause because the enacted law is not a private resolve singling out an individual for unique treatment; rather, the Legislature was attempting to address a newly developing issue that broadly affects the counties in

the state and all entities who have requested—and will request—bulk digital information from the counties. *Cf. Brann v. State*, 424 A.2d 699, 704 (Me. 1981) (stating that the Special Legislation Clause prohibits special legislation that exempts one individual from generally applicable legal requirements, with general legislation preferred "as far as practicable"). We discern no constitutional infirmity.

C. Application of the Legislation

[¶38] Having concluded that the most recent legislation applies to this matter, we now consider our role in interpreting and applying that legislation as an appellate court. The United States Supreme Court addressed this narrow issue in the early nineteenth century:

> It is in the general true that the province of an appellate court is only to inquire whether a judgment when rendered was erroneous or not. But if, subsequent to the judgment, and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation is denied.

United States v. Schooner Peggy, 5 U.S. 103, 110 (1801). In such circumstances, "[i]t is the obligation of the last court in the hierarchy that rules on the case to give effect to [the] latest enactment, even when that has the effect of overturning the judgment of an inferior court, since each court, at every level, must decide according to existing laws." *Miller v. French*, 530 U.S. 327, 344 (2000) (quotation marks omitted).

[¶39] In *Schooner Peggy*, the Supreme Court vacated a judgment condemning a vessel and then independently interpreted a newly applicable treaty with France to require that the vessel be restored to France. 5 U.S. at 108-10. By contrast, we recently remanded a matter for the trial court to conduct further proceedings based on legislation that took effect after the entry of the trial court's judgment because the newly enacted statute authorized an entire process that had not been afforded to the appellant under the earlier statute. *Morrill*, 2009 ME 116, ¶¶ 2-3, 6-8, 983 A.2d 1065. Accordingly, when legislation enacted after the entry of a trial court's judgment has been found to be applicable to the dispute, we will resolve any purely legal issues based on our interpretation and application of the law to the facts found by the trial court, *see Schooner Peggy*, 5 U.S. at 110, but if any further factual findings or adjudicatory proceedings are required, we will remand the matter to the trial court, *see Miller*, 530 U.S. at 344.

[¶40] We therefore begin by considering the undisputed factual findings of the Superior Court to determine whether, as a matter of law, each of the counties imposed a reasonable fee of "up to $1.50 per page for digital copies" in response to MacImage's and Simpson's requests. P.L. 2011, ch. 378, § 3. If any of the counties have failed to meet this requirement, we will remand the matter for appropriate action.

[¶41] Applying the test set forth by the Legislature, four of the counties—Androscoggin, Cumberland, Knox, and York—offered a bulk download of digital images for less than $1.50 per page, taking into account the per-page cost of flat fees imposed to cover county costs for technical assistance. Thus, with respect to these four counties, we vacate the judgment of the Superior Court and remand for entry of judgment in favor of these counties.

[¶42] The other two counties that have appealed—Aroostook and Penobscot—offered access to digital land records on their websites for a cost of less than $1.50 per page[12] but did not offer to provide digital copies of their indexes in response to the MacImage and Simpson requests. Because further proceedings are necessary, we remand those matters to the Superior Court.

D. Prospective Relief

[¶43] Aroostook, Cumberland, Knox, and York Counties contend that the Superior Court's ruling on anticipated future requests responded to a controversy that was not pending and justiciable. "A justiciable controversy is a claim of present and fixed rights, as opposed to hypothetical or future rights, asserted by one party against another who has an interest in contesting the claim." *Flaherty v. Muther*, 2011 ME 32, ¶ 87, 17 A.3d 640 (quotation marks omitted); *see also Berry*

[12] Although it would take more time for MacImage or Simpson to download all of the files using the websites, which would therefore increase the costs associated with their intended commercial enterprise, the counties have nonetheless satisfied the public purpose of title 33 to provide access to information and allow copies at a reasonable fee. *See* P.L. 2011, ch. 378, Emergency Preamble.

v. Daigle, 322 A.2d 320, 325-26 (Me. 1974) (same in context of a declaratory judgment action). Any requests for rulings on fees that the counties may charge in the future were not properly before the trial court and, in light of the new legislation discussed above, any pronouncements on such requests must be vacated.

The entry is:

> Judgment vacated. Remanded to the Superior Court for entry of judgment in favor of Androscoggin, Cumberland, Knox, and York Counties and for further proceedings with respect to Aroostook and Penobscot Counties.

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Kelly W. McDonald, Esq., and Chelsea E. Callanan, Esq., Murray, Plumb & Murray, Portland, and Zachary Heiden, American Civil Liberties Union Foundation of Maine, Portland, for amicus curiae American Civil Liberties Union Foundation of Maine

Patrick Strawbridge, Esq., Bingham McCutchen LLP, Boston, Massachusetts, for amicus curiae Maine Freedom of Information Coalition

At oral argument:

Peter Marchesi, Esq., for appellants Androscoggin County, Aroostook County, Cumberland County, Knox County, Penobscot County, and York County

Sigmund D. Schutz, Esq., for cross-appellant MacImage of Maine, LLC

John P. Simpson, cross-appellant pro se

Frank M. Underkuffler, Esq., for amici curiae Franklin County and Sagadahoc County

Patrick Strawbridge, Esq., for amicus curiae Maine Freedom of Information Coalition

Kelly W. McDonald, Esq., for amicus curiae American Civil Liberties Union Foundation of Maine

APPROVED CHAPTER

JUN 16 '11 378

STATE OF MAINE BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD

TWO THOUSAND AND ELEVEN

H.P. 1100 - L.D. 1499

An Act Concerning Fees for Users of County Registries of Deeds

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

Whereas, the registry of deeds offices provide a valuable public service in recording and maintaining the land records of the State; and

Whereas, current law allows the county commissioners to set fees for copying at only the cost of providing the copies; and

Whereas, the cost to the counties to maintain the information and to make it accessible cannot be adequately reimbursed by fees defined by copying cost; and

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

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

Sec. 1. 33 MRSA §751, sub-§14, as amended by PL 2009, c. 575, §2, is repealed.

Sec. 2. 33 MRSA §751, sub-§§14-B and 14-C are enacted to read:

14-B. Abstracts and copies. Making abstracts and copies of records at the office of the register of deeds as follows:

A. Five dollars per page for paper abstracts and copies of plans;

B. One dollar per page for other paper abstracts and copies; and

C. Fifty cents per page for digital abstracts and copies, except that the fee is 5¢ per page for copies of 1,000 or more digital abstracts and copies of consecutive records.

This subsection is repealed July 31, 2012;

14-C. Abstracts and copies. Beginning August 1, 2012, making abstracts and copies from the records, a reasonable fee as determined by the county commissioners for

6-3

each category of abstracts and copies, such as paper copies, attested copies, copies obtained online and bulk transfers of copies. In setting a reasonable fee for each category of abstracts and copies, the commissioners shall consider factors relating to the cost of producing and making copies available, which may include, but are not limited to: the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs or other transmitting costs; amortized infrastructure costs; any direct equipment operating and maintenance costs; costs associated with media processing time; personnel costs, including actual costs paid to private contractors for copying services; contract and contractor costs for database maintenance and for online provision and bulk transfer of copies in a manner that protects the security and integrity of registry documents; and a reasonable rate for the time a computer server is dedicated to fulfilling the request; and

Sec. 3. Legislative intent; retroactivity. The Legislature finds that the following fees charged by an office of a register of deeds for making abstracts and copies from records, whether in paper or digital form, including for bulk copies or transfers of such copies, between September 1, 2009 and the effective date of this Act are reasonable and in accordance with the legislative intent of Public Law 2009, chapter 575, section 2 and are expressly authorized: a fee of up to $1.50 per page for paper copies and a fee of up to $1.50 per page for digital copies. Nothing in this section may be interpreted as a legislative finding that a higher fee charged by an office of a register of deeds between September 1, 2009 and the effective date of this Act to persons who were not subscribers to the online services of a register of deeds is unreasonable. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this section applies retroactively to September 1, 2009.

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

APPROVED CHAPTER

MAR 16 '12 508

BY GOVERNOR PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND TWELVE

S.P. 526 - L.D. 1616

An Act Concerning Copying Fees for Users of County Registries of Deeds

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

Whereas, county registries of deeds provide a valuable public service in recording and maintaining the land records of the State; and

Whereas, under current law, the fees specified for making abstracts and copies of records at registries of deeds will be repealed July 31, 2012; and

Whereas, in order to keep the fees in effect, this legislation must be enacted as an emergency measure; and

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

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

Sec. 1. 33 MRSA §751, sub-§14-B, as enacted by PL 2011, c. 378, §2, is amended to read:

14-B. Abstracts and copies. Making abstracts and copies of records at the office of the register of deeds as follows:

A. Five dollars per page for paper abstracts and copies of plans;

B. One dollar per page for other paper abstracts and copies; and

C. Fifty cents per page for digital abstracts and copies, except that the fee is 5¢ per page for copies of 1,000 or more digital abstracts and copies of consecutive records~~.~~; and

~~This subsection is repealed July 31, 2012;~~

6-4

Sec. 2. 33 MRSA §751, sub-§14-C, as enacted by PL 2011, c. 378, §2, is repealed.

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

Maine Freedom of Information Coalition

PO Box 232
Augusta, Maine
04333

April 27, 2012

The Honorable David Hastings, Senate Chair
The Honorable Joan Nass, House Chair
Maine Right To Know Advisory Committee

Delivered via email

Dear Senator Hastings and Representative Nass:

An issue has come to our attention, and the members of the Maine Freedom of Information Coalition respectfully request that it be examined by the RTKAC when it reconvenes this summer.

The Federal Communications Commission has mandated that public safety agencies and other VHF and UHF land mobile spectrum users must migrate to narrower-bandwidth equipment by January 1, 2013. This shift is commonly known as "narrowbanding." In Maine, this migration, called MSCommNet, is being managed by the state Office of Information Technology. Among the features being touted for MSCommNet is the following: "Local Control - Each state agency will be able to decide who can listen and speak on their talk group and can assign their own security settings."[1]

It appears that public safety and other agencies in Maine and elsewhere are taking advantage of this "feature" by encrypting their radio transmissions[2], making it impossible for anyone to "listen in" on a conventional public-safety radio scanner. Indeed, this debate has been raging elsewhere since before 9/11/01[3], though it is relatively new to Maine.

While we recognize that there are legitimate public safety reasons for encrypting certain radio transmissions, such as for SWAT teams or hostage-response teams, we think a wholesale shift to

[1] Found at http://www.maine.gov/oit/services/radio/mscommnet/faq/MsCommNet_flyer.pdf
[2] For example, the Presque Isle police department has already migrated to an encrypted radio capability, with the Presque Isle fire department soon to follow. An encrypted system is also being used by the Caribou public works department. See http://www.mainemediaresources.com/ffj/02221201b.htm
[3] See, for example, "Police Scanners in the Digital Age," written in the summer of 2001, available at http://www.rtdna.org/pages/media_items/police-scanners-in-the-digital-age181.php

encryption of public safety radio transmissions raises several important freedom of information concerns:

- If such radio transmissions are encrypted, is it now, or will it become, illegal for members of the public to purchase scanners capable of decrypting them?
- If so, does this raise a concern that it has or will become illegal for citizens to monitor business conducted by public officials at public expense?
- What assurance will there be that the public will have access to the recordings, transcripts, or other public records of encrypted radio transmissions?
- What public safety concerns are raised by the inability of the news media to inform the public about breaking news or weather events that pose a risk to life or property if the media are unable to monitor public safety radio transmissions in real time?
- Is it possible to address the need for a limited amount of encryption capability by setting aside certain frequencies for this use, and keeping the remaining frequencies "in the clear"?

We offer the following in order to inform your discussion:

There is no HIPAA[4] implication in the move to encryption. HIPAA's health information privacy provisions apply only to "covered entities," which are defined in HIPAA rules[5] as follows:

> *Covered entity means:*
> *(1) A health plan.*
> *(2) A health care clearinghouse.*
> *(3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.*

Public safety agencies, such as ambulance services, thus are not covered by HIPAA's privacy requirements.

There is nothing in the Federal Communications Commission's rules for the narrowbanding migration, or in the Federal Emergency Management Agency's grant guidance for funding for the migration, that requires a public safety agency to encrypt its radio transmissions. In fact, the U.S. Department of Homeland Security's SAFECOM Program has published on its website a document from the Public Safety Wireless Network Program, titled Security Issues Report—Impediments and Issues on Using Encryption on Public Safety Radio Systems, which reaches this conclusion:

> *The case for improved security in communications and system architecture through the use of encryption technologies still has not been made. Expense, coupled with the concern that less-than-ideal management resources and practices are available, remain significant reasons why radio system managers find it prohibitive to move encryption into their systems for consistently secured radio traffic.*

---

[4] The Health Insurance Portability and Accountability Act of 1996 (HIPAA)

[5] 45 CFR 160.103, which can be viewed at http://www.gpo.gov/fdsys/pkg/CFR-2007-title45-vol1/pdf/CFR-2007-title45-vol1-sec160-103.pdf

The report is at http://tinyurl.com/cbe4wna[6].

In conclusion, we feel that "security" is not a suitable reason for public officials to draw the shade over an established source of sunshine. While many law enforcement agencies have argued that encrypted communications will keep their personnel safer and prevent criminals from monitoring their radio traffic, they have offered little hard evidence that those concerns outweigh the longstanding public interest in the openness of government activities. The secrecy that results from encrypted public safety information also impedes the public's right to know about matters of public concern and activities that are funded with public dollars.

We thank you for your attention to the foregoing, and for your exemplary service to the people of Maine.

Very truly yours,

Suzanne D. Goucher
President, MFOIC

[6] The full link is: http://www.safecomprogram.gov/SiteCollectionDocuments/Security_Issues_Report%20-%20Impediments_and_Issues_on_Using_Encryption_on_Public_Safety_Radio_Systems.pdf

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RepMary.Nelson@legislature.maine.gov

May 17, 2012

Sen. David R. Hastings, III
Rep. Joan M. Nass
Co-Chairs, Right to Know Advisory Committee

Re: Parental Privacy Issues in Maine Schools

Dear Sen. Hastings and Rep. Nass:

I understand that the Right to Know Advisory Committee will be convening this summer, to continue its consideration of matters relating to the Freedom of Access statute.

I would appreciate it if the Advisory Committee would consider an issue which has recently arisen in District 112. The Falmouth School Department has received a request from a citizen for the home e-mail addresses of all parents of students in the Falmouth school system. This request raises very serious confidentiality and privacy concerns for students, parents and their families.

As you may know, increasingly public schools are utilizing web-based student information systems, such as PowerSchool. These web-based portals connect students, teachers, administrators, and parents and provide parents and students with real-time information on grades, attendance, homework, scores, teacher comments, and school bulletins. Parents must provide their e-mail addresses so that they may gain access to their students' confidential education records through these portals and so that school officials may communicate electronically with parents about their children. These electronic communications are critical to providing parents with the opportunity to collaborate on their child's education by gaining access to student records and other important educational updates. The school department maintains parent e-mail addresses in the same secure, password-protected database used to maintain other confidential student/family information.

Because e-mail addresses and other electronic information are maintained in student education records, and are provided to enable parents to access those confidential records, the school department believes that they are confidential under the Federal Family Educational Rights and Privacy Act. However, this is not clear as a matter of Maine law, and I believe it is critical to clarify our statutes to ensure that the confidentiality of this and other sensitive parental information is maintained.

I intend to sponsor a bill in the upcoming legislative session to address this issue, but would also very much appreciate it if the Advisory Committee could consider the issue as part of its deliberations this summer.

Sincerely,

Mary P. Nelson

Mary Pennell Nelson
State Representative

Right to Know Advisory Committee
Subcommittees
Updated 11/1/2011 12:21 PM

Bulk Records Subcommittee
Mike Cianchette, Chair
Perry Antone
Joe Brown
Richard Flewelling
Mal Leary
Judy Meyer
Sen. Hastings*
Rep. Nass*

Legislative Subcommittee
Judy Meyer, Chair
Shenna Bellows
Mike Cianchette
Richard Flewelling
Ted Glessner
Mal Leary
Bill Logan
Kelly Morgan
Linda Pistner
Harry Pringle
Sen. Hastings*
Rep. Nass*

Public Records Exception Subcommittee
Shenna Bellows, Chair
Perry Antone
Joe Brown
AJ Higgins
Linda Pistner
(Ted Glessner, if needed)
(Harry Pringle, if needed)
(Robb Weaver, if needed)

Sen. Hastings*
Rep. Nass
*denotes ex officio status, do not count for a quorum

Not assigned as of 11/1/11: Mike Violette

G:\STUDIES 2011\Right to Know Advisory Committee\Subcommittees lists.doc (11/1/2011 12:22:00 PM)

Calendar for June–December 2012 (United States)

June

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126th Legislature Convenes

Report due January 15, 2013

Holidays and Observances:

Jun 17	Father's Day	Nov 11	Veterans Day
Jul 4	Independence Day	Nov 12	'Veterans Day' observed
Sep 3	Labor Day	Nov 22	Thanksgiving Day
Oct 8	Columbus Day (Most regions)	Dec 24	Christmas Eve
Oct 31	Halloween	Dec 25	Christmas Day
Nov 6	Election Day	Dec 31	New Year's Eve

Calendar generated on www.timeanddate.com/calendar

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Maine Revised Statutes

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MAINE LEGISLATURE

§410 §412

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.

[2005, c. 631, §1 (NEW) .]

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

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

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

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

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

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

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

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

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

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

J. One representative of newspaper publishers, appointed by the

Speaker of the House; [2005, c. 631, §1 (NEW).]

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

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

M. The Attorney General or the Attorney General's designee. [2005, c. 631, §1 (NEW).]

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

[2005, c. 631, §1 (NEW) .]

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. [2005, c. 631, §1 (NEW).]

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

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

[2005, c. 631, §1 (NEW) .]

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

[2005, c. 631, §1 (NEW) .]

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

[2005, c. 631, §1 (NEW) .]

6. Duties and powers. The advisory committee:

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

B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best

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practices for agencies and public officials. The advisory committee shall also provide general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries; [RR 2005, c. 2, §1 (COR).]

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

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

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

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

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

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

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

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

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

[2007, c. 576, §1 (AMD) .]

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

[2005, c. 631, §1 (NEW) .]

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

[2005, c. 631, §1 (NEW) .]

9. Staffing. The Legislative Council shall provide staff support

(4)

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.

[2005, c. 631, §1 (NEW) .]

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

[2005, c. 631, §1 (NEW) .]

SECTION HISTORY
RR 2005, c. 2, §1 (COR). 2005, c. 631, §1 (NEW). 2007, c. 576, §1 (AMD).

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Maine Revised Statutes

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§411 §431

Title 1: GENERAL PROVISIONS
Chapter 13: PUBLIC RECORDS AND PROCEEDINGS
Subchapter 1: FREEDOM OF ACCESS

§412. Public records and proceedings training for certain elected officials

1. Training required. Beginning July 1, 2008, an elected 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 shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official. For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.

[2007, c. 349, §1 (NEW) .]

amended by PL 2011 c. 662 to include "public access officers"

2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official 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; [2007, c. 349, §1 (NEW).]

B. Procedures and requirements regarding complying with a request for a public record under this chapter; and [2007, c. 349, §1 (NEW).]

C. Penalties and other consequences for failure to comply with this chapter. [2007, c. 349, §1 (NEW).]

An elected official 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.

[2007, c. 576, §2 (AMD) .]

3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official 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 elected official shall keep

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the record or file it with the public entity to which the official was elected.

[2007, c. 576, §2 (AMD) .]

4. Application. This section applies to the following elected officials:

A. The Governor; [2007, c. 349, §1 (NEW).]

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor; [2007, c. 349, §1 (NEW).]

C. Members of the Legislature elected after November 1, 2008; [2007, c. 576, §2 (AMD).]

D. [2007, c. 576, §2 (RP).]

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments; [2007, c. 576, §2 (NEW).]

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments; [2007, c. 576, §2 (NEW).]

G. Officials of school units and school boards; and [2007, c. 576, §2 (NEW).]

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 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. [2007, c. 576, §2 (NEW).]

[2007, c. 576, §2 (AMD) .]

SECTION HISTORY
2007, c. 349, §1 (NEW). 2007, c. 576, §2 (AMD).

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§200-H Title 5: §201

ADMINISTRATIVE PROCEDURES AND SERVICES
Part 1: STATE DEPARTMENTS
Chapter 9: ATTORNEY GENERAL

§200-I. Public Access Division; Public Access Ombudsman

1. Public Access Division; Public Access Ombudsman. There is created within the Department of the Attorney General the Public Access Division to assist in compliance with the State's freedom of access laws, Title 1, chapter 13. The Attorney General shall appoint the Public Access Ombudsman, referred to in this section as "the ombudsman," to administer the division.

[2007, c. 603, §1 (NEW) .]

2. Duties. The ombudsman shall:

A. Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right To Know Advisory Committee established in Title 1, section 411; [2007, c. 603, §1 (NEW).]

B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws; [2007, c. 603, §1 (NEW).]

C. Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws; [2007, c. 603, §1 (NEW).]

D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved; and [2007, c. 603, §1 (NEW).]

E. Make recommendations concerning ways to improve public access to public records and proceedings. [2007, c. 603, §1 (NEW).]

[2007, c. 603, §1 (NEW) .]

3. Assistance. The ombudsman may request from any public agency or official such assistance, services and information as will

(9)

enable the ombudsman to effectively carry out the responsibilities of this section.

[2007, c. 603, §1 (NEW) .]

4. Confidentiality. The ombudsman may access records that a public agency or official believes are confidential in order to make a recommendation concerning whether the public agency or official may release the records to the public. The ombudsman's recommendation is not binding on the public agency or official. The ombudsman shall maintain the confidentiality of records and information provided to the ombudsman by a public agency or official under this subsection and shall return the records to the public agency or official when the ombudsman's review is complete.

[2007, c. 603, §1 (NEW) .]

5. Report. The ombudsman shall submit a report not later than March 15th of each year to the Legislature and the Right To Know Advisory Committee established in Title 1, section 411 concerning the activities of the ombudsman for the previous year. The report must include:

A. The total number of inquiries and complaints received; [2007, c. 603, §1 (NEW).]

B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials; [2007, c. 603, §1 (NEW).]

C. The number of complaints received concerning respectively public records and public meetings; [2007, c. 603, §1 (NEW).]

D. The number of complaints received concerning respectively:

(1) State agencies;

(2) County agencies;

(3) Regional agencies;

(4) Municipal agencies;

(5) School administrative units; and

(6) Other public entities; [2007, c. 603, §1 (NEW).]

E. The number of inquiries and complaints that were resolved; [2007, c. 603, §1 (NEW).]

F. The total number of written advisory opinions issued and pending; and [2007, c. 603, §1 (NEW).]

G. Recommendations concerning ways to improve public access to public records and proceedings. [2007, c. 603, §1 (NEW).]

[2007, c. 603, §1 (NEW) .]

6. Repeal.

(10)

RIGHT TO KNOW ADVISORY COMMITTEE

DRAFT AGENDA
October 11, 2012
1:00 p.m.
Room 438, State House, Augusta

Convene

1. Welcome and Introductions
   Senator David R. Hastings III, Chair
   Representative Joan M. Nass

2. Introduction of Law School Extern
   Katherine Lybrand

3. Introduction of Public Access Ombudsman
   Brenda Kielty

4. Reports of Subcommittees; Discussion of Subcommittee Recommendations

   - Bulk Records Subcommittee
   - Encryption Subcommittee
   - Legislative Subcommittee
   - Public Records Exception Subcommittee

5. Comments on FOAA Submitted to Advisory Committee

6. Other?

Adjourn

STATE OF MAINE
RIGHT TO KNOW ADVISORY COMMITTEE

Encryption Subcommittee

September 16, 2012

Dear Senator Hastings,

As you recall, the Encryption Subcommittee was established to consider the concerns raised by the Maine Freedom of Information Coalition in its letter dated April 27, 2012 about the possibility that police and emergency service providers may begin to encrypt more of their radio communications after completing the federally mandated switch from an analogue to a digital radio system. We have reviewed the current encryption practices of Maine's law enforcement agencies and first responders and considered how moving to a digital radio system may impact those practices. We also reviewed federal and state laws that may apply to the use of encryption to help guide us in our deliberations. This letter contains a brief outline of our work and our unanimous recommendations to address the concerns raised by the Maine Freedom of Information Coalition.

On July 16, 2012 and August 15, 2012, the Encryption Subcommittee met in room 438 of the State House and received testimony from Suzanne Goucher representing the Maine Freedom of Information Coalition and the Maine Association of Broadcasters; representatives from the Maine State Police, Department of Public Safety, including Col. Robert Williams (Chief of the Maine State Police), Lt. Col. Raymond Bessette (Deputy Chief), Lt. Don Pomelow (Commanding Officer of Troop C), and Major Grotton (Special Services); and Wayne Gallant, of the Office of Information and Technology. In addition, we directed our staff to work with Assistant Attorney General Laura Yustak Smith to review federal and state laws and policies that may pertain to the encryption of public safety radio transmissions; staff reported those findings to us at our last meeting. Summaries of our meetings may be found at http://www.maine.gov/legis/opla/righttoknowsums.htm

Based on our review we make the following unanimous recommendations:

1. That the Right to Know Advisory Committee not propose any statutory changes to address issues raised in the Maine Freedom of Information Coalition's letter dated April 27, 2012; and

2. That the Right to Know Advisory Committee send a letter to the Board of Trustees of the Maine Criminal Justice Academy requesting that it consider creating a model encryption policy for consideration by local law enforcement agencies that reflect the current practices and requesting that the board report back to the Advisory Committee on any decisions or actions taken pursuant to this request.

Although all members of the Subcommittee agreed that current encryption practices are not an issue in Maine, members were concerned about the potential for law enforcement agencies to use digital technology to encrypt transmissions to which the public should have a right of access. Accordingly, if current practices change significantly it would be appropriate to revisit this issue.

We appreciate the opportunity to delve into this matter for the Advisory Committee. Please feel free to contact me if you have any questions.

Sincerely,

Linda Pistner, Chair

cc: Members, Right to Know Advisory Committee

For Review on October 11, 2012
Recommended by Legislative Subcommittee September 13, 2012

Legislative Subcommittee
Draft: Suggested Revisions to Frequently Asked Questions on www.maine.fov/foaa;
Links to Records Retention Guides Prepared by State Archives

What records must a public officer or agency keep, and how long do they have to keep them?

The Freedom of Access law does not control what records must be retained or for how long they must be retained. Public officers and agencies are required to keep all records made or received or maintained by that officer or agency in accordance with other law or rule or in the transaction of its official business. 5 MRSA § 92-A (5) How long records must be kept depends on the type of record and the value of the record's content. The Maine State Archives works with state agencies and local governments to establish rules for the retention and disposition of government records, including the length of time that certain records need to be preserved by the agency before they are either destroyed or sent to the Maine State Archives for long-term or permanent retention. 5 MRSA § 95 (7). The Maine State Archives provides guidance on the management and retention of state agency and local government records, including schedules for how long records are retained, on its website at http://www.maine.gov/sos/arc/records/state/index.html

Are an agency's or official's e-mails public records?

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail is "in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business" and is not deemed confidential or excepted from the Freedom of Access Act, it constitutes a "public record". 1 M.R.S.A. § 402 (3).

Email messages are subject to the same retention schedules as other public records based on the content of the message. There are no retention schedules specific to email messages. Guidance on the retention of email and digital records can be found at http://www.maine.gov/sos/arc/records/state/emailguide0712.pdf

For Review on October 11, 2012
Recommended by Legislative Subcommittee (5-2) September 13, 2012

Legislative Subcommittee
Draft: Using technology to conduct public proceedings

PART A

Sec. A-1. 1 MRSA § 403-A is enacted to read:

§403-A. Public proceedings through other means of communication

This section governs public proceedings, including executive sessions, during which public or governmental business is discussed or transacted through telephonic, video, electronic or other means of communication.

1. Requirements. A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other means of communication only if the following requirements are met.

A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other means of communication in accordance with this section. The policy may establish circumstances under which a member may participate when not physically present.

B. Notice of the public proceeding has been given in accordance with section 406.

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406.

D. Each member of the body participating in the public proceeding is able to hear each other and speak to each other during the public proceeding. Members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations.

E. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication identifies the persons present in the location from which the member is participating.

F. All votes taken during the public proceeding are taken by roll call vote.

G. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually

presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available.

2. Voting, quasi-judicial or judicial proceeding. A member of a body who is not physically present and who is participating in the public proceeding through telephonic, video, electronic or other means of communication may not vote on any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.

3. Exception to quorum requirement. A body may convene a public proceeding by telephonic, video, electronic or other means of communication without a quorum assembled physically at one location if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

B. The public proceeding is necessary to take action to address the emergency; and

C. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.

4. Annual meeting. If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other means of communication from a different location.

PART B

Small Enterprise Growth Fund Board Proposed amendment to exempt from §403-A

Sec. B-1. 10 MRSA §384, sub-§5 is enacted to read:

5. Meetings. The board shall have a physical location for each meeting. Notwithstanding Title 1, section 403-A, board members may participate in meetings by teleconference. Board members participating in the meeting by teleconference are not entitled to vote and are not considered present for the purposes of determining a quorum, except in cases in which the chair of the board determines that the counting of members participating by teleconference and the allowance of votes by those members is necessary to avoid undue hardship to an applicant for an investment.

Finance Authority of Maine No change

Sec. B-2. 10 MRSA §971 is amended to read:

§971. Actions of the members

Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. No vacancy in the membership of the authority may impair the right of the quorum to exercise all powers and perform all duties of the members.

Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with the following.

1. Placement of call. A conference call to the members must be placed by ordinary commercial means at an appointed time.

2. Record of call. The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.

3. Notice of emergency meeting. Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.

Ethics Commission No change

Sec. B-3. 21-A MRSA §1002 is amended to read:

§1002. Meetings of commission

1. Meeting schedule. The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held and every 2 weeks in the 60 days preceding an election. In the 28 days preceding an election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

2. Telephone meetings. The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. *Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:*

A. During the 28 days prior to an election when the commission is required to meet within 24 hours of the filing of any complaint or question with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

3. Other meetings. The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

4. Office hours before election. The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election and from 8 a.m. until at least 8 p.m. on election day.

Emergency Medical Services Board Proposed amendment to exempt from §403-A

Sec. B-4. 32 MRSA §88, sub-§1, ¶D is amended to read:

§88. Emergency Medical Services' Board

The Emergency Medical Services' Board, as established by Title 5, section 12004-A, subsection 15, is responsible for the emergency medical services program.

1. Composition; rules; meetings. The board's composition, conduct and compensation are as follows.

A. The board has one member representing each region and 11 persons in addition. Of the additional persons, one is an emergency physician, one a representative of emergency medical dispatch providers, 2 representatives of the public, one a representative of for-profit ambulance services, one an emergency professional nurse, one a representative of nontransporting emergency medical services, one a representative of hospitals, one a representative of a statewide association of fire chiefs, one a municipal emergency medical services provider and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, nontransporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members are appointed by the Governor. The state medical director is an ex officio nonvoting member of the board.

B. The board shall elect its own chair to serve for a 2-year term. The board may adopt internal rules that may include, but are not limited to, termination of board membership as a consequence of irregular attendance. If a board member does not serve a full term of appointment, the Governor shall appoint a successor to fill the vacancy for the remainder of the term. Any board member may be removed by the Governor for cause. The board may have a common seal. The board may establish subcommittees as it determines appropriate.

C. The board shall meet at least quarterly, and at the call of its chair or at the request of 7 members. When the board meets, members are entitled to compensation according to the provisions of Title 5, chapter 379.

D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. ~~The~~ *Notwithstanding Title 1, section 403-A, the* board may use video conferencing and other technologies to conduct its business ~~*but is not exempt from Title 1, chapter 13, subchapter 1.*~~ Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

Workers' Compensation Board Proposed amendment to exempt from §403-A

Sec. B-5. 39-A MRSA §151, sub-§5 is amended to read:

5. Voting requirements; meetings. The board may take action only by majority vote of its membership. ~~The~~ *Notwithstanding Title 1, section 403-A, the* board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the

4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

Legislative Subcommittee
Draft: General Agency Confidential Individual and Business Records Template

Sec. X. XX MRSA §XXX-X, as amended by PL XXXX, c. XXX, §XX and affected by §XX, is repealed.

Sec. X. XX MRSA §XXX-X -is enacted to read:

§ XXX-X. Freedom of access; confidentiality of records

The records of the *[board, agency, authority, etc.]* are public records, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Records containing any information acquired by the *[board, agency, authority, etc.]* or a member, officer, employee or agent of the *[board, agency, authority, etc.]* from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the *[board, agency, authority, etc.]* if the applicant or recipient is an individual;

B. A record obtained or developed by the *[board, agency, authority, etc.]* that:

(1) A person, including the *[board, agency, authority, etc.]*, to whom the record belongs or pertains has requested be designated confidential; and

(2) The *[board, agency, authority, etc.]* has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business, invasion of privacy, or other significant detriment to any person to whom the record belongs or pertains;

C. A financial statement or tax return;

D. A record that contains an assessment by a person who is not employed by the *[board, agency, authority, etc.]* of the credit worthiness or financial condition of any person or project;

E. A record obtained or developed by the *[board, agency, authority, etc.]* prior to receipt of a written application or proposal if the application or proposal is for financial assistance to be provided by or with the assistance of the *[board, agency,*

authority, etc.], or in connection with a transfer of property to or from the *[board, agency, authority, etc.]*. After receipt by the *[board, agency, authority, etc.]* of the application or proposal, a record pertaining to the application or proposal is not confidential unless it meets the requirements of the other paragraphs of the subsection; and

F. Non-public, personally identifiable information of an individual, including a consumer.

The *[board, agency, authority, etc.]* shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

2. Exceptions. Notwithstanding subsection 1, the following are public records and are not confidential:

A. Any otherwise confidential information the confidentiality of which the *[board, agency, authority, etc.]* determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information *[, including:*

(1) Names of recipients of or applicants for financial assistance, including principals, where applicable;

(2) Amounts, types and general terms of financial assistance provided to those recipients or requested by those applicants;

(3) Descriptions of projects and businesses benefiting or to benefit from the financial assistance;

(4) Names of transferors or transferees, including principals, of property to or from the authority, the general terms of transfer and the purposes for which transferred property will be used;

(5) Number of jobs and the amount of tax revenues projected or resulting in connection with a project;

(6) Upon the authority's satisfaction of its loan insurance liability, the amount of any loan insurance payments with respect to a loan insurance contract; and

(7) Names of financial institutions participating in providing financial assistance and the general terms of that financial assistance].

3. Disclosure prohibited; further exceptions. A person may not knowingly divulge or disclose records designated confidential by this section, **except that the** *[board, agency, authority, etc.]*, **in its discretion and in conformity with legislative freedom of access criteria** in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. Information requested by a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the *[board, agency, authority, etc.]* has or may have an interest;

E. In any litigation or proceeding in which the *[board, agency, authority, etc.]* has appeared, introduction for the record of any information obtained from records designated confidential by this section;

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority; and

G. If necessary in connection with acquiring, maintaining, or disposing of property.

Draft for Review by Advisory Committee October 11, 2012
Recommended by Public Records Exception Subcommittee

Public Records Exceptions Subcommittee
Proposed draft letter to Department of Health and Human Services

Re: Title 22, section 3188, related to the Maine Managed Care Insurance Plan
Title 22, section 3192, related to the Community Health Access Program

Mary C. Mayhew
Commissioner
Department of Health and Human Services
221 State Street
Augusta, Maine 04333-0040

Dear Commissioner Mayhew:

The Public Records Exceptions Subcommittee of the Right to Know Advisory Committee reviews existing public records exceptions in the statutes. The Subcommittee is expected to review and evaluate each public records exception and make a recommendation for keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation.

As part of its review of exceptions in Titles 22 through 25 during 2011, the Subcommittee considered 2 exceptions in Title 22 relating to records collected or maintained by programs authorized within the Department of Health and Human Services that have never been implemented:

- Title 22, section 3188, subsection 4 relating to the Maine Managed Care Insurance Plan Demonstration program for uninsured individuals; and
- Title 22, section 3192, subsection13 relating to medical data of the Community Health Access Program.

Last year, the Department of Health and Human Services and the Legislature's Health and Human Services Committee recommend to the Subcommittee that all of sections 3188 and 3192 be repealed, including the specific confidentiality provisions, because the statutes have never been used. However, the Subcommittee did not include language to repeal these sections in proposed legislation because the underlying policy issues are beyond the scope of the Subcommittee's charge. We are writing to inform you of the Subcommittee's decision so the department may consider whether to recommend that the statutory provisions authorizing the Maine Managed Care Insurance Plan Demonstration program and the Community Health Access Program be repealed in any proposed legislation put forward by the department for consideration by the 126th Legislature.

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch, Colleen McCarthy Reid or Curtis Bentley, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.

Bulk Records Subcommittee

The Legislative Subcommittee met on August 23, 2012.

Issue: Review of Law Court Decision in *MacImage* Case and Action Taken by Legislature in Response to Decision

- Advisory Committee requested that the Subcommittee revisit the issue of bulk data in light of the Law Court's decision in the MacImage case to close the "loop" on the discussion and determine whether additional action and/or recommendations on the issue are needed
- Last year, the Bulk Records Subcommittee did not make a specific recommendation related to bulk data given the unresolved court case
- In *MacImage*, the Law Court found that the specific statute in Title 33 regarding the registries controlled the dispute over the reasonableness of the fees charged by the registries—not the general language of the FOAA.
- Subcommittee agreed that Law Court's decision has settled the issue with regard to the Registries of Deeds but did not provide any particular guidance for the State and local governments with regard to requests under FOAA for bulk records
- Registers of Deeds (Susan Boulay and Diane Godin) told Subcommittee Registers of Deeds are satisfied with decision and status quo
- Discussion about whether there was specific way to address issue for all State and local govts—should policy should be established that applies to all state and local government agencies?
- Noted recent legislative changes (endorsed by the Advisory Committee) that clarify an agency's responsibility under FOAA is to provide information in the medium in which it is stored; belief among members that the amendment to the law may assist agencies in fulfilling requests for bulk records
- No particular interest among members in pursuing the same approach as some other states that distinguish between requests for bulk data made for commercial and non-commercial purposes
- Sense that current law and structure seems to be working for state agencies; Subcommittee not aware of any pressing issues or concerns for State agencies about bulk data

Recommendation:

No changes in statute;
No additional action needed by Subcommittee or Advisory Committee

Legislative Subcommittee

The Legislative Subcommittee met on July 19, August 23 and September 13.

Issues:

- Application of FOA laws to Maine Public Broadcasting Network
- Status of email addresses collected by schools and towns
- Balancing the public disclosure of elected officials' email with the availability of technology and other systems to maintain records and provide public access (PL 2011, c. 264)
- Use of technology in public proceedings to allow member participation from remote locations
- Templates for drafting specific confidentiality statutes

Application of FOA laws to Maine Public Broadcasting Network

- Issue raised by the late Mike Brown when MPBN refused to provide certain financial information about employees that he requested, saying they we not "public" under the FOA laws.
- Mark Vogelzang (President and CEO of MPBN) and Jim Zimpritch (MPBN's attorney) attended and provided written remarks
- Board meetings and materials open to the public, as well as annual tax filings and certain donor information

Recommendation:

No change in statute, but encourage MPBN to be more open and accommodating of requests (5-0, two abstentions)

Linda Pistner abstained: current law is ambiguous in that it includes MPBN in the open meetings portion of statute, but silent with regard to records.

Kelly Morgan abstained because she had missed most of the discussion

Status of email addresses collected by schools and towns

- Issue raised by Rep. Mary Pennell Nelson via letter; Falmouth schools received a request for parents' emails
- Discussion about whether email addresses are confidential and should they be; practical problems with redacting all email addresses from otherwise public documents
- Harry Pringle argued that probably confidential under FERPA, but should make clear; offered to prepare draft legislation
  - Review of draft; made changes, voted 4-3 to recommend draft on August 23rd, but reconsidered on September 13th to wait until the new Public Access Ombudsman Brenda Kielty could collect information to determine if it is a problem

Recommendation:

No change in statute

Public Access Ombudsman look at issue, collect information, report back (If Advisory Committee agrees, need to put request in writing)

Legislative Subcommittee

Balancing the public disclosure of elected officials' email with the availability of technology and other systems to maintain records and provide public access (PL 2011, c. 264)

- Invited David Cheever, State Archivist, to discuss issues of maintaining, storing and accessing records, especially digital records such as email
- Current best practices – rely on record retention schedules
- Everyone across the country is facing same issues with no great resolutions so far

Recommendation

Amend the Frequently Asked Questions section of FOAA webpage to address guidelines for retention of emails and digital records, including links to Archives' records manuals

Ask the Legislature to amend its record retention schedule to specifically include "correspondence"

Ask Legislature to revise training for members to include an explanation of the benefits of using the State-provided email address; but make clear that emails about legislative work are most likely public (narrow exception was added recently)

Use of technology in public proceedings to allow member participation from remote locations

- Issue has been under discussion for a few years – FOA Act is silent on whether members not present at a public proceeding of a board, commission or other body can participate via telephone, video link, etc.
- Four entities (FAME, Workers' Comp Board, Ethics Commission and Emergency Medical Services Board) have specific statutory authorization to meet via telephone or other technology in certain circumstances; all requested exemption from the proposed language
- Revised language; key provision is that an entity can use the procedure only if they have adopted a policy that authorizes it

Recommendation:

Subcommittee voted 5-2 with one abstention to recommend the revised draft to the full Advisory Committee for discussion. See draft.

Templates for drafting specific confidentiality statutes

- Another topic that has been under consideration for a few years, requested by the Judiciary Committee
- Guidance for drafting new statutes that protect information provided by an applicant for financial or technical assistance provided by the State, town or other public entity
- Received comments from FAME

Recommendation:

The Subcommittee unanimously recommended to the Advisory Committee that the template be made available as guidance for drafting new statutes.

Comments and complaints received by staff via email

Updated 10/5/2012 10:48 AM

Dear Ms. Reinsch, et al.:

We now have permission to download the link to the article "From HCQIA to the ACA" from the author. Please circulate the link -- <http://www.tandfonline.com/eprint/89fnDaXjrZkWgFMuluqb/full>

DH

Dear Dwight,

You may forward the link if you wish. As for the Flexner report, it was clearly very important in prompting reforms in medical education early in the twentieth century; many historians have explored its impact. I excluded it mainly because I did not see it as a particularly important milestone in the development of the Data Bank or of quality reporting more generally.

Kristin Madison
Professor of Law and Health Sciences
Northeastern University
400 Huntington Ave.
52 Cargill Hall
Boston, MA 02115

From: Dwight Hines [mailto:dwight.hines@gmail.com]
Sent: Saturday, September 29, 2012 4:30 AM
To: Madison, Kristin
Cc: Reinsch, Margaret; McCarthyReid, Colleen; Pistner, Linda
Subject: Thank you and request for permission to circulate e-copies of your paper to Maine Right to Know Joint House-Senate Committee and

Dwight E. Hines, Ph.D.
715 Green Woods Road
Peru, Maine 04290
207-562-4701

September 29, 2012

Kristin Madison, J.D., Ph.D.
Professor of Law and Health Sciences
Northeastern University
400 Huntington Ave.
52 Cargill Hall
Boston, MA 02115

Dear Professor Doctor Madison:

Thank you for the site for your article "From HCQIA to the ACA". I downloaded and read it. It's good. Good on history and good on recommendations for merging the two existing paths.

I have two questions:

Comments and complaints received by staff via email

1) Would you grant me permission to email copies of your paper to the Maine Joint House-Senate Right to Know Advisory Committee? I believe your paper would be of help to the Committee in making their decision to continue or discontinue the present practice of exempting sentinel events in Maine hospitals from the requirements of the Maine Right to Know Act. The RTK Committee has about 15 members.

2) You did not mention the Flexner Report (1910) in your paper. Do you think its impact has been overrated?

Dwight Hines

Mon 9/24/2012 7:53 PM

Hello Margaret & Colleen,

I would like to know more about the future Right to Know Advisory Committee meetings.

Also any information about how to request the committee on change and how report a complaint.

Thanks
John McCollor

Dwight E. Hines, Ph.D.
715 Green Woods Road
Peru, Maine 04290
207-562-4701

September 22, 2012

Olga Pierce and Marshall Allen, Investigative Reporters,
Health Care Quality Project
Propublica
Dear Ms. Pierce and Mr. Allen:

Congratulations on your Pulitzer, and you are on the right track with the Health Care Project to win several more.
I was delighted to see that you and Propublica are continuing to investigate health care quality. Please note that I am in Maine, listed 25th among the 50 states in Life Tables published this past week, September 14, 2012, by National Vital Statistics Reports, Volume 60, Number 9,, CDC, and Maine's rank drops to 42nd among the states when you look at life expectancy changes from 1989-1991 to 1999-2001. Maine is 41rst in life expectancy for all those aged 65, with women's expectancy much lower (Attachment 1a).
Based on the 2012 Robert Woods Johnson County Health Rankings, premature deaths in Maine are almost 1,000 years more than the national average, with the total estimate of years lost before age 75 ranging from 4,562 to 8,898 years. I have studied the methodology of RWJ and the University of Wisconsin and find it scientifically based. They did it right.

I have also conducted preliminary analyses of the Health Factors z-scores for the 16 counties of Maine (Attachment 1b) and using a rough cluster analyses (Attachments 2a, 2b), it appears that there are factors other than just health care causing the unacceptable, and preventable premature deaths and poor health factors. I am preparing a rough paper for the Public Health Law Research (PHLR) Annual Meeting in New Orleans in January of 2013, that indicates that some of the variance for bad health outcomes is accounted for by weak, near nonexistent enforcement of the Rule of Law in Maine. Eg, The Maine Attorney General has never prosecuted a violation of the Maine Right to Know Act and, even though last year's legislature funded a full time public records ombudsman, she just started in July and is still not answering her emails or letters. The problem is not just with failure to comply with Maine Right to Know Act by a major Maine city (Augusta — state capitol) and by Maine towns police departments (Augusta, Winthrop, et al): this year's report on Public Integrity from the Public Interest Research Group (PIRG) ranks Maine 46th and thus highly susceptible to corruption. False documents are not rare events in Maine and, again, are rarely, if ever, prosecuted.

My analyses are not finished -- I plan to include Gini coefficients and total federal funding by counties (Attachment 3) to see if these variables increase the stability of the clusters. If anyone on your team has experience with the Rule of Law indicators or stabilizing clusters, please have them contact me.

Now, the Maine Right to Know Joint House/Senate Advisory Committee has been doing a very good job and recently the Subcommittee on RTK exceptions voted to remove confidentiality for Sentinel Events in Maine hospitals. As you can see by the three pages of pdfs attached (Attachments 4-6), the Maine Hospital Association, Maine Medical Association, Maine Osteopathic Association, and the Medical Mutual Insurance Company of Maine, September 14, 2012, provided written comments to the Subcommittee on Exceptions to public records.

I was stunned by their superficial comments, poor logic, and absence of any court citations to their claims, some claims being blatantly in error, made in the comments. No mention was made of the excellent published, scientific rigorous work of AHQR or the Institute of Medicine of the National Academy of Sciences. A matrix was attached that showed the opposite of their claim that there is adequate public information already available, The comments did not include any surveys of Maine citizens or physicians to see if they wanted Sentinel events to be exceptions to the RTK act. I also found it odd, if not misleading, that the comments cited Consumer Reports as an example of the use of publicly available data but failed to note that Consumer Reports assigned every hospital they scored in Maine the equivalent of an "F".

I do admit that the recent comments are a real improvement over the testimony given by Assistant Attorney General Renee Guigard, September 29, 2011, to the Public Records Exception Subcommittee, who argued that if sentinel events "are not kept confidential, the hospitals will not report the occurrence of sentinel events, "near misses" or other instances which may or may not be sentinel events." (Attachments 7a&b)

Given that life expectancy is declining in Maine (see Vital Statistics Report 2012), and given that Maine professional oversight of Physicians, et al, is weak, and given that sentinel measures serve to indicate poor practices, and that transparency is effective in increasing the quality of health care, I hope y'all, as part of your investigation, examine Maine Sentinel Reporting practices and possibly testify at the Committee Hearings.

Dwight Hines

Copy:
The Honorable Emily Cain, House Democratic Leader, State of Maine, author of Draft Bill "An Act to Strengthen Maine Ethics Laws and Improve Public Access to Information."
The Honorable Paul LePage, Governor, State of Maine, Supporter of improving Maine Ethics and Public Access to Information
Ms. Margaret Reinsch, Legislative Counsel, RTK Joint Committee
Ms. Colleen McCarthy-Reid, Analyst, Maine Office of Policy and Legal Analysis
Mr. William Schneider, Maine Attorney General

Sent by Dwight Hines Thu 9/20/2012 2:19 PM

I was told that the reporter for the Wednesday morning meeting was Mr. Holland's daughter. Please let me know if that is false or not. In the meantime, I did not see anyone threaten your reporter, I left when the selectmen started threatening each other.

Well, because the entire meeting was recorded by Mr. Winterell, people can read the published report from the Sun Journal and compare it to the DVD. Which you have not done. Again, you are reporting based on one side, and the DVD shows the one side is not just selective, but possibly incompetent. The DVD shows your reporter agreeing not to publish about the bidding, and that was before your "editorial" decision.

I stand by my complaint on the poor reporting and will be glad to submit my complaint, along with the article published in the Sun Journal and the DVD to Journalism professors and to specialists in Journalism Ethics for their review and evaluation.

If you feel strongly about the quality of your reporting, please accept my invitation to testify in court, under oath, about how the coverage that left out so many substantive facts served your readers, the readers who do not have the time to attend the meetings, to inform them of their government and how it functions.

Finally, you may be have First Amendment immunity from civil prosecution for what you publish in the Sun Journal, but you have no such protection for slander and liable for the statements you made about me in your email below. I have never "twisted" a Sun Journal report. I expect an immediate and complete apology from you in writing or I turn this over to my attorney. I hope you will agree to accept service of process by first class mail.

Dwight Hines

Copy:
MuckRock

Thu 9/20/2012 1:49 PM

Dr. Hines,
While I certainly appreciate the zeal with which you monitor FOAA issues in Maine, with all due respect I must respond to your post since you disparage not only our newspaper but our freelance reporter.
First of all, the reporter is not the daughter of the chairman of the Peru Board of Selectmen, which you are well aware. Mrs. Standard has no family, personal or business relationship to Mr. Holland whatsoever and has absolutely no personal agenda to "make him happy." And, for those on your distribution list who do not know either Mr. Holland or Mrs. Standard, I don't think Mrs. Standard would mind if I point out that she is several decades older than Mr. Holland, which makes your assertion that she is his daughter absurd.
Secondly, Mrs. Standard did include details about the altercation between selectmen and the complainant in the report that she filed to our copydesk. We chose, as editors have the luxury to do, to remove that information for what we consider to be an appropriate journalistic reason.
As an aside, that citizen complainant threatened Mrs. Standard and, according to witnesses, came very close to striking Mrs. Standard in the face in a failed effort to frighten her from reporting on the altercation. I know you are aware of this detail because you were there.
Your remaining assertions are equally incorrect and inflammatory for which I cannot possibly fathom an appropriate explanation. This is not the first time you have twisted a Sun Journal report for your own purposes and I ask you, reiterating my respect for your devotion to open government, to knock it off.
Sincerely,
Judith Meyer, Managing Editor/days
Sun Journal
104 Park Street
Lewiston, ME 04243

Comments and complaints received by staff via email

Sent by Dwight Hines Thu 9/20/2012 1:17 PM

Below is a report on incomplete and inadequate reporting by the Lewiston-Sun Journal in Maine on local political meetings in Peru, Maine. I wish the complaint was not representative of the quality of reporting here but it is. I even left out some of the substantive facts, like how the reporter agreed not to write about the discussion on the flawed bids to keep the Chair happy. And how much conflict of interest is it to have a reporter covering events who is the daughter of the Chairman?

==========

SunJournal article (http://www.sunjournal.com/news/river-valley/2012/09/17/peru-board-gets-letter-wind-ordinance/1252617) is a typical example of selective reporting. There was no coverage of the arguments between the selectmen on the unfairness of the bid process for a new roof, no coverage of selectmen physically threatening each other, no coverage of an additional meeting of the selectmen for Wednesday morning to discuss and decide who won the roof bid (the bidding process was flawed), and no coverage of the hostile discussion by acting Chair Holland of the petition for an article to recall selectmen, no discussion of the citizen who was there to complain about the actions of a selectman toward her in her complaint about taxes on a house that does not have a foundation, no coverage on the refusal of the Chairman to allow anyone into the executive meeting to represent her, but did allow family member of the selectman who was the basis of complaint, and no coverage of the fact that the town required all the bidders to purchase their materials from one supplier. I'd go on but this one meeting is a good example of the biased coverage by the Sun Journal of our local meetings.
I have a DVD of the meeting that Ms. Martha Winterell made and it is shocking in and of itself but what's worse is comparing the written reporting to the DVD of what actually happened at the meeting. Who protects us from the Newspapers? At what point can civil fraud be invoked for misleading the people who read the paper?
Dwight Hines
========
additional information
Best to call or contact Ms. Winterell at 562-7113 to get the DVD directly from her.
N.B. At the Wednesday morning meeting, held without adequate notice as required by Maine Laws, the meeting also covered a petition to allow one selectman to hold her position as secretary and selectman, thus being her own boss. The town personnel rules forbid this joint employment, as does the recent vote of the town declaring it dual dipping wrong. The petition is also past the due date set by the Town Clerk of Sept 15, later changed to Sept 17, which is still past the deadli

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Thu 9/13/2012 4:38 AM

Dear Mr. Bridgeo:

Thank you for your quick response to my email.

Please provide me with the name and contact information for the City Attorney. Given the failure of the police department to meet the requirements of Maine RTK, I think we need to get these issues into court.

Dwight Hines

copy:
foia-a
Legislative committee
On Tue, Sep 11, 2012 at 1:43 PM, William Bridgeo <william.bridgeo@augustamaine.gov> wrote:
Mr. Hines,

I am in receipt of your complaint and your requests.
I am directing this matter to the City Attorney to address.
I do so to ensure that the City is in complete compliance with City and State law and regulations and that you requests are dealt with in a timely fashion.
William Bridgeo
City Manager

From: Dwight Hines [mailto:dwight.hines@gmail.com]
Sent: Tuesday, September 11, 2012 1:36 PM
To: William Bridgeo
Cc: database.sunshine@gmail.com; globalear@gmail.com
Subject: Augusta Police Department fails to comply with Maine RTK laws and request for information on Augusta Muni bonds and economic contracts and grants

Dwight E. Hines, Ph.D.
715 Green Woods Road
Peru, Maine 04290
207-562-4701

September 11, 2012
First Class Mail and william.bridgeo@augustamaine.gov

William Bridgeo, City Manager
City of Augusta
16 Cony Street
Augusta, ME 04330

Dear Mr. Bridgeo:

I have had problems in obtaining public records requests, made pursuant to Maine Right to Know Law, to the Augusta Police Department. Please see attached letter re-requesting documents I requested over two weeks ago. I spoke with the Assistant City Manager about the problem in person about two weeks ago.

When I told the Chief of Police that I gave his Department an "F", he did not seem concerned. He did say that he had two people responsible for records. It appears that both individuals are unconcerned enough not to respond to my requests.

So, please accept this letter as a formal complaint about the failure of the Augusta Police Department to comply with Maine Right to Know Laws and as a request, pursuant to Maine RTK Laws, for an opportunity to review any and all outstanding municipal bonds for the City of Augusta.

Second, pursuant to Maine RTK, please provide me with a date, time and place to review any and all current state and federal contracts for economic development.

Sincerely,

Dwight Hines

Copy:
FOIA
Open Government Police Accountability Project (USA & Europe)

Forwarded by Dwight Hines Thu 9/6/2012 5:07 PM

2012 Consumer Health IT Summit
Expanding Access to Health Information

Due to an overwhelming response, this event has reached capacity. You can view the live webcast at www.hhs.gov/live on Monday at 10 am EDT.

At this year's Consumer Health IT Summit we are celebrating the progress the public and private sector have made in making health information more easily available to consumers and engaging them to use their data to improve their care and well being. This year we are taking this movement to the next level.

For more information about this event, please contact Alison Banger at abanger@rti.org.
Replace this text with the content of your email message.

This service is provided to you by
The Office of the National Coordinator for Health Information Technology.

Forwarded by Dwight Hines Tue 9/4/2012 11:00 AM

---------- Forwarded message ----------
From: Patrice McDermott <info@openthegovernment.org>
Date: Tue, Sep 4, 2012 at 10:53 AM
Subject: Policy and News Update for September 4, 2012
To: dwight.hines@gmail.com

In This Issue: [click on the link to go to the corresponding section]

News from Coalition Partners & Others
I. First Anniversary of US' Open Government Partnership National Action Plan: September 20
Also, don't miss on our website: 10 Open Government Questions for 2012 and New Step Toward Making Sure the Government Can Find and Share E-Records
News from Coalition Partners & Others
NFOIC Launches New Open Government Newsletter
The National Freedom of Information Coalition (NFOIC) published its inaugural newsletter, FOI InSight, on August 23rd. The newsletter highlights state-based open government work, aggregates open government news, and offers analysis on freedom of information issues.
Sunlight Releases New Report on Public Access to Bulk Data
The Sunlight Foundation partnered with the Cornell Legal Information Institute and GovTrack.us to create a "roadmap" for Congress's Bulk Data Task Force to provide bulk access to legislative information for the public. The report provides recommendations for updating THOMAS to take advantage of the data's potential and open up legislative data for all.
National Security Counselors Seeking Legal Interns for Fall
National Security Counselors is accepting applications for its legal intern program. The part-time position and application requirements are detailed here.
I. First Anniversary of US' Open Government Partnership National Action Plan: September 20
In honor of the first anniversary of the release of the Open Government Partnership National Action Plan (NAP), OpenTheGovernment.org will be releasing an interim progress report on the Administration's efforts to implement the plan. The NAP (which we applauded for the breadth of its commitments) addresses three broad challenges, and includes 26 commitments to help achieve 17 goals. While the Administration does not intend to have enacted this plan in its entirety until January 2013 – a date that will put the US in sync with the majority of countries participating in the Open Government Partnership, the one-year progress report will show what steps the Administration has taken thus far, and how much work is left to be done in the remaining few months.
In January OpenTheGovernment.org will release an over-all assessment of how well the Administration implemented the NAP. That assessment will look at both whether the Administration met the letter of the individual commitments, and if the Administration stretched itself beyond the commitment to fulfill the underlying goal.
Click here to unsubscribe

Mon 9/3/2012 7:24 AM

Sent by Dwight Hines

These songs and videos are a treat. But Maine needs its own RTK song.

http://www.opengovernmentrecords.net/drupal/node/18

dh

AND, if you are good with a camera or cellphone camera:
On Mon, Sep 3, 2012 at 5:44 AM, Lydia Medland <lydia@access-info.org> wrote:
Dear All,

We are very pleased to announce three prizes for the "I have a right to Know!" photo contest! The top prize will be €500, followed by second and third prizes for €300 or €200. We hope that this will help spread the message about the competition within and beyond the members of the FOIAnet and allow us to come back with some powerful images that help us transmit our message about the right to know around the world.

Please see full details below and don't forget that the deadline is the 12th September.

All the best and have fun with your photo-taking!

Lydia

Please circulate widely information about the contest:

www.foiadvocates.net

10th Right to Know Day Photo Contest: "I have a Right to Know!"
This year people working all over the world to promote the right of access to information will celebrate the 10th anniversary of Right to Know Day, on the 28th September. To mark the occasion we are launching a photo contest open to members and non-members of the network. Anyone who feels able to illustrate the right to information, transparency, accountability and openness through photography is welcome participate.
The winning photo will be used on the front cover of the international publication Right to Information World Advocacy Update which is to be launched on Right to Know Day this year by the FOIAnet. Photos submitted may also be exhibited at a later date at international transparency and anti-corruption forums. More information on this coming soon!
The Jury will award three prizes, for a total of 1000 EUR, generously made available by the Open Society Institute. The prizes will be distributed as follows:
1st prize: 500 EUR
2nd prize: 300 EUR
3rd Prize: 200 EUR.
Terms of agreement and submission forms in English, French and Spanish can be found on the website: www.foiadvocates.net

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Fri 8/31/2012 10:59 AM

I went to a land use appeals board meeting last night and it was downright pleasant. Lots of people attending. There was some disagreement but no one was insulted by the board. Indeed the Appeals Board let everyone speak and they were good about telling us what was required for standing (I did object because standing should include aesthetics).

The Appeals Board demeanor, attitude, and competency was a real contrast with the autocratic "we don't need no stinkin' information from tax-payers" Board of Selectmen in Peru. It's going to look quite obvious in the videos when selections from the Peru Board of Selectmen meetings are played next to selections from Appeal Board meetings.

It sounded like to me that the planning board did their homework and made the right decision based on the information they had, Unfortunately, I don't think there was adequate notice either to the adjacent homeowners or to the public at large -- but I will verify if public notice for the planning board was published in the newspaper and if it included any public mention of the property having been designated a "Brown Fields" subject to extensive remediation from 2003-2007.

So, there is hope. Time to expand the Appeals Board's responsibilities to include decisions made by the Selectmen.

Thank you, Martha for videotaping the Appeals Board meeting.

Dwight

P.S. We need a name for law enforcement officers who are serial offenders for public records requests.

Thu 8/30/2012 5:57 AM

It would be good to have someone do some animations (could be stick-figures) on law enforcement and money flows as influenced by information.
The Canadians could help here.

DH

---------- Forwarded message ----------
From: **Center for International Media Assistance** <cima@ned.org>
Date: Tue, Aug 28, 2012 at 11:26 AM
Subject: New CIMA Report - A Video Revolution
To: dwight.hines@gmail.com

Dear dwight,

CIMA is pleased to release its latest report, The Video Revolution, by veteran journalist and freelance editorial consultant Jane Sasseen. The video revolution is part of the broader revolution of social media and citizen journalism that has swept the news media in recent years--and the impact of the two cannot be separated. Citizen journalists across the globe are using blogs, Twitter, Facebook, YouTube, and other new tools to spread articles, blog posts, videos, and photos of news happening in their countries. The new video journalists use these broader tools as well, taking full advantage of social media to share their videos and tell their stories to a wider audience. This report traces the dramatic rise in the use of crowd-sourced video and examines how this is affecting the international news media landscape. It offers recommendations for the media development community for harnessing the power--while mitigating the dangers--of citizen-shot video.

The Video Revolution is available for download, along with CIMA research reports and videos of CIMA discussions and events, at http://cima.ned.org. Also on the website is a comprehensive bibliographic database of media assistance resources with information on more than 1,100 reports, articles, books, and manuals related to the media assistance field. We welcome suggestions for additions to this bibliographic database.

For more information on the Center for International Media Assistance, please explore our website at

http://cima.ned.org, or contact us at CIMA@ned.org.

Mon 8/27/2012 9:52 PM

Need some help here.

There are questions about the integrity of a specific deputy when he is acting in a political/administrative capacity that I, and others, believe make any testimony he provides under oath in Maine State Courts dubious (falsus uno, falsus omni), at best.

The Maine State Court Records have not been converted to electronic files so it will be necessary to sample, you remember, taking a small number of cases to determine frequency of testimony by specific individuals and then going into the individual cases to determine what type of testimony was provided, and then contacting the defense attorney, or public defenders, to get copies of transcripts. It's Enough work to make an atheist pray for electronification of all court documents.

Someone should have set this up as a procedure that satisfies Daubert and its daughter requirements, if not NACOLE, then the New England Center for Innocence Project.

Let me know.

Dwight Hines
IndyMedia

Sat 8/25/2012 6:46 AM

Peggy - Life is been busy and I missed the recent meetings, Given some of the discussion via email, and my own experience (mostly much better than the discussion), I was wondering when the town was suppose to appoint the individual to be the key recipient.

Thanks

Jarryl Larson, Edgecomb

Fri 8/24/2012 10:38 AM

Dear Lt. Read:

I can not be there until the end of next week. Thursday or Friday. According to the law, you do not have to be present, you can delegate or simply put the information on the web.

I have filed formal complaints about your failure to comply with Maine Statutes. It will take time for those complaints to move through the system and I will continue to make public records requests to you. Make no mistake, you have an F now and delays in complying with future requests will be used as adverse inferences against you and your entire department.

Dwight Hines
On Thu, Aug 23, 2012 at 7:53 AM, Chris Read <chrisr@augustamaine.gov> wrote:
Mr. Hines,

Fri 8/24/2012 10:25 AM

Oh man, have you struck the gold mine of local government waste. Get this into court. This is financial abuse and waste times 50.

She is not managing her information and look at what per cent is real business and what percent is spam and what percent is betting on horses, etc. AND, how many of the emails, sent and received, are political -- paid for by the tax payers who don't agree with the politics.

Find out how much money was spent on the hardware and software and how much in training her and others -- especially check out travel expenses to a location, overnight etc, for her to be trained.

Call the vendor for the email software, or better yet, go to the high school -- any high school in Maine -- and check in with the front office and get the computer instructor to recommend a student you can pay to show you how quick and easy it is to make a copy of all the emails to a thumb drive. If they are not familiar with the email system being used, get a copy of the manual for them. TIme them in what they do. Better yet, talk to the school about making this a contest -- $250 dollars to the student who can make the copies in the shortest period of time.

Also, get a copy and read her job description and get a copy of the advertisement for her position. Some body is way off base but you have to document.

I think what she did was fraud, but you have to show she knows how to copy the emails before you can make that allegations. You do have the option of takiing her and the town to court to get your money back. I'm not sure how small claims court works here, but you definitely have a strong claim. Ask any computer science teacher.

I bet the budget for information technology for Falmouth is half a zillion dollars a year, with 10% just for training. And the purchases and leases are not one time events. Look at the totals, including the salaries of IT people, for the past five years.

Post your column from today on the FOIA-L list.

Dwight

Fri 8/24/2012 9:58 AM

More Hospitals Begin to Apply Lessons from Seven Pillars Process
http://iom.edu/~/media/Files/Perspectives-Files/2012/Commentaries/VSRT-Seven-Pillars.pdf
Carolyn M. Clancy, MD, Agency for Healthcare Research and Quality*
August 2012
When the family of Michelle Malizzo Ballog found out that their daughter's 2008 death had been caused by a preventable medical error, one question trumped all oth- ers: How could this have happened?
To the family's surprise and relief, offi- cials at the University of Illinois Hospital and Health Sciences System (UIHHSS) in Chicago did not defer that question to their lawyers. Instead, they investigated their

sus- picion that a fatal error occurred during Ms. Ballog's surgery, confirmed that information with the patient's family once it was estab- lished, apologized, and provided a financial settlement for Ms. Ballog's young children. Importantly, the hospital made changes in their anesthesia processes to ensure that the same error would not happen again.1
The Seven Pillars Process
This approach, known as the "Seven Pil- lars," was adopted by UIHHSS in 2006. It is a notable exception in our nation's health care system, which still relies heavily on the medical liability system to sort out the myri- ad issues involved in investigating, address- ing, and preventing patient safety events. (A full-disclosure policy that was adopted in 2001 by the University of Michigan Health System is credited with reducing costs per claim by 50 percent and earning approval of 98 percent of the system's faculty physi-cians.)2
Seven Pillars focuses on transparency to eliminate patient harm and learn from patient safety events. It includes:
SNIP -- attached

Dwight E. Hines
715 Green Woods Road
Peru, Maine 04290
207-562-4701

August 22, 2012

Dear Sirs and Madams:

The Augusta Police Department is way out of compliance with Maine Public Records requirements, just as they are out of compliance with equal enforcement of the laws. It stuns me that the Winthrop Police Chief sent me an email that he will comply at his convenience to my public records requests. Given that the Attorney General does not now, and has never enforced violations of the Maine Public Records Act, it is time to:

1) Commission a "singable song" contest about Maine Law Enforcement -- $250 dollars and a "Certificate of Merit and Honor" for the best submission. I'm not good with writing tunes, but I hope we come up with something syncopated, lots of counterpoints, something hummable, with a few embedded child whimpers and feminine screams for clarity of intent. Real names of real people must be used in the song so their is no fuzziness or confusions about who has failed in their sworn duties and how and when and where they have failed.

2) Notify Governor LePage that his own bureaucracy is not only not enforcing Maine laws that are core to economic development, but are helping mask, if not encourage, domestic violence through poor record keeping and weak to absent intake and investigation procedures -- procedures that Augusta Police Department can not locate and the Winthrop Police Department are taking weeks to produce because they have to remove those sections that are confidential, even though there are no exceptions for policy and procedure manuals to the Maine open records laws.

3) Seriously consider taking federal legal action against the Governor of the State of Maine, The Honorable Paul LePage, to force him to order the Attorney General of Maine to investigate and prosecute violations of the Maine Public Records Law, and related laws.

4) Notify ALNAP (Active Learning Network for Accountability and Performance in Humanitarian Action) and request help in quantifying the negative impact of these failures of law enforcement on economic development and human suffering for the State of Maine.

5) Bring these multiple violations of the Maine Public Records laws, and related laws, to the attention of the Joint House and Senate Committee on the Right to Know, and to the attention of the Joint Judiciary Committee. I've observed the RTK committees for many hours. Under the excellent leadership of Senator David Hastings, they have worked hard and long hours, being supported by diligent and learned counsel (Margaret Reinsch and Colleen McCarthy-Reid), to recommend specific improvements to the Maine Open Records Laws.

Dwight Hines

Copy:
Florida Folk Music List
Maine Folk Music List

Mon 8/20/2012 6:38 AM

As long as there are no consequences for delay of responses (Police Chief Young in Winthrop, Maine, told me in person, and emailed me, that he will respond at his convenience. Obviously, there are problems in Winthrop, they still have not produced their annual report, and such sloppy practices are good indicators for the vulnerable groups in a community.

I suggest that the Attorney General take a few cases of such constructive denials and make them high profile prosecutions and that the Economic and Community Affairs Department refuse to fund any projects until the applicants certify that their core records, as defined in the Rules of the Maine Archivist, are on the internet.

The issue of charges is just a way to inhibit, block and thwart the most valuable resources in the community (residents) from meaningful participation in local government. Odd, isn't it, the major problem that almost all local governments reported as having in the Maine Municipal Association/ University of Maine survey, a survey that was conducted properly, last year was the low levels of citizen participation in local government. Duh!

Dwight Hines
IndyMedia

Sun 8/19/2012 7:55 AM

My name is Richard Cayer and I am from Madawaska. I have been requesting for information under FOAA from our town that is readily available such as permits issued and I was required to pay $325.00 in advance. I was advised that the request to see the permit book could take up to 60 days. Actually this was an improvement since many of my past FOAA request were simply ignored. In the end they sent me a stack of useless documents a practice used by DEP for a request that I made to that department a few years ago.

I was also refused to attend a public meeting for a public boat landing without any explanation, by our town managers, Inland Fisheries and Wildlife (Commissioner Danny Martin) Department of Conservation Powell, and other public officials.

Whatever happened to our first amendment rights of public participation?

Please continue to keep me informed.

Richard Cayer
Madawaska

Sat 8/18/2012 11:43 PM

Peggy – I hope you can make the right people aware of the sentiments expressed here-in about the cost of records – especially records being provided in electronic format.

FOAA supporters – let's all get together at the next subCommittee meeting

Kenneth A. Capron
WatchDog Nation on WMPG 90.9fm
Wednesdays, 8:00-8:30pm
Portland, Maine
207-797-7891
watchdog@maine.rr.com
www.mainepolicyinstitute.org

Sat 8/18/2012 6:34 PM

I would like to add something here:

There should be positively no fee for access to records. There should be no fee for the time it takes a public employee to provide scans of paper documents in electronic format or to provide electronic copies of documents that are already in electronic format.

These people are already compensated for their time by the public and being accountable for their activities and providing information regarding their activities is part of their responsibilities to the public... once again, for which they are already compensated.

Paul Breton
Freeport, Maine

Sat 8/18/2012 6:02 PM

Great commentary Dwight. Spot on. But let me make one point – about who exactly the AGs office works for. I had the experience of a FOAA request in 2004 against a state Bureau. The AG defended the Bureau's right to withhold records by asserting a price of $1700 for 300 records. I can help but wish that the AG worked for the people first and let the agencies and departments fend for themselves. There is a huge conflict of interest in the role of AG in FOAA cases. It is just wrong.

Ken Capron

From: Dwight Hines
Sent: Saturday, August 18, 2012 9:01 AM
To: Watchdog

Hey everyone:

My feeling is that almost all the places I've been to in Maine to make public records requests, the attitude is that they respond to requests with the attitude that it is to be at their leisure, if at all. There is a mentality in Maine that is the grounds for all the Fs we are awarded by the national groups like PIRG, the Sunshine Foundation, and Forbes Magazine that the local governments are above such concerns as open records or strategic information plans. The failure of the Maine Attorney General to even bring one case on open records, much less expect the Economic & Community Grants to require compliance with open records laws prior to funding has more than an effect than just on transparency in government. I think we will be able to show that substantive and significant amounts of the variance in domestic violence in Maine counties, can be accounted for by failures in the rule of law. Such failures not only create harms to individuals but if you talk to local businesses in different towns, but cause harms to our economies.

Governor LePage I think is trying to do the right things, but he is being submarined by an entrenched bureaucracy that has no desire to promote or require compliance with Maine public records laws.

It is time to start considering an old "southern strategy", sue the governor and force him to order the Maine Attorney General to investigate and prosecute fact based allegations of violations of records violations, be they by the police, or fire departments, or local boards.

There is no way that Maine is going to be able to thrive during the "economic winter" (MHPC) without going to evidence based policies and decisions. But first, we have to make the data available.

Dwight HInes
IndyMedia
Maine

Thu 8/16/2012 4:42 PM

Hi Peggy,

I haven't kept up with all the activities related to Maine's FOAA legislation, but I am still interested.

I would like to make one recommendation though.

The amounts charged for records requested seem to vary depending on who is requesting the records and which agency is being asked. And sometimes the average citizen couldn't afford the fees even if they wanted to pay. I have on occasion asked for "access" to records (access is supposed to be free) only to end up with copies (and a bill for the costs of the copies and time incurred). I have also seen a few cases where the same records were provided to multiple parties yet both parties paid full cost for the records. In other words, this charge for public records is a game that is sometimes played irresponsibly.

So I would like to propose a solution that hopefully will remove the game playing. I propose that in each request for records that one option for "access" to the records is that the records be posted to the Internet – permanently for all to see – at no cost to the requestor.

I would expect that knowing their records could end up on the web, agencies and departments might just find a way to post records on the web in the first place. Scanning documents is not as cost intensive as

photocopying. But better yet, electronically posting documents that come from Word or Adobe or Excel or from mainframes, only requires the cost of storage – which is miniscule nowadays.

If you could forward this to the rest of the committee I would appreciate it. I don't know if my list is accurate anymore.

Kenneth A. Capron
WatchDog Nation on WMPG 90.9fm
Wednesdays, 8:00-8:30pm
Portland, Maine
207-797-7891
watchdog@maine.rr.com
www.mainepolicyinstitute.org

Fri 8/10/2012 4:39 AM

This is a 25 page paper that is quite good. It's attached, and link is below.

Ravnitzky

Mike Ravnitzky reports that
"Nine out of 99 federal agencies received top marks from the Department of Justice on how they carried out their responsibilities under the Freedom of Information Act.

Those nine were

The Department of the Interior
FMCS - Federal Mediation and Conciliation Service
OSHRC - Occupational Safety and Health Review Commission
OSTP - White House Office of Science and Technology Policy
OPIC - Overseas Private Investment Corporation
PRC - Postal Regulatory Commission
SBA - Small Business Administration
STB - Surface Transportation Board
USITC - United States International Trade Commission

The DOJ report is posted here:

http://www.justice.gov/oip/docs/sum-2012-chief-foia-officer-rpt.pdf"

Dwight HInes

Thu 8/9/2012 2:31 PM

Dear Joebillybob:

We now have access to WVAC-TV, Channel 7, for our video is good news for those being stymied in obtaining access to public records. We have quite a bit of video from Peru and the different dodges the Selectmen have used and are using, including sham legal opinions and interference with right to petition, false documents, etc., but we need some interviews with elected and appointed officials in Augusta and S. Paris. I did meet the President of MPBN last month and he is a good man but the technical quality as well as the content must be acceptable to a state wide audience to be given good run times.

M., please let your attorney know what is going on with this because some of the outline so far includes the failures of the Sheriff to follow his own rules and the failure of the Maine Attorney General to ever file an open records complaint. We need to get them on the video with their views and interpretations.

Because the International RTK Day celebration (Attached) may be too soon to submit our video, and the FOIA-net folks are ambivalent about video because of the time, etc., we could submit some still pictures, like the pick-up truck bullies (Attached) who try to intimidate folks who go to Augusta to talk with the different state agencies, like treasury (municipal bonds) and the attorney general (failure to enforce Maine RTK and SEC Rules Disclosure). Intimidation tactics are old, old short-term cowardly tactics that only deeply frightened people employ. The tactics need to be addressed by exposure and legal action, especially if the bullies work for state or local government. I don't think they were carrying weapons but that needs to be addressed. My feeling is that the high rate of unreported serious crimes to law enforcement is due partially to street bully tactics. See attached for other reasons from Bureau of Justice Statistics.

More later,

Dwight

Copy: Interested people
NACOLE
SEC File

---------- Forwarded message ----------
From: WVAC TV 7 <wvactv7@gmail.com>
Date: Thu, Aug 9, 2012 at 8:43 AM
Subject: Re: Help on obtaining rules, guidelines, and requirements for submitting local video to WVAC-TV
To: Dwight Hines <dwight.hines@gmail.com>

Hello Dwight,

The program needs to be in DVD format. It should be at least a half hour in length but no more than two hours long. If the audio is sufficient when played in a DVD player, without having to max out the audio, then it can be aired on the station. If you have any questions or concerns, please feel free to contact me, Monday - Thursday, 8:00 - Noon, at 364-3764 EXT 208.

Pamela Bevins

On Mon, Aug 6, 2012 at 5:10 PM, Dwight Hines <dwight.hines@gmail.com> wrote:
Dwight E. Hines
715 Green Woods Road
Peru, Maine 04290
207-562-4701

August 6, 2012

Management

Comments and complaints received by staff via email

WVAC TV 7

Dear Sir or Madam:

A group of us live in the River Valley Area and would like to make a video on local issues. Please provide us with the rules, guidelines, and requirements for submitting local videos to WVAC-TV.

We do have some concerns about the audio problems that appear to be consistent in the different WVAC-TV programs so we will need a contact person to advise us on engineering or technical aspects of audio requirements.

Dwight HInes

Copy
River Valley Group

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forwarded by Dwight Hines Thu 8/9/2012 8:17 AM

Internal Medicine Physicians Recommend Principles on Role of Governments and Legislation in Regulating Patient-Physician Relationship
American College of Physicians paper expresses concern about laws that cross traditional boundaries and intrude into the realm of medical professionalism
August 8, 2012
(Washington) – The American College of Physicians (ACP) today released apaper, Statement of Principles on the Role of Governments in Regulating the Patient-Physician Relationship, which recommends principles for the role of federal and state governments in health care and the patient-physician relationship. "The physician's first and primary duty is to put the patient first," David L. Bronson, MD, FACP, president of ACP, said. "To accomplish this duty, physicians and the medical profession have been granted by government a privileged position in society."
Dr. Bronson noted, though, that "some recent laws and proposed legislation appear to inappropriately infringe on clinical medical practice and patient-physician relationships, crossing traditional boundaries and intruding into the realm of medical professionalism."
Pointing to examples in ACP's paper, he expressed concern about laws that interfere, or have the potential to interfere, with appropriate clinical practice by:

- prohibiting physicians from discussing with or asking their patients about risk factors that may affect their health or the health of their families, as recommended by evidence-based guidelines of care;
- requiring physicians to discuss specific practices that in the physician's best clinical judgment are not individualized to the patient;
- requiring physicians to provide diagnostic tests or medical interventions that are not supported by evidence or clinical relevance; or
- limiting information that physicians can disclose to patients.

The paper, produced by ACP's Health and Public Policy with input from ACP's Ethics, Professionalism and Human Rights Committee, offers a framework for evaluating laws and regulations affecting the patient-physician relationship, rather than taking a position on the specific issues that are cited by lawmakers to impose particular restrictions or mandates.
ACP's paper states that:

- "Physicians should not be prohibited by law or regulation from discussing with or asking their patients about risk factors, or disclosing information to the patient, which may affect their health, the health of their families, sexual partners, and others who may be in contact with the patient."
- "Laws and regulations should not mandate the content of what physicians may or may not say to patients or mandate the provision or withholding of information or care that, in the physician's clinical

judgment and based on clinical evidence and the norms of the profession, are not necessary or appropriate for a particular patient at the time of a patient encounter."
ACP recommends seven questions that should be asked about any proposed law to impose restrictions on the patient-physician relationship:
1. Is the content and information or care consistent with the best available medical evidence on clinical effectiveness and appropriateness and professional standards of care?
2. Is the proposed law or regulation necessary to achieve public health objectives that directly affect the health of the individual patient, as well as population health, as supported by scientific evidence, and if so, are there no other reasonable ways to achieve the same objectives?
3. Could the presumed basis for a governmental role be better addressed through advisory clinical guidelines developed by professional societies?
4. Does the content and information or care allow for flexibility based on individual patient circumstances and on the most appropriate time, setting and means of delivering such information or care?
5. Is the proposed law or regulation required to achieve a public policy goal – such as protecting public health or encouraging access to needed medical care – without preventing physicians from addressing the healthcare needs of individual patients during specific clinical encounters based on the patient's own circumstances, and with minimal interference to patient-physician relationships?
6. Does the content and information to be provided facilitate shared decision-making between patients and their physicians, based on the best medical evidence, the physician's knowledge and clinical judgment, and patient values (beliefs and preferences), or would it undermine shared decision-making by specifying content that is forced upon patients and physicians without regard to the best medical evidence, the physician's clinical judgment and the patient's wishes?
7. Is there a process for appeal to accommodate individual patients' circumstances?

By insisting that such questions be asked of proposed laws before a decision is made on their adoption, legislators will have appropriate guidance before enacting ill-considered laws that "can cause grave damage to the patient-physician relationship and medical professionalism and undermine the quality of care," concluded Dr. Bronson.
***
The American College of Physicians is the largest medical specialty organization and the second-largest physician group in the United States. ACP members include 133,000 internal medicine physicians (internists), related subspecialists, and medical students. Internists specialize in the prevention, detection, and treatment of illness in adults. Follow ACP on Twitter andFacebook.
Contact:
David Kinsman, (202) 261-4554
dkinsman@acponline.org
Jacquelyn Blaser, (202) 261-4572
jblaser@acponline.org

Thu 8/9/2012 8:14 AM

See attached pdf of RWF report:

Can Publicly Reporting the Performance of Health Care Providers Spur Quality Improvement? Insights from Aligning Forces for Quality . Robert Woods Johnson Foundation, August 2012.

Also, in Maine, the Subcommittee to the Right to Know Committee has voted to drop the exemption from Maine RTK laws for "sentinel" events in Maine hospitals. Good common sense, good research based, good consumer oriented decision. Kudos to the Subcommittees and RTK Committee for courage to make the right decisions on transparency.

There will soon be a Subcommittee hearing, with the Maine Physicians' and Maine Hospitals' Associations to testify on how critical it is to keep "sentinel" events exempt from Maine Right to Know laws. At least one hospital Central Maine Medical in Lewiston, has a hit and miss approach to evaluating complaints about physicians, mostly miss.

The hospital and physician testimony is not likely to be evidence-based, and will be fraught with anecdotes meant to scare the committee and to induce empathy for those physicians who accidentally sew up a patient, leaving a motorcycle and some sponges inside. Because Maine Physicians also have the weakest impaired physicians program in the U.S., according to my measures (failure to respond to complaints about physicians, failure to make timely reports on the association's activities to help physicians, even specialists), we can also anticipate their testimony as eschewing any meaningful data, according to Daubert and its daughters.

Our best bet for the hearing is to be sure that someone is there to testify about recent research on transparency, medical information systems. and informed consumer choices. I would like to testify on valid, generalizable, reliable research on costs, which transparency lowers, and quality of care, which transparency improves -- all in support of the subcommittee's decision to remove the RTK exemption for hospitals reporting sentinel events.

I hope someone invites representatives from the Maine Plaintiffs' Bar to testify about how not reporting on "sentinel events" is a crippling, too often lethal approach to health care.

Please circulate to the Exceptions Subcommittee and other interested people.

Dwight Hines
IndyMedia
Maine

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forwarded by Dwight Hines Wed 8/8/2012 11:46 AM

Final reports and more ... for the next few hours

http://www.aspeninstitute.tv
https://twitter.com/#!/search/realtime/%23FOCAS12

From: Charlie Firestone <aspencs@aspeninstitute.org>
Date: Wed, Aug 8, 2012 at 10:12 AM

Subject: Nuggets from Aspen FOCAS 2012, Towards Open and Innovative Governance - Watch Live Now!Video of FOCAS 2012, Towards Open and Innovative Governance, is now online and you can catch Day 3 LIVE right now at www.aspeninstitute.tv. Also, don't miss out on the #FOCAS12 twitter stream, a lively backchannel on innovating digital governance and fostering transparency.

A few highlights so far:

Toomas Hendrik Ilves is the President of Estonia, which was recently ranked number one in the world for internet freedom by the organization Freedom House. How did this former Soviet state achieve this rating? Estonia's tech-savvy President explained:

"E-governance does not mean putting a 1040 taxation form into HTML. You have to redo things. You have to make it for the user. You have to stop thinking in terms of 19th Century bureaucratic rules where everything is on paper. That ends up meaning redesigning government and how you interact with people." Watch on Livestream.

Macon Phillips, Director of Digital Strategy at the White House, says that to get citizens more engaged in government, information needs to be presented in more meaningful ways:

"In a day and age when people can Google 'education' and 'Obama' and the White House site comes up pretty high in the search results, we have a responsibility to make sure that the content people find is actually stuff that they can understand and not just fact sheets and press releases." Watch on Livestream.

Juliana Rotich co-founded Ushahidi, a web-based reporting platform that uses crowdsourced data to create visual maps of real-time information in crisis situations. Through its hard work and global network, Ushahidi has saved tens of thousands of lives. Rotich knows the importance of sharing data, but she wonders about identity, privacy and ownership:

"There needs to be a shift in thinking about personal data. … If I own my data, then what are the incentives for me to share that data with the city so that it can truly be a smart city? … The government needs to perhaps lead in terms of saying 'you own your own data' and 'this is how we can engage with you giving us data and for you to get relevant information back' … But it has to be a trust relationship where I'm opting in." Watch this on Livestream.

Reed Hundt was chairman of the FCC during the emergence of Internet as a commercial platform. Hundt embraced the new medium and was the first to the give the Commission an online presence. Now, Hundt questions whether big data and the capability to individualize information are the next big things for e-government:

"When we talk about government services and combine it with the power of technology and the power of big data, we're on the edge of being able to have government deliver a suite of services to people that is so impactful of every part of their life that it beggars imagination." Watch this on Livestream.

Jeff Gomez is an expert in global transmedia storytelling. He traces the roots of movements like the Arab Spring to narratives, and believes that without these narratives, citizens won't engage in a new world of digital governance. What is needed, in his mind, is a new breed of storyteller who is technically savvy and can work across platforms (i.e. young people). Gomez explains what he calls Transmedia 2.0:

"There is a method for sifting through mountains of data and deriving the information that we need to build an infrastructure around which can be wrapped compelling narrative. Around the skeleton, we can create interactive stories; we are capable of inspiring with popular storytelling. And popular storytelling, we have seen, can mobilize

entire populations." Watch this on Livestream.

Watch FOCAS 2012 at www.aspeninstitute.tv.

Learn more at http://as.pn/focas12 and be sure to follow us on Twitter @aspencs

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About C&S
The Aspen Institute Communications and Society Program addresses the societal impact of communications and information technologies, and provides a multi-disciplinary venue for considered judgment on communications policy issues. Visit our homepage, www.aspeninstitute.org/c&s. Also, check out the C&S Facebook Page and become a fan.

This message was sent to clift@e-democracy.org from:

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Forwarded from Dwight Hines Tue 8/7/2012 2:42 PM

Reform in Action: Transparency Drives Transformation
Insights on Measuring and Reporting the Performance of Health Care Providers
In less than a decade, the push for transparency in health care has come a long way. Publicly reported performance data has motivated health care providers to improve their care and led employers to change purchasing habits. And while it has been challenging to reach consumers, that is changing as reports become more meaningful and accessible.

This transparency is at the heart of Aligning Forces for Quality (AF4Q), the Robert Wood Johnson Foundation's signature effort to lift the overall quality of care in 16 targeted communities. Lessons and

resources from AF4Q have been combined in a new brief that offers an overview on selecting performance metrics, engaging stakeholders, making performance reports consumer-friendly, and using performance measures to improve quality.

- Read the brief.
- Watch how the Wisconsin AF4Q alliance started using composite measures.
- Watch how the Minnesota AF4Q alliance selects what to measure.
- Watch how the Boston AF4Q alliance measures patient experience.
- See who's reporting on physician and hospital performance.
- Learn more about Aligning Forces for Quality.

You have received this email alert because you have elected to receive information from the Robert Wood Johnson Foundation on: Quality/Equality or Health Policy.

Stay connected to RWJF:

40 Years of Improving Health and Health Care
Learn more at www.rwjf.org/40years.

Dwight E. Hines
715 Green Woods Road
Peru, Maine 04290
207-562-4701

August 6, 2012

Management
WVAC TV 7

Dear Sir or Madam:

A group of us live in the River Valley Area and would like to make a video on local issues. Please provide us with the rules, guidelines, and requirements for submitting local videos to WVAC-TV.

We do have some concerns about the audio problems that appear to be consistent in the different WVAC-TV programs so we will need a contact person to advise us on engineering or technical aspects of audio requirements.

Dwight HInes

Copy
River Valley Group

Thu 8/2/2012 1:35 PM

RE: Guidance on denial of police report review

How does on see courthouse records of convictions, sentencing for non juveniles?

This is occurring in our neighborhood we have a right to know why police are responding here so we can take precautions to protect ourselves, children, pets, and property.
I want to see conviction records, courthouse records, all of them. How does one review that?
Pam

Dwight E. Hines
715 Green Woods Road
Peru, Maine 04290
207-562-4701

August 2, 2012
Email and by hand

Ms. Vera Parent, Town Clerk, and
Mr. Tim Holland, Selectman
Town of Peru

Dear Ms. Parent and Mr. Holland:

Pursuant to Maine Public Records Statutes, I am requesting a place, date, and time to review the emails exchanged between Mr. Tim Holland and the Maine Municipal Association for the past 6 months.

Because it will only take a few minutes to make an electronic copy and to email them to me as an attachment, that would be my preference. To avoid the few minutes of effort required to conduct an electronic search for just the MMA emails, an electronic copy of all of Mr. Holland's emails for the past six months would be acceptable.

Dwight HInes

copy:
Maine Attorney General

Wed 8/1/2012 10:22 AM

Hello,

I am one of a group of concerned neighbors in Kennebunk who are living with high incidents of criminal activity in our neighborhood. The police are called to our neighborhood on a daily basis.

Yesterday when I asked the Lieutenant on the phone to allow us to know what the criminal activity is by reviewing the police reports, I was told that I am not allowed to review police reports and that they are not public record. The Lieutenant said we are only allowed to read about any criminal activity in our neighborhood via the newspaper.

I do not believe this is the case. I believe that police reports are public record, and we have a right to know what criminal activity is occurring in our neighborhood so we can make informed decisions on how best to protect ourselves.

We are meeting with the police department next week, and I would like this issue clarified as soon as possible. After reviewing Maine law, it appears as though the police cannot deny a resident access to police reports.

I had also gone to the courthouse to review criminal records after being denied access by the police department, and was told I am only allowed one search per day, and any more are $13 and I must know the exact date of an incident.

How do I as a resident of Maine, access the records? I have to stand in line at the Biddeford Court house, speak to a woman through a window. She demands the exact information on what I am researching and then if I don't have it, she won't help me. Then if I ask her to search via a different way, she says I must pay $13 for her to type it into the computer.

If there is a suspicious person on my property, and I have this person's name and a vague reference to an arrest for criminal activity via a Google search, how am I supposed to learn more about someone who is trespassing on my property at night?

How am I supposed to learn more information about crime in my neighborhood?

How am I supposed to know that the police department is conducting itself according to the law if I cannot access its records? How do I know where the patrols are, and whether they even exist in my neighborhood, or if they are being conducted in other areas of my town? How can I ensure that public servants are doing their job without access to records? How do I protect myself if I cannot learn what criminal history someone has?

How come Maine does not list a street address for sexual offenders online?

I am very distressed to learn that so much is done to protect convicted child predators' privacy, people arrested for assault, criminal activity, while I am left on my own to protect my child.

Pam Jones
Kennebunk

Tue 7/31/2012 3:57 PM

Dear Ones:

First, last night the selectmen did not allow any discussion about or even consideration of relevant pertinent material documents before having the split vote to not remove Ms. Hussey from the Board. The email I wanted to be included was the one I wrote to Vera requesting the requirements for a petition and received her response from Maine Municipal Association which did not discuss my question, but discussed who should write the ordinance. The discussion centered on "legal opinions" from MMA that are absolutely terrible in the lack of material facts, true complete history, total absence of on target case decisions, and logic that makes me think of 1960s city council discussions about how to avoid integration that went on throughout the south.

Second, Mr. Holland is closing down legitimate discussion, discussions that were allowed for over 200 years before the board decided this year they were unable to keep discussions on track.

Similarly, continuing to refuse to provide copies of the documents discussed in the meeting by the board is a constructive denial of an open meeting. No one can follow the numbers just for the road department that were discussed last night in their heads.

Given that all of the documents are created on a computer it would be simple and inexpensive to email them to interested people.

Not allowing discussion, not providing documents, and engaging in sham legal discussions are the best way to keep citizen participation at bay.

Finally, we need to have some social type barbecue events in different place in the county. We did that years ago in Florida where we had multiple problems of corruption. I was just 12 or 13 when discussions started at a barbecue, someone mentioned that they had a friend retiring from the FBI and wouldn't it be great to have an offspring of Kit Carson as our clean house sheriff? Well, it worked. But then, once Dale and his family got settled in and he started cleaning house, about 2 years, he held a meeting and said that the corruption was too deep and that the city had their ways and duval county had its ways and it was not possible to clean them both up. So, he proposed merging the city and the county to destroy those old criminal "family" networks. It worked. It took tons of work, but it happened. Jacksonville is still not perfect, but the waste is way down and economy is doing well, and the system is open to all people.

And I like barbecue.

Dwight

Mon 7/30/2012 7:22 AM

I'm in Maine, a state that is definitely not as economically developed as it should be. It is also a state that Forbes' Magazine continues to rate at rock bottom in being friendly to businesses. Robert Woods Johnson rates the county I'm in (Oxford Count) as being at the bottom or next to the bottom in health factors and health outcomes (premature death, etc.) Now, just recently I received some "legal opinions" from a state agency that were pretty much junk law opinions. No citations to case law, poor and absent logic, terrible coverage of the facts, etc -- the type of opinion a high school graduate could write and one that you hope your worst enemies will get before they go to court.

Questions:

1) Given the success of DOJ (federal) interventions in a number of police departments, pursuant to all the proper laws, for violating numerous civil rights and for criminal activities, and given the importance of the rule of law for health and economic development, what evidence is there that provides robust causal links between shoddy legal advice and the rule of law? It seems intuitive that the police departments, be they in Miami or New Orleans, are not composed of stupid cops and not being stupid would have requested and would have received quite a bit of junk law support before going down the slippery long slopes of corruption. Comments, and any references to cites or sites that are examining weak and corrupt legal practices ("legal Opinions" from attorneys or paralegals) prior to federal interventions would be helpful.

2) Given that corrupt practices weaken, if not destroy credibility and trust in other authorities (eg, loss of trust in corrupt police and legal agencies generalize to other agencies, like health and welfare, are there any studies completed or in progress that show improvements in premature deaths and other health outcomes and health factors after a successful federal intervention in a law enforcement agency? Cites and sites please.

3) Given that the rule of law provides businesses some predictability in dynamic competitive environments, are there measurable changes in economic development, including rate and quality of innovations, after federal interventions in law enforcement agencies? Cites and sites please.

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4) We need data, and the feds may have all we need, to examine and estimate the costs, in human pain and economically, of the feds waiting far too long to intervene to stop corrupt practices in local law enforcement agencies. Think about this and you realize it's not a trivial question or problem. We don't want the DOJ continually providing oversight, that is the path to a loss of local control and a loss of common sense because one size does not fit all wrt law enforcement. Yet, we also don't want communities losing what they value, or perceiving they are losing what they value -- that is the way for the loss of a community's soul (See the excellent work by Knight Foundation on "Community Soul") -- because DOJ waits to long for optimal intervention.

5) Maine recently received another set of Fs for their open records laws and practices from the Sunshine Foundation. Given that a good study has shown that about after a year or so after a state passes strong open records laws federal prosecutions for corrupt activities increase substantively and significantly, it would appear that it's time to realize that good logic would indicate the reverse may be true: poor open records laws or poor enforcement of open records laws (Maine attorney general has never ever prosecuted an open records violation), not only mask corruption but interfere with economic development. The links between health outcomes, premature deaths, etc., may be more difficult to establish but my gut tells me that the quality of rule of law practiced in a community will more reliably predict health outcomes, like premature death, than the number and quality of local physicians, or size and technology of local and regional hospitals, or the amount of money spend on health care.
Hey, LeeRoy, these are not for Aristotelian arguments, these are testable statements.

Dwight Hines
IndyMedia
Maine

Thu 7/26/2012 3:19 PM

I'm in Maine and the state has an agency, or quasi-agency, Maine Municipal Association (MMA), that provides insurance to most of the towns and cities, as well as providing legal advice to the selectmen and employees. I have read several recent opinions from the MMA Legal Department and, to be frank, they are shoddy. No citations to any case law, disorganized (one was written by a non-attorney), no attempt to determine what conflicting facts existed, and no specific citations to state statutes. They provide opinions but do not represent the towns in court.

I'm not sure about other states, but to call these writings "Legal Opinions" is an insult to those folks who have worked hard to obtain a law degree and who work hard to provide good legal representation. A secondary issue is that of antitrust - a state agency taking money to provide low quality legal work not only reduces competition from private attorneys but it reduces innovation at the same time — a state agency is not going to innovate or challenge the laws that protect them or the towns from being held accountable.

Now, FOI comes in because the town does not provide copies of documents that are discussed in meetings, as they are required to do, and responses to requests are delayed, and some times partial or incomplete. Public discussion at board meetings is severely restricted.

Question: Does anyone know of qualitative evaluation methods and quantitative evaluation approaches that will allow assignment of grades to one page "legal opinions"? There must be some grading systems because law schools teach legal writing.

Let me hear from you because if FOIA requests are being denied based on shoddy or low quality legal work, the problems need to be addressed with the state and federal bars because the town employees and

officials are going to read the opinions much like people read their horoscopes, looking for general statements that support what they believe, regardless of the consequences they face.

Dwight Hines
IndyMedia
Maine

Tue 7/24/2012 7:30 AM

Dwight E. Hines
715 Green Woods Road
Peru, Maine 04290
207-562-4701

July 24, 2012

Ms. Vera Parent, Town Clerk
Peru, Maine

Dear Ms. Parent:
Just a reminder on my July 18, 2012, public records request to review the contract, which Mr. Pulsifer identified last night as an "interlocal agreement" and as a "quasi-contract" between Peru and Emergency Medical Services. I believe that it is important that the Town of Peru have at least one copy of the agreement or contract.

As you know, Peru has a number of problems, that are not getting cleared up, that range from failure to notify the Securities and Exchange Commission of material changes in the ability of the Town of Peru to pay its municipal bonds to failure to follow common law and long established practices for public participation in Selectmen's meetings, to the refusal of the Board to correct false documents and their failure to honor the right of citizens to petition. I am starting to believe that needed changes to directly impact the improvement of residents' health (For the past three years, Oxford County has been at the bottom or next to the bottom on health factors and health outcomes -- including the highest premature death levels, for all of Maine Counties.), welfare (the Rule of Law is necessary for economic development), and trust in the system will require court actions.

Pursuant to the new and improved Maine public records law, I am copying the Assistant Attorney General to request that she consider becoming involved in my particular request for the EMS interlocal agreement and the concerns of others on poor and irregular government practices in Peru. I'm not sure if the Attorney General will respond, even though his office was notified yesterday about Maine's latest F grades for our open records laws and practices, because he is running for a new office and that likely is taking most of his time.

Because we are now past the five day deadline for your responding to my request before I initiate court action, please let me hear from you today.

Our discussion with Mr. Pulsifer last night was interesting, although I disagree with him totally about the ability of Mainers to govern themselves. I've taught and been involved in research in Maine over the years and Maine people can compete easily with people in other states and countries. To expect less is to insult their abilities and places very real limits on their rights and benefits under our democratic capitalist system.

Dwight Hines

Copy:
Linda Pistner, Assistant Attorney General
Jim Pulsifer

Mon 7/23/2012 2:15 PM

Maine ranks, once again, with the lowest of low.
Dwight

==========

Dear FOI-Lers:

Check out latest State Integrity investigation into state public records laws

http://www.stateintegrity.org/flawed_open_records_laws_limit_public_access_to_state_government

Barbara

Barbara Croll Fought
FOI-L owner/manager

Associate Professor | Broadcast & Digital Journalism | Communications Law

S.I. Newhouse School of Public Communications | Syracuse University
Room 448 | Newhouse 3
215 University Place | Syracuse | NY | 13244
315 443 4054 315 443 3946 (fax)
bcfought.expressions.syr.edu | readyreporter.syr.edu | @bcfought | @readyreporter
bcfought@syr.edu

Tue 6/26/2012 9:20 AM

Dear Dawna:

Your mother must have been a southerner because your name is spelled the way we pronounce Donna in the south, and you are also ready to declare war and secede from the union.

Now, take three deep breaths and know that I admire and completely support what you say, but the strategy you are advocating is close to a scorched earth strategy. We need to take the high road and not make this personal. RIght now the main issue is an employee of the town can not be a Peru selectperson -- it is a conflict of interest.

I have obtained, pursuant to a Maine FOAA request to Vera, the sole legal opinion from MMA that the board feels supports their argument. It is junk and I will complain about it to the Board, to MMA and to the Maine Bar. No matter what someone may think or not think about a specific select person, they are our elected representatives and deserve good legal advice, which MMA did not provide. Ms. Hussey and her brother did a lot of good things for Peru and I hope they continue to do the good things. The bad thing about a lazy attorney is that they hurt the person they are supposed to be representing more than anyone else.

More later, I have to get a formal complaint in to the justice department on some folks involved in bid rigging and unfair and deceptive practices today. But, I will keep on the legal aspects, to wit: Ms. Hussey is voting as a select person and she is not in office legally at this time. Her votes will be subject to cancellation and so on. I will copy you on what I write to MMA, to the Peru Board, and to the Maine Bar, and to the Maine Attorney General.

What bothers me now is that after Vera gave me the half page of what is being called a legal opinion, she said last night that the town contacted MMA three times for legal help. She didn't give me those records. Cuss. Cuss.

Dawna, you know more about the law than all of us put together so go out into the garden and pull weeds until you feel calm and then think about what organizations and agencies can help us get this into court pronto.

One thing I'm seriously considering is filing a complaint against MMA for legal malpractice and false and misleading advertising. They are charging us $5,000 dollars a year and they are giving worse than worthless advice, advice that a first year law student would know was in error in substance and style and facts.

Keep the faith,

Dwight

On Tue, Jun 26, 2012 at 6:09 AM, Dawna Kazregis <dkazregis@roadrunner.com> wrote:
This came to me last night as an idea-what do you think? Please circulate to your friends and family who are Peru voters.

Recall Petition
We, the qualified voters of the Town of Peru, from which Kathy Hussey was elected as Selectman, demand her recall. The grounds of this demand for recall are as follows:
Failure to appropriately carry out the duties and responsibilities of the office; Engaging in conduct which brings the office into disrepute; Engaging in conduct which displays an unfitness to hold the office; Failure to abide by the No Political Activity ordinance which was voted in by the voters of Peru on June 12, 2012. This recall is effective immediately.

Dawna Kazregis
dkazregis@roadrunner.com
207-357-6186

VISION WITHOUT ACTION IS A DREAM.
ACTION WITHOUT VISION IS SIMPLY PASSING THE TIME.
ACTION WITH VISION IS MAKING A POSITIVE DIFFERENCE....Joel Barker

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Thu 6/21/2012 1:58 PM

Peggy,

Please forward this to the Committee as an ongoing example of the problems dealing with Falmouth management.

Thank you,

Michael

From: seller99@msn.com
To: npoore@town.falmouth.me.us; fvarney@town.falmouth.me.us
CC: pfelmly@dwmlaw.com; policedept@town.falmouth.me.us
Subject: TOWN NOTIFICATION
Date: Thu, 21 Jun 2012 13:55:14 -0400
Nathan,

I just got the notice for the annual report. It wasn't coded to open on an Apple. This should be fixed immediately.

As Faith would say, "It was a colossal goof."

This is also why I can't open the FOAA protocols.

This is also why I can't open the School Board agenda online.

How's that contract with the VTS coming? I really want to see what this type of technical service is costing Falmouth.

Michael Doyle
766.6644

Judiciary Committee

June 21, 2012

Committee Members:

This past week has been an interesting one for the FOAA law of Maine. I have discussed the proposed law that Rep. Mary Nelson will introduce this fall in an earlier memo.

This week there was considerable consternation in Falmouth when I requested and received the Town's email contact list for residents that wanted to be made aware of road closings, council meetings, etc. In the list of 3,129 email addresses was the all access email to post directly to the Town's notification site. This caused me to inadvertently send this notice through the Town's site to all addresses, "Check falmouthtoday.me and Comedy Corner." Nathan Poore, Town Manager, and his assistant Melissa Tyron specifically lied to me when I asked if such an all access address was available.

Poore was recently quoted in the Forecaster stating that the Maine Municipal Assoc. had been contacted to start a lobbying effort to bar access to these lists of emails in the State of Maine. When you couple that effort with the proposed Nelson legislation you will effectively close off communication with a large percentage of the population of the State. The only exception will be what the Towns, Cities, and Schools want to have disseminated to the citizens through their controlled outlets. This is contrary to transparency.

Forevermore this has become an information driven society and for democracy to work for everyone, access to the population through emails are crucial for the opposition to be heard and for both sides of an issue to be reviewed and considered by the voters.

Whatever false premises the proponents will use to promote this attack on the FOAA law, they must be rejected outright for what they are, an incremental reduction of the ability to insure we have as much transparency in government as possible.

Thank you for your time and consideration.

Michael Doyle
3 Shady Ln.
766.6644

Wed 6/20/2012 11:43 AM

Hi Peggy

It has been suggested that we forward this e-mail to the Advisory Committee. Can I rely on you to bring this to your next meeting and share with the group. It is another example of the abuse of FOAA. We hope that there can be some consideration for the proposed language developed by MMA that will exempt citizen e-mails which are used for important news alerts (one-way communication).

Best regards,

Nathan A. Poore, Town Manager
Town of Falmouth
271 Falmouth Road
Falmouth Maine 04105

Telephone: 207-781-5253 ext 5314
Email: npoore@town.falmouth.me.us

Under Maine's Freedom of Access ("Right to Know") law, all e-mail and e-mail attachments received or prepared for use in matters concerning Town business or containing information relating to Town business are likely to be regarded as public records which may be inspected by any person upon request, unless otherwise made confidential by law.

-----Original Message-----
From: Tony Payne [mailto:tpayne@clarkinsurance.com]
Sent: Tuesday, June 19, 2012 9:17 AM
To: Nathan Poore
Subject: RE: Web site news and notices posting

Nathan - May I suggest that you forward this with an explanation to Mal Leary and the FOIA advisory committee. Thanks. - Tony

Tony Payne | Business Development Director Clark Insurance | 2385 Congress St PO Box 3543 | Portland ME 04104-3543
Tel: 207.523.2213 | Fax: 207.774.2994
Cell: 207.807.5331

www.clarkinsurance.com

Visit me on Linked In

-----Original Message-----
From: Chris Orestis [mailto:corestis@town.falmouth.me.us]
Sent: Monday, June 18, 2012 11:37 PM
To: Nathan Poore; Council
Cc: Jennifer Phinney; Edward J. Tolan; Amy Lamontagne; 'William L. Plouffe'
Subject: RE: Web site news and notices posting

http://www.falmouthtoday.me/

WE HAVE A WINNER

June 18, 2012

By: Editor

We were looking for the most interesting request to be removed from the email list and we found a winner.

It was Allen Evans of 3 Fox Hall Rd., a 72 year-old resident of Falmouth, and he can be reached at 207.797.4571. His email is ki4dhx@gmail.com<mailto:ki4dhx@gmail.com>, which is the use of his short wave radio call sign. He has used "not wanting to have any truck with you", which is something we haven't heard for some time, actually not in this century. So we give special kudos to Allen for the most inventive and angry request to get off the email list. Allen apparently is also in the radical far leftwing moon bat club with Pam Fenrich.

Now in our defense we have to disclose that Nathan Poore, Town Manager of Falmouth, supplied the email address list in a printed form instead of the digital format that would have allowed us to merge both lists and more easily delete those "Allen Evans" types that wanted to be deleted.

The printed list required a lot of work to get it into a useable format. That process will likely cause several more emails to be sent to people who already don't want to receive them because of what Nathan did to you. We are working at making these corrections to the problem caused by Nathan as quickly as we can and we apologize for the misconduct of the Town.

From: ki4dhx@gmail.com<mailto:ki4dhx@gmail.com>
To: seller99@msn.com<mailto:seller99@msn.com>
Subject: RE: UPCOMING ELECTION
Date: Mon, 11 Jun 2012 20:36:05 -0400

Remove me from your list immediately! You are a fat ass, bumbling, gadfly . a pox on our fair town. I want no truck with you.

-----Original Message-----
From: Michael Doyle [mailto:seller99@msn.com]
Sent: Monday, June 11, 2012 8:04 PM
To: seller99@msn.com<mailto:seller99@msn.com>

Comments and complaints received by staff via email

Subject: UPCOMING ELECTION

Check www.falmouthtoday.me<http://www.falmouthtoday.me> and Comedy Corner

From: seller99@msn.com<mailto:seller99@msn.com>
To: ki4dhx@gmail.com<mailto:ki4dhx@gmail.com>
Subject: RE: UPCOMING ELECTION
Date: Mon, 11 Jun 2012 21:19:07 -0400

You're removed. However because of the way the Town sent your address to me (not digital) you may get several more emails while we work on eliminating dups and deletes.

Congratulations, you're in the lead for the most interesting removal email. We're going to do a story about the winner with their email address, name, and all sorts of fun stuff.

Have a great night.

Michael Doyle

Mon 6/18/2012 12:39 PM

Peggy,

Please forward this to the Committee:

Committee Members:

Falmouthtoday.me was recently informed of Supt. Barbara Powers' continued and ongoing influence in the political process through her position as the head of the School System.

At last Tuesday's election she ordered all candidate signs to be removed on school (public) property while voting was currently being done. This was countermanded by Town Manager Nathan Poore, and the signs were reinstalled by town workers later on the day of the election. It would be difficult to ascertain the impact this had on the outcome of the vote. However, what is not difficult to ascertain is Supt. Powers use of her position to sway the voters using whatever she has available to her. If it's not her online and hard copy newsletter espousing her political agenda she uses her unchecked authority to remove campaign signs.

This is just another reason why we need access to the parent's email addresses to counter balance this behavior and conduct that Powers refuses to cease because of her agenda that we can't fully respond to at this time.

Michael Doyle
Member, The National Press Club

Fri 6/15/2012 12:19 AM

Peggy,

Like every adult in America I get hundreds if not thousands of unwanted emails every month. I send them to my junk file and delete them every few days. I'm not a jerk about it and complain to theirs or my own email service.

I CHOSE, three weeks ago, to send "reply all" to your notice email to a group that is related to the Advisory Committee for the FOAA laws in Maine as an EXPERIMENT in what this group's attitude is to Protected Political Free Speech. I have a substantial group that I notify when we post a new story. The only protests I received (less than a dozen) are from your email list that I would think have an agenda that only supports Freedom of Speech, if it's their kind of speech, that fits their kind of agenda. It was disturbing to even see a pretend republican among this group.

I think I may post a story about this group of individuals and how dangerous it is to have an opinion that others not only don't share but complain that they have to delete it, while over 5,000 readers are eager to read the site. One title that I thought might be appropriate is "Advisors to Legislature's Committee on the FOAA Law of Maine's Email List, A Danger to the Law Itself.

I was appalled by this group's reaction.

Michael Doyle
766.6644
Member, The National Press Club

FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS

TITLE 1
GENERAL PROVISIONS

CHAPTER 13
PUBLIC RECORDS AND PROCEEDINGS

SUBCHAPTER 1
FREEDOM OF ACCESS

- New 2012

§ 400. Short title

This subchapter may be known and cited as "the Freedom of Access Act."

§401. Declaration of public policy; rules of construction

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

Declaration of public policy

- Reason for public proceedings is to aid in the people's business
- Actions be taken openly
- Records open
- Deliberations open
- Clandestine meetings on private property without notice not be used to defeat purposes

- Party alleging violation of FOA has burden of producing evidence that Act violated[1]
- The Act's underlying purposes and policies favor disclosure[2]

This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter.

- New 2011

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

Liberally construe and apply to promote underlying purposes and policies

- Interpretation of the Freedom of Access laws is a matter of law that the Supreme Judicial Court reviews de novo[3]

§402. Definitions

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not

[1] Chase et al. v. Town of Machiasport et al., 1998 ME 260, 721 A.2d 636.
[2] Bangor Historic Track, Inc. v. Department of Agriculture, 2003 ME 140, 837 A.2d 129.
[3] Dow v. Caribou Chamber of Commerce and Industry, 2005 ME 113, 884 A.2d 667.

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.		
1-A. Legislative subcommittee. "Legislative subcommittee" means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.	*Legislative subcommittee* must consist of at least 3 members and be appointed for the purpose of conducting legislative business on behalf of the committee	
2. Public proceedings. The term "public proceedings" as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:	*Public proceeding*: transactions of any functions affecting any or all citizens of the State by listed entities	
A. The Legislature of Maine and its committees and subcommittees;	• Legislature and committees and subcommittees	
B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Technical College System and any of its committees and subcommittees;	• Any board or commission of any state agency or authority • Boards of trustees of state educational institutions and their committees and subcommittees	• Hospital Administrative District subject to FOA laws[4] • "Special civil service study committee" of municipality subject to FOA laws[5] • Court considers four factors when evaluating whether an entity is subject to the Freedom of Access laws: (1) whether the entity is performing a governmental function; (2) whether the funding of an entity is governmental; (3) the extent of governmental involvement or control; and (4) whether the entity was created by private or legislative action[6]
C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;	• Board, commission agency, authority of political or administrative	• Local school boards subject to FOA laws[7] • Indian tribes when acting in their municipal

[4] Town of Burlington v. Hospital Administrative District No. 1 et al., 2001 ME 59, 769 A.2d 857.
[5] Lewiston Daily Sun, Inc. v. City of Auburn, 544 A.2d 335 (ME 1988).
[6] Dow v. Caribou Chamber of Commerce and Industry, 2005 ME 113, 884 A.2d 667.
[7] Marxsen v. Board of Directors, M.S.A.D. No. 5, 591 A.2d 867 (ME 1991).

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
	subdivision	capacities are subject state laws affecting municipal governments, including FOA laws[8] • A tribal reservation was acting in its business capacity, rather than its municipal capacity when it entered into lease of tribal land with developer of liquefied natural gas facility. The tribe has more autonomy than a town in light of provisions of Act to Implement Maine Indian Claims Settlement. [9]
D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;	• Full membership meetings of associations of political or administrative subdivisions	
E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees;	• Maine Public Broadcasting Corporation	
F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and	• Advisory/study commissions set up by Legislature or by Executive Order UNLESS the law, resolve or EO specifically exempts from FOA laws	
G. The committee meetings, subcommittee meetings and full	• Statewide interscholastic	

[8] Great Northern Paper, Inc. v. Penobscot Nation, 2001 ME 68, 770 A.2d 574, cert. denied 534 U.S. 1019.
[9] Winifred B. French Corp. v. Pleasant Point Passamaquoddy Reservation, 2006 ME 53, 896 A.2d 950.

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
membership meetings of any association that: (1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and (2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities. This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach.	organizations that receive funding from public or private schools and are meeting in regard to interscholastic activities. • It does not apply to such meetings in which the subject is limited to personnel issues, allegations of interscholastic athletic rule violations, or student athlete or coach eligibility.	
3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:	Public records defined • Written, printed, graphic, mechanical or electronic • In possession or custody of agency, official or association • Received or prepared for use in connection with the transaction of public or governmental business OR contains info relating to the transaction of public or governmental business • EXCEPTIONS:	• Corollary to FOA laws liberal construction is necessarily strict construction of any exceptions to public disclosure[10] • The records of an uncompensated, advisory group created by State officials and acting without legislative mandate to review alleged improprieties are not public records. Courts look at the function the entity performs in evaluating whether an entity or individual, individually or collectively, qualifies as "an agency or public official."[11]
A. Records that have been designated confidential by statute;	• Designated confidential	• The plain language of the

[10] Guy Gannett Publishing Co. v. University of Maine et al., 555 A.2d 470 (ME 1989).
[11] Moore v. Abbott, 2008 ME 100, 952 A.2d 980.

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
	by statute (see other statutes)	corporation statute does not provide that specific document is confidential, nor does the statute implicitly require salary information supplied to the Superintendent of Insurance to be confidential[12] • The location of a municipal employee personnel record has no bearing on its protected status under statute (30-A MRSA §2702(1)(B)(5)).[13]
B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding;	• Within scope of a privilege against discovery or use in civil or criminal trials	• Compensation records of hospital district's management employees not "trade secrets"[14] • "Work product" • Privilege against self-incrimination • Record subject to a court-issued protective order[15] • Compensation records of insurer's board of directors and senior management not "trade secrets"[16]
C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the	• Legislative papers during the legislative session until signed and publicly distributed • Working papers of legislators and staff for the session or sessions	• The attorney-client privilege does not protect communications in litigation between adverse parties on opposite sides of the bargaining table. The parties did not have a common interest merely because they are willing to negotiate a settlement.[17]

[12] Medical Mutual Insurance Co. of Maine v. Bureau of Insurance, 2005 ME 12.
[13] S. Portland Police Patrol Ass'n v. City of S. Portland, 2006 ME 55, 896 A.2d 960.
[14] Town of Burlington v. Hospital Administrative District No. 1 et al., 2001 ME 59, 769 A.2d 857.
[15] Bangor Publishing Co. v. Town of Bucksport, 682 A.2d 227 (ME 1996).
[16] Medical Mutual Insurance Co. of Maine v. Bureau of Insurance, 2005 ME 12.
[17] Citizens Communications Co. v. Attorney General, 2007 ME 114, 931 A.2d 503.

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
paper or report is carried over;		
C-1. Information contained in a communication between a constituent and an elected official if the information: (1) Is of a personal nature, consisting of: (a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders; (b) Credit or financial information; (c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family; (d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or (e) An individual's social security number; or (2) Would be confidential if it were in the possession of another public agency or official;		• New 2011
D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives;	• Public employer labor negotiation materials	
E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Technical College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in	• Faculty and administrative records of state educational institutions, other than boards of trustees	

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
subsection 2, paragraph B;		
F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;	• Otherwise confidential but in the hands of association	
G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;	• Materials related to legislative positions or insurance in the hands of association of political or administrative subdivisions of the State	
H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct;	• Medical records and reports of municipal rescue and emergency medical services, except available to law enforcement in criminal investigations	
I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter;	• Juvenile fire starter records	
J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization;	• Advisory/study commission working papers	
K. Personally identifying information	• Personally identifying	• Sections of an independent

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concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A;	information concerning minors collected/maintained by municipality for recreational and nonmandatory educational services and programs IF ordinance adopted	report of a school employment controversy must be redacted if they touch upon the personal history, general character or conduct of an employee or an employee's immediate family (20-A MRSA §6101(2)(B)(5)).[18]
L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure;	• Security plans, security procedures, risk assessments to prepare/ prevent terrorism if expected to jeopardize physical safety of public personnel. Available to Legislature or municipal officials if further protect from disclosure	
M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure, systems and software. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;	• Information technology infrastructure information	• New 2012

[18] Cyr v. Madawaska School Dept., 2007 ME 26, 916 A.2d 967.

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N. Social security numbers;	• Social Security Numbers	• Amended 2011 - see also new ¶R (was limited to SSNs in possession of IF&W)
O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph: (1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and (2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials;	• Personal contact information for certain public employees	
P. Geographical information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information;	• Geographical information of recreational trails located on private land, unless landowner authorizes release	
Q. Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials, the Department of Corrections	• Department of Corrections or county jail security plans, staffing plans, security procedures or risk assessments prepared for emergency events if the records would endanger one's life or safety. Information in these security plans and procedures can be disclosed to state and county officials if necessary to carry out duties.	

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or members of the State Board of Corrections under conditions that protect the information from further disclosure; and		
R. Social security numbers in the possession of the Secretary of State.		• New 2011 - see ¶N
3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:	• More public records:	
A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, conviction data, address of furlough and dates of furlough;	• Public	
B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, conviction data, address of residence and dates of supervision; and	• Public	
C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, conviction data and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information.	• Not public: Prisoner's, adult probationer's or parolee's info when Commissioner of Corrections determines detrimental to welfare of a client to disclose	
4. Public records of interscholastic athletic organizations. Any records or minutes of meetings under subsection 2, paragraph G are public records.		• New 2012
5. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.		
6. Reasonable office hours. "Reasonable office hours" includes all regular office hours of an agency or official.		
§402-A. Public records defined (REPEALED)	(now part of §402)	
§403. Meetings to be open to public; record of meetings		
1. Proceedings open to public. Except as otherwise provided by statute or by	Public proceedings open to public unless	

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section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.	• Otherwise provided by statute • Authorized executive session pursuant to §405 Required record/minutes open to public inspection	
2. Record of public proceedings. Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include:		• New 2011
A. The date, time and place of the public proceeding;		
B. The members of the body holding the public proceeding recorded as either present or absent; and		
C. All motions and votes taken, by individual member, if there is a roll call.		
3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.		• New 2011
4. Maintenance of record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.		• New 2011
5. Validity of action. The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.		• New 2011
6. Advisory bodies exempt from record requirements. Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.		• New 2011
§404. Recorded or live broadcasts authorized		
In order to facilitate the public policy so	Writing, taping, filming, live	• Unemployment Insurance

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declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The body or agency holding the public proceedings may make reasonable rules and regulations governing these activities, so long as these rules or regulations do not defeat the purpose of this subchapter.	broadcasts authorized if does not interfere with orderly conduct of proceedings	Commission proceedings not open to the public so no right to independently record proceeding[19]
§404-A. Decisions (REPEALED)	(see now §407)	
§405. Executive sessions		
Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions.	Executive sessions may be held subject to the following:	
1. Not to defeat purposes of subchapter. These sessions may not be used to defeat the purposes of this subchapter as stated in section 401.	• Not to defeat purposes of FOA	
2. Final approval of certain items prohibited. An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at executive session.	• Not to finally approve an ordinance, order, rule, resolution, regulation, contract, appointment or other official action	• Employee whose contract was not renewed by school committee was not entitled to relief on ground that committee discussed the nonrenewal in executive sessions where the vote to refuse to extend or renew the contract was made in public meeting attended by employee and her counsel[20]
3. Procedure for calling of executive session. An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.	• Must have 3/5s of the vote of the members present and voting	
4. Motion contents. A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of	• The precise nature of the business to be conducted in executive session must be part of	• Record clearly established that Board of Selectmen, before going into executive session to discuss pending

[19] Martin v. Unemployment Insurance Commission, 1998 ME 271, 723 A.2d 412.
[20] Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

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statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent.	the motion	litigation, stated that the session was for purposes of receiving from the town's attorney updated status on that litigation, thereby complying with law[21]
5. Matters not contained in motion prohibited. Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.	• Motions not contained in the motion are prohibited	
6. Permitted deliberation. Deliberations on only the following matters may be conducted during an executive session:	Only the following deliberations may be conducted during an executive session:	• Public body charged with violating FOA laws during executive session has burden of proving that its actions during executive session complied with FOA laws[22] • Any statutory exceptions to the requirement that deliberations be public must be narrowly construed[23]
A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or person or persons subject to the following conditions:	• Discussion of employment issues, subject to the following limitations	
(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy would be violated;	• Only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to	• The time for a "reasonable" expectation of damage to the reputation of an employee to be determined is before the executive session is conducted.[24]

[21] Vella v. Town of Camden, 677 A.2d 1051 (ME 1996).
[22] Underwood v. City of Presque Isle et al., 715 A.2d 148 (ME 1998).
[23] Underwood v. City of Presque Isle, 715 A.2d 148 (ME 1998).
[24] Blethen Maine Newspapers, Inc. v. Portland School Committee, 2008 Me 69, 947 A.2d 479.

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	privacy	
(2) Any person charged or investigated shall be permitted to be present at an executive session if he so desires;	• The individual can choose to be present	
(3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against him be conducted in open session. A request, if made to the agency, must be honored; and	• If the individual requests in writing that the proceeding be open to the public, the agency must open the proceeding; and	
(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.	• The person filing the complaint may choose to be present	
This paragraph does not apply to discussion of a budget or budget proposal;	• This paragraph cannot be used to discuss budget issues in executive session.	• Questions asked of employees about fiscal matters during executive session do not amount to discussions of the budget or budget deliberations.[25]
B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:	A school board's discussion of the suspension or expulsion of a student, with the following restriction	
(1) The student and legal counsel and, if the student be a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire.	• The student, parents/guardians, legal counsel may choose to be present	
C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or	Discussion of property issues that would prejudice the competitive or bargaining position of the public body	

[25] Blethen Maine Newspapers, Inc. v. Portland School Committee, 2008 Me 69, 947 A.2d 479.

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economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency;		
D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;	Negotiations between a public employer and public employees	
E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage.	Consultations between a public body and its attorney concerning pending or contemplated litigation, matters that are confidential under the Maine Code of Professional Responsibility, or matters that would clearly place the public body at a substantial disadvantage	• The mere presence of an attorney cannot be used to circumvent the open meeting requirement by invocation of attorney consultation exception[26]
F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;	Discussion of records made confidential by statute	
G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and	Discussions of professional licensing decisions	
H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1,	Discussions with municipal officers and code enforcement officer about enforcement of land use laws and municipal	

[26] Underwood v. City of Presque Isle, 715 A.2d 148 (ME 1998).

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paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.	ordinances when the CEO is representing the municipality in court. Similar to attorney-client provision in paragraph E without the requirement that CEO be an attorney	
§405-A. Recorded or live broadcasts authorized (REPEALED)	(see now §404)	
§405-B. Appeals (REPEALED)	(see now §409)	
§ 405-C. Appeals from actions (REPEALED)	(see now §409)	
§406. Public notice		
Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.	• Notice required if agency or body consists of at least 3 persons • Timing: ample time to allow public attendance • Manner: reasonably calculated to notify the general public in the jurisdiction served by the public body • Emergency meeting: notify representatives of local media whenever practical. By same or faster means	• One day notice of planning board's additional meeting sufficient under the circumstances[27]
§407. Decisions		

1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient	• Written record of conditional approval or denial
	  • Reason/reasons
	  • Findings of fact
		• FOA laws require agency to set out its findings with a level of specificity that is sufficient to apprise the applicant and any interested member of the public of the basis of the

[27] Crispin et al. v. Town of Scarborough et al., 1999 ME 112, 736 A.2d 241.

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to apprise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.		decision[28] • When local agency conditionally approves or denies a permit, the agency must make findings of fact adequate to indicate the basis for the decision and to allow meaningful judicial review[29]

2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.	• Written record of dismissal or refusal to renew a contract of official, employee, appointee
	  • Reason/reasons
	  • Findings of fact
		• The Personnel Committee of a municipality is not required to vote as to each individual reason for termination of an employee as long as the decision included specific findings of fact and conclusions.[30]

§408. Public records available for public inspection and copying **(REPEALED)**	(See now 408-A)	
§ 408-A. Public records available for inspection and copying Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record. **1. Inspect.** A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee	New 2012, replaces § 408 • Every person • Right to inspect and copy • Within a reasonable period of time after request • Inspection during reasonable office hours. • No fee for inspection unless record converted or complied	• When person requests information that falls within FOA laws' disclosure requirements, and governmental entity knows that it has particular records containing that information, entity must at least inform requesting party that material is available and that the requesting party may come in and "inspect and copy"

[28] Yusem v. Town of Raymond, 2001 ME 61, 769 A.2d 865.
[29] Carroll v. Town of Rockport, 2003 ME 135, 837 A.2d 148.
[30] Quintal v. City of Hallowell, 2008 ME 155, 956 A.2d 88.

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as provided in subsection 8.		the information sought[31]
2. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 8.	• During reasonable office hours • Cost of copying paid by requestor (see sub-§8)	
A. A request need not be made in person or in writing.	• Copy request need not be in person	
B. The agency or official shall mail the copy upon request.	• Mail copies upon request	
3. Acknowledgment; clarification; time estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within a reasonable period of time, and may request clarification concerning which public record or public records are being requested. The agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request. The agency or official shall make a good faith effort to fully respond to the request within the estimated time.	• State acknowledge request for record within a reasonable time • Estimate of time to comply with request	
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 written notice of the denial, stating the reason for the denial, within 5 working days of the request for inspection or copying.	• Written notice of request denial within 5 working days of request	
5. Schedule. Inspection, conversion pursuant to subsection 7 and copying of a public record subject to a request under this section may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody or control of the public record requested. If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.	• May schedule compliance with record request so not to delay or inconvenience the agency's or official's regular activities	

[31] Bangor Publishing Co. v. City of Bangor, 544 A.2d 733 (ME 1988).

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6. No requirement to create new record. An agency or official is not required to create a record that does not exist.	• No requirement to create a record	
7. Electronically stored public records. An agency or official having custody or control of a public record subject to a request under this section shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.	• State must provide access to electronic record as printed a document or in the medium it is stored at discretion of the requestor unless it would result in the disclosure of confidential information	
A. If in order to provide access to an electronically stored public record the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the agency or official may charge a fee to cover the cost of conversion as provided in subsection 8.		
B. This subsection does not require an agency or official to provide a requester with access to a computer terminal.	• Does not require agency or official to provide access to computer terminal	
8. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.		
A. The agency or official may charge a reasonable fee to cover the cost of copying.	• May charge a reasonable copying fee and a fee to cover cost of searching for, retrieving and compiling the record of not more than $15 per hour after the first hour of staff time per request	
B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.		
C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural	• May charge for actual conversion costs	

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comprehension or into a usable format. D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies.	• No charge for inspection unless record must be complied or converted	
E. The agency or official may charge for the actual mailing costs to mail a copy of a record.	• May charge actual mailing	
9. Estimate. The agency or official having custody or control of a public record subject to a request under this section shall provide to the requester an estimate of the time necessary to complete the request and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than $30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 10 applies.	• Estimate of compliance time and costs	
10. Payment in advance. The agency or official having custody or control of a public record subject to a request under this section may require a requester to pay all or a portion of the estimated costs to complete the request prior to the search, retrieval, compiling, conversion and copying of the public record if:	• May require payment in advance if estimated cost exceeds $100 or requestor has previously failed to pay a fee	
A. The estimated total cost exceeds $100; or B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.		
11. Waivers. The agency or official having custody or control of a public record subject to a request under this section may waive part or all of the total fee charged pursuant to subsection 8 if:	• Waiver of fees if requestor indigent or release of record is in the public interest	
A. The requester is indigent; or B. The agency or official considers release of the public record requested to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.		

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§409. Appeals		

1. Records. Any person aggrieved by a refusal or denial to inspect or copy a record under section 408-A may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.	• Refusal of inspection or copying must be
	  • In writing
	  • Within 5 working days of request
	• Appeal from denial within 5 working days of denial to Superior Court
	• Court may issue order of disclosure
	• Expedited
		• Failure of governmental body to respond to request for records in the time established by statute is deemed a denial of the request[32]
		• Amended 2012 see also 408-A
		• In its review, superior court is the forum of origin for a determination of both facts and law with respect to the alleged violation and does not function in an appellate capacity, and thus, procedures for taking additional evidence on judicial review are inapplicable (overruling Marxsen v. Board of Directors, 591 A.2d 867).[33]

2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.	• Approval of official action in executive session is illegal; officials subject to penalties • Superior Court shall declare action null and void if action taken illegally • Expedited	• Freedom of Access claim must be filed within 30 days of discovering a possible violation (MRCivP, Rule 80B)[34] • Burden of proof on agency to establish "just and proper cause" for denial of a FOA request[35] • Amended 2012 • Supreme Judicial Court, sitting as the Law Court, could not create settlement negotiation privilege against disclosure under FOA; Court could only create new privileges pursuant to its rulemaking powers.[36]
3. Proceedings not exclusive. The	• Other civil remedies	

[32] Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).
[33] Underwood v. City of Presque Isle, 1998 ME 166, 715 A.2d 148.
[34] Palmer v. Portland School Committee et al., 652 A.2d 86 (ME 1995).
[35] Springfield Terminal Railway Company v. Department of Transportation, 2000 ME 126, 754 A.2d 353.
[36] Citizens Communications Co. v. Attorney General, 2007 ME 114, 931 A.2d 503.

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proceedings authorized by this section are not exclusive of any other civil remedy provided by law.	available	
4. Attorney's fees. In an appeal under subsection 1 or 2, the court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe. This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.	• Reasonable attorney's fees and litigation expenses maybe awarded to the prevailing plaintiff who appealed if the court determines that the refusal or illegal action was committed in bad faith	
§410. Violations		
For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than $500 may be adjudged.	• Willful = intentional or knowing • Agency or entity liable for civil violation; fine of up to $500	• Penalties for official actions taken in executive session in violation of FOA laws may only be sought by the Attorney General or AG's representative[37] • Only Attorney General or AG's representative may enforce FOA laws by seeking imposition of fine[38] • If a requesting party has undertaken successful appeal of denial, that party is entitled to costs[39]
§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.		

[37] Lewiston Daily Sun v. School Administrative District No. 43, 1999 ME 143, 738 A.2d 1239.
[38] Scola v. Town of Sanford,1987 ME 119, 695 A.2d 1194.
[39] Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

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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; and

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

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

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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 the 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

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proceedings and records.

§412 Public records and proceedings training for certain elected officials

1. Training required. A public access officer and an elected 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 or public access officer shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official or the person is designated as a public access officer pursuant to section 413, subsection 1.

- Amended 2012

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

- Amended 2012

A. The general legal requirements of this chapter regarding public records and public proceedings;

B. Procedures and requirements regarding complying with this chapter;

C. Penalties and other consequences for failure to comply with this chapter.

An elected official 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 elected official or a public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must

- Amended 2012

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identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected. 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 elected officials:

- Amended 2012

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. Deleted. Laws 2007, c. 576, §2.

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

G. Officials of school administrative units; and

H. Officials of regional or other political subdivisions 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 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.

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		• New 2012

§ 413. Public access officer

1. Designation; responsibility. Each agency, county, municipality, 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, school administrative unit and 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 a reasonable period of time 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, 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, 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.

§ 414. Public records; information technology

An agency shall consider, in the purchase of and contracting for computer software and other information technology resources, the extent to which the software or technology will:

1. Maximize public access. Maximize public access to public records; and

2. Maximize exportability; protect confidential information. Maximize the

exportability of public records while protecting confidential information that may be part of public records.

SUBCHAPTER 1-A

(headnote revised 2011)

PUBLIC RECORDS EXCEPTIONS AND ACCESSIBILITY

§431. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Public records exception. "Public records exception" or "exception" means a provision in a statute or a proposed statute that declares a record or a category of records to be confidential or otherwise not a public record for purposes of subchapter 1.

2. Review committee. "Review committee" means the joint standing committee of the Legislature having jurisdiction over judiciary matters.

3. Advisory committee. "Advisory committee" means the Right To Know Advisory Committee established in Title 5, section 12004-J, subsection 14 and described in section 411.

§432. Exceptions to public records; review

1. Recommendations. During the second regular session of each Legislature, the review committee may report out legislation containing its recommendations concerning the repeal, modification and continuation of public records exceptions and any recommendations concerning the exception review process and the accessibility of public records. Before reporting out legislation, the review committee shall notify the appropriate committees of jurisdiction concerning public hearings and work sessions and shall allow members of the appropriate committees of jurisdiction to participate in work sessions.

- Amended 2011

2. Process of evaluation. According to the schedule in section 433, the advisory committee shall evaluate each public records exception that is scheduled for review that

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biennium. This section does not prohibit the evaluation of a public record exception by either the advisory committee or the review committee at a time other than that listed in section 433. The following criteria apply in determining whether each exception scheduled for review should be repealed, modified or remain unchanged:

A. Whether a record protected by the exception still needs to be collected and maintained;

B. The value to the agency or official or to the public in maintaining a record protected by the exception;

C. Whether federal law requires a record to be confidential;

D. Whether the exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;

E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;

F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;

H. Whether the exception is as narrowly tailored as possible; and

I. Any other criteria that assist the review committee in determining the value of the exception as compared to the public's interest in the record

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protected by the exception.

2-A. Accountability review of agency or official. In evaluating each public records exception, the advisory committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

2-B. Recommendations to review committee. The advisory committee shall report its recommendations under this section to the review committee no later than the convening of the second regular session of each Legislature.

2-C. Accessibility of public records. The advisory committee may include in its evaluation of public records statutes the consideration of any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

- New 2011

3. Assistance from committees of jurisdiction. The advisory committee may seek assistance in evaluating public records exceptions from the joint standing committees of the Legislature having jurisdiction over the subject matter related to the exceptions being reviewed. The advisory committee may hold public hearings after notice to the appropriate committees of jurisdiction.

§433. Schedule for review of exceptions to public records

1. Scheduling guidelines. (repealed)

2. Scheduling guidelines. The advisory committee shall use the following list as a guideline for scheduling reviews of public records exceptions.

A. Exceptions codified in the following Titles are scheduled for review in 2008:

(1) Title 1;

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(2) Title 2;

(3) Title 3;

(4) Title 4;

(5) Title 5;

(6) Title 6;

(7) Title 7;

(8) Title 8;

(9) Title 9-A; and

(10) Title 9-B.

B. Exceptions codified in the following Titles are scheduled for review in 2010:

(1) Title 10;

(2) Title 11;

(3) Title 12;

(4) Title 13;

(5) Title 13-B;

(6) Title 13-C;

(7) Title 14;

(8) Title 15;

(9) Title 16;

(10) Title 17;

(11) Title 17-A;

(12) Title 18-A;

(13) Title 18-B;

(14) Title 19-A;

(15) Title 20-A; and

(16) Title 21-A.

C. Exceptions codified in the following Titles are scheduled for review in 2012:

(1) Title 22;

(2) Title 23;

(3) Title 24;

(4) Title 24-A; and

(5) Title 25.

D. Exceptions codified in the following Titles are scheduled for review in 2014:

(1) Title 26;

(2) Title 27;

(3) Title 28-A;

(4) Title 29-A;

(5) Title 30;

(6) Title 30-A;

(7) Title 31;

(8) Title 32;

(9) Title 33;

(10) Title 34-A;

(11) Title 34-B;

(12) Title 35-A;

(13) Title 36;

(14) Title 37-B;

(15) Title 38; and

(16) Title 39-A.

3. Scheduling changes. The advisory committee may make adjustments to the scheduling guidelines provided in subsection 2 as

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it determines appropriate and shall notify the review committee of such adjustments.

§434. Review of proposed exceptions to public records

1. Procedures before legislative committees. Whenever a legislative measure containing a new public records exception is proposed or a change that affects the accessibility of a public record is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed exception or proposed change that affects the accessibility of a public record may not be enacted into law unless review and evaluation pursuant to subsections 2 and 2-B have been completed.

- Amended 2011

2. Review and evaluation. Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed exception should be enacted:

A. Whether a record protected by the proposed exception needs to be collected and maintained;

B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;

C. Whether federal law requires a record covered by the proposed exception to be confidential;

D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest

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substantially outweighs the public interest in the disclosure of records; **E.** Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records; **F.** Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records; **G.** Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records; **H.** Whether the proposed exception is as narrowly tailored as possible; and **I.** Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception. **2-A. Accountability review of agency or official.** In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.		
2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request		• New 2011

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procedures and timeliness of responses.		
3. **Report.** The review committee shall report its findings and recommendations on whether the proposed exception or proposed limitation on accessibility should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.		• Amended 2011

To: **Linda Pistner**
Chief Deputy Attorney General

From: **Katie Lybrand**
Right to Know Advisory Committee Extern

Date: **September 21, 2012**

Re: **Website Improvement Recommendations**

You asked me to review the AG's FOAA webpage and make recommendations for improvements. Some of my recommendations are more organizational, while others are substantive. I also examined the RTKAC's website however I do not have any major recommendations for that site. I think that site contains all the information it should, I think it is just a matter of having links on the main FOAA website to make the information more readily accessible.

Organization Recommendations

Related Websites

I think the related websites section could be improved. Right now, it is rather sparse and does not contain much explanatory detail. I think a simple descriptor sentence before/after each link would be useful. I would also create two sections - one for state resources and one for national resources. Here is what I would suggest:

State Resources:

- Maine Governor's Office[1] The official website for Maine's governor.
- Maine Attorney General's Office The Attorney General's Office provides the legal services for the State and its agencies. Their website contains the latest news on cases of interest as well as many electronic resources for consumers, and much more.
- Maine State Archives Search through Maine's history! The Maine State Archives maintains approximately 95 million pages of official State records. They also have several electronic databases and interactive archives available through their website.
- Maine Government Services Online Look here if you hate waiting in line. Many state and local services, such as payments, registrations, licensing and permit applications, purchases, searches, email notifications and more are available electronically.

[1] Note: all of the links in this document are hyperlinks and should take you directly to the website I'm referring to if clicked on.

- 122nd Maine Legislature - Freedom of Access Advisory Committee Learn more about the legislative committee responsible for ensuring compliance with Maine's freedom of access laws.
- Information Resource of Maine (InforME) Check here for public documents. Many state services and related information are available electronically for InforME subscribers.
- Maine Freedom of Information Coalition A nonprofit organization that has many resources for Mainers looking for state or national public records, including a public records request letter generator.

I would add the following links to this section:

- Maine State Legislature Learn about upcoming bills, watch live Senate and House video, and learn how your state representative and senator voted on each bill.
- Public Meetings Calendar Find state agency meetings and hearings that are open to the public and sign up to receive meeting notices by email.
- Right to Know Advisory Committee Learn about the activities of the Right to Know Advisory Committee, view annual reports and meeting summaries.

National Resources

- Federal Freedom of Information Act Read the text of the Federal Freedom of Information Act, which governs public record requests from federal officials and agencies.
- FOIA Homepage Start here for an overview of the Federal Freedom of Information Act. Explore the website for useful data and reports and learn how to make a FOIA request.
- National Freedom of Information Coalition A national organization with a website overflowing with useful links, articles and other information for those interested in open government.

Substantive Recommendations

Citizen's Guide

I would make the the Citizen's Guide and Flowchart more prominently available. Right now, it is only available if a user finds it on the RTKAC's website. I think it would be more useful to either have it as a link on the FOAA homepage or as a separate link on the left hand column. It could become its own section, perhaps between the "News and Updates" section and the "How to Make a Request" section. This section could have a brief intro describing the guide and how it will provide a comprehensive overview of the FOAA laws and process for obtaining records. I have examined the websites of several other states and most of them include a similar citizen's guide on their homepage or some other prominent location.

How to Make a Request Section

In this section I would consider adding a sample FOAA request letter. Although the text on this page tells users how to draft a good request letter, it may be useful to have a sample letter

for individuals to base their own letters off of. There is a sample request letter located in the Maine Citizen's Guide to FOAA on page 19 that could be used or referenced.

News & Updates Section

This section looks like it could use some updating, such as a link to the most recent RTKAC's report with a descriptor such as "See the changes to Maine's open government laws passed during the 2012 session" or something similar.. Likewise, the "Legislative Updates," "Court Opinions" and "Sunshine Week" sections also need some updating. In the court opinions section, I think it would be useful to have a sentence or two describing what each case is about.

It may also be useful to include a link to the National Freedom of Information Coalition's website here. Users could be directed to look there for recent updates and reports on important national freedom of information matters.

Frequently Requested Documents

I am not sure how many requests agencies receive, but it may be useful to have some sort of frequently requested documents page. This could easily be accomplished through the use of the "News and Updates" section. For example, if a decision in a case of interest is released or if there is some other hot button issue, there could be a link to that document on the website which could save agencies some time fielding requests. This could even be done for items that do not strictly fall under FOAA. For example, Florida's AG's website has a frequently requested documents section which contains some items that are frequently requested, but probably not state public records within the meaning of their freedom of access law. For instance, Florida has a link to the recent Supreme Court decision on the Affordable Care Act. This section may require too much updating compared with the use it would receive, but it would be an interesting addition to the website.

Newsletter

An interesting addition to the website would be some sort of monthly or quarterly newsletter that summarizes recent developments and features commentary. I saw this type of newsletter on a few non-profit websites and a similar recent updates type document (without the commentary) on several state websites. The Brechner Center at the University of Florida publishes a monthly newsletter and the most interesting aspect of it to me was that it features commentary by journalists, attorneys, and scholars on contemporary issues. For example, one month could be about the impact of social media and technology developments on public records. Although this may be a bit ambitious, I think it would be interesting to at least have some sort of publication like this perhaps a few times a year. This could be a task for the extern as well. This idea would depend on interest from journalists/attorneys/others to weigh in on the issues, and I don't know if that interest is there or sustainable, but I think the idea is compelling. This idea could also translate into some sort of public outreach program where, perhaps twice a year or once a year, the Committee hosts a public seminar type program that is open to the

public. The commentary I suggested for the newsletter could instead be presented at this forum, with time for questions from the public. Again, I'm not sure how much interest there would be in such a program, but it would be a way to extend the outreach of FOAA.

A regular publication or public outreach program may be something to work on in conjunction with the Maine State Bar and the University of Maine School of Law. New York state, for example, publishes a journal of the sort described above, but the New York State Bar, Albany Law School, and State Committee on Open Government all work on its publication.

KATHERINE H. LYBRAND

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EDUCATION

University of Maine School of Law, Portland, Maine
Candidate for Juris Doctor; degree expected May 2013
Staff, Maine Law Review; Dean's List; Top 25%

Smith College, Northampton, Massachusetts
Bachelor of Arts, Government, African Studies, May 2010
Dean's List, First Group Scholar, 2007-10
Pi Sigma Alpha (National Political Science Honor Society)
Activities: Smith College Judicial Board; Class of 2010 Vice President; Gold Key Tour Guide

EXPERIENCE

Research Assistant, University of Maine School of Law
Portland, Maine, December 2011 – Present
Perform research on the Endangered Species Act and climate change.
Assemble information into memos and case tables.

Student Assistant, Garbrecht Law Library, University of Maine School of Law
Portland, Maine, Sept. - May 2010 - Present
Operate sole circulation desk.
Assist patrons in locating resources; shelve books and maintain order in library stacks.

Intern, Office of the Attorney General, Augusta, Maine, Summer 2011
Wrote appellate briefs for the Maine Supreme Judicial Court, sitting as the Law Court, on Child Protective matters.
Conducted research on various environmental issues for Natural Resources Division and compiled research in memos for Assistant Attorneys General.

Intern, Congresswoman Chellie Pingree, District Office, Portland, Maine, Summer, 2010
Answered questions on policy and fielded calls from constituents.
Assisted in casework preparation through form writing, filing and mailing.
Drafted grant support letters and conducted policy research for staff members.

Office Assistant, Camp Nashoba North, Raymond, Maine, Summers, 2008, 2009
Juggled many duties including acting as an assistant to camp director and program director, managing camp store stock and accounts, contacting parents, and filing and organizing 100-150 weekly camper schedules.

Note: Changes to the FAQs based on Chapter 662 from the last legislative session are shown in red. Changes based on the pink sheet, "FAQ Suggested Updates 10-21-11," are shown in pink. Changes based on the suggestions of the Legislative Subcommittee, dated 09-13-12, are shown in orange.

Frequently Asked Questions (FAQ)

General Questions | Public Records | Public Proceedings

GENERAL QUESTIONS

What is the Freedom of Access Act?

The Freedom of Access Act (FOAA) is a state statute that is intended to open the government of Maine by guaranteeing access to the "public records" and "public proceedings" of state and local government bodies and agencies.

Are federal agencies covered by the Freedom of Access Act?

No. FOAA does not apply to federal agencies operating in Maine or to federal government records. A similar but different federal statute called the "Freedom of Information Act" applies to the federal government. This federal statute does not apply to state or local government bodies, agencies or officials.

You can find the text of the Freedom of Information Act, 5 U.S.C. § 551 et seq., at: http://www.usdoj.gov/oip/foiastat.htm *or you can find more general information on the Freedom of Information Act* at: http://answers.usa.gov/cgi-bin/gsa*ict.cfg/php/enduser/std*adp.php?p_faqid=5940

Who enforces the Freedom of Access Act?

Any aggrieved person may appeal to any Superior Court in the state to seek relief for an alleged violation of FOAA. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

Relief can be in the form of an ~~injunction~~ order issued by the court that directs the government body, agency or official to comply with the law, such as by providing access to a public proceeding or by making public records available for inspection or copying.

In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful. 1 M.R.S.A. § 410.

What are the penalties for failure to comply with the Freedom of Access Act?

A state government agency or local government entity whose officer or employee commits a willful violation of FOAA commits a civil violation for which a forfeiture of not more than $500 may be adjudged. 1 M.R.S.A. § 410. Under the current law, there are no criminal penalties for failure to comply with a request for public records. It is a Class D crime to intentionally remove, alter, or destroy documents belonging to a state office. 1 M.R.S.A. § 452.

What is the Public Access Ombudsman?

The Legislature created a public access ombudsman position to review complaints about compliance with FOAA and attempt to mediate their resolution, as well as answer calls from the public, media and legislators about the requirements of the law. The ombudsman is also responsible for providing educational materials about the law and preparing advisory opinions. The ombudsman works closely with the Right to Know Advisory Committee in monitoring new developments and considering improvements to the law.

How do I contact the Public Access Ombudsman?

Call the Office of the Attorney General at (207) 626-8577 or get more information online at public access ombudsman. (webpage and link needed)

Are elected officials required to take training on the Freedom of Access Act?

Yes. ~~Beginning July 1, 2008,~~All elected officials subject to this section and public access officers must complete a course of training on the requirements of FOAA. 1 M.R.S.A. § 412. (cite needs to be linked)

Which elected officials are required to take Freedom of Access training?

Elected officials required to complete the training include:

- the Governor
- Attorney General, Secretary of State, Treasurer of State and State Auditor
- Legislators ~~elected after November 1, 2008~~
- Commissioners, treasurers, district attorneys, registers of deeds, registers of probate and budget committee members of any county
- Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments
- Officials of school ~~units and school boards~~administrative units
- Officials of regional or other political subdivisions, including officials of water districts, sanitary districts, hospital districts, transit districts or regional transportation districts
- Public access officers.

What is a public access officer?

A public access officer must be designated to serves as the contact person for an agency, county, municipality, school administrative unit and regional or other political subdivision for public records requests. An existing employee is designated public access officer and is responsible for ensuring that public record requests are acknowledged within a reasonable amount of time and that a good faith estimate of when the response to the request will be complete is provided.

What does the training include?

At a minimum, the training must be designed to be completed in less than 2 hours and include instruction in:

- the general legal requirements regarding public records and public proceedings
- the procedures and requirements regarding complying with a request for a public record
- the penalties and other consequences for failure to comply with the law

Elected officials and public access officers can meet the training requirement by conducting a thorough review of the material in this FAQ section of the State's Freedom of Access website or by completing another training course that includes all off this information but may include additional information.

Do training courses need to by certified by the Right to Know Advisory Committee?

No. Training courses do not need the approval of the Right to Know Advisory Committee, or any other State agency.

How do elected officials and public access officers certify they have completed the training?

After completing the training, elected officials and public access officers are required to make a written or electronic record attesting that the training has been completed. The record, which will be available to the public, must be kept by the elected official or filed with the public entity to which the official was elected. A public access officer must file the record with the agency or official that designated the public access officer. A sample training completion form is available (This file requires the free Adobe Reader).

~~**What is a public access officer?**~~
~~A public access officer serves as the contact person for an agency, county, municipality, school administrative unit, and regional or other political subdivision with regard to public records requests. Each agency, county, municipality, school administrative unit and regional or other political subdivision must designate an existing employee as its public access officer.~~

PUBLIC RECORDS

What is a public record?

FOAA defines "public record" as "any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business". A number of exceptions are specified. (See the discussion of exemptions below) 1 M.R.S.A. § 402 (3).

Do I have to be a citizen of this state to submit a Freedom of Access Act request for a public record?

No. FOAA provides that "~~every~~ a person" has the right to inspect and copy public records. 1 M.R.S.A. § 408-A ~~(1)~~.

How do I make a Freedom of Access Act request for a public record?

See the How to Make a Request page on this site.

Is there a form that must be used to make a Freedom of Access Act request?

No. There are no required forms.

Does my Freedom of Access Act request have to be in writing?

No. FOAA does not require that requests for public records be in writing. However, most government bodies and agencies ask individuals to submit requests in writing in order to maintain a record of when the request was received and what records were specifically requested.

What should I say in my request?

In order for the government body, agency or official to promptly respond to your request, you should be as specific as possible when describing the records you are seeking. If a particular document is required, it should be identified precisely—preferably by author, date and title. However, a request does not have to be that specific. If you cannot identify a specific record, you should clearly explain the type of records you are seeking, from what timeframe and what subject the records should contain. For example, assume you want to obtain a list of active landfills near your home. A request to the state Department of Environmental Protection asking for "all records on landfills" is very broad and would likely produce volumes of records. The fees for such a request would be very high; the agency would likely find your request too vague and ask that you make it more specific. On the other hand, a request for "all records identifying landfills within 20 miles of 147 Main Street in Augusta" is very specific and the request might fail to produce the information you desire because the agency has no record containing data

organized in that exact fashion. You might instead consider requesting any record that identifies "all active landfills in Augusta" or "all active landfills in Kennebec County." It is more likely that a record exists which contains this information. You might also want to explain to the agency exactly what information you hope to learn from the record. In other words, if you are really trying to determine whether any active landfills near your home in Augusta accept only wood waste, this additional explanation may help the agency narrow its search and find a record that meets the exact request.

Does an agency have to acknowledge receipt of my request?

Yes. An agency or official must acknowledge receipt of a request within a reasonable period of time. 1 MRSA § ~~408 (1)~~ 408-A (3).

Can an agency ask me for clarification concerning my request?

Yes. An agency or official may request clarification concerning which public record or public records are being requested. 1 MRSA §~~408 (1)~~ 408-A (3).

Does an agency have to estimate how long it will take to respond to my request?

Yes. An agency or official must provide a good faith, nonbinding estimate of how long it will take to comply with the request. The agency or official shall make a good faith effort to fully respond within the estimated time. 1 MRSA §408-A (3).

When does the agency or official have to make the records available?

The records must be made available "within a reasonable period of time" after the request was made. 1 M.R.S.A. § ~~408 (1)~~ 408-A. The agency or official can schedule the time for your inspection, conversion and copying of the records during the regular business hours of the agency or official, and at a time that will not delay or inconvenience the regular activities of the agency of official. 1 M.R.S.A. §§ ~~408 (1) & (2)~~ 408-A (5).

Can an agency or official delay responding if my request was not directed to the agency public access officer?

No. An agency that receives a request to inspect or copy a public record must acknowledge and respond regardless of whether the request was directed to the public access officer. The unavailability of a public access officer may not be reason for a delay.

What if the agency or official does not have regular office hours?

If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists. 1 M.R.S.A.§408-A (5).

Does an agency have to produce records within 5 days of my request?

No. The records that are responsive to a request must be made available "within a reasonable period of time" after the request was made. 1 MRSA § 408-A ~~(1)~~. Agencies must respond in writing within 5 working days only if your request is denied in whole or in part. 1 MRSA § 409 ~~(1)~~.408-A (4).

Do I have to go to the agency to inspect the records or can I ask the agency or official to mail me the records?

A person may inspect or copy any public record in the office of the agency or official during reasonable office hours. ~~FOAA only requires the agency or official to make the records available to you for inspection and copying, it does not require the agency or official to mail records. However, depending on the volume of records produced in response to your request, some agencies or officials may be willing to mail copies to you~~. The agency or official shall mail the copy upon request. The agency may charge a reasonable fee to cover the cost of making the copies for you, as well as actual mailing costs. 1 M.R.S.A. §§ 408-A (1), ~~&~~ (2) & (8)(E). ~~408 (1) & (3)(A)~~.

When may a governmental body refuse to release the records I request?

FOAA provides that certain categories of documents are not public records. Included among these are records that have been designated confidential by statute, documents subject to a recognized legal privilege such as the attorney-client privilege or the work-product privilege, records describing security plans or procedures designed to prevent acts of terrorism, medical records, juvenile records, and the personal contact information of public employees contained within records. 1 M.R.S.A. § 402 (3)(A)-(O).

For a list of records or categories of records deemed by statute to be confidential or otherwise not a public record, see the Statutory Exceptions List. While this listing may not be totally complete, it contains the vast majority of exceptions to FOAA.

What happens if a public record holds some information that is open to the public and some information that falls within an exception to the Freedom of Access Act?

Some public records contain a mixture of information that is public and information that is confidential or otherwise not subject to public inspection under FOAA. If the record you requested contains any confidential or excepted information, the custodian will decide if the confidential or excepted information can be adequately redacted or blacked out so that public access can be provided or if public access to the document should be denied.

Must an agency have computer technology resources that allow for maximum accessibility to public records while protecting confidential information?

When purchasing and contracting for computer software and other information technology resources, an agency shall consider the extent to which it will maximize accessibility and exportability while protecting confidential information that may be contained in the public records. 1 M.R.S.A. §414.

Does an agency have to explain why it denies access to a public record?

Yes. When an agency denies access to a public record, it must provide the reason for its denial in writing within 5 working days of the date of the FOAA request. 1 M.R.S.A. § 408-A (4) ~~409 (1)~~.

What can I do if I believe an agency has unlawfully withheld a public record?

If you are dis~~un~~satisfied with an agency's decision to withhold access to certain records, you are entitled to appeal, within 5 working days of your receipt of the written notice of denial, to any Superior Court within the state. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

May a governmental body ask me why I want a certain record?

FOAA does not specifically prohibit agencies or officials from asking why an individual is requesting a public record. However, if asked, the individual is not required to provide a reason for seeking a record, and the agency cannot deny an individual's request based solely on either the individual's refusal to provide a reason or the reason itself. An agency or official may request clarification concerning which public record or public records are being requested. 1 M.R.S.A. § 408-A(3) ~~(1)~~.

Can I ask that public reports or other documents be created, summarized or put in a particular format for me?

No. A public officer or agency is not required to prepare reports, summaries, or compilations not in existence on the date of your request. 1 M.R.S.A. § 408-A (6).

~~Similarly, a public officer or agency is not required to produce a record in an alternate format if the record can be made available for public inspection and copying in the format in which it exists. If the record requires translation in order for it to be made available for public inspection and copying, the agency or official must translate the record but can charge you a fee to cover the actual cost of translation. 1 M.R.S.A. § 408-A (8) (3)(C).~~

If the public record is electronically stored, the agency or official subject to a request must provide the public record either as a printed document or in the medium in which the record is stored, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file. ~~An agency or official is not required to provide a requester with access to a computer terminal.~~ 1 M.R.S.A. § 408-A (7).

Must the agency or official provide me with access to a computer terminal to inspect electronically stored public records?

No. The agency or official is not required to provide access to a computer terminal.

I asked a public official a question about a record, but he/she didn't answer. Is he/she required to answer my question?

No. A public officer or agency is not required ~~under FOAA~~ to explain or answer questions about public records. FOAA~~The Act~~ only requires officials and agencies to make public records available for inspection and copying.

What records must a public officer or agency keep, and how long do they have to keep them?

~~The~~ Generally, FOAA does not control what records must be retained or for how long they must be retained. ~~Public officers and agencies are required to keep all records made or received or maintained by that officer or agency in accordance with other law or rule or in the transaction of its official business. 5 M.R.S.A. § 92-A (5) (This file requires the free Adobe Reader).~~

However, FOAA does require that a public body keep a summary of its public proceedings. The summary must include: the date, time and place of the proceeding; the members of the public body, recorded as either present or absent; and all motions and votes taken, by individual member if the vote is by roll call. The summary can be in any medium, including audio, video and electronic. This requirement applies to public bodies that do more than serve in an advisory capacity. 1 M.R.S.A. § 403.

How long records must be kept depends on the type of record and the value of the record's content. The Maine State Archives works with state agencies and local governments to establish rules for the retention and disposition of government records, including the length of time that certain records need to be preserved by the agency before they are either destroyed or sent to the Maine State Archives for long-term or permanent retention. 5 M.R.S.A. § 95 (7). The Maine State Archives provides guidance on the management and retention of state agency and local government records, including schedules for how long records are retained, on its website at http://www.maine.gov/sos/arc/records/state/index.html

Are an agency's or official's e-mails public records?

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail is "in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or

governmental business" and is not deemed confidential or excepted from FOAA, it constitutes a "public record". 1 M.R.S.A. § 402 (3).

Email messages are subject to the same retention schedules as other public records based on the content of the message. There are no retention schedules specific to email messages. Guidance on the retention of email and digital records can be found at http://www.maine.gov/sos/arc/records/state/emailguide0712.pdf

Is the ~~personal contact information of~~ information contained in a communication between a ~~-~~constituent and ~~s who contact~~ their legislators a public record?

The information ~~is not a public record if it is~~ of a personal nature consisting of an individual's medical information, credit or financial information, character, misconduct or disciplinary action, social security number, or that would be confidential if it were in the possession of another public agency or official is not a public record. However, other parts of the communication are public. 1 M.R.S.A. § 402 (3)(C-1)

~~1 M.R.S.A. § 402 (3)(C-1)~~

Can an agency charge for public records?

There is no initial fee for submitting a FOAA request and agencies cannot charge an individual to inspect records unless the public record cannot be inspected without being compiled or converted. 1 M.R.S.A. § 408-A (8)(D) ~~(3)(D)~~. However, agencies can and normally do charge for copying records. Although FOAA does not set standard copying rates, it permits agencies to charge "a reasonable fee to cover the cost of copying". 1 M.R.S.A. § 408-A (8)(A) ~~(3)(A)~~.

Agencies and officials may also charge fees for the time spent searching for, retrieving, compiling or redacting confidential information from the requested records. FOAA authorizes agencies or officials to charge $15~~10~~ per hour after the first hour of staff time per request. 1 M.R.S.A. § 408-A (8)(B) ~~(3)(B)~~. Where ~~translation~~ conversion of a record is necessary, the agency or official may also charge a fee to cover the actual cost of ~~translation~~conversion. 1 M.R.S.A. § 408-A (8)(C) ~~(3)(C)~~.

The agency or official must prepare an estimate of the time and cost required to complete a request and if the estimate is greater than $~~20~~30, the agency or official must notify the requester before proceeding. The agency may request payment of the costs in advance if the estimated cost exceeds $100 or if the requester has previously failed to pay a fee properly assessed under FOAA. 1 M.R.S.A. § 408-A (9) & (10) ~~(4) & (5)~~.

I cannot afford to pay the fees charged by the agency or official to research my request or copy the records. Can I get a waiver?

The agency of official may, but is not required to, waive part or all of the total fee if the requester is indigent, or if the agency or official considers release of the public record ~~is~~to be in the public interest because it is likely to contribute significantly to public understanding of the operations or

activities of government and is not primarily in the commercial interest of the requester. 1 M.R.S.A. § 408-A (11). ~~(6)~~

Is a public agency or official required under the Freedom of Access Act to honor a "standing request" for information, such as a request that certain reports be sent to me automatically each month?

No. A public body is required to make available for inspection and copying (subject to any applicable exemptions) only those public records that exist on the date of the request. Persons seeking to inspect or obtain copies of public records on a continuing basis are required to make a new request for any additional records sought after the date of the original request.

PUBLIC PROCEEDINGS

What is a public proceeding?

The term "public proceeding" means "the transactions of any functions affecting any or all citizens of the State" by the Maine Legislature and its committees and subcommittees; any board or commission of a state agency or authority including the University of Maine and the Maine Community College System; any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; the full membership meetings of any association, the membership of which is comprised exclusively of counties, municipalities, school districts, other political or administrative subdivisions, or their boards, commissions, agencies or authorities; and any advisory organization established, authorized or organized by law, resolve or executive order. 1 M.R.S.A. § 402 (2).

What does the law require with regard to public proceedings?

FOAA requires all public proceedings to be open to the public and any person must be permitted to attend. 1 M.R.S.A. § 403.

When does a meeting or gathering of members of a public body or agency require public notice?

Public notice is required of all public proceedings if the proceedings are a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

What kind of notice of public proceedings does the Freedom of Access Act require?

Public notice must be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency. 1 M.R.S.A. § 406.

Can a public body or agency hold an emergency meeting?

Yes. Public notice of an emergency meeting must be provided to local representatives of the media, whenever practicable. The notice must include the time and location of the meeting and be provided by the same (or faster) means used to notify the members of the public body or agency conducting the public proceeding. 1 MRSA § 406. The requirements that the meeting be open to the public, that any person be permitted to attend and that records or minutes of the meeting be made and open for public inspection still apply. 1 MRSA § 403.

Can public bodies or agencies hold a closed meeting?

Yes. Public bodies or agencies are permitted, subject to certain procedural conditions, to hold closed "executive sessions" on specified subjects after a public recorded vote of 3/5 of the members present and voting. 1 M.R.S.A. § 405 (1)-(5).

Can the body or agency conduct all of its business during an executive session?

Generally, no. The content of deliberations during executive sessions is restricted to the matters listed in FOAA, such as: discussions regarding the suspension or expulsion of a student; certain employment actions; the acquisition, use or disposition of public property; consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and discussion of documents that are confidential by statute. In addition, any body or agency subject to FOAA is prohibited from giving final approval to any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session. 1 M.R.S.A. § 405 (2) & (6).

What if I believe a public body or agency conducted improper business during an executive session?

Upon learning of any such action, any person may appeal to any Superior Court in the State. If the court determines the body or agency acted illegally, the action that was taken by the body or agency will be declared to be null and void and the officials responsible will be subject to the penalties provided in the Act. 1 M.R.S.A. § 409 (2). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

Can members of a body communicate with one another by e-mail outside of a public proceeding?

~~There is no legal prohibition against email communication between members of a public body outside of a public proceeding.~~

The law does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of FOAA. 1 M.R.S.A. § 401.

~~However, email~~ E-mail or other communication among a quorum of the members of a body that is used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State..." 1 M.R.S.A. § 402. The underlying purpose of FOAA is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. 1 M.R.S.A. § 401. Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. 1 M.R.S.A. § 403. In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. 1 M.R.S.A. § 406.

Members of a body should refrain from the use of e-mail as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. E-mail is permissible to communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Even when sent or received using a member's personal computer or e-mail account, e-mail may be considered a public record ~~Email is a public record (likely even when sent using a member's personal computer)~~ if it contains information relating to the transaction of public or governmental business unless the information is designated as confidential or excepted from the definition of a public record. 1 M.R.S.A. § 402, ~~sub-§~~(3). As a result, members of a body should be aware that all e-mails and e-mail attachments relating to the member's participation are likely public records subject to public inspection under FOAA.

Can I record a public proceeding?

Yes. FOAA allows individuals to make written, taped or filmed records of a public proceeding, or to broadcast the proceedings live, provided the action does not interfere with the orderly conduct of the proceedings. The body or agency holding the proceeding can make reasonable rules or regulations to govern these activities so long as the rules or regulations do not defeat the purpose of FOAA. 1 M.R.S.A. § 404.

Do members of the public have a right to speak at public meetings under the Freedom of Access Act?

FOAA does not require that an opportunity for public participation be provided at open meetings, although many public bodies or agencies choose to permit public participation. In those instances, the public body or agency can adopt reasonable rules to ensure meetings are conducted in a fair and orderly manner. For example, the body or agency can set a rule that requires the same amount of time be afforded to each person that wants to speak.

Is the public body or agency required to keep running minutes or a record of a public proceeding?

There is no requirement under FOAA that a public body or agency keep running minutes during all public proceedings. FOAA does require, however, that public bodies and agencies keep a written record of every decision that involves the conditional approval or denial of an application, license, certificate or permit, and every decision that involves the dismissal or refusal to renew the contract of any public official, employee or appointee. 1 M.R.S.A. § 407 (1) & (2).

If the public proceeding is an "adjudicatory proceeding" as defined in the Maine Administrative Procedure Act, the agency is required to compile a record that complies with statutory specifications, including a recording in a form susceptible of transcription. 5 M.R.S.A. §§ 8002 (1) and 9059.

Note: A member of the RTKAC asked Peggy whether this should be changed "given the recent revision to 403" and she asked me to look into it. As far as I can tell, there are no changes to 403 in Chapter 662. It seems to me as though this section was going to be changed (LD 1791), but didn't pass and was made into a resolve (2009, Chp. 186) directing the Committee to examine some more aspects of a proposed change. Just wanted to note this in case I was reading the legislative history wrong, or missing some change to this issue.

Is the agency or body required to make the record or minutes of a public proceeding available to the public?

Yes. Any legally required record or minutes of a public proceeding must be made promptly and shall be open to public inspection. In addition, every agency is required to make a written record of any decision that involves conditional approval or denial of any application, license, certificate or other type of permit and to make those decisions publicly available, 1 M.R.S.A. §§ 403, 407; 5 M.R.S.A. § 9059 (3).

Frequently Asked Questions (FAQ)

General Questions | Public Records | Public Proceedings

GENERAL QUESTIONS

What is the Freedom of Access Act?

The Freedom of Access Act (FOAA) is a state statute that is intended to open the government of Maine by guaranteeing access to the "public records" and "public proceedings" of state and local government bodies and agencies.

Are federal agencies covered by the Freedom of Access Act?

No. FOAA does not apply to federal agencies operating in Maine or to federal government records. A similar but different federal statute called the "Freedom of Information Act" applies to the federal government. This federal statute does not apply to state or local government bodies, agencies or officials.

You can find the text of the Freedom of Information Act, 5 U.S.C. § 551 et seq., at: http://www.usdoj.gov/oip/foiastat.htm *or you can find more general information on the Freedom of Information Act* at: http://answers.usa.gov/cgi-bin/gsa*ict.cfg/php/enduser/std*adp.php?p_faqid=5940

Who enforces the Freedom of Access Act?

Any aggrieved person may appeal to any Superior Court in the state to seek relief for an alleged violation of FOAA. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

Relief can be in the form of an order issued by the court that directs the government body, agency or official to comply with the law, such as by providing access to a public proceeding or by making public records available for inspection or copying.

In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful. 1 M.R.S.A. § 410.

What are the penalties for failure to comply with the Freedom of Access Act?

A state government agency or local government entity whose officer or employee commits a willful violation of FOAA commits a civil violation for which a forfeiture of not more than $500 may be adjudged. 1 M.R.S.A. § 410. Under the current law, there are no criminal penalties for failure to comply with a request for public records. It is a Class D crime to intentionally remove, alter, or destroy documents belonging to a state office. 1 M.R.S.A. § 452.

What is the Public Access Ombudsman?

The Legislature created a public access ombudsman position to review complaints about compliance with FOAA and attempt to mediate their resolution, as well as answer calls from the public, media and legislators about the requirements of the law. The ombudsman is also responsible for providing educational materials about the law and preparing advisory opinions. The ombudsman works closely with the Right to Know Advisory Committee in monitoring new developments and considering improvements to the law.

How do I contact the Public Access Ombudsman?

Call the Office of the Attorney General at (207) 626-8577 or get more information online at public access ombudsman. (webpage and link needed)

Are elected officials required to take training on the Freedom of Access Act?

Yes. All elected officials subject to this section and public access officers must complete a course of training on the requirements of FOAA. 1 M.R.S.A. § 412. (cite needs to be linked)

Which elected officials are required to take Freedom of Access training?

Elected officials required to complete the training include:

- the Governor
- Attorney General, Secretary of State, Treasurer of State and State Auditor
- Legislators
- Commissioners, treasurers, district attorneys, registers of deeds, registers of probate and budget committee members of any county
- Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments
- Officials of school administrative units
- Officials of regional or other political subdivisions, including officials of water districts, sanitary districts, hospital districts, transit districts or regional transportation districts
- Public access officers.

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A public access officer must be designated to serve as the contact person for an agency, county, municipality, school administrative unit and regional or other political subdivision for public records requests. An existing employee is designated public access officer and is responsible for ensuring that public record requests are acknowledged within a reasonable amount of time and that a good faith estimate of when the response to the request will be complete is provided.

What does the training include?

At a minimum, the training must be designed to be completed in less than 2 hours and include instruction in:

- the general legal requirements regarding public records and public proceedings
- the procedures and requirements regarding complying with a request for a public record
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Elected officials and public access officers can meet the training requirement by conducting a thorough review of the material in this FAQ section of the State's Freedom of Access website or by completing another training course that includes all off this information but may include additional information.

Do training courses need to by certified by the Right to Know Advisory Committee?

No. Training courses do not need the approval of the Right to Know Advisory Committee, or any other State agency.

How do elected officials and public access officers certify they have completed the training?

After completing the training, elected officials and public access officers are required to make a written or electronic record attesting that the training has been completed. The record, which will be available to the public, must be kept by the elected official or filed with the public entity to which the official was elected. A public access officer must file the record with the agency or official that designated the public access officer. A sample training completion form is available (This file requires the free Adobe Reader).

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Do I have to be a citizen of this state to submit a Freedom of Access Act request for a public record?

No. FOAA provides that "a person" has the right to inspect and copy public records. 1 M.R.S.A. § 408-A.

How do I make a Freedom of Access Act request for a public record?

See the How to Make a Request page on this site.

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No. There are no required forms.

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No. FOAA does not require that requests for public records be in writing. However, most governmental bodies and agencies ask individuals to submit requests in writing in order to maintain a record of when the request was received and what records were specifically requested.

What should I say in my request?

In order for the governmental body, agency or official to promptly respond to your request, you should be as specific as possible when describing the records you are seeking. If a particular document is required, it should be identified precisely—preferably by author, date and title. However, a request does not have to be that specific. If you cannot identify a specific record, you should clearly explain the type of records you are seeking, from what timeframe and what subject the records should contain. For example, assume you want to obtain a list of active landfills near your home. A request to the state Department of Environmental Protection asking for "all records on landfills" is very broad and would likely produce volumes of records. The fees for such a request would be very high; the agency would likely find your request too vague and ask that you make it more specific. On the other hand, a request for "all records identifying landfills within 20 miles of 147 Main Street in Augusta" is very specific and the request might fail to produce the information you desire because the agency has no record containing data organized in that exact fashion. You might instead consider requesting any record that identifies "all active landfills in Augusta" or "all active landfills in Kennebec County." It is more likely that a record exists which contains this information. You might also want to explain to the agency exactly what information you hope to learn from the record. In other words, if you are really trying to determine whether any active landfills near your home in Augusta accept only wood waste, this additional explanation may help the agency narrow its search and find a record that meets the exact request.

Does an agency have to acknowledge receipt of my request?

Yes. An agency or official must acknowledge receipt of a request within a reasonable period of time. 1 M.R.S.A. § 408-A (3).

Can an agency ask me for clarification concerning my request?

Yes. An agency or official may request clarification concerning which public record or public records are being requested. 1 M.R.S.A. § 408-A (3).

Does an agency have to estimate how long it will take to respond to my request?

Yes. An agency or official must provide a good faith, nonbinding estimate of how long it will take to comply with the request. The agency or official shall make a good faith effort to fully respond within the estimated time. 1 M.R.S.A. § 408-A (3).

When does the agency or official have to make the records available?

The records must be made available "within a reasonable period of time" after the request was made. 1 M.R.S.A. § 408-A. The agency or official can schedule the time for your inspection, conversion and copying of the records during the regular business hours of the agency or official, and at a time that will not delay or inconvenience the regular activities of the agency of official. 1 M.R.S.A. § 408-A (5).

Can an agency or official delay responding if my request was not directed to the agency public access officer?

No. An agency that receives a request to inspect or copy a public record must acknowledge and respond regardless of whether the request was directed to the public access officer. The unavailability of a public access officer may not be reason for a delay.

What if the agency or official does not have regular office hours?

If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists. 1 M.R.S.A. § 408-A (5).

Does an agency have to produce records within 5 days of my request?

No. The records that are responsive to a request must be made available "within a reasonable period of time" after the request was made.1 M.R.S.A. § 408-A. Agencies must respond in writing within 5 working days only if your request is denied in whole or in part. 1 M.R.S.A. § 408-A (4).

Do I have to go to the agency to inspect the records or can I ask the agency or official to mail me the records?

A person may inspect or copy any public record in the office of the agency or official during reasonable office hours.. The agency or official shall mail the copy upon request. The agency may charge a reasonable fee to cover the cost of making the copies for you, as well as actual mailing costs. 1 M.R.S.A. § 408-A (1), (2), (8)(E).

When may a governmental body refuse to release the records I request?

FOAA provides that certain categories of documents are not public records. Included among these are records that have been designated confidential by statute, documents subject to a recognized legal privilege such as the attorney-client privilege or the work-product privilege, records describing security plans or procedures designed to prevent acts of terrorism, medical records, juvenile records, and the personal contact information of public employees contained within records. 1 M.R.S.A. § 402 (3)(A)-(O).

For a list of records or categories of records deemed by statute to be confidential or otherwise not a public record, see the Statutory Exceptions List. While this listing may not be totally complete, it contains the vast majority of exceptions to FOAA.

What happens if a public record holds some information that is open to the public and some information that falls within an exception to the Freedom of Access Act?

Some public records contain a mixture of information that is public and information that is confidential or otherwise not subject to public inspection under FOAA. If the record you requested contains any confidential or excepted information, the custodian will decide if the confidential or excepted information can be adequately redacted or blacked out so that public access can be provided or if public access to the document should be denied.

Must an agency have computer technology resources that allow for maximum accessibility to public records while protecting confidential information?

When purchasing and contracting for computer software and other information technology resources, an agency shall consider the extent to which it will maximize accessibility and exportability while protecting confidential information that may be contained in the public records. 1 M.R.S.A. §414.

Does an agency have to explain why it denies access to a public record?

Yes. When an agency denies access to a public record, it must provide the reason for its denial in writing within 5 working days of the date of the FOAA request. 1 M.R.S.A. § 408-A (4) .

What can I do if I believe an agency has unlawfully withheld a public record?

If you are not satisfied with an agency's decision to withhold access to certain records, you are entitled to appeal, within 5 working days of your receipt of the written notice of denial, to any Superior Court within the state. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

May a governmental body ask me why I want a certain record?

FOAA does not specifically prohibit agencies or officials from asking why an individual is requesting a public record. However, if asked, the individual is not required to provide a reason for seeking a record, and the agency cannot deny an individual's request based solely on either the individual's refusal to provide a reason or the reason itself. An agency or official may request clarification concerning which public record or public records are being requested. 1 M.R.S.A. § 408-A (3).

Can I ask that public reports or other documents be created, summarized or put in a particular format for me?

No. A public officer or agency is not required to prepare reports, summaries, or compilations not in existence on the date of your request. 1 M.R.S.A. § 408-A (6).

If the public record is electronically stored, the agency or official subject to a request must provide the public record either as a printed document or in the medium in which the record is stored, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file. . 1 M.R.S.A. § 408-A (7).

Must the agency or official provide me with access to a computer terminal to inspect electronically stored public records?

No. The agency or official is not required to provide access to a computer terminal.

I asked a public official a question about a record, but he/she didn't answer. Is he/she required to answer my question?

No. A public officer or agency is not required to explain or answer questions about public records. FOAA only requires officials and agencies to make public records available for inspection and copying.

What records must a public officer or agency keep, and how long do they have to keep them?

Generally, FOAA does not control what records must be retained or for how long they must be retained. However, FOAA does require that a public body keep a summary of its public proceedings. The summary must include: the date, time and place of the proceeding; the members of the public body, recorded as either present or absent; and all motions and votes taken, by individual member if the vote is by roll call. The summary can be in any medium, including audio, video and electronic. This requirement applies to public bodies that do more than serve in an advisory capacity. 1 M.R.S.A. § 403.

How long records must be kept depends on the type of record and the value of the record's content. The Maine State Archives works with state agencies and local governments to establish

rules for the retention and disposition of government records, including the length of time that certain records need to be preserved by the agency before they are either destroyed or sent to the Maine State Archives for long-term or permanent retention. 5 M.R.S.A. § 95 (7). The Maine State Archives provides guidance on the management and retention of state agency and local government records, including schedules for how long records are retained, on its website at http://www.maine.gov/sos/arc/records/state/index.html

Are an agency's or official's e-mails public records?

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail is "in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business" and is not deemed confidential or excepted from FOAA, it constitutes a "public record". 1 M.R.S.A. § 402 (3).

Email messages are subject to the same retention schedules as other public records based on the content of the message. There are no retention schedules specific to email messages. Guidance on the retention of email and digital records can be found at http://www.maine.gov/sos/arc/records/state/emailguide0712.pdf

Is information contained in a communication between a constituent and their legislator a public record?

Information of a personal nature consisting of an individual's medical information, credit or financial information, character, misconduct or disciplinary action, social security number, or that would be confidential if it were in the possession of another public agency or official is not a public record. However, other parts of the communication are public. 1 M.R.S.A. § 402 (3)(C-1)

Can an agency charge for public records?

There is no initial fee for submitting a FOAA request and agencies cannot charge an individual to inspect records unless the public record cannot be inspected without being compiled or converted. 1 M.R.S.A. § 408-A (8)(D). However, agencies can and normally do charge for copying records. Although FOAA does not set standard copying rates, it permits agencies to charge "a reasonable fee to cover the cost of copying". 1 M.R.S.A. § 408-A (8)(A).

Agencies and officials may also charge fees for the time spent searching for, retrieving, compiling or redacting confidential information from the requested records. FOAA authorizes agencies or officials to charge $15 per hour after the first hour of staff time per request. 1 M.R.S.A. § 408-A (8)(B). Where conversion of a record is necessary, the agency or official may also charge a fee to cover the actual cost of conversion. 1 M.R.S.A. § 408-A (8)(C).

The agency or official must prepare an estimate of the time and cost required to complete a request and if the estimate is greater than $30, the agency or official must notify the requester before proceeding. The agency may request payment of the costs in advance if the estimated cost exceeds $100 or if the requester has previously failed to pay a fee properly assessed under FOAA. 1 M.R.S.A. § 408-A (9), (10).

I cannot afford to pay the fees charged by the agency or official to research my request or copy the records. Can I get a waiver?

The agency of official may, but is not required to, waive part or all of the total fee if the requester is indigent, or if the agency or official considers release of the public record to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. 1 M.R.S.A. § 408-A (11).

Is a public agency or official required under the Freedom of Access Act to honor a "standing request" for information, such as a request that certain reports be sent to me automatically each month?

No. A public body is required to make available for inspection and copying (subject to any applicable exemptions) only those public records that exist on the date of the request. Persons seeking to inspect or obtain copies of public records on a continuing basis are required to make a new request for any additional records sought after the date of the original request.

PUBLIC PROCEEDINGS

What is a public proceeding?

The term "public proceeding" means "the transactions of any functions affecting any or all citizens of the State" by the Maine Legislature and its committees and subcommittees; any board or commission of a state agency or authority including the University of Maine and the Maine Community College System; any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; the full membership meetings of any association, the membership of which is comprised exclusively of counties, municipalities, school districts, other political or administrative subdivisions, or their boards, commissions, agencies or authorities; and any advisory organization established, authorized or organized by law, resolve or executive order. 1 M.R.S.A. § 402 (2).

What does the law require with regard to public proceedings?

FOAA requires all public proceedings to be open to the public and any person must be permitted to attend. 1 M.R.S.A. § 403.

When does a meeting or gathering of members of a public body or agency require public notice?

Public notice is required of all public proceedings if the proceedings are a meeting of a body or agency consisting of 3 or more persons. 1 M.R.S.A. § 406.

What kind of notice of public proceedings does the Freedom of Access Act require?

Public notice must be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency. 1 M.R.S.A. § 406.

Can a public body or agency hold an emergency meeting?

Yes. Public notice of an emergency meeting must be provided to local representatives of the media, whenever practicable. The notice must include the time and location of the meeting and be provided by the same (or faster) means used to notify the members of the public body or agency conducting the public proceeding. 1 M.R.S.A. § 406. The requirements that the meeting be open to the public, that any person be permitted to attend and that records or minutes of the meeting be made and open for public inspection still apply. 1 M.R.S.A. § 403.

Can public bodies or agencies hold a closed meeting?

Yes. Public bodies or agencies are permitted, subject to certain procedural conditions, to hold closed "executive sessions" on specified subjects after a public recorded vote of 3/5 of the members present and voting. 1 M.R.S.A. § 405 (1)-(5).

Can the body or agency conduct all of its business during an executive session?

Generally, no. The content of deliberations during executive sessions is restricted to the matters listed in FOAA, such as: discussions regarding the suspension or expulsion of a student; certain employment actions; the acquisition, use or disposition of public property; consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and discussion of documents that are confidential by statute. In addition, any governmental body or agency subject to FOAA is prohibited from giving final approval to any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session. 1 M.R.S.A. § 405 (2), (6).

What if I believe a public body or agency conducted improper business during an executive session?

Upon learning of any such action, any person may appeal to any Superior Court in the State. If the court determines the body or agency acted illegally, the action that was taken by the body or agency will be declared to be null and void and the officials responsible will be subject to the penalties provided in the Act. 1 M.R.S.A. § 409 (2). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

Can members of a body communicate with one another by e-mail outside of a public proceeding?

The law does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of FOAA. 1 M.R.S.A. § 401.

E-mail or other communication among a quorum of the members of a body that is used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State…" 1 M.R.S.A. § 402. The underlying purpose of FOAA is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. 1 M.R.S.A. § 401. Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. 1 M.R.S.A. § 403. In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. 1 M.R.S.A. § 406.

Members of a body should refrain from the use of e-mail as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. E-mail is permissible to communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Even when sent or received using a member's personal computer or e-mail account, e-mail may be considered a public record if it contains information relating to the transaction of public or governmental business unless the information is designated as confidential or excepted from the definition of a public record. 1 M.R.S.A. § 402,(3). As a result, members of a body should be aware that all e-mails and e-mail attachments relating to the member's participation are likely public records subject to public inspection under FOAA.

Can I record a public proceeding?

Yes. FOAA allows individuals to make written, taped or filmed records of a public proceeding, or to broadcast the proceedings live, provided the action does not interfere with the orderly conduct of the proceedings. The body or agency holding the proceeding can make reasonable rules or regulations to govern these activities so long as the rules or regulations do not defeat the purpose of FOAA. 1 M.R.S.A. § 404.

Do members of the public have a right to speak at public meetings under the Freedom of Access Act?

FOAA does not require that an opportunity for public participation be provided at open meetings, although many public bodies or agencies choose to permit public participation. In those instances, the public body or agency can adopt reasonable rules to ensure meetings are

conducted in a fair and orderly manner. For example, the body or agency can set a rule that requires the same amount of time be afforded to each person that wants to speak.

Is the public body or agency required to keep running minutes or a record of a public proceeding?

There is no requirement under FOAA that a public body or agency keep running minutes during all public proceedings. FOAA does require, however, that public bodies and agencies keep a written record of every decision that involves the conditional approval or denial of an application, license, certificate or permit, and every decision that involves the dismissal or refusal to renew the contract of any public official, employee or appointee. 1 M.R.S.A. § 407 (1), (2).

If the public proceeding is an "adjudicatory proceeding" as defined in the Maine Administrative Procedure Act, the agency is required to compile a record that complies with statutory specifications, including a recording in a form susceptible of transcription. 5 M.R.S.A. § 8002 (1); 5 M.R.S.A. § 9059.

Is the agency or body required to make the record or minutes of a public proceeding available to the public?

Yes. Any legally required record or minutes of a public proceeding must be made promptly and shall be open to public inspection. In addition, every agency is required to make a written record of any decision that involves conditional approval or denial of any application, license, certificate or other type of permit and to make those decisions publicly available, 1 M.R.S.A. § 403, 407; 5 M.R.S.A. § 9059 (3).