

# RIGHT TO KNOW ADVISORY COMMITTEE

## PROPOSED AGENDA

August 19, 2014

10:00 a.m.

Room 438, State House, Augusta

### Convene

1. Welcome and Introductions
2. Public Access Ombudsman, Brenda Kielty – update
3. Update on Government Oversight Committee’s request to Attorney General Mills
4. Summary of Second Regular Session, 126th Legislature’s FOA actions in 2014
  - A. RTK AC recommendations
    - LD 1809, An Act Concerning Meetings of Public Bodies Using Communication Technology
    - LD 1821, An Act to Implement the Recommendations of the Right to Know Advisory Committee
      - Part A: Public records exceptions
      - Part B: Add technology member to RTK AC
      - Part C: Public Access Ombudsman reporting date
      - Part D: FOAA deadlines and appeals
    - Relief from overly-burdensome FOAA request (not printed)
  - B. Public Access Ombudsman recommendations (PL 2013, c. 229)
    - LD 1818, An Act to Facilitate Public Records Requests to State Agencies
  - C. Proposed public records exceptions reviewed by Judiciary Committee
5. Public records exceptions online search tool updated (<http://www.mainelegislature.org/legis/foa/>)
6. Existing exceptions review process – no reviews planned until 2015
7. Discussion: Potential topics and projects for 2014
  - A. Public information v. public records
  - B. Anonymous requests
  - C. “Working papers” – training, records retention schedules
  - D. Unintended adverse impacts of FOAA
  - E. State Library repository of state agency reports and publications (Adam Fisher, Maine State Library)
  - F. Resolve 2013, c. 112: Privacy of social media and email; cloud storage of school data
  - G. Other?
8. Scheduling future meetings

### Adjourn





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REP. CHUCK KRUGER, HOUSE CHAIR

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MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

July 31, 2014

Honorable Janet Mills  
Attorney General  
6 State House Station  
Augusta, Maine 04333-0006

Honorable Matthew Dunlap  
Secretary of State  
148 State House Station  
Augusta, Maine 04333-0148

Dear Attorney General Mills and Secretary of State Dunlap:

In the months since the Office of Program Evaluation and Government Accountability released its December 2013 report on Healthy Maine Partnerships' FY13 Contracts and Funding, our committee has been considering potential actions on associated issues with records retention policies and practices at the Maine Center for Disease Control and Prevention, as well as Statewide. Chief Deputy Attorney General Linda Pistner, FOAA Ombudsman Brenda Kieilty, Senior Attorney General Phyllis Gardiner and State Archivist David Cheever have provided information and perspective that have helped us to understand where weaknesses exist in the State's records retention and management framework and helped brainstorm possible ideas for improvements. We greatly appreciate their interest and assistance in these matters.

As a result of these discussions, the Government Oversight Committee would like to accept the offer extended by your offices for the FOAA Ombudsman and Director of the State Archives Records Management to convene a working group to develop and/or make specific recommendations to the GOC regarding improvements to the State's Records Retention framework. Specifically, the GOC requests that:

- A. A working group be convened by the FOAA Ombudsman and the Director of Maine State Archives Records Management and include, at a minimum, representatives of the Attorney General's Office, the Office of Information Technology, the Bureau of Human Resources and the Department of Audit.

82 State House Station, Room 107 Cross Building  
Augusta, Maine 04333-0082  
TELEPHONE 207-287-1901 FAX: 207-287-1906

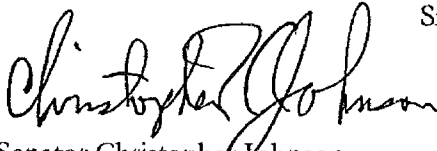
- B. The working group make specific recommendations concerning the following:
- a. improved guidance for agencies on record retention, including specifically the issue of draft documents and the appropriate criteria for determining the extent to which drafts should be retained;
  - b. model policies on record retention;
  - c. training requirements, including additional requirements for supervisors, and a system of accountability to assure that all state employees receive appropriate training on record retention policies, schedules and procedures; and
  - d. establishing, or promoting/enhancing existing, avenues for employees to get consistent and accurate answers to records retention questions.
- C. The working group also make suggestions on how best to implement the following ideas with the goal of ensuring expectations regarding records retention are clear and well understood by all employees and that all employees are accountable for complying with those expectations:
1. All executive branch agencies shall review and update their record retention policies, procedures and schedules consistent with the improved guidance and model policies; train incoming and existing employees and supervisors on those updated record retention policies and procedures (in addition to, or in conjunction with FOAA training); and require staff to review and acknowledge receipt of the State of Maine Policy on Preservation of State Government Records on an annual basis.
  2. Consistent with collective bargaining agreements, civil service law and rule and other applicable law, compliance with record retention policies, procedures and schedules should be included as part of each employee's performance expectations. Employees who fail to fulfil their obligations under applicable record retention policies, procedures and schedules will be subject to disciplinary action, up to and including discharge.
  3. The FOAA Ombudsman's ongoing training of state agency personnel continue to address the importance of record retention, as well as the obligation of each agency to update their record retention schedules, policies and procedures, and to assure that all agency staff receive training on those policies and procedures.
- D. The working group make recommendations on guidelines that should be used by agencies in determining costs for responding to a FOAA such that costs are reasonable, consistent across State government and do not present an unnecessary barrier to FOAA requests.
- E. In developing its recommendations and suggestions, that the working group seek input from the Right to Know Advisory Committee, other State agencies and/or stakeholders as appropriate.
- F. The working group report back to the GOC by February 1, 2015, on the results of its work and include recommendations for any additional steps, including those that may require legislative action.

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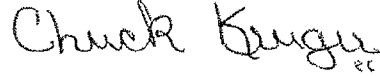
We understand that your offices have very limited staff resources to support this effort and, consequently, there may not be time or resources to involve or seek feedback from a broad stakeholder group, even if the working group feels that would be appropriate. If it seems that the working group's recommendations should be vetted with stakeholders more than you have opportunity to do before February 1<sup>st</sup>, the GOC can do so through its public consideration of those recommendations.

Please confirm with OPEGA Director Beth Ashcroft that your offices intend to honor this request. Director Ashcroft can also answer any questions you may have.

Sincerely,



Senator Christopher Johnson  
Senate Chair



Representative Chuck Kruger  
House Chair

Cc: Members of the Government Oversight Committee



4A-1

(Changes from LD 258 are in *italics*)

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

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

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 one or more members~~ of the body ~~participates participate~~ 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 must~~ establish ~~circumstances under criteria which that must be met~~ before a member may participate when not physically present. *If the policy allows a member who is not physically present to participate in an executive session, the policy must specifically address the circumstances under which the executive session may be conducted to ensure privacy.*

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

C. Except as provided in subsection 3, 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 all the other members and speak to all the other members during the public proceeding, and 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

**Right to Know Advisory Committee**

Draft: Use of technology to permit remote participation in meetings

proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate the action of a body in a public proceeding.

**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 under subsection 1, paragraph C if:

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

(1) The public proceeding is necessary to take action to address the emergency; and

(2) The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency; or

B. The body is specifically authorized by its governing statute to convene a public proceeding by telephonic, video, electronic or other means of communication with less than a quorum assembled physically at the location identified in the notice required by section 406.

**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**

**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.



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Draft: Use of technology to permit remote participation in meetings

**Sec. B-2. 32 MRSA §88, sub-§1, ¶D**, as amended by PL 2007, c. 274, §19, is further amended to read:

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 otherwise 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.

**Sec. B-3. 39-A MRSA §151, sub-§5**, as amended by PL 2003, c. 608, §9, is further 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.

**SUMMARY**

Part A authorizes the use of remote-access technology to conduct public proceedings. Subject to the following requirements, it authorizes a body to conduct a public proceeding during which a member of the body participates in the transaction of public or government business through telephonic, video, electronic or other similar means of communication.

1. The body must adopt a policy that authorizes such participation and establishes the criteria that must be met under which a member may participate when not physically present.

**Right to Know Advisory Committee**

Draft: Use of technology to permit remote participation in meetings

If the policy authorizes such participation in an executive session, the policy must spell out the circumstances for conducting the executive session that will ensure the required privacy.

2. Notice of any proceeding must be provided in accordance with the Freedom of Access Act.
3. A quorum of the body must be physically present, except that under certain emergency circumstances, a body may convene a public proceeding by telephonic, video, electronic or other similar means of communication without a quorum assembled physically at one location. One such circumstance is if the public body's governing statute authorizes a meeting using remote access technology with less than a quorum physically present in the location listed in the meeting notice.
4. Members of the body must be able to hear and speak to each other during the proceeding.
5. A member who is participating remotely must identify the persons present in the location from which the member is participating.
6. All votes taken during the public proceeding must be taken by roll call vote.
7. Each member who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication must have received, prior to the proceeding, any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented.
8. A member of a body who is not physically present 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.
9. If a body conducts one or more public proceedings using remote-access technology, the body must also hold at least one public proceeding annually during which all members of the body in attendance are physically assembled at one location.

Under current law, the following state agencies are authorized to use remote-access technology to conduct meetings: the Finance Authority of Maine, the Commission on Governmental Ethics and Election Practices, the Emergency Medical Services' Board and the Workers' Compensation Board. Part B provides a specific exemption from the new requirements for the Small Enterprise Growth Board, the Emergency Medical Services' Board and the Workers' Compensation Board.

**Right to Know Advisory Committee**

Statement of Commissioner Brown concerning remote participation in meetings,  
submitted to Joint Standing Committee on Judiciary on LD 258

Maine Legislature

Judicial Committee

Senator Valentino, Rep. Priest and members of the Judicial Committee thank you for allowing me to comment on LD 258 "An Act to Implement the Recommendations of Right To Know Advisory Committee Concerning Meetings of Public Bodies".

My name is Percy L. Brown, Jr., I live in Deer Isle, Maine. I have been a Hancock County Commissioner for eleven years and I am a current member of the Right to Know Committee. I have served on many State and local Boards over the past 25 years. I am requesting this committee amend LD 258 and not allow "Elected Officials" to conduct public proceeding through other means of communication. This bill will work well for appointed board and council members but most County Commissioners, Town Selectmen, elected School Board members and Town Councilors are elected by the people and access through public proceeding should always be available to the public. As you all know nothing can be more persuasive than a room full of concerned citizens. The information presented at these proceeding may sway the vote and from my experience often does. It is easier to make a decision on difficult issues when the member is not physically present. Remote technology is great but the public should always be allowed to have face time with their elected officials and question or support decisions they make as it insures greater transparency in government.

Thank You,

Percy L. Brown, Jr.

Hancock County Commissioner

Ellsworth, ME

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# 126th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2014

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Legislative Document

No. 1809

H.P. 1300

House of Representatives, March 11, 2014

### **An Act Concerning Meetings of Public Bodies Using Communications Technology**

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Reported by Representative PRIEST of Brunswick for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

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

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

3 **§403-A. Public proceedings through communications technology**

4 **1. Elected membership; prohibition.** A public body composed of elected members  
5 of a municipality, quasi-municipal entity or school administrative unit may not conduct a  
6 public proceeding in which a member participates in the discussion or transaction of  
7 public or governmental business when that member is not physically present at the  
8 location of the public proceeding.

9 **2. Authorized participation.** A public body, except a public body composed of  
10 elected members, of a municipality, quasi-municipal entity or school administrative unit  
11 may conduct a public proceeding during which one or more members of the body  
12 participate in the discussion or transaction of public or governmental business through  
13 telephonic, video, electronic or other similar means of communication only if all of the  
14 following requirements are met:

15 A. The body has adopted a written policy that authorizes a member of the body who  
16 is not physically present to participate in a public proceeding through telephonic,  
17 video, electronic or other similar means of communication in accordance with this  
18 section. The policy must establish criteria that must be met before a member may  
19 participate when not physically present. If the policy allows a member who is not  
20 physically present to participate in an executive session, the policy must specifically  
21 address the circumstances under which the executive session may be conducted to  
22 ensure privacy;

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

24 C. Except as provided in subsection 4, a quorum of the body is assembled physically  
25 at the location identified in the notice required by section 406;

26 D. Each member of the body participating in the public proceeding is able to hear all  
27 the other members and speak to all the other members during the public proceeding,  
28 and members of the public attending the public proceeding in the location identified  
29 in the notice required by section 406 are able to hear all members participating from  
30 other locations. If documents or materials that include pictures, graphs, illustrations  
31 or other information presented in a visual format are part of the discussion, either the  
32 communications technology used must ensure that all members can see the  
33 documents and materials while the documents and materials are being discussed or  
34 the documents and materials must be provided to all members not physically present  
35 before or during the proceeding;

36 E. Each member who is not physically present and who is participating through  
37 telephonic, video, electronic or other similar means of communication identifies the  
38 persons present at the location from which the member is participating;

39 F. All votes taken during the public proceeding are taken by roll call vote; and





1           1. The body must adopt a policy that authorizes such participation and establishes the  
2 criteria that must be met under which a member may participate when not physically  
3 present. If the policy authorizes such participation in an executive session, the policy  
4 must spell out the circumstances for conducting the executive session that will ensure the  
5 required privacy.

6           2. Notice of any proceeding must be provided in accordance with the Freedom of  
7 Access Act.

8           3. A quorum of the body must be physically present, except that under certain  
9 circumstances a body may convene a public proceeding by telephonic, video, electronic  
10 or other similar means of communication without a quorum assembled physically at one  
11 location. One such circumstance is if the body's governing statute authorizes a meeting  
12 using the remote-access technology with less than a quorum physically present in the  
13 location listed in the meeting notice.

14           4. Members of the body must be able to hear and speak to each other during the  
15 proceeding. If discussions are based on documents or materials that are in visual format,  
16 the technology used must also allow all members to see the materials unless the  
17 documents and materials are provided before or during the proceedings to all members  
18 not physically present.

19           5. A member who is participating remotely must identify the persons present in the  
20 location from which the member is participating.

21           6. All votes taken during the public proceeding must be taken by roll call vote.

22           7. Each member who is not physically present and who is participating through  
23 telephonic, video, electronic or other similar means of communication must have  
24 received, prior to the proceeding, any documents or other materials that will be discussed  
25 at the public proceeding, with substantially the same content as those documents actually  
26 presented.

27           8. A member of a body who is not physically present may not vote on any issue  
28 concerning testimony or other evidence provided during the public proceeding if it is a  
29 judicial or quasi-judicial proceeding.

30           9. If a body conducts one or more public proceedings using the remote-access  
31 technology, the body must also hold at least one public proceeding annually during which  
32 all members of the body in attendance are physically assembled at one location.



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Date: 4/3/14

majority

L.D. 1809

(Filing No. H-798)

JUDICIARY

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
126TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1300, L.D. 1809, Bill, "An Act Concerning Meetings of Public Bodies Using Communications Technology"

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

'An Act Concerning Meetings of Boards of Trustees and Governing Bodies of Quasi-municipal Corporations and Districts That Provide Water, Sewer and Sanitary Services'

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

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

§403-A. Public proceedings using communications technology by governing bodies of quasi-municipal corporations and districts

1. Application. This section applies to public proceedings conducted by a governing body, including a board of trustees, of a quasi-municipal corporation or district, as defined in Title 30-A, section 2351, subsection 4, that provides water, sewer or sanitary services.

2. Authorized participation. A governing body may conduct a public proceeding during which one or more members of the governing body participate in the discussion or transaction of public or governmental business when not physically present only if all of the following requirements are met:

A. The governing body has adopted a written policy that authorizes a member of the governing body who is not physically present to participate in a public proceeding through combined audio and video means of communication in accordance with this section. The policy must establish criteria that must be met before a member may participate when not physically present. The policy may not allow a member who is not physically present to participate in an executive session;

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

COMMITTEE AMENDMENT

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1 C. Except as provided in subsection 4, a quorum of the governing body is assembled  
2 physically at the location identified in the notice required by section 406;

3 D. Each member of the governing body participating in the public proceeding is able  
4 to see and hear all the other members and speak to all the other members during the  
5 public proceeding, and members of the public attending the public proceeding in the  
6 location identified in the notice required by section 406 are able to see and hear all  
7 members participating from other locations. If documents or materials that include  
8 pictures, graphs, illustrations or other information presented in a visual format are  
9 part of the discussion, either the communications technology used must ensure that  
10 all members can see the documents and materials while the documents and materials  
11 are being discussed or the documents and materials must be provided to all members  
12 not physically present before or during the proceeding;

13 E. Each member who is not physically present and who is participating through  
14 combined audio and video means of communication identifies the persons present at  
15 the location from which the member is participating;

16 F. All votes taken during the public proceeding are taken by roll call vote; and

17 G. Each member who is not physically present and who is participating through  
18 combined audio and video means of communication has received prior to the public  
19 proceeding any documents or other materials that will be discussed at the public  
20 proceeding, with substantially the same content as those documents actually  
21 presented. Documents or other materials made available at the public proceeding  
22 may be transmitted to the member not physically present during the public  
23 proceeding if the transmission technology is available. Failure to comply with this  
24 paragraph does not invalidate the action of a governing body in a public proceeding.

25 **3. Voting; quasi-judicial proceeding.** A member of a governing body who is not  
26 physically present and who is participating through combined audio and video means of  
27 communication may vote in all proceedings other than quasi-judicial proceedings. A  
28 member of a governing body who is not physically present may participate in a  
29 quasi-judicial proceeding through combined audio and video means of communication,  
30 but may not vote on any issue concerning testimony or other evidence provided during  
31 the quasi-judicial proceeding. For the purposes of this subsection, "quasi-judicial  
32 proceeding" means a proceeding in which the governing body is obligated to objectively  
33 determine facts and draw conclusions from the facts so as to provide the basis of an  
34 official action when that action may affect the legal rights, duties or privileges of specific  
35 persons.

36 **4. Exception to quorum requirement.** A governing body may convene a public  
37 proceeding by combined audio and video means of communication without a quorum  
38 under subsection 2, paragraph C if:

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

41 (1) The public proceeding is necessary to take action to address the emergency;  
42 and

ROFS

- 1                   (2) The governing body otherwise complies with the provisions of this section to
- 2                   the extent practicable based on the circumstances of the emergency; or
- 3                   B. The governing body is expressly authorized by its governing statute to convene a
- 4                   public proceeding by combined audio and video means of communication with less
- 5                   than a quorum of the body assembled physically at the location identified in the
- 6                   notice required by section 406.
- 7                   5. Annual meeting. If a governing body conducts one or more public proceedings
- 8                   pursuant to this section, it also shall hold at least one public proceeding annually during
- 9                   which members of the governing body in attendance are physically assembled at one
- 10                   location and at which no members of the governing body participate by combined audio
- 11                   and video means of communication from a different location.'

**SUMMARY**

12                   This amendment is the majority report of the Joint Standing Committee on Judiciary.

13                   This amendment limits the application of the bill to the governing bodies of quasi-

14                   municipal corporations and districts, as defined in the Maine Revised Statutes, Title

15                   30-A, section 2351, subsection 4, that provide water, sewer or sanitary services if the

16                   governing bodies adopt policies that meet specified requirements.

17                   This amendment limits the type of communication technology that may be used to

18                   participate remotely to combined audio and video means of communication that permit

19                   all the members of the governing body and the public that are in attendance to see and

20                   hear all the members that are participating.

21                   This amendment prohibits a member who is not physically present from participating

22                   in an executive session.

23                   This amendment clarifies that a member who is not physically present may

24                   participate and vote remotely, but a member who is not physically present may not vote

25                   in a quasi-judicial proceeding on any issue concerning testimony or other evidence

26                   provided during the quasi-judicial public proceeding. The amendment defines "quasi-

27                   judicial proceeding."

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**COMMITTEE AMENDMENT**

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L.D. 1809

Date: 4-4-14

(Filing No. H-812)

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
126TH LEGISLATURE  
SECOND REGULAR SESSION

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1300,  
L.D. 1809, Bill, "An Act Concerning Meetings of Public Bodies Using Communications  
Technology"

Amend the amendment by inserting after section 1 the following:

Sec. 2. 5 MRSA §13080-B, sub-§3, as amended by PL 1995, c. 166, §1, is  
further amended to read:

3. **Quorum; voting.** Seven members constitute a quorum. Seven affirmative votes  
are required for the board to take action. A member of the authority who is not physically  
present at a meeting of the authority may be considered present for purposes of  
determining a quorum and participate and vote in all proceedings of the authority if that  
member is participating through combined audio and video means of communication.

Sec. 3. 5 MRSA §13083-I, sub-§3, as enacted by PL 2005, c. 599, §1, is  
amended to read:

3. **Quorum; voting.** Six members constitute a quorum. Six affirmative votes are  
required for the board of trustees to take action. A member of the authority who is not  
physically present at a meeting of the authority may be considered present for purposes of  
determining a quorum and participate and vote in all proceedings of the authority if that  
member is participating through combined audio and video means of communication.

SUMMARY

This amendment expressly allows a member of the Loring Development Authority of  
Maine or the Midcoast Regional Redevelopment Authority who is not physically present  
at a meeting but who is participating through combined audio and video means of  
communication to be considered present for purposes of establishing a quorum and to  
participate and vote in all proceedings of the authority.

SPONSORED BY: \_\_\_\_\_

(Representative WILLETTE)

TOWN: Mapleton



STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

Paul R. LePage  
GOVERNOR

22 April 2014

The 126<sup>th</sup> Legislature of the State of Maine  
State House  
Augusta, ME

Dear Honorable Members of the 126<sup>th</sup> Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 1809, "An Act Concerning Meetings of Boards of Trustees and Governing Bodies of Quasi-municipal Corporations and Districts That Provide Water, Sewer and Sanitary Services."

This legislation purports to allow certain quasi-municipal entities to use audio and video technology to conduct meetings. Unfortunately, this legislation is unnecessary and may actually have the impact of reducing the use of technology by governmental entities.

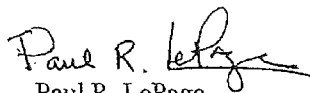
I support increased use of technology to conduct government business. In a rural state like Maine, technology has the potential to create significant efficiencies in the way we govern. It reduces costs and allows entities to recruit better qualified (but often busier) individuals who want to serve, but travel, work and the demands of life may limit the number of meetings these individuals may attend in person. In Maine's island communities, the use of video and teleconferencing to conduct business is not just a convenience, but an absolute necessity.

Many public entities use modern means to conduct a portion of their business. Entities doing this must meet the requirements of Maine statute governing public proceedings. Meetings must be noticed, conducted in public, and records must be kept. A meeting is legal based on whether or not these requirements are met, not on the use of technology.

It is currently legal to conduct a remote meeting as long as it complies with the other requirements of law. Island communities and others do so regularly. This law would call that practice into question. By specifically prescribing and authorizing the use of technology for this very limited subset of entities, it implies that other entities can no longer do so. At best, this ambiguous situation creates uncertainty and could have the effect of discouraging the use of common-sense means to conduct government business.

For these reasons, I return LD 1809 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,

  
Paul R. LePage  
Governor



PRINTED ON RECYCLED PAPER



4A-2

Sec. 1. 22 MRSA c. 271, subc. 2 (§1696-A to §1696-F) is repealed.

Sec. 2. 26 MRSA §3 is repealed and the following enacted in its place:

**§3. Confidentiality of records**

**1. Confidential records.** Except as provided in subsections 2 and 3, all information and reports received by the director or the director's authorized agents under this Title are confidential for purposes of Title 1, section 402, subsection 3, paragraph A.

**2. Exceptions** Reports of final bureau action taken under the authority of this Title are public records for the purposes of Title 1, chapter 13, subchapter 1.

**3. Authorized disclosure.** The director shall make or authorize any disclosure of information of the following types or under the following circumstances with the understanding that the confidentiality of the information will be maintained:

A. Information and reports to other government agencies if the director believes that the information will serve to further the protection of the public or assist in the enforcement of local, state and federal laws; and

B. Information and records pertaining to the work force, employment patterns, wage rates, poverty and low-income patterns, economically distressed communities and regions and other similar information and data to the Department of Economic and Community Development and to the Governor's Office of Policy and Management for the purposes of analysis and evaluation, measuring and monitoring poverty and economic and social conditions throughout the State and to promote economic development.

Sec. 3. 26 MRSA §934 is amended to read:

**§934. Conciliation; notification of dispute; proceedings in settlement; report**

Whenever it appears to the employer or employees concerned in a labor dispute, or when a strike or lockout is threatened, or actually occurs, he or they may request the services of the board.

If, when the request or notification is received, it appears that a substantial number of employees in the department, section or division of the business of the employer are involved, the board shall endeavor, by conciliation, to obtain an amicable settlement. If the board is unable to obtain an amicable settlement it shall endeavor to persuade the employer and employees to submit the matter to arbitration.

**Right to Know Advisory Committee**  
Draft: Statutory changes to public records exceptions

The board shall, upon notification, as soon as practicable, visit the place where the controversy exists or arrange a meeting of the interested parties at a convenient place, and shall make careful inquiry into the cause of the dispute or controversy, and the board may, with the consent of the Governor, conduct the inquiry beyond the limits of the State.

The board shall hear all interested persons who come before it, advise the respective parties what ought to be done by either or both to adjust the controversy, and shall make a confidential written report to the Governor and the Executive Director of the Maine Labor Relations Board. The Governor or executive director ~~may~~ shall make the report public if, after 15 days from the date of its receipt, the parties have not resolved the controversy and the public interest would be served by publication. In addition, either the Governor or the executive director may refer the report and recommendations of the board to the Attorney General or other department for appropriate action when it appears that any of the laws of this State may have been violated.

**Sec. 4. 29-A MRS §152, sub-§3** is amended to read:

**3. Central computer system.** Notwithstanding any other provisions of law, purchase and maintain a central computer system for purposes of administering this Title and conducting departmental operations. All other uses must be approved by the Secretary of State. ~~The Secretary of State shall adopt rules regarding the maintenance and use of data processing information files required to be kept confidential and shall distinguish those files from files available to the public;~~

**Sec. 5. 29-A MRS §257** is repealed.

**Sec. 6. 29-A MRS §517, sub-§4** is amended to read:

**4. Unmarked law enforcement vehicles.** An unmarked motor vehicle used primarily for law enforcement purposes, when authorized by the Secretary of State and upon approval from the appropriate requesting authority, is exempt from displaying a special registration plate. Records for all unmarked vehicle registrations are confidential.

~~Upon receipt of a written request by an appropriate criminal justice official showing cause that it is in the best interest of public safety, the Secretary of State may determine that records of a nongovernment vehicle may be held confidential for a specific period of time, which may not exceed the expiration of the current registration.~~

**Sec. 7. 35-A MRS §8703, sub-§5** is amended to read:

**5. Confidentiality.** ~~Relay service communications must be~~ The providers of telecommunications relay services must keep relay service communications confidential.



**Right to Know Advisory Committee**

Draft: Statutory changes to public records exceptions

**Sec. 8. 38 MRS §414, sub-§6** is amended to read:

**6. Confidentiality of records.** Any records, reports or information obtained under this subchapter is available to the public, except that upon a showing satisfactory to the department by any person that any records, reports or information, or particular part of any record, report or information, other than the names and addresses of applicants, license applications, licenses and effluent data, to which the department has access under this subchapter would, if made public, divulge methods or processes that are entitled to protection as trade secrets as defined in Title 10, section 1542, subsection 4, these records, reports or information must be confidential and not available for public inspection or examination. Any records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any party to a hearing held under this section on terms the commissioner may prescribe in order to protect these confidential records, reports and information, as long as this disclosure is material and relevant to any issue under consideration by the department.

**Sec. 9. 38 MRS §585-B, sub-§6** is amended to read:

**6. Mercury reduction plans.** An air emission source emitting mercury in excess of 10 pounds per year after January 1, 2007 must develop a mercury reduction plan. Except as provided in subsection 7, the mercury reduction plan must be submitted to the department no later than September 1, 2008. The mercury reduction plan must contain:

- A. Identification, characterization and accounting of the mercury used or released at the emission source; and
- B. Identification, analysis and evaluation of any appropriate technologies, procedures, processes, equipment or production changes that may be utilized by the emission source to reduce the amount of mercury used or released by that emission source, including a financial analysis of the costs and benefits of reducing the amount of mercury used or released.

~~The department may keep information submitted to the department under this subsection confidential as provided under section 1310-B.~~

The department shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters no later than March 1, 2009 summarizing the mercury emissions and mercury reduction potential from those emission sources subject to this subsection. In addition, the department shall include an evaluation of the appropriateness of the 25-pound mercury standard established in subsection 5. The evaluation must address, but is not limited to, the technological feasibility, cost and schedule of achieving the standards established in subsection 5. The department shall

**Right to Know Advisory Committee**  
Draft: Statutory changes to public records exceptions

submit an updated report to the committee by March 1, 2013. The joint standing committee of the Legislature having jurisdiction over natural resources matters is authorized to report out to the 126th Legislature a bill relating to the evaluation and the updated report.

**Sec. 10. 38 MRSA §585-C, sub-§2, ¶D is repealed:**

**2. Emissions inventory.** The commissioner shall carry out and maintain an inventory of the sources in the State emitting any substance that may be a hazardous air pollutant.

A. This inventory must include the following data for each of those substances:

- (1) The number of sources;
- (2) The location of each source or category of source;
- (3) The quantity emitted by each source or category of source;
- (4) The total emissions; and
- (5) The percentage of total emissions generated by sources with existing air licenses.

B. In conducting this inventory, the commissioner may rely upon questionnaires or other reasonable methods, including those established by the United States Environmental Protection Agency, for the purpose of carrying out this duty as promptly and efficiently as possible. The commissioner shall clearly indicate on any requests for information the minimum amount of emissions that must be reported. The commissioner may not require reporting of this information more frequently than every other year.

C. In carrying out this inventory, the commissioner may require persons to provide information on forms supplied by the commissioner. Refusal to provide the information subjects the person of whom it is requested to a civil penalty of not more than \$100 for each day's delay. Submission of false information constitutes a violation of section 349, subsection 3, in addition to being subject to remedies otherwise available by law.

~~D. Information relating to the emissions inventory submitted to the commissioner under this section may be designated by the person submitting it as being only for the confidential use of the commissioner. Designated confidential information must be handled as confidential information is handled under section 1310-B, with the exception of emissions data which is public record.~~

**Right to Know Advisory Committee**

Draft: Statutory changes to public records exceptions

**SUMMARY**

This proposed legislation implements the recommendations of the Right to Know Advisory Committee relating to existing public records exceptions in Title 22 and Titles 26 to 39-A. The legislation does the following.

Section 1 repeals the Community Right to Know Act, a program within the Department of Health and Human Services intended to provide disclosure of information about hazardous substances in the community that has never been implemented.

Section 2 makes clear that reports of final bureau action are public records, removing the language in current law that gives the director of the Bureau of Labor Standards the discretion to release reports.

Section 3 relates to reports of the State Board of Arbitration and Conciliation in a labor dispute. The amendment makes clear that the report must be released 15 days after its receipt by the Governor and Executive Director of the Maine Labor Relations Board if the conciliation process is not successful.

Section 4 repeals language authorizing the Secretary of State to adopt rules relating to maintenance and use of data processing files concerning motor vehicles as the confidentiality of personal information is already protected under federal law.

Section 5 repeals a provision relating to the Secretary of State's motor vehicle information technology system because the confidentiality of the system is already addressed in another provision of law.

Section 6 removes language that is redundant with another section of law.

Section 7 clarifies that it is the responsibility of the providers of telecommunications relay services to keep relay services communications confidential.

Section 8 adds a cross-reference to the definition of "trade secret".

Section 9 repeals language making mercury reduction plans for air emission source emitting mercury confidential.

Section 10 repeals language making hazardous air pollutant emissions inventory reports confidential.

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6

**Right to Know Advisory Committee**

Draft: Add Information Technology expert to RTK AC membership

**Sec. 1. 1 MRSA §411, sub-§2** is amended to read:

- 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; and
  - N. One member with broad experience and understanding of issues and costs in multiple areas of information technology, including practical applications concerning creation, storage, retrieval and accessibility of electronic records; use of communication technologies to support meetings, including audio and web

**Right to Know Advisory Committee**

Draft: Add Information Technology expert to RTK AC membership

conferencing; databases for records management and reporting; and information technology system, development and support, appointed by the Governor.

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

**SUMMARY**

This bill adds one additional member to the Right to Know Advisory Committee, appointed by the Governor. The new position will bring information technology expertise to the Advisory Committee.



**Right to Know Advisory Committee**

Draft: Change reporting date for Public Access Ombudsman

**Sec. 1. 5 MRSA §200-I, sub-§5** is amended to read:

**§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.

**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;

B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws;

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;

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;

E. Make recommendations concerning ways to improve public access to public records and proceedings.; and

F. Coordinate with the state agency public access officers the compilation of data through the development of a uniform log to facilitate record keeping and annual reporting of the number of requests for information, the average response time and the costs of processing requests.

**3. Assistance.** The ombudsman may request from any public agency or official such assistance, services and information as will enable the ombudsman to effectively carry out the responsibilities of this section.

**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

**Right to Know Advisory Committee**

Draft: Change reporting date for Public Access Ombudsman

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.

**5. Report.** The ombudsman shall submit a report not later than ~~March~~ January 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;
- B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials;
- C. The number of complaints received concerning respectively public records and public meetings;
- 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;
- E. The number of inquiries and complaints that were resolved;
- F. The total number of written advisory opinions issued and pending; and
- G. Recommendations concerning ways to improve public access to public records and proceedings.

**SUMMARY**

Current law requires the Public Access Ombudsman to submit an annual report to the Right to Know Advisory Committee and the Legislature by March 15th of each year. This bill changes the reporting date to January 15th of each year, which is the same date by which the Right to Know Advisory Committee is required to submit its annual report.



**Sec. 1. 1 MRSA §408-A** is amended 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. ~~At~~ A body, 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 body, 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 body, agency or official having custody of the public record during reasonable office hours or may request that the body, agency or official having custody of the record provide a copy. The body, 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; cost estimate.** The body, agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within 5 working days of receiving the request, ~~and the body, agency or official~~ may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, the body, agency or official shall provide a good faith, nonbinding estimate of the time within which the body, agency or official will comply with the request, as well as a cost estimate as provided in subsection 9. The body, agency or official shall make a good faith effort to fully respond to the request within the estimated time. For purposes of this section, the date a request is received is the date a sufficient description of the public record is received by the body, agency or official at the office responsible for maintaining the public record.

**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 receipt of the request for inspection or copying. Failure to ~~comply with~~ provide the notice required by this subsection within 10 working days of the receipt of the request is considered failure a denial to allow inspection or copying and is subject to appeal as provided in section 409.

**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 body, agency or official having custody or control of the public record requested. If the body, agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the body's, agency's or official's records must be posted in a conspicuous public place and at the office of the body, agency or official, if an office exists.

**Right to Know Advisory Committee**  
Draft: FOAA deadlines and appeals (PL 2013, c. 350)

**6. No requirement to create new record.** ~~An~~ A body, agency or official is not required to create a record that does not exist.

**7. Electronically stored public records.** ~~An~~ A body, 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 body, agency or official is not required to provide access to an electronically stored public record as a computer file if the body, 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 body, 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 body, 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~~ a body, 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~~ a body, agency or official having custody of a public record may charge fees for public records as follows.

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

B. The body, 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 body, 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~~ A body, 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 body, agency or official may charge for the actual mailing costs to mail a copy of a record.

**9. Estimate.** The body, 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 body, 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 body, 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

**Right to Know Advisory Committee**

Draft: FOAA deadlines and appeals (PL 2013, c. 350)

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 body, 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 body, 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. 2. 1 MRSA §409, sub-§1** is amended to read:

**§409. Appeals**

**1. Records.** Any person aggrieved by a ~~refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record~~ under section 408-A may appeal the ~~refusal, denial or failure~~ within 30 calendar days of the receipt of the written notice of ~~refusal, denial or failure~~ or 40 days from the date of the request if no written notice is provided under section 408-A, subsection 4 to any the Superior Court within the State as a trial de novo for the county in which the person resides or in which the body or agency maintains an office to which the person made the request. The body, agency or official shall file an answer a statement of position within 14 calendar days of service of the appeal. If a court, after a trial de novo review and taking testimony and other evidence it determines necessary, determines such ~~refusal, denial or failure~~ was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

**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.

**3. Proceedings not exclusive.** The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.

**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

**Right to Know Advisory Committee**  
Draft: FOAA deadlines and appeals (PL 2013, c. 350)

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.

**SUMMARY**

This bill amends the Freedom of Access Act to clarify that the date of receipt of a request to copy or inspect a public record is the date a sufficient description of the public record is received by the body, agency or official at the office responsible for maintaining the public record.

Current law requires a body, agency or official to provide, within 5 days of the receipt of a request to inspect or copy a public record, a written notice that the request is denied. This bill clarifies that refusing to allow inspection or copying is considered a denial, as is the failure, within 10 days of the receipt of a request, to provide a written notice that the request is denied.

This bill amends the Freedom of Access Act with regard to appeals of denials of request to inspect or copy public records. Under current law, a person whose request has been denied may appeal the denial to any Superior Court within 30 calendar days of receipt of the written notice of denial. If no written notice of denial is provided, the requestor may file an appeal with 40 calendar days of the request. The bill provides that the appeal must be filed in the Superior Court for the county where the requestor resides or where the body or agency maintains an office to which the request was made. Current law requires the agency or official to file an answer within 14 calendar days. This bill requires the body, agency or official to a statement of position within 14 calendar days of service of the appeal. This bill provides that the court does not have to convene a trial, but must conduct a de novo review and shall take testimony and other evidence it determines necessary, and if it determines that the denial was not for just and proper cause, the court shall enter an order for disclosure.

This bill revises the language in sections 408-A and 409 to clarify that the provisions apply to public bodies as well as agencies and officials.



# 126th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2014

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Legislative Document

No. 1821

H.P. 1311

House of Representatives, March 17, 2014

### **An Act To Implement Recommendations of the Right To Know Advisory Committee**

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Reported by Representative PRIEST of Brunswick for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND

Clerk

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

2 **PART A**

3 **Sec. A-1. 22 MRSA c. 271, sub-c. 2,** as amended, is repealed.

4 **Sec. A-2. 26 MRSA §3,** as amended by PL 2011, c. 655, Pt. DD, §10 and affected  
5 by §24, is repealed and the following enacted in its place:

6 **§3. Confidentiality of records**

7 **1. Confidential records.** Except as provided in subsections 2 and 3, all information  
8 and reports received by the director or the director's authorized agents under this Title are  
9 confidential.

10 **2. Exceptions.** Reports of final bureau action taken under the authority of this Title  
11 are public records for the purposes of Title 1, chapter 13, subchapter 1.

12 **3. Authorized disclosure.** The director shall make or authorize any disclosure of  
13 information of the following types or under the following circumstances with the  
14 understanding that the confidentiality of the information will be maintained:

15 A. Information and reports disclosed to other government agencies if the director  
16 believes that the information will serve to further the protection of the public or assist  
17 in the enforcement of local, state and federal laws; and

18 B. Information and records pertaining to the work force, employment patterns, wage  
19 rates, poverty and low-income patterns, economically distressed communities and  
20 regions and other similar information and data disclosed to the Department of  
21 Economic and Community Development and to the Governor's Office of Policy and  
22 Management for the purposes of analysis and evaluation, for the purposes of  
23 measuring and monitoring poverty and economic and social conditions throughout  
24 the State and to promote economic development.

25 **Sec. A-3. 26 MRSA §934, last ¶,** as enacted by PL 1985, c. 294, §§2 and 3, is  
26 amended to read:

27 The board shall hear all interested persons who come before it, advise the respective  
28 parties what ought to be done by either or both to adjust the controversy, and shall make a  
29 confidential written report to the Governor and the Executive Director of the Maine  
30 Labor Relations Board. The Governor or executive director ~~may~~ shall make the report  
31 public if, after 15 days from the date of its receipt, the parties have not resolved the  
32 controversy and the public interest would be served by publication. In addition, either the  
33 Governor or the executive director may refer the report and recommendations of the  
34 board to the Attorney General or other department for appropriate action when it appears  
35 that any of the laws of this State may have been violated.

36 **Sec. A-4. 29-A MRSA §152, sub-§3,** as enacted by PL 1993, c. 683, Pt. A, §2  
37 and affected by Pt. B, §5, is amended to read:

1           **3. Central computer system.** Notwithstanding any other provisions of law,  
2 purchase and maintain a central computer system for purposes of administering this Title  
3 and conducting departmental operations. All other uses must be approved by the  
4 Secretary of State. ~~The Secretary of State shall adopt rules regarding the maintenance~~  
5 ~~and use of data processing information files required to be kept confidential and shall~~  
6 ~~distinguish those files from files available to the public;~~

7           **Sec. A-5. 29-A MRSA §257**, as enacted by PL 2003, c. 434, §6 and affected by  
8 §37, is repealed.

9           **Sec. A-6. 29-A MRSA §517, sub-§4**, as enacted by PL 1993, c. 683, Pt. A, §2  
10 and affected by Pt. B, §5, is amended to read:

11           **4. Unmarked law enforcement vehicles.** An unmarked motor vehicle used  
12 primarily for law enforcement purposes, when authorized by the Secretary of State and  
13 upon approval from the appropriate requesting authority, is exempt from displaying a  
14 special registration plate. Records for all unmarked vehicle registrations are confidential.

15 ~~Upon receipt of a written request by an appropriate criminal justice official showing~~  
16 ~~cause that it is in the best interest of public safety, the Secretary of State may determine~~  
17 ~~that records of a nongovernment vehicle may be held confidential for a specific period of~~  
18 ~~time, which may not exceed the expiration of the current registration.~~

19           **Sec. A-7. 35-A MRSA §8703, sub-§5**, as enacted by PL 1989, c. 851, §7, is  
20 amended to read:

21           **5. Confidentiality.** ~~Relay service communications must be~~ The providers of  
22 telecommunications relay services must keep relay service communications confidential.

23           **Sec. A-8. 38 MRSA §414, sub-§6**, as amended by PL 1997, c. 794, Pt. A, §20, is  
24 further amended to read:

25           **6. Confidentiality of records.** Any records, reports or information obtained under  
26 this subchapter is available to the public, except that upon a showing satisfactory to the  
27 department by any person that any records, reports or information, or particular part of  
28 any record, report or information, other than the names and addresses of applicants,  
29 license applications, licenses and effluent data, to which the department has access under  
30 this subchapter would, if made public, divulge methods or processes that are entitled to  
31 protection as trade secrets as defined in Title 10, section 1542, subsection 4, these  
32 records, reports or information must be confidential and not available for public  
33 inspection or examination. Any records, reports or information may be disclosed to  
34 employees or authorized representatives of the State or the United States concerned with  
35 carrying out this subchapter or any applicable federal law, and to any party to a hearing  
36 held under this section on terms the commissioner may prescribe in order to protect these  
37 confidential records, reports and information, as long as this disclosure is material and  
38 relevant to any issue under consideration by the department.

39           **Sec. A-9. 38 MRSA §585-B, sub-§6**, as amended by PL 2009, c. 535, §2, is  
40 further amended to read:



1           **6. Mercury reduction plans.** An air emission source emitting mercury in excess of  
2 10 pounds per year after January 1, 2007 must develop a mercury reduction plan. Except  
3 as provided in subsection 7, the mercury reduction plan must be submitted to the  
4 department no later than September 1, 2008. The mercury reduction plan must contain:

5           A. Identification, characterization and accounting of the mercury used or released at  
6 the emission source; and

7           B. Identification, analysis and evaluation of any appropriate technologies,  
8 procedures, processes, equipment or production changes that may be utilized by the  
9 emission source to reduce the amount of mercury used or released by that emission  
10 source, including a financial analysis of the costs and benefits of reducing the amount  
11 of mercury used or released.

12 ~~The department may keep information submitted to the department under this subsection~~  
13 ~~confidential as provided under section 1310-B.~~

14 The department shall submit a report to the joint standing committee of the Legislature  
15 having jurisdiction over natural resources matters no later than March 1, 2009  
16 summarizing the mercury emissions and mercury reduction potential from those emission  
17 sources subject to this subsection. In addition, the department shall include an evaluation  
18 of the appropriateness of the 25-pound mercury standard established in subsection 5.  
19 The evaluation must address, but is not limited to, the technological feasibility, cost and  
20 schedule of achieving the standards established in subsection 5. The department shall  
21 submit an updated report to the committee by March 1, 2013. The joint standing  
22 committee of the Legislature having jurisdiction over natural resources matters is  
23 authorized to report out to the 126th Legislature a bill relating to the evaluation and the  
24 updated report.

25           **Sec. A-10. 38 MRSA §585-C, sub-§2, ¶D,** as affected by PL 1989, c. 890, Pt.  
26 A, §40 and amended by Pt. B, §160, is repealed.

27           **Sec. A-11. 38 MRSA §1310-B, sub-§2,** as repealed and replaced by PL 2011, c.  
28 420, Pt. A, §35 and amended by c. 657, Pt. W, §5, is further amended to read:

29           **2. Hazardous waste information and information on mercury-added products**  
30 **and electronic devices; chemicals.** Information relating to hazardous waste submitted to  
31 the department under this subchapter, information relating to mercury-added products  
32 submitted to the department under chapter 16-B, information relating to electronic  
33 devices submitted to the department under section 1610, subsection 6-A, ~~information~~  
34 ~~relating to mercury reduction plans submitted to the department under section 585-B,~~  
35 ~~subsection 6,~~ information related to priority toxic chemicals submitted to the department  
36 under chapter 27 or information related to products that contain the "deca" mixture of  
37 polybrominated diphenyl ethers submitted to the department under section 1609 may be  
38 designated by the person submitting it as being only for the confidential use of the  
39 department, its agents and employees, the Department of Agriculture, Conservation and  
40 Forestry and the Department of Health and Human Services and their agents and  
41 employees, other agencies of State Government, as authorized by the Governor,  
42 employees of the United States Environmental Protection Agency and the Attorney  
43 General and, for waste information, employees of the municipality in which the waste is





1 located. The designation must be clearly indicated on each page or other portion of  
2 information. The commissioner shall establish procedures to ensure that information so  
3 designated is segregated from public records of the department. The department's public  
4 records must include the indication that information so designated has been submitted to  
5 the department, giving the name of the person submitting the information and the general  
6 nature of the information. Upon a request for information, the scope of which includes  
7 information so designated, the commissioner shall notify the submitter. Within 15 days  
8 after receipt of the notice, the submitter shall demonstrate to the satisfaction of the  
9 department that the designated information should not be disclosed because the  
10 information is a trade secret or production, commercial or financial information, the  
11 disclosure of which would impair the competitive position of the submitter and would  
12 make available information not otherwise publicly available. Unless such a  
13 demonstration is made, the information must be disclosed and becomes a public record.  
14 The department may grant or deny disclosure for the whole or any part of the designated  
15 information requested and within 15 days shall give written notice of the decision to the  
16 submitter and the person requesting the designated information. A person aggrieved by a  
17 decision of the department may appeal only to the Superior Court in accordance with the  
18 provisions of section 346. All information provided by the department to the  
19 municipality under this subsection is confidential and not a public record under Title 1,  
20 chapter 13. In the event a request for such information is submitted to the municipality,  
21 the municipality shall submit that request to the commissioner to be processed by the  
22 department as provided in this subsection.

23

## PART B

24 **Sec. B-1. 1 MRSA §411, sub-§2, ¶¶L and M**, as enacted by PL 2005, c. 631,  
25 §1, are amended to read:

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

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

29 **Sec. B-2. 1 MRSA §411, sub-§2, ¶N** is enacted to read:

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

37

## PART C

38 **Sec. C-1. 5 MRSA §200-I, sub-§5**, as enacted by PL 2007, c. 603, §1, is  
39 amended to read:

40 **5. Report.** The ombudsman shall submit a report not later than ~~March~~ January 15th  
41 of each year to the Legislature and the Right To Know Advisory Committee established

1 in Title 1, section 411 concerning the activities of the ombudsman for the previous year.  
2 The report must include:

- 3 A. The total number of inquiries and complaints received;
- 4 B. The number of inquiries and complaints received respectively from the public, the  
5 media and public agencies or officials;
- 6 C. The number of complaints received concerning respectively public records and  
7 public meetings;
- 8 D. The number of complaints received concerning respectively:
  - 9 (1) State agencies;
  - 10 (2) County agencies;
  - 11 (3) Regional agencies;
  - 12 (4) Municipal agencies;
  - 13 (5) School administrative units; and
  - 14 (6) Other public entities;
- 15 E. The number of inquiries and complaints that were resolved;
- 16 F. The total number of written advisory opinions issued and pending; and
- 17 G. Recommendations concerning ways to improve public access to public records  
18 and proceedings.

19 **PART D**

20 **Sec. D-1. 1 MRSA §408-A**, as amended by PL 2013, c. 350, §§1 and 2, is further  
21 amended to read:

22 **§408-A. Public records available for inspection and copying**

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

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

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

- 34 A. A request need not be made in person or in writing.
- 35 B. The body, agency or official shall mail the copy upon request.

20

1           **3. Acknowledgment; clarification; time estimate; cost estimate.** The body,  
2 agency or official having custody or control of a public record shall acknowledge receipt  
3 of a request made according to this section within 5 working days of receiving the request  
4 ~~and.~~ The body, agency or official may request clarification concerning which public  
5 record or public records are being requested. Within a reasonable time of receiving the  
6 request, the body, agency or official shall provide a good faith, nonbinding estimate of  
7 the time within which the body, agency or official will comply with the request, as well  
8 as a cost estimate as provided in subsection 9. The body, agency or official shall make a  
9 good faith effort to fully respond to the request within the estimated time. For purposes  
10 of this subsection, the date a request is received is the date a sufficient description of the  
11 public record is received by the body, agency or official.

12           **4. Refusals; denials.** If a body ~~or an,~~ agency or official having custody or control of  
13 any public record refuses permission to inspect or copy ~~or abstract~~ a public record, the  
14 body ~~or,~~ agency or official shall provide written notice of the denial, stating the reason for  
15 the denial, within 5 working days of the receipt of the request for inspection or copying.  
16 Failure to ~~comply with~~ provide the notice required by this subsection within 10 working  
17 days of the receipt of the request is considered ~~failure~~ a denial to allow inspection or  
18 copying and is subject to appeal as provided in section 409.

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

27           **6. No requirement to create new record.** ~~An~~ A body, agency or official is not  
28 required to create a record that does not exist.

29           **7. Electronically stored public records.** ~~An~~ A body, agency or official having  
30 custody or control of a public record subject to a request under this section shall provide  
31 access to an electronically stored public record either as a printed document of the public  
32 record or in the medium in which the record is stored, at the requester's option, except  
33 that the body, agency or official is not required to provide access to an electronically  
34 stored public record as a computer file if the body, agency or official does not have the  
35 ability to separate or prevent the disclosure of confidential information contained in or  
36 associated with that file.

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

41           B. This subsection does not require ~~an~~ a body, agency or official to provide a  
42 requester with access to a computer terminal.

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

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

6           B. The body, agency or official may charge a fee to cover the actual cost of  
7 searching for, retrieving and compiling the requested public record of not more than  
8 \$15 per hour after the first hour of staff time per request. Compiling the public record  
9 includes reviewing and redacting confidential information.

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

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

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

18           **9. Estimate.** The body, agency or official having custody or control of a public  
19 record subject to a request under this section shall provide to the requester an estimate of  
20 the time necessary to complete the request and of the total cost as provided by subsection  
21 8. If the estimate of the total cost is greater than \$30, the body, agency or official shall  
22 inform the requester before proceeding. If the estimate of the total cost is greater than  
23 \$100, subsection 10 applies.

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

28           A. The estimated total cost exceeds \$100; or

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

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

34           A. The requester is indigent; or

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

39           **Sec. D-2. 1 MRSA §409, sub-§1,** as repealed and replaced by PL 2013, c. 350,  
40 §3, is amended to read:

1           **1. Records.** Any person aggrieved by a refusal or denial to inspect or copy a record  
2 ~~or the failure to allow the inspection or copying of a record~~ under section 408-A may  
3 appeal the ~~refusal, denial or failure~~ within 30 calendar days of the receipt of the written  
4 notice of ~~refusal, denial or failure~~ or 40 days from the date of the request if no written  
5 notice is provided under section 408-A, subsection 4 to any the Superior Court within the  
6 State as a trial de novo for the county in which the person resides or in which the body,  
7 agency or official maintains an office to which the person made the request. The body,  
8 agency or official shall file an answer within 14 calendar days of service of the appeal. If  
9 a court, after a ~~trial~~ trial de novo review and taking testimony and other evidence it determines  
10 necessary, determines such ~~refusal, denial or failure~~ was not for just and proper cause, the  
11 court shall enter an order for disclosure. Appeals may be advanced on the docket and  
12 receive priority over other cases when the court determines that the interests of justice so  
13 require.

14

## SUMMARY

15           This bill implements recommendations from the Right To Know Advisory  
16 Committee.

17           Part A implements the recommendations of the Right To Know Advisory Committee  
18 relating to existing public records exceptions in the Maine Revised Statutes, Titles 22, 26,  
19 29-A, 35-A and 38. The legislation does the following.

20           It repeals the Community Right-to-Know Act, a program within the Department of  
21 Health and Human Services intended to provide disclosure of information about  
22 hazardous substances in the community. The program has never been implemented.

23           It makes clear that reports of final bureau action are public records, removing the  
24 language in current law that gives the Director of the Bureau of Labor Standards within  
25 the Department of Labor the discretion to release reports.

26           It amends the laws governing reports of the State Board of Arbitration and  
27 Conciliation in a labor dispute. The bill makes clear that a report must be released 15  
28 days after its receipt by the Governor and the Executive Director of the Maine Labor  
29 Relations Board if the conciliation process is not successful.

30           It strikes language authorizing the Secretary of State to adopt rules relating to  
31 maintenance and use of data processing files concerning motor vehicles as the  
32 confidentiality of personal information is already protected under the federal Driver's  
33 Privacy Protection Act of 1994.

34           It repeals a provision relating to the Secretary of State's motor vehicle information  
35 technology system because the confidentiality of the system is already addressed in the  
36 Maine Revised Statutes, Title 1, section 402, subsection 3, paragraph M.

37           It removes language that is redundant with another section of law concerning  
38 nongovernment vehicle registrations in the Maine Revised Statutes, Title 29-A, section  
39 253.

1 It clarifies that it is the responsibility of the providers of telecommunications relay  
2 services to keep relay service communications confidential.

3 It adds a cross-reference to the definition of "trade secret" in the law governing waste  
4 discharge licenses.

5 It strikes language allowing mercury reduction plans for air emission sources emitting  
6 mercury to be designated as confidential.

7 It repeals language allowing hazardous air pollutant emissions inventory reports to be  
8 designated as confidential.

9 Part B adds one additional member to the Right To Know Advisory Committee,  
10 appointed by the Governor. The new position will bring information technology  
11 expertise to the committee.

12 Current law requires the Public Access Ombudsman to submit an annual report to the  
13 Right To Know Advisory Committee and the Legislature by March 15th of each year.  
14 Part C changes the reporting date to January 15th of each year, which is the same date by  
15 which the Right To Know Advisory Committee is required to submit its annual report.

16 Part D amends the Freedom of Access Act to clarify that the date of receipt of a  
17 request to copy or inspect a public record is the date a sufficient description of the public  
18 record is received by the body, agency or official.

19 Current law requires a body, agency or official to provide, within 5 days of the  
20 receipt of a request to inspect or copy a public record, a written notice that the request is  
21 denied. Part D clarifies that refusing to allow inspection or copying is considered a  
22 denial, as is the failure, within 10 days of the receipt of a request, to provide a written  
23 notice that the request is denied.

24 Part D amends the Freedom of Access Act with regard to appeals of denials of  
25 requests to inspect or copy public records. Under current law, a person whose request has  
26 been denied may appeal the denial to any Superior Court within 30 calendar days of  
27 receipt of the written notice of denial. The bill provides that if no written notice of denial  
28 is provided, the requester may file an appeal within 40 calendar days of the request in the  
29 Superior Court for the county where the requester resides or where the body, agency or  
30 official maintains an office to which the request was made. Current law requires the  
31 agency or official to file an answer within 14 calendar days. This bill clarifies that the  
32 body, agency or official must file an answer within 14 calendar days of service of the  
33 appeal. This bill provides that the court does not have to convene a trial, but must  
34 conduct a de novo review and take testimony and other evidence it determines necessary,  
35 and if it determines that the denial was not for just and proper cause, the court is required  
36 to enter an order for disclosure.

SMC  
ROFS

1

L.D. 1821

2

Date: 4/4/14

(Filing No. H-811)

3

## JUDICIARY

4

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5

## STATE OF MAINE

6

## HOUSE OF REPRESENTATIVES

7

## 126TH LEGISLATURE

8

## SECOND REGULAR SESSION

9  
10

COMMITTEE AMENDMENT "A" to H.P. 1311, L.D. 1821, Bill, "An Act To Implement Recommendations of the Right To Know Advisory Committee"

11  
12

Amend the bill in Part A in section 3 in the first paragraph in the 5th line (page 1, line 31 in L.D.) by striking out the following: "15" and inserting the following: '15 30'

13  
14

Amend the bill in Part D in section 1 in §408-A by striking out all of subsection 4 (page 6, lines 12 to 18 in L.D.) and inserting the following:

15  
16  
17  
18  
19  
20

**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 receipt of the request for inspection or copying. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.'

21  
22

Amend the bill in Part D in section 2 by striking out all of subsection 1 (page 8, lines 1 to 13 in L.D.) and inserting the following:

23  
24  
25  
26  
27  
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31  
32  
33

**1. Records.** Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may appeal the refusal, denial or failure within 30 calendar days of the receipt of the written notice of refusal, denial or failure to any the Superior Court ~~within the State as a trial de novo~~ for the county in which the person resides or in which the body, agency or official maintains an office to which the person made the request. The body, agency or official shall file an answer within 14 calendar days of service of the appeal. If a court, after a trial de novo review and taking testimony and other evidence it determines necessary, determines such refusal, denial or failure was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.'

# COMMITTEE AMENDMENT

25

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2  
3  
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7

**SUMMARY**

This amendment provides that the reports of the State Board of Arbitration and Conciliation in a labor dispute must be released 30 days after its receipt by the Governor and the Executive Director of the Maine Labor Relations Board if the conciliation process is not successful.

This amendment deletes changes proposed in the bill to identify when access to a record is denied and when an appeal of that denial may be made.





STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

Paul R. LePage  
GOVERNOR

22 April 2014

The 126<sup>th</sup> Legislature of the State of Maine  
State House  
Augusta, ME

Dear Honorable Members of the 126<sup>th</sup> Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 1821, "An Act To Implement Recommendations of the Right To Know Advisory Committee."

I am committed to a transparent government that allows the citizens of Maine to easily access information pertinent to their lives. Indeed, my Administration has taken significant steps to increase the average citizen's access to information. We launched a new financial transparency website to provide Maine citizens with access to basic, easy-to-understand information regarding state finances and government spending. We have responded to thousands of Freedom to Access Act (FOAA) requests, producing millions of documents. I pushed state government to be more customer friendly – ensuring that everyday requests for information from citizens are responded to daily without the formality of a FOAA request.

This bill would make minor changes to the FOAA recommended by the Right to Know Advisory Committee. The purpose of the Advisory Committee is to "serve as a resource for ensuring compliance ... and upholding the integrity of the purposes underlying [this law] as it applies to all public entities in the conduct of the public's business." Unfortunately, these recommendations just nibble around the edges of the law without addressing real flaws in it. The recommendations do not address the use of FOAA by special interest groups to harass the Executive Branch. They do not address practical concerns that make compliance virtually impossible for many Executive Branch agencies. They do not address real inequities in the application of the law to different branches of government as contained in the Advisory Committee's mandate to advise on applying the law to "all" public entities.

The FOAA law, meant to allow access to government, is instead being used as a weapon to hinder effective and efficient state government. My office has received many overly broad requests from special interests groups. They request years of all communications between my office and certain commissioners, my personal grocery bills and other fishing expeditions that are not about a transparent government. Instead, they are about trying to cripple the operations of my office with thousands of hours of staff time and creating a distraction from conducting the people's business.



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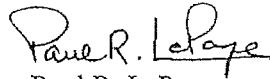
27

The Maine State Police testified that they cannot comply with portions of the law dealing with timing of when a document is received for purposes of the law. If the top law enforcement agency in the State cannot comply with the law, that is a serious problem that must be addressed. Yet the Advisory Committee and the Judiciary Committee both declined to make a reasonable fix to the law.

Most troubling, the FOAA law is inequitable. The Legislature has given itself a "working papers" exception, yet refuses to extend the same courtesy to the Executive Branch. We should either give the Executive Branch a similar exception or strip the Legislature of theirs. Either way, this inequity should not stand. Until it is righted, the Legislature cannot claim its own operations are transparent.

Until these major problems with the law are fixed, I cannot support this legislation. For these reasons, I return LD 1821 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,

  
Paul R. LePage  
Governor

4A-3

1 MRSA §410-A is enacted to read:

**§410-A. Government remedy; just and proper cause**

**1. Petition for determination.** A body, agency or official who has custody or control of a public record may petition the Superior Court for a determination that a request by a person to inspect or copy the public record may be denied with just and proper cause. Petitions may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

**2. Order.** After a trial de novo, the court shall either dismiss the petition or enter an order appropriately limiting or denying the request to inspect or copy the public record.

**3. Just and proper cause.** For the purposes of this section, in determining whether a request to inspect or copy a public record may be denied with “just and proper cause” a court shall include consideration of the identity of the requesting person and the historical frequency, scope and manner of the requesting person’s requests for inspection or copying of records under section 408-A, and whether the probative value of the information to the public outweighs any substantial burden on the body, agency or official.

**SUMMARY**

This bill creates an option for a public body, agency or official to seek relief from overly-burdensome requests under the Freedom of Access Act by filing an action in Superior Court seeking a determination whether the request may be denied. The court must determine if the request to inspect or copy a record may be denied for just and proper cause. In making the determination, the court must consider the identity of the requesting person and the historical frequency, scope and manner of the requesting person’s requests for inspection or copying, and whether the probative value of the information to the public outweighs any substantial burden on the government body, agency or official. After a trial de novo the court may issue an order limiting or denying the request to inspect or copy the public record, or may dismiss the petition.



SENATE

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JOHN L. TUTTLE, JR., District 3  
DAVID C. BURNS, District 29

MARGARET J. REINSCH, Legislative Analyst  
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State of Maine  
ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE  
COMMITTEE ON JUDICIARY

April 2, 2014

Jonathan T. Nass, Esq.  
Senior Policy Advisory  
Governor Paul R. LePage  
1 State House Station  
Augusta, Maine 04333-0001

Re: LD 1818, An Act To Facilitate Public Records Requests to State Agencies

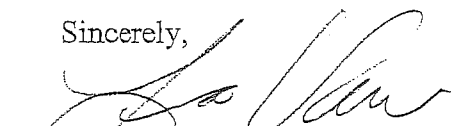
Dear Mr. Nass:

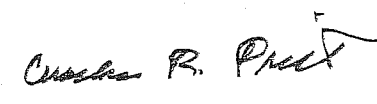
Thank you for engaging in the discussion about the Freedom of Access Act and some of the difficulties that often arise when governments are committed to transparency. We join the Governor in recognizing the importance in ensuring that citizens of Maine can easily access information pertinent to their lives and well-being. We agree that government transparency is essential in maintaining confidence in every level of government as well as the democratic process.

We accept your commitment to the administrative implementation of the recommendations for action in LD 1818 that we agree will help members of the public more easily access records, as well as increase their faith in the efficacy of government. We have confidence in Brenda Kielty's ability to work with OIT and others to develop and implement the tracking system that should help identify bottlenecks, as well as what the State is doing successfully in sharing information. We are very appreciative of your commitment to implement the tracking and reporting system using existing budgeted resources.

We look forward to continued cooperation in improving the transparency of Maine's state government. Thank you for coming forward and getting the process started.

Sincerely,

  
Linda M. Valentino  
Senate Chair

  
Charles R. Priest  
House Chair



STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

Paul R. LePage  
GOVERNOR

March 27, 2014

The Honorable Linda Valentino  
The Honorable Charles R. Priest  
Chairs, Joint Standing Committee on the Judiciary  
C/O Legislative Information  
100 State House Station  
Augusta, ME, 04333

RE: LD 1818, *An Act to Facilitate Public Records Requests to State Agencies*

Dear Senator Valentino and Representative Priest:

Thank you for the opportunity to address the Judiciary Committee on LD 1818, *An Act to Facilitate Public Records Requests to State Agencies*. I am writing to memorialize that discussion.

Governor LePage is committed to a transparent government that allows the citizens of Maine to easily access information pertinent to their lives and well-being and that maintains confidence in state government and the democratic process. Therefore, the LePage Administration commits to administratively implement the provisions of LD 1818. These provisions include the actions that follow:

- The public access officer for each state agency that maintains a website will place his or her contact information or a link to his or her contact information on the home page of the agency's publically accessible website;
- The Department of Administrative and Financial Services will develop a standardized link to the Freedom of Access Act pages and develop a keyword match for "FOAA" in state agency website; and
- The Department of Administrative and Financial Services will work with the Public Access Ombudsman to develop and implement a system of consistent tracking and reporting of requests made pursuant to the Freedom of Access Act.

As we also discussed, I hope the Committee will make a similar request of the Legislative Council and the Legislature's own information technology office. If that office requires assistance in that effort, please have them contact my office, and I will facilitate assistance from the Office of Information Technology.

Thank you again for the opportunity to address the Judiciary Committee on this important topic.

Sincerely,

Jonathan T. Nass, Esq.  
Senior Policy Advisor  
Governor Paul R. LePage



PRINTED ON RECYCLED PAPER

PHONE: (207) 287-3531 (Voice)

TTY USERS CALL 711  
www.maine.gov

FAX: (207) 287-1034

3

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

2 **Sec. 1. 1 MRSA §413, sub-§5** is enacted to read:

3 **5. Website.** The public access officer for each state agency that maintains a website  
4 shall cause the name, physical address, e-mail address and telephone number for the  
5 public access officer or a link to a page containing the public access officer's contact  
6 information to be posted on the home page of that agency's publicly accessible website.

7 **Sec. 2. State agencies; website link to dedicated page.** The Department of  
8 Administrative and Financial Services, Office of Information Technology, in consultation  
9 with state agencies, shall develop a standardized website link to a dedicated Freedom of  
10 Access Act page within each agency's publicly accessible website with instructions and  
11 information for persons requesting public records.

12 **Sec. 3. State agencies; keyword match for "FOAA."** State agencies shall use  
13 executive branch information technology resources to create a keyword match for  
14 "FOAA" in their websites.

15 **Sec. 4. Freedom of Access Act portal and request tracking.** The Public  
16 Access Ombudsman and the Department of Administrative and Financial Services, Office  
17 of Information Technology shall work with InforME to develop and implement a system  
18 of consistent tracking and reporting of Freedom of Access Act request information  
19 pursuant to Public Law 2013, chapter 229, section 3. The tracking and reporting system  
20 must be implemented by all state agencies by January 1, 2015.

21 **SUMMARY**

22 This bill implements recommendations of the Public Access Ombudsman pursuant to  
23 Public Law 2013, chapter 229, section 3 related to the feasibility of developing a  
24 centralized system for coordinating the receipt of and response to requests to state  
25 agencies for public records in accordance with the Freedom of Access Act.

26 The bill requires state agencies' public access officers to include their contact  
27 information on their agency websites. It also requires the Department of Administrative  
28 and Financial Services, Office of Information Technology, in consultation with state  
29 agencies, to develop a standardized link to Freedom of Access Act pages and requires  
30 state agencies to use executive branch resources to create a keyword match for "FOAA"  
31 in their websites.

32 The bill requires the Public Access Ombudsman and the Office of Information  
33 Technology to work with InforME to develop and implement a system of consistent  
34 tracking and reporting of public records requests under the Freedom of Access Act.

4B



# 126th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2014

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Legislative Document

No. 1818

S.P. 728

In Senate, March 12, 2014

### **An Act To Facilitate Public Records Requests to State Agencies**

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Reported by Senator VALENTINO of York for the Joint Standing Committee on Judiciary pursuant to Public Law 2013, chapter 229, section 3.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate



**FOA Reviews ~ Judiciary Committee ~ 126th Legislature, Second Regular Session**  
Final

LD	COMMITTEE	SUBJECT	MEMO DATE	REVIEW DATE	REPORT DATE	RESULT	STATUTE	RESULT
1627	TAX	Business Equipment Tax Exemption – proprietary information submitted to municipality	03/05/14	03/12/14	3/19/14	Approved without change	36 MRSA §706, 5th ¶	PL 2013, c. 544
1665	ACF	Wood processor report information	02/25/14	02/26/14	03/05/14	Recommended change	12 MRSA §8884, sub-§3	PL 2013, c. 513
1687	MAR	Proprietary information submitted to Department of Marine Resources	03/11/14	03/19/14	03/25/14	Approved without change	12 MRSA §6173-B, sub-§1	PL 2013, c. 512
1689	MAR	Seafood processing information – proprietary information	03/11/14	03/19/14	03/25/14	Approved without change	1 MRSA §402, sub-§3, ¶T	PL 2013, c. 518
1690	VLA	Confidential records received by the Commission on Governmental Ethics and Election Practices	None	02/25/14	02/27/14	Approved without change	21-A MRSA §1003, sub-§3-A	PL 2013, c. 470
1707	TAX	Amend the Tax Laws – criminal history record of applicant	03/12/14	03/07/14	03/19/14	Recommended change	36 MRSA §194-B	PL 2013, c. 546
1724	LCRED	Licensing for Real Estate Appraisers with Federal Law – criminal history record of applicant	03/20/14	03/25/14	03/26/14	Recommended change	32 MRSA §14021, sub-§7	PL 2013, c. 547

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4C



## FOAA INFORMATION

[Return to FOAA pages on  
Maine.gov](#)[Begin your search](#)

## Maine State Legislature

### Exceptions to Maine's Freedom of Access laws

This page allows you to search a list of statutory exceptions to the state's Freedom of Access laws. The list contains statutes that either designate records and information as confidential or specifically except records and information from the definition of "public records". Inclusion in or exclusion of items from this list does not affect the purposes for which the information was collected or for which it may be used or maintained. This list is continually under review and will be updated as possible.

This list is maintained by the Maine Legislative Council on behalf of the Maine Right to Know Advisory Committee.

### How to Search

You can begin your search by clicking on the "Begin your search" button shown below. To show the entire list of exceptions, select "All" from the drop down list in the "category" field and click "Submit query". If you do not wish to see the entire list, you can either choose specific categories from the drop-down list, search for exceptions that fall within specific titles or sections, or search using using key-words. Each record that displays as a result of your search is hyperlinked to the text of the appropriate section of the Maine Revised Statutes, as maintained by the Legislature.

[Begin Your Search](#)

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**FOAA INFORMATION**

- [Return to FOAA pages on Maine.gov](#)
- [Begin your search](#)

Use the fields below to search the list of statutory exceptions to the definition of "public record" under Maine's Freedom of Access Law.

Category:

Title:

Section:

Key Word:

1	Agriculture	The following statutes designate as confidential certain records containing information collected, used or maintained for agriculture purposes:
2	Commercial Regulation	The following statutes designate as confidential certain records containing information collected, used or maintained for commercial regulation purposes:
3	Compensation programs	The following statutes designate as confidential certain records containing information collected, used or maintained for compensation programs and purposes:
4	Economic and Community development	The following statutes designate as confidential certain records containing information collected, used or maintained for economic and community development purposes:
5	Education	The following statutes designate as confidential certain records containing information collected, used or maintained for education purposes:
6	Election Law	The following statutes designate as confidential certain records containing information collected, used or maintained for election law purposes:
7	Environmental regulations	The following statutes designate as confidential certain records containing information collected, used or maintained for environmental regulations purposes:
8	Families and children	The following statutes designate as confidential certain records containing information collected, used or maintained for families and children purposes:
9	Financial Services	The following statutes designate as confidential certain records containing information collected, used or maintained for financial services purposes:
10A	Health - patients, clients, individuals	The following statutes designate as confidential certain records containing information collected, used or maintained for health purposes - records relating to patients, clients or other identifiable individuals:
10B	Health - facilities, manufacturers or other entities	The following statutes designate as confidential certain records containing information collected, used or maintained for health purposes - records relating to facilities, manufacturers or other entities:
10C	Health - Maine Health Security Act or other review	The following statutes designate as confidential certain records containing information collected, used or maintained for health purposes - records relating to the Maine Health Security Act or other health care review:
11A	Insurance regulation - insurers	The following statutes designate as confidential certain records containing information collected, used or maintained for insurance regulation purposes - records pertaining primarily to insurers:
11B	Insurance regulation - insureds	The following statutes designate as confidential certain records containing information collected, used or maintained for insurance regulation purposes - records pertaining primarily to insureds:
12A	Investigations - internal	The following statutes designate as confidential certain records containing information collected, used or maintained for investigations purposes - records relating to internal departmental or agency investigations:
12B	Investigations - all other	The following statutes designate as confidential certain records containing information collected, used or maintained for investigations purposes - records relating to investigations other than those set out in 12A:
13	Judicial proceedings	The following statutes designate as confidential certain records containing information collected, used or maintained for judicial proceedings purposes:
14	Juvenile justice or criminal investigation and history	The following statutes designate as confidential certain records containing information collected, used or maintained for juvenile justice or criminal investigation and history purposes:
15	Labor	The following statutes designate as confidential certain records containing information collected, used or maintained for labor purposes:

## Database categories

16	Maine Human Rights Act	The following statutes designate as confidential certain records containing information collected, used or maintained for Maine Human Rights Act purposes:
17A	Marine resources and aquaculture - marine resources	The following statutes designate as confidential certain records containing information collected, used or maintained for marine resources and aquaculture purposes - records relating to marine resources:
17B	Marine resources and aquaculture - aquaculture	The following statutes designate as confidential certain records containing information collected, used or maintained for marine resources and aquaculture purposes - records relating to aquaculture:
18	Market assistance and regulation	The following statutes designate as confidential certain records containing information collected, used or maintained for market assistance and regulation purposes:
19	Medical facilities	The following statutes designate as confidential certain records containing information collected, used or maintained for medical facilities purposes:
20	Motor vehicles and operators	The following statutes designate as confidential certain records containing information collected, used or maintained for motor vehicles and operators purposes:
21A	Occupational credentialing - initial, continuing and renewed	The following statutes designate as confidential certain records containing information collected, used or maintained for occupational credentialing purposes - initial, continuing and renewed credentialing:
21B	Occupational credentialing - quality, complaints, investigations	The following statutes designate as confidential certain records containing information collected, used or maintained for occupational credentialing purposes - quality, complaints, investigations:
21C	Occupational credentialing - other	The following statutes designate as confidential certain records containing information collected, used or maintained for occupational credentialing purposes - other purposes:
22	Other licensing	The following statutes designate as confidential certain records containing information collected, used or maintained for other licensing purposes:
23	Public employment	The following statutes designate as confidential certain records containing information collected, used or maintained for public employment purposes:
24	Public services	The following statutes designate as confidential certain records containing information collected, used or maintained for public services purposes:
25	Social services	The following statutes designate as confidential certain records containing information collected, used or maintained for social services purposes:
26	Taxation	The following statutes designate as confidential certain records containing information collected, used or maintained for taxation purposes:
27	Utilities	The following statutes designate as confidential certain records containing information collected, used or maintained for utilities purposes:
28	Other purposes	The following statutes designate as confidential certain records containing information collected, used or maintained for purposes not listed elsewhere in this section:
29	Social security numbers	The following statutes designate social security numbers as confidential information:
30	Domestic violence and safety	The following statutes designate certain information as confidential based on domestic violence or other safety purposes:

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**Public Records Exceptions Database for online search function**

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
1	402	3	Title 1, section 402, subsection 3, paragraph H, relating to medical records and reports of municipal ambulance and rescue units and other emergency medical service units	10B
1	402	3	Title 1, section 402, subsection 3, paragraph M, relating to architecture, design, access authentication, encryption and security of information technology infrastructure and systems	12B
1	402	3	Title 1, section 402, subsection 3, paragraph B, relating to records within scope of privilege against discovery or use as evidence	13
1	402	3	Title 1, section 402, subsection 3, paragraph H, relating to medical records and reports of municipal ambulance and rescue units and other emergency medical service units	13
1	402	3-A	Title 1, section 402, subsection 3-A, relating to criminal justice agency records of the identity, conviction data or current address or location of prisoner, adult probationer or parolee	14
1	402	3	Title 1, section 402, subsection 3, paragraph I, relating to juvenile records and reports of municipal fire departments regarding juvenile fire setters	14
1	402	3	Title 1, section 402, subsection 3, paragraph M, relating to architecture, design, access authentication, encryption and security of information technology infrastructure and systems	14
1	402	3	Title 1, section 402, subsection 3, paragraph D, relating to collective bargaining materials developed or held by a public employer	15
1	402	3	Title 1, section 402, subsection 3, paragraph T, relating to fisheries, aquaculture and seafood processing and depuration plant research	17A
1	402	3	Title 1, section 402, subsection 3, paragraph T, relating to fisheries, aquaculture and seafood processing and depuration plant research	17B
1	402	3	Title 1, section 402, subsection 3, paragraph H, relating to medical records and reports of municipal ambulance and rescue units and other emergency medical service units	19
1	402	3	Title 1, section 402, subsection 3, paragraph R, relating to Social Security numbers in possession of the Secretary of State	20
1	402	3	Title 1, section 402, subsection 3, paragraph O, relating to personal contact information concerning public employees other than elected officials	23
1	402	3	Title 1, section 402, subsection 3, paragraph K, relating to personally identifying information concerning minors for municipal nonmandatory education or recreation purposes	24
1	402	3	Title 1, section 402, subsection 3, paragraph Q, relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events for Department of Corrections or county jail	25
1	402	3	Title 1, section 402, subsection 3, paragraph L, relating to records describing security plans, security procedures or risk assessments prepared to prevent or prepare for acts of terrorism	28

## Public Records Exceptions Database for online search function

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
1	402	3	Title 1, section 402, subsection 3, paragraph J, relating to working papers of advisory group established by Legislature or Governor	28
1	402	3	Title 1, section 402, subsection 3, paragraph M, relating to architecture, design, access authentication, encryption and security of information technology infrastructure and systems	28
1	402	3	Title 1, section 402, subsection 3, paragraph C, relating legislative working papers	28
1	402	3	Title 1, section 402, subsection 3, paragraph A, relating records designated confidential by statute	28
1	402	3	Title 1, section 402, subsection 3, paragraph P, relating to geographic information regarding recreational trails on private land	28
1	402	3	Title 1, section 402, subsection 3, paragraph E, relating to records of committees of Maine Maritime Academy, Maine Community College System and University of Maine System	28
1	402	3	Title 1, section 402, subsection 3, paragraph F, relating to records of association of political subdivisions	28
1	402	3	Title 1, section 402, subsection 3, paragraph G, relating to records of an association of political subdivisions concerning legislation or insurance	28
1	402	3	Title 1, section 402, subsection 3, paragraph N, relating to Social Security numbers in possession of the Department of Inland Fisheries and Wildlife	29
1	402	3	Title 1, section 402, subsection 3, paragraph R, relating to Social Security numbers in possession of the Secretary of State	29
1	402	3	Title 1, section 402, subsection 3, paragraph E, relating to records of committees of Maine Maritime Academy, Maine Community College System and University of Maine System	5
1	402	3	Title 1, section 402, subsection 3, paragraph K, relating to personally identifying information concerning minors for municipal nonmandatory education or recreation purposes	5
1	538	3	Title 1, section 538, subsection 3, relating to InformE subscriber information	24
1	1013	4	Title 1, section 1013, subsection 4, relating to Commission on Governmental Ethics and Election Practices records other than complaints	12B
1	1013	3-A	Title 1, section 1013, subsection 3-A, relating to complaint alleging a violation of legislative ethics	12B
1	1013	2	Title 1, section 1013, subsection 2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions	12B
3	156		Title 3, section 156, relating to prehearing conference materials for legislative confirmations of gubernatorial appointments	21A
3	159		Title 3, section 159, relating to prehearing conference materials for legislative confirmations of gubernatorial appointments	21A
3	997	1, 3, 4-6	Title 3, section 997, subsections 1, 3, 4, 5 and 6, relating to the Office of Program Evaluation and Government Accountability activities and working papers	12A



Public Records Exceptions Database for online search function

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
3	997	1, 3, 4-6	Title 3, section 997, subsections 1, 3, 4, 5 and 6, relating to the Office of Program Evaluation and Government Accountability activities and working papers	12B
4	17	3	Title 4, section 17, subsection 3, relating to State Court Administrator complaints and investigative files that relate to court and judicial security	12A
4	1701	7	Title 4, section 1701, subsection 7, relating to the Judicial Compensation Commission concerning working papers in the possession of a legislative employee	28
5	90-B	7	Title 5, section 90-B, subsection 7, relating to the Address Confidentiality Program	20
5	90-B	7	Title 5, section 90-B, subsection 7, relating to the Address Confidentiality Program	22
5	90-B	7	Title 5, section 90-B, subsection 7, relating to the Address Confidentiality Program	30
5	95	11	Title 5, section 95, subsection 11, relating to state archives patrons	24
5	200-H		Title 5, section 200-H, relating to the Office of the Attorney General, Maine Elder Death Analysis Review Team	14
5	211	4	Title 5, section 211, subsection 4, relating Unfair Trade Practices information in Attorney General investigation	12B
5	211	4	Title 5, section 211, subsection 4, relating Unfair Trade Practices information in Attorney General investigation	2
5	244-C	2, 3	Title 5, section 244-C, subsections 2 and 3, relating to the Department of Audit activities and working papers	12A
5	244-E	2	Title 5, section 244-E, subsection 2, relating to complaint alleging fraud, waste, inefficiency or abuse through hotline or other referral service established by the State Auditor	12A
5	244-E	1	Title 5, section 244-E, subsection 1, relating to identity of person making complaint alleging fraud, waste, inefficiency or abuse through hotline or other referral service established by the State Auditor	12A
5	791		Title 5, section 791, relating to the code of fair practices and affirmative action concerning confidential business information	28
5	957	5	Title 5, section 957, subsection 5, relating to State Employee Assistance Program client records	10A
5	957	5	Title 5, section 957, subsection 5, relating to State Employee Assistance Program client records	23
5	1541	10-B	Title 5, section 1541, subsection 10-B, relating to internal audit working papers of the State Controller	12A
5	1545		Title 5, section 1545, relating to outstanding unpaid checks issued by the State	12B
5	1743	5	Title 5, section 1743, subsection 5, relating to public improvements construction contracts concerning evaluations of proposals	28
5	1747	3	Title 5, section 1747, subsection 3, relating to public improvement contracts concerning prebid qualifications	28
5	1976	1	Title 5, section 1976, subsection 1, relating to the State Government computer system	28
5	3305-B	1	Title 5, section 3305-B, subsection 1, relating to the Executive Department, State Planning Office concerning energy policy	28
5	3360-D	4	Title 5, section 3360-D, subsection 4, relating to the Victims' Compensation Fund concerning applications and awards	3
5	4572	2	Title 5, section 4572, subsection 2, relating to medical information or history of an applicant in an employment discrimination complaint	16

**Public Records Exceptions Database for online search function**

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
5	4573	2	Title 5, section 4573, subsection 2, relating to records of mental or physical disability	16
5	4612	5	Title 5, section 4612, subsection 5, relating to 3rd-party records	16
5	7070	2	Title 5, section 7070, subsection 2, relating to state employees personal and complaint and disciplinary information	12A
5	7070	2, 4	Title 5, section 7070, subsections 2 and 4, relating to state employees' personal information	23
5	7070	1	Title 5, section 7070, subsection 1, relating to state employee applicants	23
5	13119-A		Title 5, section 13119-A, relating to economic and community development activities of the Department of Economic and Community Development and municipalities	4
5	13120-M	2	Title 5, section 13120-M, subsection 2, relating to Maine Rural Development Authority activities	4
5	15302-A	2	Title 5, section 15302-A, subsection 2, relating to Maine Technology Institute activities	4
5	15322	3	Title 5, section 15322, subsection 3, paragraph B relating to technology centers records concerning applications and proposals	18
5	15322	3	Title 5, section 15322, subsection 3, paragraph B relating to technology centers records concerning applications and proposals	4
5	17057	5	Title 5, section 17057, subsection 3, relating to Maine Public Employees Retirement System employees personal and complaint and disciplinary information	12A
5	17057	5	Title 5, section 17057, subsection 3, relating to Maine Public Employees Retirement System employees personal and complaint and disciplinary information	23
5	17057	2	Title 5, section 17057, subsection 2, relating to Maine Public Employees Retirement System participant designated beneficiary of amount of insurance coverage or group life insurance	23
5	17057	1	Title 5, section 17057, subsection 1, relating to Maine Public Employees Retirement System information	23
5	17057	3	Title 5, section 17057, subsection 3, relating to home contact information of Maine Public Employees Retirement System members, benefit recipients and staff	24
5	17057	4	Title 5, section 17057, subsection 3, relating to Maine Public Employees Retirement System private market investment activity	28
5	19203		Title 5, section 19203, relating to confidentiality of HIV test results	10A
5	19203-D	1, 2	Title 5, section 19203-D, subsections 1 and 2, relating to disclosure of medical records containing information regarding HIV status of a person	10A
5	19507		Title 5, section 19507, relating to information, materials and records of the protection and advocacy agency for persons with disabilities	10A
5	19507		Title 5, section 19507, relating to information, materials and records of the protection and advocacy agency for persons with disabilities	25

Public Records Exceptions Database for online search function

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
5	20047	1	Title 5, section 20047, subsection 1, relating to Department of Health and Human Services, Office of Substance Abuse records concerning patients	10A
7	20	1	Title 7, section 20, subsection 1, relating to information reported to the Department of Agriculture, Food and Rural Resources	1
7	20	1	Title 7, section 20, subsection 1, relating to information reported to the Department of Agriculture, Food and Rural Resources	18
7	306-A	3	Title 7, section 306-A, subsection 3, relating to agricultural development grant program, market research or development activities	1
7	306-A	3	Title 7, section 306-A, subsection 3, relating to agricultural development grant program, market research or development activities	18
7	607	5-A	Title 7, section 607, subsection 5-A, relating to pesticide formula, test results and other information	1
7	607	5-A	Title 7, section 607, subsection 5-A, relating to pesticide formula, test results and other information	7
7	951-A		Title 7, section 951-A, relating to minimum standards for planting potatoes	1
7	951-A		Title 7, section 951-A, relating to minimum standards for planting potatoes	18
7	1052	2-A	Title 7, section 1052, subsection 2-A, relating to total potential acreage of genetically modified crops reported by individual manufacturers	1
7	1052	2	Title 7, section 1052, subsection 2, relating to growers of genetically engineered plants and seeds	1
7	1052	2	Title 7, section 1052, subsection 2, relating to growers of genetically engineered plants and seeds	18
7	1052	2-A	Title 7, section 1052, subsection 2-A, relating to total potential acreage of genetically modified crops reported by individual manufacturers	18
7	2103-A	4	Title 7, section 2103-A, subsection 4, relating to patented and nonreleased potato varieties	1
7	2103-A	4	Title 7, section 2103-A, subsection 4, relating to patented and nonreleased potato varieties	18
7	2226	1	Title 7, section 2226, subsection 1, relating to ginseng license applications, licensees and locations of ginseng plantings	1
7	2226	1	Title 7, section 2226, subsection 1, relating to ginseng license applications, licensees and locations of ginseng plantings	21A
7	2992-A	1	Title 7, section 2992-A, subsection 1, paragraph C, relating to records of the Maine Dairy Promotion Board	18
7	2998-B	1	Title 7, section 2998-B, subsection 1, paragraph C, relating to the records of the Maine Dairy and Nutrition Council	18
7	3909	6	Title 7, section 3909, subsection 6, relating to personally identifying information of persons who report cruelty to animals to the Department of Agriculture, Conservation and Forestry	14
7	4204	10	Title 7, section 4204, subsection 10, relating to nutrient management plans	1
7	4204	10	Title 7, section 4204, subsection 10, relating to nutrient management plans	1
7	4204	10	Title 7, section 4204, subsection 10, relating to nutrient management plans	7

## Public Records Exceptions Database for online search function

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
7	4205	2	Title 7, section 4205, subsection 2, relating to livestock operation permits and nutrient management plans	1
7	4205	2	Title 7, section 4205, subsection 2, relating to livestock operation permits and nutrient management plans	7
8	270-A		Title 8, section 270-A, relating to records and information included in application or materials required for issuance of commercial track license	22
8	300-B	10	Title 8, section 300-B, subsection 10, relating to records of child support obligors provided to collect child support from pari-mutuel winnings	29
8	300-B	10	Title 8, section 300-B, subsection 10, relating to records of child support obligors provided to collect child support from pari-mutuel winnings	8
8	416-A	9	Title 8, section 416-A, subsection 9, relating to the Tri-State Lotto concerning personal records in connection with payment of prize	28
8	416-A	9	Title 8, section 416-A, subsection 9, relating to records concerning payment of Tri-state Lotto prizes	29
8	1006	1	Title 8, section 1006, subsection 1, paragraph E, relating to information or records required by the Gambling Control Board for licensure: creditworthiness, credit rating or financial condition of person or project	22
8	1006	1	Title 8, section 1006, subsection 1, paragraph F, relating to information or records required by the Gambling Control Board for licensure: information from other jurisdictions conditioned on remaining confidential	22
8	1006	1	Title 8, section 1006, subsection 1, paragraph G, relating to information or records required by the Gambling Control Board for licensure: information designated confidential under federal law	22
8	1006	4	Title 8, section 1006, subsection 4, relating to financial, statistical and surveillance information from the central site monitoring system held by the Gambling Control Board and the Dept. of Public Safety	22
8	1006	3	Title 8, section 1006, subsection 3, relating to records and information developed as part of suitability requirement to select operator of central site monitoring system, held by Gambling Control Board and Dept. of Public Safety	22
8	1006	1	Title 8, section 1006, subsection 1, paragraph C, relating to information or records required by the Gambling Control Board for licensure: key executive or gaming employee compensation	22
8	1006	1	Title 8, section 1006, subsection 1, paragraph D, relating to information or records required by the Gambling Control Board for licensure: financial, statistical and surveillance information related to the applicant	22
8	1006	1	Title 8, section 1006, subsection 1, paragraph B, relating to information or records required by the Gambling Control Board for licensure: would be unwarranted invasion of privacy of key executive, gaming employee or another person	22
8	1006	1	Title 8, section 1006, subsection 1, paragraph H, relating to information or records required by the Gambling Control Board for licensure: specific personal information, including Social Security number, of any individual	22
8	1006	1	Title 8, section 1006, subsection 1, paragraph A, relating to information or records required by the Gambling Control Board for licensure: trade secrets and proprietary information	22
8	1006	1	Title 8, section 1006, subsection 1, paragraph H, relating to information or records required by the Gambling Control Board for licensure: specific personal information, including Social Security number, of any individual	29

Public Records Exceptions Database for online search function

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
8	1007	2	Title 8, section 1007, subsection 2, relating to information or records received by the Gambling Control Board or Department of Public Safety from another agency pursuant to agreement	22
8	1052	3	Title 8, section 1052, subsection 3, relating to all complaints and investigative records of the Gambling Control Board during the pendency of an investigation	12B
8	1052		Title 8, section 1052, relating to reports, information or records compiled by the Gambling Control Board and Dept. of Public Safety concerning noncompliance with or violation of the chapter by an applicant, licensee, owner or key executive	22
8	1052	3	Title 8, section 1052, subsection 3, relating to all complaints and investigative records of the Gambling Control Board during the pendency of an investigation	22
9-A	2-304	2	Title 9-A, section 2-304, subsection 2, relating to reports of supervised lenders	9
9-A	6-105-A		Title 9-A, section 6-105-A, last paragraph, relating to information concerning uniform multistate licensing system provided to Consumer Credit Protection by other jurisdictions	9
9-A	6-116		Title 9-A, section 6-116, relating to the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection	9
9-A	6-117		Title 9-A, section 6-117, relating to confidential information shared by agencies from other jurisdictions regulating consumer credit	9
9-B	226	1	Title 9-B, section 226, subsection 1, relating to information derived by or communicated to the Bureau of Financial Institutions	9
9-B	252	3-A	Title 9-B, section 252, subsection 3-A, relating to confidential information shared by agencies from other jurisdictions that regulate financial institutions	9
10	391	2, 3	Title 10, section 391, subsections 2 and 3, relating to the Small Enterprise Growth Program	4
10	945-J		Title 10, section 945-J, relating to the Maine International Trade Center concerning applications and proposals	18
10	945-J		Title 10, section 945-J, relating to the Maine International Trade Center concerning applications and proposals	4
10	975-A	2	Title 10, section 975-A, subsections 2 and 3, relating to the Finance Authority of Maine concerning applications and proposals	18
10	975-A	2	Title 10, section 975-A, subsections 2 and 3, relating to the Finance Authority of Maine concerning applications and proposals	4
10	1079	4	Title 10, section 1079, subsection 4, relating to persons who have family development accounts (FAME)	4
10	1107		Title 10, section 1107, relating to books, records or correspondence summonsed in an antitrust investigation, at the discretion of the person being investigated	12B
10	1109	4	Title 10, section 1109, subsection 4, relating to information reported to the Attorney General concerning acquisition of gasoline and heating oil assets	12B
10	1109	4	Title 10, section 1109, subsection 4, relating to information reported to the Attorney General concerning acquisition of gasoline and heating oil assets	2

**Public Records Exceptions Database for online search function**

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
10	1188-A		Title 10, section 1188-A, relating to settlement conference discussions under the Maine Motor Vehicle Franchise Board	2
10	1495-G	3	Title 10, section 1495-G, subsection 3, relating to payroll processing bonding	2
10	1675		Title 10, section 1675, relating to information received by the Attorney General under the Petroleum Market Share Act	12B
10	1675		Title 10, section 1675, relating to information received by the Attorney General under the Petroleum Market Share Act	18
10	1675		Title 10, section 1675, relating to information received by the Attorney General under the Petroleum Market Share Act	2
10	1677		Title 10, section 1677, relating to the name of retailers or retail outlets in Attorney General report concerning retail outlet concentration under Petroleum Market Share Act	18
10	8002	10	Title 10, section 8002, subsection 10, relating to information provided to the Commissioner of Professional and Financial Regulation	2
10	8002	10	Title 10, section 8002, subsection 10, relating to information provided to the Commissioner of Professional and Financial Regulation	21A
10	8003	2-A	Title 10, section 8003, subsection 2-A, relating to information shared with the Office of Licensing and Registration from other regulatory agencies on condition it remain confidential	21A
10	8003	2-A	Title 10, section 8003, subsection 2-A, relating to information shared with the Office of Licensing and Registration from other regulatory agencies on condition it remain confidential	21B
10	8003-B	1, 2-A	Title 10, section 8003-B, subsections 1 and 2-A, relating to complaints and investigations and client records of boards and commissions within or associated with the Department of Professional and Financial Regulation	12A
10	8003-B	1, 2-A	Title 10, section 8003-B, subsections 1 and 2-A, relating to complaints and investigations and client records of boards and commissions within or associated with the Department of Professional and Financial Regulation	21B
10	9012	1	Title 10, section 9012, subsection 1, relating to information provided to the Department of Professional and Financial Regulation, Manufactured Housing Board	2
10	9012	1	Title 10, section 9012, subsection 1, relating to information provided to the Department of Professional and Financial Regulation, Manufactured Housing Board	21C
10	9202	1-B	Title 10, section 9202, subsection 1-B, relating to records of the Northern Maine Transmission Corporation (same as Title 10, section 975-A)	27
12	544-B	4	Title 12, section 544-B, subsection 4, relating to the location of a species or natural area	7
12	549-B	5	Title 12, section 549-B, subsection 5, relating to investigatory and exploratory work reported under a mining permit	7

**Public Records Exceptions Database for online search function**

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
12	550-B	6	Title 12, section 550-B, subsection 6, relating to water well information collected by the Department of Agriculture, Conservation and Forestry, Bureau of Geology, Natural Areas and Coastal Resources, Geological Survey	7
12	1827	3	Title 12, section 1827, subsection 3, relating to Department of Conservation records concerning camper reservations at state parks	24
12	6072	10	Title 12, section 6072, subsection 10, relating to aquaculture lease seeding and harvesting reports	17B
12	6072	10	Title 12, section 6072, subsection 10, relating to aquaculture lease seeding and harvesting reports	18
12	6072-A	17-A	Title 12, section 6072-A, subsection 17-A, relating to aquaculture leasing research and development	17B
12	6072-A	17-A	Title 12, section 6072-A, subsection 17-A, relating to aquaculture leasing research and development	18
12	6077	4	Title 12, section 6077, subsection 4, relating to the aquaculture monitoring program	17B
12	6077	4	Title 12, section 6077, subsection 4, relating to the aquaculture monitoring program	18
12	6078-A	1	Title 12, section 6078-A, subsection 1, relating to the Aquaculture Monitoring, Research and Development Fund concerning harvest information from leaseholders	17B
12	6078-A	1	Title 12, section 6078-A, subsection 1, relating to the Aquaculture Monitoring, Research and Development Fund concerning harvest information from leaseholders	18
12	6078-A	1	Title 12, section 6078-A, subsection 1, relating to the Aquaculture Monitoring, Research and Development Fund concerning harvest information from leaseholders	4
12	6082		Title 12, section 6082, relating to information obtain from other jurisdiction that is designated confidential by that jurisdiction and must remain confidential	17B
12	6082		Title 12, section 6082, relating to information obtain from other jurisdiction that is designated confidential by that jurisdiction and must remain confidential	18
12	6173	1	Title 12, section 6173, subsection 1, relating to marine resources statistics	17A
12	6173	1	Title 12, section 6173, subsection 1, relating to marine resources statistics	7
12	6173-A	1	Title 12, section 6173-A, subsection 1, relating to information designated as proprietary information submitted under the Maine Working Waterfront Access Pilot Project	17A
12	6173-A	1	Title 12, section 6173-A, subsection 1, relating to information designated as proprietary information submitted under the Maine Working Waterfront Access Pilot Project	4
12	6173-B	1	Title 12, section 6173-A, subsection 1, relating to information designated as proprietary information for research, aquaculture, education, surveillance and inspection, shellfish sanitation and depuration	17A
12	6173-B	1	Title 12, section 6173-A, subsection 1, relating to information designated as proprietary information for research, aquaculture, education, surveillance and inspection, shellfish sanitation and depuration	17B
12	6310	3	Title 12, section 6310, subsection 3, relating to medical information pertaining to lobster and crab fishing license denials	21A

## Public Records Exceptions Database for online search function

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
12	6455	1-B	Title 12, section 6455, subsection 1-B, relating to market studies and promotional plans of the Lobster Promotion Council	17A
12	6455	1-B	Title 12, section 6455, subsection 1-B, relating to market studies and promotional plans of the Lobster Promotion Council	18
12	6749-S	1	Title 12, section 6749-S, subsection 1, relating to log book for sea urchin buyers and processors	17-A
12	8005	1	Title 12, section 8005, subsection 1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	18
12	8005	2	Title 12, section 8005, subsection 2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs	18
12	8005	4	Title 12, section 8005, subsection 4, relating to forest management information designated confidential by agency furnishing the information	18
12	8005	1	Title 12, section 8005, subsection 1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	29
12	8005	2	Title 12, section 8005, subsection 2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs	29
12	8005	4	Title 12, section 8005, subsection 4, relating to forest management information designated confidential by agency furnishing the information	7
12	8005	1	Title 12, section 8005, subsection 1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	7
12	8424	2	Title 12, section 8424, subsection 2, relating to cutting plans under the Maine Spruce Budworm Management Act	18
12	8424	2	Title 12, section 8424, subsection 2, relating to cutting plans under the Maine Spruce Budworm Management Act	7
12	8611	1	Title 12, section 8611, subsection 1, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	18
12	8611	1	Title 12, section 8611, subsection 1, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	24
12	8611	1	Title 12, section 8611, subsection 1, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	7
12	8869	13	Title 12, section 8869, subsection 13, relating to forest policy experimental areas	18
12	8883-B	8	Title 12, section 8883-B, subsection 8, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	18
12	8883-B	8	Title 12, section 8883-B, subsection 8, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	7



Public Records Exceptions Database for online search function

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
12	8884	3	Title 12, section 8884, subsection 3, relating to landowner and wood processor reporting requirements concerning information about volume, species, product types, county of origin and personally identifying information of forest product suppliers	18
12	12551-A	10	Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch	22
12	12551-A	10	Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch	28
12	12907	8	Title 12, section 12907, subsection 8, relating to whitewater outfitters and affiliated outfitter records	21A
12	12954	4	Title 12, section 12954, subsection 4, relating to records of purchasers and sellers maintained by hide dealers	14
13	1957	8	Title 13, section 1957, subsection 8, relating to the members of associations of agricultural producers and purchasing information	1
13	1957	8	Title 13, section 1957, subsection 8, relating to the members of associations of agricultural producers and purchasing information	18
14	164-A	3	Title 14, section 164-A, subsection 3, relating to identity or treatment of participants in the Maine Assistance Program for Lawyers	10A
14	1254-A	1	Title 14, section 1254-A, subsection 1, relating to juror questionnaire recipients and names drawn	13
14	1254-A	8	Title 14, section 1254-A, subsection 8, relating to names of jury pool during the period of service of jurors and prospective jurors	13
14	1254-A	7	Title 14, section 1254-A, subsection 7, relating to names of prospective jurors and contents of juror qualification forms	13
14	1254-B	2	Title 14, section 1254-B, subsection 2, relating to juror selection records and information	13
15	101-C	3	Title 15, section 101-C, subsection 3, relating to records necessary to conduct an evaluation concerning mental responsibility for criminal conduct	14
15	393	4-A	Title 15, section 393, subsection 4-A, paragraph G, relating to information concerning application to possess firearm by person who was involuntarily committed	10A
15	393	4-A	Title 15, section 393, subsection 4-A, paragraph G, relating to information concerning application to possess firearm by person who was involuntarily committed	14
15	3009	2	Title 15, section 3009, subsection 2, relating to the reintegration of a juvenile into school	14
15	3009	2	Title 15, section 3009, subsection 2, relating to the reintegration of a juvenile into school	5
15	3301	6-A	Title 15, section 3301, subsection 6-A, relating to information about a juvenile against whom a juvenile petition has not been filed	14
15	3308	7	Title 15, section 3308, subsection 7, relating to juvenile proceedings	13
15	3308	7	Title 15, section 3308, subsection 7, relating to juvenile proceedings	14
15	3308	7	Title 15, section 3308, subsection 7, relating to juvenile proceedings	5

## Public Records Exceptions Database for online search function

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
16	613		Title 16, section 613, relating to dissemination of nonconviction data (Criminal History Record Information Act)	14
16	703	2	Title 16, section 703, subsection 2, relating to confidential criminal history record information (Criminal History Record Information Act)	13
16	703	2	Title 16, section 703, subsection 2, relating to confidential criminal history record information (Criminal History Record Information Act)	14
16	804		Title 16, section 804, relating to reports or records that contain intelligence and investigative information (Intelligence and Investigative Record Information Act)	13
16	804		Title 16, section 804, relating to reports or records that contain intelligence and investigative information (Intelligence and Investigative Record Information Act)	14
17-A	1176	5	Title 17-A, section 1176, subsection 5, relating to request by crime victim for notice of release of defendant	14
17-A	1176	1	Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims	14
17-A	1176	5	Title 17-A, section 1176, subsection 5, relating to request by crime victim for notice of release of defendant	30
17-A	1176	1	Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims	30
18-A	2-901		Title 18-A, section 2-901, relating to wills deposited with the Probate Court	13
18-A	9-304	(a-1)	Title 18-A, section 9-304, subsection (a-1), relating to background checks for adoptions ordered by the Probate Court	13
18-A	9-304	(a-2)	Title 18-A, section 9-304, subsection (a-2), relating to background checks initiated by the Department of Health and Human Services	13
18-A	9-304	(a-1)	Title 18-A, section 9-304, subsection (a-1), relating to background checks for adoptions ordered by the Probate Court	8
18-A	9-304	(a-2)	Title 18-A, section 9-304, subsection (a-2), relating to background checks initiated by the Department of Health and Human Services	8
18-A	9-308	(c)	Title 18-A, section 9-308, subsection (c), relating to final adoption decrees	13
18-A	9-308	(c)	Title 18-A, section 9-308, subsection (c), relating to final adoption decrees	8
18-A	9-310		Title 18-A, section 9-310, relating to adoption records concerning adoptions decreed on or after August 8, 1953	8
18-A	9-310		Title 18-A, section 9-310, relating to adoption records concerning adoptions decreed on or after August 8, 1953	13
19-A	651	2	Title 19-A, section 651, subsection 2, relating to social security numbers on marriage applications	8
19-A	651	2	Title 19-A, section 651, subsection 2, relating to social security numbers on marriage applications	29
19-A	908		Title 19-A, section 908, relating to social security numbers on divorce records	8
19-A	908		Title 19-A, section 908, relating to social security numbers on divorce records	29
19-A	908		Title 19-A, section 908, relating to social security numbers on divorce records	8
19-A	1565	4	Title 19-A, section 1565, subsection 4, relating to Social Security numbers in paternity actions	8
19-A	1565	4	Title 19-A, section 1565, subsection 4, relating to Social Security numbers in paternity actions	29
19-A	1565	4	Title 19-A, section 1565, subsection 4, relating to Social Security numbers in paternity actions	8

**Public Records Exceptions Database for online search function**

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
19-A	1653	6	Title 19-A, section 1653, subsection 6, relating to addresses of children and victims in cases concerning parental rights and responsibilities involving domestic abuse	30
19-A	1653	6	Title 19-A, section 1653, subsection 6, relating to addresses of children and victims in cases concerning parental rights and responsibilities involving domestic abuse	8
19-A	1753	5	Title 19-A, section 1753, subsection 5, relating to identifying information under the Uniform Child Custody Jurisdiction and Enforcement Act if health, safety or liberty jeopardized	30
19-A	1753	5	Title 19-A, section 1753, subsection 5, relating to identifying information under the Uniform Child Custody Jurisdiction and Enforcement Act if health, safety or liberty jeopardized	8
19-A	2006	10	Title 19-A, section 2006, subsection 10, relating to social security numbers in child support actions	29
19-A	2006	10	Title 19-A, section 2006, subsection 10, relating to social security numbers in child support actions	8
19-A	2152	11	Title 19-A, section 2152, subsection 11, relating to information collected in child support enforcement and medical support recoupment	29
19-A	2152	11	Title 19-A, section 2152, subsection 11, relating to information collected in child support enforcement and medical support recoupment	8
19-A	2158	6	Title 19-A, section 2158, subsection 6, relating to records of child support obligors provided to wireless service provider	29
19-A	2158	6	Title 19-A, section 2158, subsection 6, relating to records of child support obligors provided to wireless service provider	8
19-A	3012		Title 19-A, section 3012, relating to specific identifying information in child support enforcement	30
19-A	3012		Title 19-A, section 3012, relating to specific identifying information in child support enforcement	8
19-A	4008		Title 19-A, section 4008, relating to identifying information concerning protection from abuse actions if health, safety or liberty would be jeopardized	30
19-A	4008		Title 19-A, section 4008, relating to identifying information concerning protection from abuse actions if health, safety or liberty would be jeopardized	8
19-A	4013	4	Title 19-A, section 4013, subsection 4, relating to the Domestic Abuse Homicide Review Panel	14
19-A	4013	4	Title 19-A, section 4013, subsection 4, relating to the Domestic Abuse Homicide Review Panel	30
20-A	4008	2	Title 20-A, section 4008, subsection 2, relating to school counselor or social worker activities	25
20-A	4008	2	Title 20-A, section 4008, subsection 2, relating to school counselor or social worker activities	5
20-A	5001-A	3	Title 20-A, section 5001-A, subsection 3, relating to homeschooling records	5
20-A	6001	3	Title 20-A, section 6001, subsection 3, relating to education records of students	5
20-A	6101	2	Title 20-A, section 6101, subsection 2, relating to school records concerning employees and applicants	21A
20-A	6103	3	Title 20-A, section 6103, subsection 3, relating to school records concerning criminal history record checks of employees and applicants	14

**Public Records Exceptions Database for online search function**

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
20-A	6103	3	Title 20-A, section 6103, subsection 3, relating to school records concerning criminal history record checks of employees and applicants	21A
20-A	6205		Title 20-A, section 6205, relating to standards and assessments of student performance	5
20-A	6357	1	Title 20-A, section 6357, subsection 1, relating to student immunization records	10A
20-A	6357	1	Title 20-A, section 6357, subsection 1, relating to student immunization records	5
20-A	7451	2	Title 20-A, section 7451, subsection 2, relating to records of the Baxter Compensation Authority	3
20-A	10206	2	Title 20-A, section 10206, subsection 2, relating to records of the Energy Testing Laboratory of Maine	28
20-A	11418	1, 2	Title 20-A, section 11418, subsections 1 and 2, relating to Maine Educational Loan Authority applicants and recipients	5
20-A	11444	1	Title 20-A, section 11444, subsection 1, relating to the Student Financial Aid Supplemental Loan Program applicants and recipients	5
20-A	11494	1	Title 20-A, section 11494, subsection 1, relating to the Higher Education Loan Purchase Program borrowers	5
20-A	13004	2	Title 20-A, section 13004, subsection 2, relating to certification and registration of teachers	21A
20-A	13004	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel	21B
20-A	13015	5	Title 20-A, section 13015, subsection 5, relating to teacher action plans	21A
20-A	13034		Title 20-A, section 13034, relating to teacher qualifying exam scores	21A
21-A	1	21	Title 21-A, section 1, subsection 21, relating to portion of incoming voting list relating to Address Confidentiality Program participants	30
21-A	1	21	Title 21-A, section 1, subsection 21, relating to portion of incoming voting list relating to Address Confidentiality Program participants	6
21-A	22	3	Title 21-A, section 22, subsection 3, paragraph A, relating to records pertaining to a voter certified as a participant in the Address Confidentiality Program	30
21-A	22	3	Title 21-A, section 22, subsection 3, paragraph B, relating to residence and mailing address of voter when voter submits statement to registrar stating good reason to believe physical safety jeopardized	30
21-A	22	2	Title 21-A, section 22, subsection 2, relating to ballots	6
21-A	22	5, 6	Title 21-A, section 22, subsections 5 and 6, relating to registered voter applications	6
21-A	22	3	Title 21-A, section 22, subsection 3, paragraph A, relating to records pertaining to a voter certified as a participant in the Address Confidentiality Program	6
21-A	22	3	Title 21-A, section 22, subsection 3, paragraph B, relating to residence and mailing address of voter when voter submits statement to registrar stating good reason to believe physical safety jeopardized	6
21-A	122-A		Title 21-A, section 122-A, relating to voter registration records of voters who are participants in the Address Confidentiality Program	30

**Public Records Exceptions Database for online search function**

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
21-A	122-A		Title 21-A, section 122-A, relating to voter registration records of voters who are participants in the Address Confidentiality Program	6
21-A	172		Title 21-A, section 172, relating to a voter registration file kept by the registrar when the voter is a participant in the Address Confidentiality Program	30
21-A	172		Title 21-A, section 172, relating to a voter registration file kept by the registrar when the voter is a participant in the Address Confidentiality Program	6
21-A	196-A		Title 21-A, section 196-A, relating to information contained electronically in the central voter registration system	6
21-A	624	1	Title 21-A, section 624, subsection 1, relating to that portion of voter list relating to Address Confidentiality Program participants	30
21-A	624	1	Title 21-A, section 624, subsection 1, relating to that portion of voter list relating to Address Confidentiality Program participants	6
21-A	737-A	7	Title 21-A, section 737-A, subsection 7, relating to disputed ballots	6
21-A	753-B	6	Title 21-A, section 753-B, subsection 6, paragraph A, relating to the portion of the absentee voter list relating to voters who are Address Confidentiality Program participants	30
21-A	753-B	6	Title 21-A, section 753-B, subsection 6, paragraph A, relating to the portion of the absentee voter list relating to voters who are Address Confidentiality Program participants	6
21-A	764		Title 21-A, section 764, relating to applications and envelopes for absentee ballots	6
21-A	1003	3-A	Title 21-A, section 1003, subsection 3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices	12B
21-A	1003	3-A	Title 21-A, section 1003, subsection 3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices	14
21-A	1003	3-A	Title 21-A, section 1003, subsection 3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices	6
21-A	1125	2-B	Title 21-A, section 1125, subsection 2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet	6
21-A	1125	3	Title 21-A, section 1125, subsection 3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet	6
22	17	7	Title 22, section 17, subsection 7, relating to records of child support obligors	29
22	17	7	Title 22, section 17, subsection 7, relating to records of child support obligors	8
22	42	5	Title 22, section 42, subsection 5, relating to Department of Health and Human Services records that contain personally identifying medical information that are created or obtained in connection with public health activities or programs	10A
22	261	7	Title 22, section 261, subsection 7, relating to records created or maintained by the Maternal and Infant Death Review Panel	14

**Public Records Exceptions Database for online search function**

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
22	666	3	Title 22, section 666, subsection 3, relating to the State Nuclear Safety Program concerning the identity of a person providing information about unsafe activities, conduct or operation or license violation	27
22	811	6	Title 22, section 811, subsection 6, relating to hearings regarding testing or admission concerning communicable diseases	10A
22	811	6	Title 22, section 811, subsection 6, relating to hearings regarding testing or admission concerning communicable diseases	13
22	815	1	Title 22, section 815, subsection 1, relating to notifiable diseases or conditions	10A
22	824		Title 22, section 824, relating to persons having or suspected of having notifiable diseases or conditions	10A
22	832	3	Title 22, section 832, subsection 3, relating to hearings for consent to test for the source of exposure for a blood-borne pathogen	10A
22	832	3	Title 22, section 832, subsection 3, relating to hearings for consent to test for the source of exposure for a blood-borne pathogen	13
22	1494		Title 22, section 1494, relating to occupational disease reporting	10A
22	1596		Title 22, section 1596, relating to abortion and miscarriage reporting	10A
22	1597-A	6	Title 22, section 1597-A, subsection 6, relating to a petition for a court order consenting to an abortion for a minor	10A
22	1597-A	6	Title 22, section 1597-A, subsection 6, relating to a petition for a court order consenting to an abortion for a minor	13
22	1711-C		Title 22, section 1711-C, relating to hospital records concerning health care information pertaining to an individual	10A
22	1711-C		Title 22, section 1711-C, relating to hospital records concerning health care information pertaining to an individual	10B
22	1828		Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities	10A
22	1828		Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities	10B
22	1828		Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities	19
22	1828		Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities	21A
22	1848	1	Title 22, 1848, subsection 1, relating to documents and testimony given to Attorney General under Hospital and Health Care Provider Cooperation Act	10B
22	1848	1	Title 22, 1848, subsection 1, relating to documents and testimony given to Attorney General under Hospital and Health Care Provider Cooperation Act	19
22	2706-A	6	Title 22, section 2706-A, subsection 6, relating to adoption contact files	8

**Public Records Exceptions Database for online search function**

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
22	3022	8, 13, 14	Title 22, section 3022, subsections 8, 13 and 14, relating to medical examiner information	14
22	3034	2	Title 22, section 3034, subsection 2, relating to the Chief Medical Examiner missing persons files	14
22	3188	4	Title 22, section 3188, subsection 4, relating to the Maine Managed Care Insurance Plan Demonstration for uninsured individuals	10A
22	3188	4	Title 22, section 3188, subsection 4, relating to the Maine Managed Care Insurance Plan Demonstration for uninsured individuals	11A
22	3188	4	Title 22, section 3188, subsection 4, relating to the Maine Managed Care Insurance Plan Demonstration for uninsured individuals	25
22	3192	13	Title 22, section 3192, subsection 13, relating to Community Health Access Program medical data	10A
22	3192	13	Title 22, section 3192, subsection 13, relating to Community Health Access Program medical data	10B
22	3474	1	Title 22, section 3474, subsection 1, relating to adult protective records	10A
22	3474	1	Title 22, section 3474, subsection 1, relating to adult protective records	25
22	4008	3-A	Title 22, section 4008, subsection 3-A, relating to the child death and serious injury review panel	14
22	4008	1	Title 22, section 4008, subsection 1, relating to child protective records	14
22	4008	3-A	Title 22, section 4008, subsection 3-A, relating to the child death and serious injury review panel	25
22	4008	1	Title 22, section 4008, subsection 1, relating to child protective records	25
22	4018	4	Title 22, section 4018, subsection 4, relating to information about a person delivering a child to a safe haven	8
22	4019	9	Title 22, section 4019, subsection 9, relating to files, reports, records, communications and working papers used or developed in providing services at child advocacy centers	10A
22	4019	9	Title 22, section 4019, subsection 9, relating to files, reports, records, communications and working papers used or developed in providing services at child advocacy centers	30
22	4019	9	Title 22, section 4019, subsection 9, relating to files, reports, records, communications and working papers used or developed in providing services at child advocacy centers	8
22	4087-A	6	Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman	12A
22	4087-A	6	Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman	25
22	4306		Title 22, section 4306, relating to general assistance	25
22	5328	1	Title 22, section 5328, subsection 1, relating to community action agencies records about applicants and providers of services	25
22	7250	1	Title 22, section 7250, subsection 1, relating to the Controlled Substances Prescription Monitoring Program	10A
22	7703	2	Title 22, section 7703, subsection 2, relating to facilities for children and adults	10A
22	7703	2	Title 22, section 7703, subsection 2, relating to facilities for children and adults	10B

**Public Records Exceptions Database for online search function**

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
22	7703	2	Title 22, section 7703, subsection 2, relating to facilities for children and adults	19
22	7703	2	Title 22, section 7703, subsection 2, relating to facilities for children and adults	21B
22	8707		Title 22, section 8707, relating to the Maine Health Data Organization	10A
22	8707		Title 22, section 8707, relating to the Maine Health Data Organization	10B
22	8754		Title 22, section 8754, relating to medical sentinel events and reporting	10B
22	8754		Title 22, section 8754, relating to medical sentinel events and reporting	10C
22	8754		Title 22, section 8754, relating to medical sentinel events and reporting	21B
22	8824	2	Title 22, section 8824, subsection 2, relating to the newborn hearing program	10A
22	8943		Title 22, section 8943, relating to the registry for birth defects	10A
23	63		Title 23, section 63, relating to records of the Department of Transportation and the Maine Turnpike Authority	24
23	63		Title 23, section 63, relating to records of the Department of Transportation and the Maine Turnpike Authority	28
23	1980	2-B	Title 23, section 1980, subsection 2-B, relating to recorded images used to enforce tolls on the Maine Turnpike	12B
23	1980	2-B	Title 23, section 1980, subsection 2-B, relating to recorded images used to enforce tolls on the Maine Turnpike	24
23	1982		Title 23, section 1982, relating to patrons of the Maine Turnpike	24
23	4251	10-A	Title 23, section 8115-A, relating to information submitted to the Department of Transportation relating to a public-private partnership proposal for transportation facilities	24
23	8115-A		Title 23, section 8115-A, relating to the Northern New England Passenger Rail Authority	24
24	2307	3	Title 24, section 2307, subsection 3, relating to accountant work papers concerning nonprofit hospital or medical service organizations	11A
24	2510	1	Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act	10C
24	2510	1	Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act	21B
24	2510-A		Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act	10C
24	2510-A		Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act	21B
24	2604		Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act	10C
24	2604		Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act	11B
24	2604		Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act	21B
24	2853	1-A	Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act	10A
24	2853	1-A	Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act	10C
24	2853	1-A	Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act	11B



Public Records Exceptions Database for online search function

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
24	2853	1-A	Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act	21B
24	2857	1, 2	Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels	10C
24	2857	1, 2	Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels	11B
24	2857	1, 2	Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels	13
24	2857	1, 2	Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels	21B
24-A	216	5	Title 24-A, section 216, subsection 5, relating to documents or information received from NAIC, officials, other jurisdictions or agencies if provided to insurance superintendent with notice that it is confidential	11A
24-A	216	2	Title 24-A, section 216, subsection 2, relating to correspondence and reports of investigation in connection with actual or claimed violations of Title 24-A or prosecution or disciplinary action for those violations	11A
24-A	216	2	Title 24-A, section 216, subsection 2, relating to correspondence and reports of investigation in connection with actual or claimed violations of Title 24-A or prosecution or disciplinary action for those violations	11B
24-A	216	2	Title 24-A, section 216, subsection 2, relating to correspondence and reports of investigation in connection with actual or claimed violations of Title 24-A or prosecution or disciplinary action for those violations	12B
24-A	222	13	Title 24-A, section 222, subsection 13, relating to insurance information filed with the Superintendent of Insurance concerning registration statements, tender offers, requests or invitations for tender offers, options to purchase, agreements	11A
24-A	222	13-A	Title 24-A, section 222, subsection 13-A, relating to holding company information in possession or control of insurance superintendent or NAIC	11A
24-A	225	3	Title 24-A, section 225, subsection 3, relating to insurance examination reports	11A
24-A	226	2	Title 24-A, section 226, subsection 2, relating to insurance examination reports furnished to the Governor, the Attorney General and the Treasurer of State pending final decision	11A
24-A	227		Title 24-A, section 227, relating to information pertaining to individuals in insurance examination reports	11A
24-A	414	5	Title 24-A, section 414, subsection 5, relating to insurance certificate of authority audit work papers	11A
24-A	423-C	4	Title 24-A, section 423-C, subsection 4, relating to insurance reports of material transactions	11A
24-A	796-A		Title 24-A, section 796-A, relating to proprietary business information of special purpose insurance vehicle filed with the Superintendent of Insurance	11A
24-A	962	2	Title 24-A, section 994, subsection 2, relating to protected valuation information related to insurers that use principle-based valuation methods to value reserves	11A
24-A	994	2	Title 24-A, section 994, subsection 2, paragraph A, relating to property and casualty actuarial report, work papers or actuarial opinion summary in possession or control of Bureau of Insurance	11A
24-A	1420-N	6	Title 24-A, section 1420-N, subsection 6, relating to insurers and producers	11A
24-A	1905	1	Title 24-A, section 1905, subsection 1, relating to credit and investigative reports concerning insurance administrator applicants	11A

**Public Records Exceptions Database for online search function**

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
24-A	1911		Title 24-A, section 1911, relating to insurance audits and examinations	11A
24-A	2204	4	Title 24-A, section 2204, subsection 4, relating to insurance investigative information	11B
24-A	2304-A	7	Title 24-A, section 2304-A, subsection 7, relating to insurance rate filings	11A
24-A	2323	4	Title 24-A, section 2323, subsection 4, relating to reports of insurers concerning loss and expense experience	11A
24-A	2384-B	8	Title 24-A, section 2384-B, subsection 8, relating to workers' compensation insurance rating concerning claims and self-insurance	11B
24-A	2384-C	7	Title 24-A, section 2384-C, subsection 7, relating to workers' compensation insurance concerning claims and self-insurance	11B
24-A	2393	2	Title 24-A, section 2393, subsection 2, relating to workers' compensation pool self-insurance and surcharges	11A
24-A	2393	2	Title 24-A, section 2393, subsection 2, relating to workers compensation pool self-insurance and surcharges	15
24-A	2412	8	Title 24-A, section 2412, subsection 8, relating to insurance contracts and forms	11A
24-A	2483	6	Title 24-A, section 2483, subsection 6, relating to the Interstate Insurance Product Regulation Commission work papers and individuals privacy and proprietary information of insurers	11A
24-A	4204	2-A	Title 24-A, section 4204, subsection 2-A, relating to quality assurance programs of health maintenance organizations	10C
24-A	4204	2-A	Title 24-A, section 4204, subsection 2-A, relating to quality assurance programs of health maintenance organizations	11B
24-A	4224	2	Title 24-A, section 4224, subsection 2, relating to quality assurance committees of health maintenance organizations	10C
24-A	4224	2	Title 24-A, section 4224, subsection 2, relating to quality assurance committees of health maintenance organizations	11B
24-A	4233	2	Title 24-A, section 4233, subsection 2, relating to health maintenance organizations work papers filed with the Superintendent of Insurance	11A
24-A	4245	1	Title 24-A, section 4245, subsection 1, relating to health maintenance organizations accreditation survey report	11A
24-A	4312	7-A	Title 24-A, section 4312, subsection 7-A, relating to records of the Bureau of Insurance or an independent review organization relating to external review request or external review proceeding	11A
24-A	4312	7-A	Title 24-A, section 4312, subsection 7-A, relating to records of the Bureau of Insurance or an independent review organization relating to external review request or external review proceeding	11B
24-A	4406	3	Title 24-A, section 4406, subsection 3, relating to delinquent insurers	11A
24-A	6708	2	Title 24-A, section 6708, subsection 2, relating to examination of captive insurance companies documents	11A
24-A	6715		Title 24-A, section 6715, relating to captive insurance companies information submitted to the Superintendent of Insurance	11A
24-A	6807	7	Title 24-A, section 6807, subsection 7, paragraph B, relating to viatical settlement licensee examination records	11A
24-A	6807	7	Title 24-A, section 6807, subsection 7, paragraph A, relating to individual identification data of viators	11B

**Public Records Exceptions Database for online search function**

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
24-A	6818	6	Title 24-A, section 6818, subsection 6, relating to fraudulent viatical or life insurance settlements information provided for enforcement	11B
24-A	6907	2	Title 24-A, section 6907, subsection 2, relating to health information obtained by Dirigo Health covered by the federal Health Insurance Portability and Accountability Act of 1996, or c. 24, or T.22 section 1711-C	10A
24-A	6907	3	Title 24-A, section 6907, subsection 3, relating to practitioner-specific quality data collected, used, produced or maintained for measuring the professional performance of a health care practitioner by the Maine Quality Forum	10C
24-A	6907	1	Title 24-A, section 6907, subsection 1, relating to personally identifiable financial information obtained by Dirigo Health	11B
24-A	6907	2	Title 24-A, section 6907, subsection 2, relating to health information obtained by Dirigo Health covered by the federal Health Insurance Portability and Accountability Act of 1996, or c. 24, or T.22 section 1711-C	11B
24-A	6907	3	Title 24-A, section 6907, subsection 3, relating to practitioner-specific quality data collected, used, produced or maintained for measuring the professional performance of a health care practitioner by the Maine Quality Forum	21B
25	1577	1	Title 25, section 1577, subsection 1, relating to the state DNA data base and the state DNA data bank	14
25	2006	2	Title 25, section 2006, subsection 2, relating to concealed handguns permits	22
25	2006	1	Title 25, section 2006, subsection 1, relating to concealed handguns permit applications	22
25	2806	8	Title 25, section 2806, subsection 8, relating to proceedings of the board of trustees of the Maine Criminal Justice Academy concerning complaints of misconduct of law enforcement officers	12A
25	2929	1, 2, 3, 4	Title 25, section 2929, subsections 1, 2, 3 and 4, relating to emergency services communications	10A
25	2929	2	Title 25, section 2929, subsection 2, relating to public safety answering point records	14
25	2929	1, 2, 3, 4	Title 25, section 2929, subsections 1, 2, 3 and 4, relating to emergency services communications	24
25	2929	2	Title 25, section 2929, subsection 2, relating to public safety answering point records	24
25	2957		Title 25, section 2957, relating to Maine Drug Enforcement Agency investigative records	14
26	3		Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor	15
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	15
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	15
26	685	3	Title 26, section 685, subsection 3, relating to substance abuse testing by an employer	10A
26	685	3	Title 26, section 685, subsection 3, relating to substance abuse testing by an employer	15
26	934		Title 26, section 934, relating to a report of the State Board of Arbitration and Conciliation in labor dispute	15
26	934		Title 26, section 934, relating to a report of the State Board of Arbitration and Conciliation in labor dispute	28

**Public Records Exceptions Database for online search function**

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
26	939		Title 26, section 939, relating to information disclosed by a party to the State Board of Arbitration and Conciliation	15
26	939		Title 26, section 939, relating to information disclosed by a party to the State Board of Arbitration and Conciliation	28
26	1082	7	Title 26, section 1082, subsection 7, relating to employers' unemployment compensation records concerning individual information	15
27	86-B	2	Title 27, section 86-B, subsection 2, relating to personal information contained in any record about the individual that is obtained by the Maine State Museum in the course of a historical research project	28
27	86-B	1	Title 27, section 86-B, subsection 1, relating to museum draft research, publications and exhibit materials, including scientific, archaeological and historic findings	28
27	121		Title 27, section 121, relating to library records concerning identity of patrons and use of books and materials	24
27	377		Title 27, section 377, relating to the location of a site for archeological research	28
28-A	755		Title 28-A, section 755, relating to liquor licensees' business and financial records	2
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	20
29-A	251	4	Title 29-A, section 251, subsection 4, relating to an email address submitted as part of the application process for a license or registration under Title 29-A	28
29-A	253		Title 29-A, section 253, relating to motor vehicle records concerning certain nongovernmental vehicles	20
29-A	255	1	Title 29-A, section 255, subsection 1, relating to motor vehicle records when a protection order is in effect	20
29-A	255	1	Title 29-A, section 255, subsection 1, relating to motor vehicle records when a protection order is in effect	30
29-A	257		Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system	20
29-A	517	4	Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles	20
29-A	1258	7	Title 29-A, section 1258, subsection 7, relating to the competency of a person to operate a motor vehicle	10A
29-A	1258	7	Title 29-A, section 1258, subsection 7, relating to the competency of a person to operate a motor vehicle	20
29-A	1401	6	Title 29-A, section 1401, subsection 6, relating to driver's license digital images	20
30-A	503	1-A	Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force	12A
30-A	503	1-A	Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force	23
30-A	503	1	Title 30-A, section 503, subsection 1, relating to county personnel records concerning the use of force	23
30-A	2702	1-A	Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force	12A
30-A	2702	1	Title 30-A, section 2702, subsection 1, relating to municipal personnel records	23
30-A	2702	1-A	Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force	23
30-A	4706	1	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities	28
30-A	5242	13	Title 30-A, section 5242, subsection 13, relating to tax increment financing districts	26

Public Records Exceptions Database for online search function

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
30-A	5242	13	Title 30-A, section 5242, subsection 13, relating to tax increment financing districts	4
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	14
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	21A
32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	10A
32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to information about a person receiving emergency medical services as part of an application for credentialing by Emergency Medical Services Board	10A
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	10A
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	10A
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	21A
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	21A
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	21A
32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	21B
32	1092-A	1, 2	Title 32, section 1092-A, subsections 1 and 2, relating to privileged communications of dentists and dental hygienists patients	21C
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 identifies a patient	10A
32	2109		Title 32, section 2109, relating to personal contact and health information of nurse applicants and licensees	10A
32	2109		Title 32, section 2109, relating to personal contact and health information of nurse applicants and licensees	21A
32	2599		Title 32, section 2599, relating to medical staff reviews and hospital reviews - osteopathic physicians	10C
32	2599		Title 32, section 2599, relating to medical staff reviews and hospital reviews - osteopathic physicians	21B
32	2600-A		Title 32, section 2600-A, relating to personal contact and health information of osteopathic physician applicants and licensees	10A
32	2600-A		Title 32, section 2600-A, relating to personal contact and health information of osteopathic physician applicants and licensees	21A
32	3296		Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees	10C

**Public Records Exceptions Database for online search function**

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
32	3296		Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees	21B
32	3300-A		Title 32, section 3300-A, relating to Board of Licensure in Medicine personal contact and health information about applicants and licensees	10A
32	3300-A		Title 32, section 3300-A, relating to Board of Licensure in Medicine personal contact and health information about applicants and licensees	21A
32	6115	1	Title 32, section 6115, subsection 1, relating to financial information provided to the Superintendent of the Bureau of Consumer Credit Protection, Department of Professional and Financial Regulation concerning money transmitters	2
32	7365	3	Title 32, section 7365, subsection 3, relating to polygraph examination for pre-employment screening or law enforcement investigation	14
32	7365	4	Title 32, section 7365, subsection 4, paragraph B, relating to information of a minor to whom a polygraph has been administered	14
32	7365	3	Title 32, section 7365, subsection 3, relating to polygraph examination for pre-employment screening or law enforcement investigation	21A
32	7365	4	Title 32, section 7365, subsection 4, paragraph A, relating to information concerning polygraph applicant or licensee	21A
32	9418		Title 32, section 9418, relating to private security guards	21A
32	11305	3	Title 32, section 11305, subsection 3, relating to administration of the Maine Commodity Code by the Securities Administrator	2
32	13006		Title 32, section 13006, relating to real estate grievance and professional standards committees hearings	12A
32	13006		Title 32, section 13006, relating to the real estate grievance and professional standards committees hearings	21B
32	14021	7	Title 32, section 14021, subsection 7, relating to criminal history records provide to the Board of Real Estate Appraisers to determine eligibility of applicant for licensure	21A
32	16607	2	Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act	2
33	1971	4	Title 33, section 1971, subsection 4, relating to information derived from unclaimed property reports	28
34-A	1212		Title 34-A, section 1212, relating to personal information of Department of Corrections employees and contractors	23
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	10A
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	14
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	28
34-A	5210	4	Title 34-A, section 5210, subsection 4, relating to the State Parole Board report to the Governor	14

**Public Records Exceptions Database for online search function**

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
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	14
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	14
34-B	1207	1	Title 34-B, section 1207, subsection 1, relating to orders of commitment and medical and administrative records, applications and reports pertaining to any client of Department of Health and Human Services	10A
34-B	1216	3	Title 34-B, section 1216, subsection 3, relating to the Consumer Advisory Board	10A
34-B	1223	10	Title 34-B, section 1223, subsection 10, relating to information about a person with intellectual disabilities or autism accessed by the Maine Developmental Services Oversight and Advisory Board	10A
34-B	1223	10	Title 34-B, section 1223, subsection 10, relating to information about a person with intellectual disabilities or autism accessed by the Maine Developmental Services Oversight and Advisory Board	12A
34-B	1223	10	Title 34-B, section 1223, subsection 10, relating to information about a person with intellectual disabilities or autism accessed by the Maine Developmental Services Oversight and Advisory Board	25
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	10A
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	10C
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	14
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	25
34-B	3864	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	10A
34-B	3864	5	Title 34-B, section 3864, subsection 5, relating to mental health involuntary commitment hearings	10A
34-B	3864	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	13
34-B	3864	5	Title 34-B, section 3864, subsection 5, relating to mental health involuntary commitment hearings	13
34-B	3864	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	14
34-B	5005-A	5	Title 34-B, section 5005-A, subsection 5, relating to records and accounts concerning request for action by advocacy agency for persons with intellectual disabilities or autism	10A
34-B	5005-A	5	Title 34-B, section 5005-A, subsection 5, relating to records and accounts concerning request for action by advocacy agency for persons with intellectual disabilities or autism	12A

## Public Records Exceptions Database for online search function

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
34-B	5005-A	5	Title 34-B, section 5005-A, subsection 5, relating to records and accounts concerning request for action by advocacy agency for persons with intellectual disabilities or autism	25
34-B	5005-A	5	Title 34-B, section 5005-A, subsection 5, relating to records and accounts concerning request for action by advocacy agency for persons with intellectual disabilities or autism	25
34-B	5475	3	Title 34-B, section 5475, subsection 3, relating to intellectual disabilities or autism judicial certification hearings	10A
34-B	5475	3	Title 34-B, section 5475, subsection 3, relating to intellectual disabilities or autism judicial certification hearings	13
34-B	5476	6	Title 34-B, section 5476, subsection 6, relating to intellectual disabilities or autism judicial commitment hearings	10A
34-B	5476	6	Title 34-B, section 5476, subsection 6, relating to intellectual disabilities or autism judicial commitment hearings	13
34-B	5605	15	Title 34-B, section 5605, subsection 15, relating to records of persons receiving intellectual disabilities or autism services	10A
34-B	7014	1	Title 34-B, section 7014, subsection 1, relating to court proceedings concerning sterilization	10A
34-B	7014	1	Title 34-B, section 7014, subsection 1, relating to court proceedings concerning sterilization	13
35-A	114	1	Title 35-A, section 114, subsection 1, relating to utility personnel records, not open to the Public Utilities Commission	15
35-A	114	1	Title 35-A, section 114, subsection 1, relating to utility personnel records, not open to the Public Utilities Commission	27
35-A	704	5	Title 35-A, section 704, subsection 5, relating to utility records concerning customer information, Consumer Assistance Division, Public Utilities Commission	27
35-A	1311-A		Title 35-A, section 1311-A, relating to Public Utilities Commission	27
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	27
35-A	1316-A		Title 35-A, section 1316-A, relating to Public Utilities Commission communications concerning utility violations	27
35-A	8703	5	Title 35-A, section 8703, subsection 5, relating to telecommunications relay service communications	27
35-A	9207	1	Title 35-A, section 9207, subsection 1, relating to information about communications service providers	2
35-A	9207	1	Title 35-A, section 9207, subsection 1, relating to information about communications service providers	27
36	191		Title 36, section 191, relating to tax returns	26
36	194-B	3	Title 36, section 194-B, subsection 3, relating to criminal history record information received by the State Tax Assessor concerning applicant for employment with Maine Revenue Services	21A
36	194-B	3	Title 36, section 194-B, subsection 3, relating to criminal history record information received by the State Tax Assessor concerning applicant for employment with Maine Revenue Services	23
36	575-A	2	Title 36, section 575-A, subsection 2, relating to forest management harvest plans provided to Bureau of Forestry and information collected for compliance assessment for Tree Growth Tax Law	26
36	575-A	2	Title 36, section 575-A, subsection 2, relating to forest management harvest plans provided to Bureau of Forestry and information collected for compliance assessment for Tree Growth Tax Law	7



Public Records Exceptions Database for online search function

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
36	579		Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans	26
36	579		Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans	7
36	581-G	3	Title 12, section 861, subsection 1, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	18
36	653	1	Title 36, section 653, subsection 1, paragraph G, relating to applications and proof of entitlement for veterans property tax exemption	26
36	706		Title 36, section 706, relating to information labeled as proprietary and confidential information supplied by taxpayer concerning Business Equipment Tax Exemption	26
36	841	2	Title 36, section 841, subsection 2, relating to property tax abatement application information and proceedings	26
36	4315	1-A	Title 36, section 4315, subsection 1-A, relating to the transportation of wild blueberries	1
36	4315	1-A	Title 36, section 4315, subsection 1-A, relating to the transportation of wild blueberries	18
36	4316	4	Title 36, section 4316, subsection 4, relating to wild blueberries audits, Department of Agriculture, Conservation and Forestry	1
36	4316	4	Title 36, section 4316, subsection 4, relating to wild blueberries audits, Department of Agriculture, Conservation and Forestry	18
36	6760		Title 36, section 6760, relating to employment tax increment financing	26
37-B	506		Title 37-B, section 506, relating to Department of Defense, Veterans and Emergency Management, Bureau of Maine Veterans' Services benefits	25
37-B	708	3	Title 37-B, section 708, subsection 3, relating to documents collected or produced by the Homeland Security Advisory Council	28
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	28
38	100-A	1	Title 38, section 100-A, subsection 1, relating to complaints and investigative records concerning vessel pilots	21B
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	7
38	414	6	Title 38, section 414, subsection 6, relating to records and reports obtained by the Board of Environmental Protection in license application procedures	7
38	470-D		Title 38, section 470-D, relating to individual water withdrawal reports	7
38	585-B	6	Title 38, section 585-B, subsection 6, paragraph C, relating to mercury reduction plans for air emission source emitting mercury	7
38	585-C	2	Title 38, section 585-C, subsection 2, relating to the hazardous air pollutant emissions inventory	7
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	7

**Public Records Exceptions Database for online search function**

TITLE	§	Sub-§	DESCRIPTION	CATEGORY
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	7
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	7
38	1776	10	Title 38, section 10, relating to product stewardship plans and reports	7
38	2144	5	Title 38, section 2144, subsection 5, paragraph F, relating to architectural paint stewardship program reports	7
38	2324	3	Title 38, section 2324, subsection 3, relating to information submitted to the Department of Environmental Protection concerning priority toxic chemicals	7
39-A	153	9	Title 39-A, section 153, subsection 9, relating to the Workers Compensation Board audit working papers	12A
39-A	153	5	Title 39-A, section 153, subsection 5, relating to the Workers Compensation Board abuse investigation unit	12B
39-A	153	5	Title 39-A, section 153, subsection 5, relating to the Workers Compensation Board abuse investigation unit	15
39-A	153	9	Title 39-A, section 153, subsection 9, relating to the Workers Compensation Board audit working papers	15
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	11B
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	15
39-A	403	3	Title 39-A, section 403, subsection 15, relating to workers compensation self-insurers proof of solvency and financial ability to pay	11A
39-A	403	15	Title 39-A, section 403, subsection 15, relating to workers compensation self-insurers	15
39-A	403	3	Title 39-A, section 403, subsection 15, relating to workers compensation self-insurers proof of solvency and financial ability to pay	15
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	11A
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	15
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	15



## Maine Revised Statutes

### Title 1: GENERAL PROVISIONS

#### Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

##### §501-A. PUBLICATIONS OF STATE AGENCIES

**1. Definitions.** As used in this section, the term "publications" includes periodicals; newsletters; bulletins; pamphlets; leaflets; directories; bibliographies; statistical reports; brochures; plan drafts; planning documents; reports; special reports; committee and commission minutes; informational handouts; and rules and compilations of rules, regardless of number of pages, number of copies ordered, physical size, publication medium or intended audience inside or outside the agency.

**2. Production and distribution.** The publications of all agencies, the University of Maine System and the Maine Maritime Academy may be printed, bound and distributed, subject to Title 5, sections 43 to 46. The State Purchasing Agent may determine the style in which publications may be printed and bound, with the approval of the Governor.

**3. Annual or biennial reports.** Immediately upon receipt of any annual or biennial report that is not included in the Maine State Government Annual Report provided for in Title 5, sections 43 to 46, the State Purchasing Agent shall deliver at least 55 copies of that annual or biennial report to the State Librarian for exchange and library use. The State Purchasing Agent shall deliver the balance of the number of each such report to the agency that prepared the report.

**4. State agency and legislative committee publications.** Except as provided in subsection 5, any agency or legislative committee issuing publications, including publications in an electronic format, shall deliver 18 copies of the publications in the published format to the State Librarian. These copies must be furnished at the expense of the issuing agency. Publications not furnished upon request will be reproduced at the expense of the issuing agency. The agency or committee preparing a publication may determine the date on which a publication may be released, except as otherwise provided by law.

**5. Electronic publishing.** An agency or committee that electronically publishes information to the public is only required to provide the State Librarian with one printed copy of an electronically published publication. An electronically published publication is not required to be provided to the State Librarian if the publication is also published in print or in an electronic format and is provided to the State Librarian in compliance with subsection 4 or the publication is:

A. Designed to provide the public with current information and is subject to frequent additions and deletions, such as current lists of certified professionals, daily updates of weather conditions or fire hazards; or

B. Designed to promote the agency's services or assist citizens in use of the agency's services, such as job advertisements, application forms, advertising brochures, letters and memos.

**6. Forwarding of requisitions.** The State Purchasing Agent, Central Printing and all other printing operations within State Government shall forward to the State Librarian upon receipt one copy of all requisitions for publications to be printed.

##### SECTION HISTORY

1975, c. 436, §2 (NEW). 1975, c. 746, §1 (AMD). 1985, c. 584, (AMD). 1985, c. 779, §3 (AMD). 1987, c. 402, §A2 (RPR). 1997, c. 299, §1 (RPR).



STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND FOURTEEN

H.P. 838 - L.D. 1194

**Resolve, Directing a Study of Social Media Privacy in School and in the Workplace**

**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 Legislature finds that the fast pace of technological development places increasing pressure on individuals' privacy, especially with regard to social media, e-mail and similar applications; and

**Whereas,** educational institutions often provide electronic devices, cloud computing services that process and store student data and access to technology to students to further the educational missions of the institutions; and

**Whereas,** educational institutions' responsibilities include protecting the privacy, safety and well-being of students and educational personnel, including stopping and preventing bullying; and

**Whereas,** employers often provide electronic devices and access to technology to their employees to further the employers' operations; and

**Whereas,** state and federal laws, rules, regulations and guidance require employers to monitor their employees' activities that may affect or be related to the employers' responsibilities; and

**Whereas,** the Legislature finds that an appropriate balance must be found between the needs of educational institutions and employers and the privacy interests of students and employees; and

**Whereas,** it is necessary that this legislation take effect immediately in order to allow sufficient time for the Joint Standing Committee on Judiciary to conduct its work; 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

77

immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

**Sec. 1. Study. Resolved:** That the Joint Standing Committee on Judiciary of the 126th Legislature, referred to in this resolve as "the committee," shall study the issues involved in social media and personal e-mail privacy with regard to education and employment. The committee shall study:

1. Concerns of employees and applicants for employment about privacy rights associated with social media and personal e-mail accounts;

2. Concerns of employers, both public and private, about social media and personal e-mail accounts of employees and applicants for employment with regard to workplace needs, protection of proprietary information, proposed heightened requirements associated with specific types of employment and compliance with state and federal laws concerning workplace safety and regulation of business-related representations;

3. Concerns of students and prospective students about privacy rights associated with social media, cloud computing services that process and store student data and personal e-mail accounts;

4. Concerns of educational institutions, including public and private schools and postsecondary institutions, about social media, cloud computing services that process and store student data and personal e-mail accounts of students and prospective students with regard to electronic communications devices provided by the institution, compliance with applicable laws and regulatory requirements, including policies and practices addressing bullying and harassment, and in loco parentis responsibilities;

5. Concerns of parents and educators about the processing and storing of student data by online service providers to kindergarten to 12th grade educational institutions in order to build information profiles on students and target online advertisements to students;

6. Laws and experiences in other states concerning social media, cloud computing services that process and store student data and personal e-mail privacy;

7. The application of federal law and regulations concerning social media, cloud computing services that process and store student data and personal e-mail privacy; and

8. How subpoena powers of governmental entities apply to social media, cloud computing services that process and store student data and personal e-mail accounts; and be it further

**Sec. 2. Meetings. Resolved:** That the committee may meet up to 4 times for the purposes of the study; and be it further

**Sec. 3. Staff assistance. Resolved:** That the Legislative Council shall provide necessary staffing services to the committee for the purposes of the study; and be it further

**Sec. 4. Report. Resolved:** That, no later than November 5, 2014, the committee shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the First Regular Session of the 127th Legislature. The committee shall make recommendations concerning limitations on providing log-in information, requiring inclusion on contacts lists, changing privacy settings and otherwise accessing content of social media, cloud computing services that process and store student data and personal e-mail accounts of employees, applicants for employment, students and prospective students, as well as appropriate remedies for violations of restrictions; and be it further

**Sec. 5. Funding. Resolved:** That the committee shall seek funding contributions to fully fund the costs of the study. All funding is subject to approval by the Legislative Council in accordance with its policies. If sufficient contributions to fund the study have not been received within 30 days after the effective date of this resolve, no meetings are authorized and no expenses of any kind may be incurred or reimbursed; and be it further

**Sec. 6. Appropriations and allocations. Resolved:** That the following appropriations and allocations are made.

**LEGISLATURE**

**Study Commissions - Funding 0444**

Initiative: Provides an allocation to authorize the expenditure of contributions received to fund the costs of a study by the Joint Standing Committee on Judiciary.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2013-14</b>	<b>2014-15</b>
Personal Services	\$0	\$3,080
All Other	\$0	\$4,170
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<u>\$0</u>	<u>\$7,250</u>

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





## RIGHT TO KNOW ADVISORY COMMITTEE

### PROPOSED AGENDA

September 17, 2014

9:00 a.m.

Room 438, State House, Augusta

#### **Convene**

1. Welcome and Introductions
2. Overview of types of technology/cloud computing data storage/ social media; how can technology, cloud computing and social media be used by government entities?  
*Representatives of Google and Microsoft (invited, but not confirmed)*  
*Greg McNeal, Chief Technology Officer, Office of Information Technology*
3. Legislation in other states addressing use of technology by government entities  
*RTKAC staff*
4. Intersection of Freedom of Access Act with new and emerging technology  
*Brenda Kielty, Public Access Ombudsman*
5. Resolve 2013, c. 112: Privacy of social media and email; cloud storage of school data
  - JUD bill, LD 1194, An Act to Protect Social Media Privacy in School and the Workplace;
  - EDU bill, LD 1780, An Act To Prohibit Providers of Cloud Computing Service to Elementary and Secondary Educational Institutions from Processing Student Data for Commercial Purposes
6. Update on activities re: LD 1818, An Act to Facilitate Public Records Requests to State Agencies
7. Agenda and schedule for 3<sup>rd</sup> meeting--- remote participation in public proceedings?
8. Other?

#### **Adjourn**



# Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

## TITLE 1 GENERAL PROVISIONS

### CHAPTER 13 PUBLIC RECORDS AND PROCEEDINGS

#### SUBCHAPTER 1 FREEDOM OF ACCESS

##### **§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.

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.

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

##### **§402. Definitions**

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

**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.

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

A. The Legislature of Maine and its committees and subcommittees;

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;

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;

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

## Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

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;

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

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

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

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.

**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:

A. Records that have been designated confidential by statute;

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;

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 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;

## Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

- (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;
- 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;
- 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 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;
- 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;
- 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;
- I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter;
- 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;
- K. Personally identifying information 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;
- 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,

## Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure;

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;

N. Social security numbers;

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;

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;

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 or members of the State Board of Corrections under conditions that protect the information from further disclosure;

R. Social security numbers in the possession of the Secretary of State;

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

T. Records describing research for the development of processing techniques for fisheries, aquaculture and seafood processing or the design and operation of a depuration plant in the possession of the Department of Marine Resources.

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

A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of furlough and dates of furlough;

# Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of residence and dates of supervision; and

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

**4. Public records of interscholastic athletic organizations.** Any records or minutes of meetings under subsection 2, paragraph G are public records.

**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)**

## **§403. Meetings to be open to public; record of meetings**

**1. Proceedings open to public.** Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.

**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:

- 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.

**4. Maintenance of record.** Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.

**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.

**6. Advisory bodies exempt from record requirements.** Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.

## **§404. Recorded or live broadcasts authorized**

# Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

In order to facilitate the public policy so 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.

## §404-A. Decisions (REPEALED)

## §405. Executive sessions

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions.

**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.

**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.

**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.

**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 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.

**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.

**6. Permitted deliberation.** Deliberations on only the following matters may be conducted during an executive session:

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:

(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;

(2) Any person charged or investigated shall be permitted to be present at an executive session if he so desires;

(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

(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.



# Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

This paragraph does not apply to discussion of a budget or budget proposal;

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:

(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.

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 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;

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.

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;

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

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.

**§405-A. Recorded or live broadcasts authorized  
(REPEALED)**

**§405-B. Appeals  
(REPEALED)**

**§ 405-C. Appeals from actions  
(REPEALED)**

**§406. Public notice**

# Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

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.

## §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 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.

**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.

## §408. Public records available for public inspection and copying (REPEALED)

### § 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; cost 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 5 working days of receiving the request and may request clarification concerning which public

## Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

record or public records are being requested. Within a reasonable time of receiving the request, 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, as well as a cost estimate as provided in subsection 9. 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 receipt of the request for inspection or copying. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

**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

# Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

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.

## §409. Appeals

**1. Records.** Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may appeal the refusal, denial or failure within 30 calendar days of the receipt of the written notice of refusal, denial or failure to any Superior Court within the State as a trial de novo. The agency or official shall file an answer within 14 calendar days. If a court, after a trial de novo, determines such refusal, denial or failure was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

**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.

**3. Proceedings not exclusive.** The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.

**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.

## §410. Violations

# Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

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.

## §411. Right To Know Advisory Committee

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

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

- A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate;
- B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House;
- C. One representative of municipal interests, appointed by the Governor;
- D. One representative of county or regional interests, appointed by the President of the Senate;
- E. One representative of school interests, appointed by the Governor;
- F. One representative of law enforcement interests, appointed by the President of the Senate;
- G. One representative of the interests of State Government, appointed by the Governor;
- H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House;
- I. One representative of newspaper and other press interests, appointed by the President of the Senate;
- J. One representative of newspaper publishers, appointed by the Speaker of the House;
- K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House;
- L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; 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.

## Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

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

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

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

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

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

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

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

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

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

## Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

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

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

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

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

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

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

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

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

### **§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 120<sup>th</sup> 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.

## Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

**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 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 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;
- 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.

### § 413. Public access officer



# Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

**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

### 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

# Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

**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.

**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 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 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.

# Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

**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;
- (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;

# Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

- (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 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.

**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 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;

# Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

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 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.

## TITLE 5

### ADMINISTRATIVE PROCEDURES AND SERVICES

#### 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.

**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;

B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws;

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;

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

## Freedom of Access Act and Public Access Ombudsman Statute

Updated September 2014

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;

E. Make recommendations concerning ways to improve public access to public records and proceedings; and

F. Coordinate with the state agency public access officers the compilation of data through the development of a uniform log to facilitate record keeping and annual reporting of the number of requests for information, the average response time and the costs of processing requests.

**3. Assistance.** The ombudsman may request from any public agency or official such assistance, services and information as will enable the ombudsman to effectively carry out the responsibilities of this section.

**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.

**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;
- B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials;
- C. The number of complaints received concerning respectively public records and public meetings;
- 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;
- E. The number of inquiries and complaints that were resolved;
- F. The total number of written advisory opinions issued and pending; and
- G. Recommendations concerning ways to improve public access to public records and proceedings.

**6. Repeal.** [PL 2009, c. 240, §7 (RP).]

## Maine Freedom of Access Act: Your Right to Know

Home → Frequently Asked Questions

# 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. The 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 (FOIA) applies to the federal government. This federal statute does not apply to state or local government bodies, agencies or officials.

For more general information on the Freedom of Information Act go to:

[FOIA.gov](http://foia.gov) - Freedom of Information Act

### **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 the FOAA. 1 M.R.S. § 409(1)

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. § 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 the FOAA commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. 1 M.R.S. § 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. § 452

### **What is the Public Access Ombudsman?**

The Legislature created a public access ombudsman position to review complaints about compliance with the FOAA and attempt to mediate their resolution, as well as answer calls from the public, media, public agencies and officials 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:

Your Right to Know: Maine's Freedom of Access Act

### **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 the FOAA. 1 M.R.S. § 412

### **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, sheriffs, 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.

### **What is a public access officer?**

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
- 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 of this information but may include additional information.

### **Do training courses need to be 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 (PDF) (This file requires the free Adobe Reader).

## **PUBLIC RECORDS**

### **What is a public record?**

The 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. § 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. The FOAA provides that "a person" has the right to inspect and copy public records. 1 M.R.S. § 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.

### **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. The 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 5 working days of receipt of the request. 1 M.R.S. § 408-A(3) P.L. 2013, ch. 350

### **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. § 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 within a reasonable time of receiving the request. The agency or official shall make a good faith effort to fully respond within the estimated time. 1 M.R.S. § 408-A(3) P.L. 2013, ch. 350

### **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. § 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 or official. 1 M.R.S. § 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. 1 M.R.S. § 413(3)

### **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. § 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. § 408-A Agencies must acknowledge the request within 5 working days of receipt. A written denial within 5 working days of receipt is required if your request is denied in whole or in part. 1 M.R.S. § 408-A(4) P.L. 2013, ch. 350

### **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. § 408-A(1), (2), (8)(E)

### **When may a governmental body refuse to release the records I request?**

The 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. § 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 the 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 the 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. §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 receipt of the request for inspection or copying. 1 M.R.S. § 408-A(4) P.L. 2013, ch. 350

### **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 30 calendar days of your receipt of the written notice of denial, to any Superior Court within the state. 1 M.R.S. § 409(1) P.L. 2013, ch. 350

### **What can I do if an agency fails to provide a written denial?**

If an agency withholds access to a public record and does not provide a written denial within 5 working days of the receipt of the request, this is considered a failure to allow inspection or copying and is subject to appeal. 1 M.R.S. § 408-A(4) P.L. 2013, ch. 350

### **May a governmental body ask me why I want a certain record?**

The 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. § 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. § 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. § 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. 1 M.R.S. § 408-A(7)(B)

### **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. The FOAA only requires officials and agencies to make public records available for inspection and copying.

### **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 FOAA, it constitutes a "public record". 1 M.R.S. § 402(3)

An agency or official must provide access to electronically stored public records, including e-mails, as a printed document or in the medium it is stored at the discretion of the requestor. If an agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in an e-mail, the agency is not required to provide the records in an electronic format. 1 M.R.S. § 408-A(7)

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. The State of Maine E-mail and Digital Records Retention Guide contains more information on electronic records.

### **Is information contained in a communication between a constituent and an elected official 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. § 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. § 408-A(8)(D) However, agencies can and normally do charge for copying records. Although the 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. § 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. The FOAA authorizes agencies or officials to charge \$15 per hour after the first hour of staff time per request. 1 M.R.S. § 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. § 408-A(8)(C)

The agency or official must prepare an estimate of the time and cost required to complete a request within a reasonable amount of time of receipt of the request. 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 the FOAA. 1 M.R.S. § 408-A(9), (10) P.L. 2013, ch. 350

**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 or 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. § 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 agency or official 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. § 402 (2)



**What does the law require with regard to public proceedings?**

The FOAA requires all public proceedings to be open to the public and any person must be permitted to attend. 1 M.R.S. § 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. § 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. § 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. § 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. § 403

**Can public bodies or agencies hold a closed-door discussion?**

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. § 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 the FOAA, such as the following: 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 the 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. § 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. § 409(2)

### **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 the FOAA. 1 M.R.S. § 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. § 402 The underlying purpose of the 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. § 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. § 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. § 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. § 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 the FOAA.

### **Can I record a public proceeding?**

Yes. The 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 the FOAA. 1 M.R.S. § 404

### **Do members of the public have a right to speak at public meetings under the Freedom of Access Act?**

The 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 a public body or agency required to make a record of a public proceeding?**

Unless otherwise provided by law, a record of each public proceeding for which notice is required must be made within a reasonable period of time. At a minimum, the record must include the date, time and place of the meeting; the presence or absence of each member of the body holding the meeting; and all motions or votes taken, by individual member if there is a roll call.

The FOAA also requires that public bodies and agencies make 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. § 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. § 8002(1); 5 M.R.S. § 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. § 403 , 407; 5 M.R.S. § 9059 (3)

### **Credits**

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MEMORANDUM

TO: Members, Right to Know Advisory Committee
FROM: Peggy Reinsch, Colleen McCarthy Reid, Dan Tartakoff, Legislative Analysts
DATE: September 17, 2014
RE: Background to Communication Technology Platforms and Services

DOCUMENT-CENTRIC COLLABORATION PLATFORMS

- Google Docs, Office 365, Xaitporter, etc.
Each of these platforms offer, among other things, web-based word processing programs where multiple users can create, edit, and comment on documents online in real time.
Documents are private between the creating party and those users who the documents have been shared with.
Edits are automatically saved. Ability to track changes and revisions to a document varies by platform.

CLOUD STORAGE SERVICES

- Google Drive, iCloud, Dropbox, OneDrive, etc.
Each of these providers offer online data storage services. Users of the service upload files to the provider's servers ("the cloud") via an application or other interface. User can download or otherwise access files on the cloud through the same interface.
Files uploaded to a cloud storage server are private; however, files may be uploaded to shared folders or accounts and accessed by multiple users. Multiple users can edit the same shared document, although not simultaneously.

OTHER COMMONLY USED COMMUNICATION TECHNOLOGIES

- Email
Method of digital message exchange between multiple parties.
Emails are private between the sender and the receiver(s).
Multiple parties may collaborate on items via email, either in the body of the email or by attaching documents.
Text Messaging
Method of electronic communication via brief messages between two or more phones, or fixed or portable devices over a phone network. Messages may be sent between multiple parties (group messaging).
Text messages are private between the sender and the receiver(s).
Multiple parties may collaborate on an item via group message. Documents may be exchanged via text message.
Text message retention policy varies from provider to provider, although most providers save message content for less than 1 month. Message content, if available, will generally not be disclosed by a provider absent a subpoena.

➤ Facebook

- Online social networking site where users create a personal profile and may post statuses, photos, links, etc. to share with their “friends.” Facebook also provides a messaging service for users to directly communicate with each other.
- Facebook’s privacy settings allow a user to significantly restrict what portions of their activity or profile are publicly available. Direct messages sent via Facebook are private.
- Multiple Facebook users can communicate and share documents via the messaging system. Documents shared cannot be amended directly via this interface.

➤ Twitter

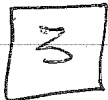
- Online social networking site that allows users to send and read short 140-character messages called “tweets.” A Twitter user may elect to “follow” another Twitter user and thereby receive notification of that user’s tweets.
- Tweets may be public, and thus viewed by both Twitter users and non-users, or can be “protected” so that only approved followers may view and comment on the tweet. Multiple users comment can comment on a tweet or share the tweet with others (called a “re-tweet”).
- Twitter users may also send private direct messages, although it is difficult to share documents on this interface or to engage in group messaging without the aid of outside applications.

➤ Snapchat

- Online photo messaging application where users can take photos, record videos, add text and drawings, and send them to a controlled list of recipients. These sent items are known as “snaps” and users set a time limit for how long recipients can view the snap (generally from 1 to 10 seconds), which are thereafter deleted.
- Although snaps are deleted within seconds of being viewed, users can create permanent screenshots of these snaps using their smartphone, a separate recording device, or a variety of applications designed for this purpose.

➤ Instagram

- Online mobile photo-sharing, video-sharing, and social networking service that enables users to take pictures and videos and share them on a variety of social networking platforms like Facebook, Twitter, etc.
- Photos may be shared publicly or privately on a user’s profile, or, utilizing Instagram Direct, may be sent to a specific user or group of users along with a short caption.



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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 653

- 02/18/2013 Authored by Quam, Simon, Drazkowski, Winkler, Woodard and others  
The bill was read for the first time and referred to the Committee on Government Operations
- 03/20/2013 Adoption of Report: Pass as Amended and Read Second Time
- 05/20/2013 Pursuant to Rule 4.20, re-referred to the Committee on Government Operations
- 03/27/2014 Adoption of Report: Amended and Placed on the General Register  
Read Second Time
- 04/24/2014 Calendar for the Day  
Read Third Time  
By motion, re-referred to the Committee on Rules and Legislative Administration

- 1.1 A bill for an act
- 1.2 relating to open meeting law; providing that certain communications on
- 1.3 social media are not meetings under the law; proposing coding for new law
- 1.4 in Minnesota Statutes, chapter 13D.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. [13D.065] USE OF SOCIAL MEDIA.

1.7 The use of social media by members of a public body does not violate this chapter so

1.8 long as the social media use is limited to exchanges with members of the general public.

1.9 For purposes of this section, e-mail is not considered a type of social media.



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HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 653

02/18/2013 Authored by Quam; Simon; Murphy, M.; Draskowski; Winkler and others  
The bill was read for the first time and referred to the Committee on Government Operations  
03/20/2013 Adoption of Report: Pass as Amended and Read Second Time

- 1.1 A bill for an act  
1.2 relating to open meeting law; providing that certain communications on social  
1.3 media are not meetings under the law; amending Minnesota Statutes 2012,  
1.4 section 13D.01, subdivision 2.
- 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. Minnesota Statutes 2012, section 13D.01, subdivision 2, is amended to read:
- 1.7 Subd. 2. **Exceptions.** This chapter does not apply:
- 1.8 (1) to meetings of the commissioner of corrections;
- 1.9 (2) to a state agency, board, or commission when it is exercising quasi-judicial  
1.10 functions involving disciplinary proceedings; ~~or~~
- 1.11 (3) to participation in social media forums by members of a public body otherwise  
1.12 subject to this chapter, so long as:
- 1.13 (i) the social media forums are open to public participation;
- 1.14 (ii) the social media forums have been first identified by the public body at a public  
1.15 meeting and a list of the identified social media forums is kept on file at the primary  
1.16 offices of the public body;
- 1.17 (iii) participation is limited to discussion only and no decision or vote is made  
1.18 or taken;
- 1.19 (iv) the use of social media forums is not the sole means of deliberation by the  
1.20 public body; and
- 1.21 (v) participation does not take the place of any required public meeting or hearing.
- 1.22 "Social media" means forms of Web-based and mobile technologies for communication,  
1.23 such as Web sites for social networking and microblogging, through which users participate  
1.24 in online communities to share information, ideas, messages, and other content; or



2.1 (4) as otherwise expressly provided by statute.

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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **653**

02/18/2013 Authored by Quam; Simon; Murphy, M.; Draskowski and Winkler  
The bill was read for the first time and referred to the Committee on Government Operations

1.1 A bill for an act  
1.2 relating to open meeting law; providing that certain communications on social  
1.3 media are not meetings under the law; amending Minnesota Statutes 2012,  
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1.8 (1) to meetings of the commissioner of corrections;

1.9 (2) to a state agency, board, or commission when it is exercising quasi-judicial  
1.10 functions involving disciplinary proceedings; ~~or~~

1.11 (3) participation in social media forums by a member of a public body otherwise  
1.12 subject to this chapter, whether or not a quorum of the public body is participating, when  
1.13 participation is intended to augment traditional communication methods. The social  
1.14 media forum must be generally open to public participation. Simultaneous or serial  
1.15 participation by a quorum or more of members of a public body otherwise subject to this  
1.16 chapter in a forum or section of a forum that the members know is not open to general  
1.17 public participation is not exempt under this paragraph. Participation in a social media  
1.18 forum shall not replace any required public meeting or hearing and no vote of any entity  
1.19 otherwise subject to this section shall be taken by means of a social media forum. "Social  
1.20 media" means forms of Web-based and mobile technologies for communication, such as  
1.21 Web sites for social networking and microblogging, through which users participate in  
1.22 online communities to share information, ideas, messages, and other content; or  
1.23 (4) as otherwise expressly provided by statute.



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## MISSISSIPPI ETHICS COMMISSION

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### PUBLIC RECORDS OPINION NO. R-13-023

April 11, 2014

The Mississippi Ethics Commission issued this opinion on the date shown above in accordance with Section 25-61-13(1)(b), Mississippi Code of 1972, as reflected upon its minutes of even date.

#### I. FACTS/PROCEDURAL HISTORY

1.1 On November 25, 2014, Robbie Ward ("Ward") of the Northeast Mississippi Daily Journal requested the City of Tupelo (the "city") provide "digital copies of all text messages Mayor Jason Shelton sent in his role as Mayor from [a cell phone number] between October 23, 2013 and October 26, 2013."

1.2 On December 9, 2013, the city attorney timely responded to Ward and denied the request. The city attorney explained that the mayor maintains a personal cell phone over which the city has no possession or control. The city also stated that the records of the city do not include the individual records of appointed or elected public officials. Finally, the city asserted that text messages containing governmental subject matter but stored on private hardware are not public records.

1.3 Ward filed this public records opinion request claiming that the mayor utilizes his personal cell phone to conduct official city business through text messaging. Additionally, Ward notes that the city has created a cell phone list of elected leaders and other officials. Ward asserts that the city has utilized this list since at least 2002, providing the city "a reasonable length of time to comply with laws related to public and electronic records including text messages."

1.4 In response to the public records opinion request, the city reiterates that the mayor's cell phone is a personal cell phone and that the city does not pay or reimburse the mayor for the cost of the cell phone. The city also recognizes this request presents a question of first impression in Mississippi and requests guidance from the Commission. The response also states the city maintains sixty (60) city-owned cell phones. The city asserts that "[o]f the remaining

400-plus employees [of the city], it can be inferred that most own their own private cell phones and conduct some manner of city business throughout the day. . . ." As it relates to the specific public records request at issue in this matter, the city does not deny that the mayor utilizes his cell phone to conduct city business.

1.5 The city also discusses the difficulty in differentiating between personal text messages and text messages concerning official city business. The city urges the Commission to differentiate text messages from more widely accepted methods of electronic communication such as email. The city points out that accessing text messages is more difficult than other forms of electronic communication. The city also explains that text messaging is widely used for "transitory communications" which are casual and routine messages that are not required to be maintained under guidelines applicable to email messaging. Ultimately, the city posits that treating texts messages as public records will "have a chilling and burdensome effect on the use of a now universally-utilized means of instant and efficient communication of transitory information."

## II. ANALYSIS

2.1 At issue in this matter is whether text messages concerning city business but stored on a personal cell phone belonging to a mayor are subject to disclosure under the Mississippi Public Records Act of 1983 (the "Act"), codified at Section 25-61-1, et seq., Miss. Code of 1972. The Commission is asked to opine on this subject in the abstract because the city has not requested the mayor search his cell phone and provide any text messages responsive to the request.

2.2 The Act provides that public records shall be available for inspection by any person unless otherwise provided by law and places a duty upon public bodies to provide access to such records. Section 25-61-2 and Section 25-61-5, Miss. Code of 1972. The term "public records" is defined by the Act as follows:

"Public records" shall mean all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body.

See Section 25-61-3(b). A public body must provide access to public records upon request of any person, unless a statute or court decision "specifically declares" a public record to be confidential, privileged, or exempt. Section 25-61-11.

2.3 Text messages, similar to other electronic records, constitute documentary materials. The Act applies equally to paper and electronic records and provides that documentary materials are records "regardless of physical form or characteristics." The Legislature has instructed that "[a]s each agency increases its use of and dependence on electronic record keeping, each agency must ensure reasonable access to records electronically maintained, subject to the rules of records retention." See Section 25-61-1 and 25-61-2.

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2.4 Mr. Ward's public records request is inexact and broad in that it does not request a specific text message or even a category of text messages. Instead, the request broadly seeks all text messages sent by the mayor in his role as mayor for a specific time period. The City of Tupelo operates under the mayor-council form of government. The mayor serves as the chief executive officer of the city and is charged with supervising all departments of the municipality, as well as enforcing the charter and ordinances of the city. Notwithstanding the inexact and broad nature of the request, text messages concerning city business that are sent by the mayor in his role as chief executive officer of the city qualify as public records subject to the Act. The city should direct the mayor to forward any responsive documents to the city for review and production.

2.5 The fact that text messages reside on the mayor's personal cell phone is not determinative as to whether text messages must be produced.<sup>1</sup> Rather, it is the purpose or use of the text message that is determinative. Any text message used by a city official "in the conduct, transaction or performance of any business, transaction, work, duty or function of [the city], or required to be maintained by [the city]" is a public record subject to the Act, regardless of where the record is stored. However, purely personal text messages having absolutely no relation to city business are not subject to production under the Act. Documents described by the city as "transitory communications" should be reviewed for production on a case-by-case basis. Any doubt about whether records should be disclosed should be resolved in favor of disclosure. Harrison County Development Commission v. Kinney, 920 So.2d 497, 502 (Miss. App. 2006).

2.6 As the city notes in its response, the Mississippi Department of Archives and History (MDAH) has not developed records retention requirements specifically for text messages as it has for emails. However, MDAH's Local Government Records Office website states that "[e]lectronic [r]ecords are subject to the same retention guidelines as paper records and existing retention schedules apply to all records regardless of format unless noted otherwise in the approved retention period."<sup>2</sup> The city should instruct city officials that all public records, regardless of where they are created or stored, should eventually be stored on city equipment or in city files if those records are subject to an applicable retention schedule. All questions concerning retention requirements should be directed to MDAH.

MISSISSIPPI ETHICS COMMISSION

BY:

Tom Hood, Executive Director and  
Chief Counsel

<sup>1</sup> See Comments to Rule 3, Mississippi Model Public Records Rules, [http://www.ethics.state.ms.us/ethics/ethics.nsf/webpage/A\\_records](http://www.ethics.state.ms.us/ethics/ethics.nsf/webpage/A_records) (March 5, 2010).

<sup>2</sup> See <http://mdah.state.ms.us/recman/electronic.php> (April 11, 2014). MDAH has developed records retention schedules applicable to municipalities, pursuant to Section 39-5-9. See <http://mdah.state.ms.us/recman/schedulemain.php> (April 24, 2012). Additionally, MDAH has also developed specific guidelines for retention of emails pursuant to Section 39-5-9 and the Mississippi Archives and Records Management Law (Sections 25-59-1 through 25-59-31). The email standards cite Section 29-59-3 for the proposition that work-related emails "must be managed the same way that other public records, whether paper or electronic, are managed." See [http://mdah.state.ms.us/recman/email\\_guidelines.pdf](http://mdah.state.ms.us/recman/email_guidelines.pdf) (emphasis added). Section 29-59-3 defines "public records" as "documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other materials regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency or by any appointed or elected official." (emphasis added).



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## SOCIAL MEDIA: *THE RECORDS MANAGEMENT CHALLENGE*

### Purpose

As society shifts from traditional methods of recordkeeping to electronic recordkeeping, the issues surrounding the management of electronic records have become more significant. The use of social media by governments is growing rapidly because it creates new avenues for and dramatically speeds up communication between public offices and their constituents. This guideline provides insight into what social media is and the records management challenges associated with social media use in the public sector.

### Introduction to the Guidelines

Government agencies are increasing their use of social media to provide improved services, enable citizen interaction and increase overall transparency. Social media sites, such as Facebook and Twitter, provide governments the ability to explore new ways of working and shifting communication patterns. Because these sites are available to government offices and citizens with internet access, they add valuable audio, video and interactive capabilities without substantial costs.

These guidelines are intended to assist local government and state agencies in understanding the challenges related to social media implementation and how to mitigate risks associated with social media use. Before embracing these tools, agencies should reflect on their mission and vision and have a clear understanding of how social media can support those core functions.

Developing a Social Media Management Guideline should be considered as an important first step for government agencies that want to engage social media tools. Retention, management, and disposition of content of these sites, to the extent that it constitutes "records" of the agency, must be taken into consideration to ensure compliance with Ohio's public records law.

The Ohio Electronic Records Committee has developed these guidelines as a resource for governments to manage the creation, retention, disposition and preservation of social media records.

### Social Media Definition

Social media are media for social interaction using highly accessible and scalable publishing techniques. Web 2.0 and social media are terms used to define the various activities integrating web technology, social interaction and content creation. These Internet based applications allow for the creation and exchange of user generated content. Through social media, individuals or collaborators create, organize, edit, comment and/or share content online. Social media is designed to support rapid interactive communications. Examples include, but are not limited to the following:



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1. **Web-Publishing** – Creating a Web site and placing on the Web server. A Web site is a collection of HTML pages accessed via the Internet.
  - a. ***Blogs*** – Web sites generally used to post online diaries or serve as a platform to express ones ideas and opinions, a particular topic or set of topics. These sites often allow for interactive commenting and feedback. The term “blog” derives from “web log.”
  - b. ***Microblogging*** – Microblogging services enable users to send/post content similar to traditional blogs, albeit much smaller in size that is typically character limited. Examples of microblogging include Twitter, Tumblr and Yammer. Other social media services include microblogging functionality such as Facebook, Google+ and LinkedIn.
  - c. ***Wikis*** – Web sites that allow multiple users to collaboratively create and edit its content. Levels of access and control over editing rights such as adding and removing material can be controlled.
  - d. ***Mashups*** – Web sites that combine data and functionality from multiple sources to create a new service or a “mashup”. Example: data from Google Maps can be utilized to add location maps in a real estate listings website.
2. **Social Networking** – Communicating informally with other members of a site by posting messages, status updates, photographs, videos, and other materials. Allows multiple users to share content and interact.
  - a. ***Social*** – A free online service for individuals or groups to connect and interact with other people or organizations. Examples include Facebook, MySpace and Google+.
  - b. ***Business/Professional*** – A Web site that enables companies and industry professionals to communicate with colleagues and build business relationships. Typically a base service is provided free of charge with enhanced capabilities for a fee. Examples include LinkedIn, Plaxo and Yammer.
  - c. ***Virtual Worlds*** – A type of online community that takes the form of a computer-based simulated environment through which users create an avatar to interact with one another and create objects. Enables the user to perform operations on a simulated system in such a way that it appears and feels like a real environment and often have their own economy. Virtual worlds are often used for massively multiplayer online games but can be used for research, educational and business purpose. An example of the latter is SecondLife.
3. **File Sharing and Storage** – A public or private sharing of computer data or space in an online network with various levels of access privilege. Users download or upload digital information such as music and movies in a network that allows a number of people to view, write to, copy or print.
  - a. ***Photo Library*** – An online service that allows users to post and view their photos and share them with specified individuals or freely with anyone. The service provider may also supply various ecommerce options for repurposing of the images. Examples of Photo libraries include Flickr, Picasa and Snapfish.
  - b. ***Video Sharing*** – An online service that users can upload, share and view videos. Examples include YouTube and Vimeo.
  - c. ***Document Sharing*** – An online service that allows users to store, share and potentially collaborate on documents. Examples range from Dropbox that is free and allows for storage and sharing to GoogleDocs, which is also free and allows storage sharing and



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rudimentary online collaboration to Microsoft SharePoint, which must be purchased by an organization, but can provide enterprise level online collaboration.

### Social Media as Records

As defined in the Ohio Revised Code (O.R.C.) 149.011(G), the term 'records' includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office." Therefore, an agency must look beyond the electronic social medium and analyze the content to determine if information is a "record" that must be managed and kept in accordance with retention schedules.

If the content demonstrates that the information was both (1) created or received by and (2) documents the office's business activities, the posted information may well be a record. The analysis to determine record or non-record is necessarily fact-specific. More information on how to conduct this analysis can be found in the Ohio Sunshine Laws: An Open Government Resource Manual ([www.OhioAttorneyGeneral.gov/Sunshine](http://www.OhioAttorneyGeneral.gov/Sunshine)). If the agency evaluates the particular social media content and determines that it is a record, the agency must then decide whether that record is the agency's official record or a secondary copy. If the information or social media content is duplicated and kept elsewhere (i.e. Press Release, Meeting Minutes), then the social media version should be considered a secondary copy and therefore not need to be maintained in accordance with the records retention schedule. If it is determined that the information is the agency's official record, the information must be retained in accordance with agency records retention and disposition policy. Agencies must also consider whether each posting constitutes a unique record, or whether a record is composed of a collection of posts, such as an internal account used for a specific project.

When considering the use of a social media tools, agency records officers, legal counsel and information technology professionals should conduct an evaluation of the social media tool to determine what features or components should be included and how it will affect agency records management obligations.

### Records Management Challenges

When considering the use of social media, it is important to understand the records and information management challenges that these tools may present users.

1. **Capture of Content** – Capturing records created by social media is important for a variety of reasons. An agency may need to retain a posted record due to the administrative, fiscal, legal or historical value of the information, to fulfill public records requests, as part of a litigation hold, or to ensure that the entity fulfills its responsibility for disposing of those records in accordance with its retention and disposition policy. Retaining social media records can be difficult, especially those that are frequently updated. Some social media platforms have developed tools





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to assist users with capturing content for retention purposes. It may be necessary to purchase third-party tools or develop in-house applications to electronically capture social media records. Capture strategies must be crafted for particular circumstances and tools. Once captured, agencies must also consider how they will access and search the captured information, which may accumulate quickly. For technical recommendations, consult Information Systems Security Agency (ISSA) or ARMA International.

2. **Ownership and Control of Data** – Most social media tools are managed by third-party companies and are generally free of charge. Yet, governmental agencies are responsible for the management of record information to the extent that it is available on the agency's accounts. One of the main concerns for many agencies is the possibility of termination of service and the loss of information that the agency is obligated to maintain. Generally, social media companies provide a generic "terms of service" agreement for all customers. Internal use policies should clarify who has the authority to enter into terms of service agreements with social media providers. Where possible, agencies, along with legal counsel and information technology professionals, should read and negotiate, where applicable, the "terms of service" agreement to incorporate language for the proper retention and disposition of records in accordance with state and federal laws.
3. **Implementation of Retention Policy** – Many times existing retention schedules can be applied to social media content and an agency should make every effort to map the information value of the content within the social media tools to existing records retention schedules or determine it to be a non-record. However, if the content is determined to have record value and cannot be mapped to an existing schedule, a new retention schedule or schedules will need to be created and approved. An inventory of data and records created across various social media will be helpful in assessing the strengths and weaknesses of one's current retention schedule in managing social media. Records that may be created through the use of social media include user agreements, user input forms, and user identification data. Retention of communication sent and received via social media should be managed in accordance with existing communication or e-mail policies. Retention policies should work in conjunction with policies governing employee use of social media.
4. **Duplication of Content** – Much like other formats, agencies must be careful to manage the duplication of information in social media. Similar content with different naming conventions, employee turnover, and lack of employee access and use controls are just a few of the issues that can lead to duplicate content. The effective management of duplicate content is critical to ensure records are not maintained longer than necessary. When the official record becomes eligible for disposal, duplicate content maintained on social media accounts should also be purged. It is important to keep track of where duplicate content is posted to ensure the efficient disposal of eligible record information.
5. **Management of Non-Record Content** – Agencies may determine that a considerable amount of information transmitted via social media is not a record under state and federal law. This content, however, still needs to be managed and properly disposed of. Otherwise, non-records can cause difficulty in retrieving information, wasted records storage resources, and additional discovery burden in the event of a lawsuit.
6. **Disposition of Content** – Once a government agency creates a presence on a social media site, any third party postings can be captured, forwarded, and used by others. Be cautious about what type of content is posted. Absent an existing records request or litigation hold, public



## GUIDELINES FOR ELECTRONIC RECORDS MANAGEMENT

### OHIO ELECTRONIC RECORDS COMMITTEE

<http://www.ohioerc.org/>

agencies are encouraged to delete social media in accordance with their retention schedule and use policies. The removal of obscene content should be treated as transparently and consistently as possible in accordance with internal policy. With that being said, it is also important to remember that information posted on social media should be considered available indefinitely, even if not through the government agency's site.

7. **Public Records Requests** – When evaluating social media, consideration should be given to features and components such as two-way communication. Be aware that public records requests could be made for social media content provided by both the public agency and the public. Agencies must determine whether comments and responses posted on the social media by the public meet the definition of 'record.' Also be aware that if two-way communication is enabled, it is possible to receive public records requests via social media. Consider who will monitor social media accounts for such requests and how the response will be provided and documented. Finally, while social media can be used both internally and externally, even social media tools that are not public facing, such as internal microblogging services (e.g. Yammer) or internal instant messaging, have the potential to be subject to public records inquiries.
8. **Legal Issues** – Agencies need to ensure that all federal, state and local laws and regulations are followed. Consider issues related to privacy, freedom of information, accessibility and applicable records management and public records laws; especially as it relates to how your agency handles requests for public records, the removal of inappropriate comments or posts, or use of copyrighted materials. It is important to consult your agency's legal representative to examine these issues, but a multidisciplinary approach is valuable. Professionals serving in other areas, such as human resources, accounting, or information technology, may have an intimate knowledge of the legal implications of social media within their areas of expertise.
9. **Preservation** – By law, records must be retained in an organized and accessible manner for the duration of their retention periods (O.R.C. 149.351, O.R.C. 149.43(B)(2)). The preservation of social media content can be challenging. Over time, you may not be able to rely on maintaining it in the third party provider's environment. Some social media sites provide tools to extract information in open formats, while other sites do not. Agencies must consider how frequently record information will need to be captured, the stability of the social media site, and the functionality of the tools used to extract the information. Depending on how your agency uses social media and how frequently, consideration must be given to how you will find captured information. This is particularly important when social media content is subject to a legal hold. Commercial tools may be available to assist agencies in archiving and searching social media content, but many times these tools are not "one-size fits all." It is also important to remember that the social media tools do not consist of just posts, but embedded files, links, photos, videos, etc., which need to be addressed in your agency's preservation strategy.
10. **Employee Use & Access** – Public sector workers must be trained to understand that the social media content they create as a public employee may be a record and subject to disclosure as a public record. Therefore, agencies must develop a policy identifying expected agency uses for social media, restrictions for personal use and consequences for violating the policy. Consider using a disclaimer that specifies that comments posted by employees are personal in nature and do not represent the views of the agency. Control which employees are allowed access to social media sites and limit the types of sites they can access. Request an official business justification in order to access and use pre-approved social media sites.

5

GOVERNOR'S  
VETO  
OVERRIDDEN

CHAPTER

112

MAY 1, 2014

RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND FOURTEEN

H.P. 838 - L.D. 1194

**Resolve, Directing a Study of Social Media Privacy in School and in the  
Workplace**

**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 Legislature finds that the fast pace of technological development places increasing pressure on individuals' privacy, especially with regard to social media, e-mail and similar applications; and

**Whereas,** educational institutions often provide electronic devices, cloud computing services that process and store student data and access to technology to students to further the educational missions of the institutions; and

**Whereas,** educational institutions' responsibilities include protecting the privacy, safety and well-being of students and educational personnel, including stopping and preventing bullying; and

**Whereas,** employers often provide electronic devices and access to technology to their employees to further the employers' operations; and

**Whereas,** state and federal laws, rules, regulations and guidance require employers to monitor their employees' activities that may affect or be related to the employers' responsibilities; and

**Whereas,** the Legislature finds that an appropriate balance must be found between the needs of educational institutions and employers and the privacy interests of students and employees; and

**Whereas,** it is necessary that this legislation take effect immediately in order to allow sufficient time for the Joint Standing Committee on Judiciary to conduct its work; 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

1

immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

**Sec. 1. Study. Resolved:** That the Joint Standing Committee on Judiciary of the 126th Legislature, referred to in this resolve as "the committee," shall study the issues involved in social media and personal e-mail privacy with regard to education and employment. The committee shall study:

1. Concerns of employees and applicants for employment about privacy rights associated with social media and personal e-mail accounts;

2. Concerns of employers, both public and private, about social media and personal e-mail accounts of employees and applicants for employment with regard to workplace needs, protection of proprietary information, proposed heightened requirements associated with specific types of employment and compliance with state and federal laws concerning workplace safety and regulation of business-related representations;

3. Concerns of students and prospective students about privacy rights associated with social media, cloud computing services that process and store student data and personal e-mail accounts;

4. Concerns of educational institutions, including public and private schools and postsecondary institutions, about social media, cloud computing services that process and store student data and personal e-mail accounts of students and prospective students with regard to electronic communications devices provided by the institution, compliance with applicable laws and regulatory requirements, including policies and practices addressing bullying and harassment, and in loco parentis responsibilities;

5. Concerns of parents and educators about the processing and storing of student data by online service providers to kindergarten to 12th grade educational institutions in order to build information profiles on students and target online advertisements to students;

6. Laws and experiences in other states concerning social media, cloud computing services that process and store student data and personal e-mail privacy;

7. The application of federal law and regulations concerning social media, cloud computing services that process and store student data and personal e-mail privacy; and

8. How subpoena powers of governmental entities apply to social media, cloud computing services that process and store student data and personal e-mail accounts; and be it further

**Sec. 2. Meetings. Resolved:** That the committee may meet up to 4 times for the purposes of the study; and be it further

**Sec. 3. Staff assistance. Resolved:** That the Legislative Council shall provide necessary staffing services to the committee for the purposes of the study; and be it further

**Sec. 4. Report. Resolved:** That, no later than November 5, 2014, the committee shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the First Regular Session of the 127th Legislature. The committee shall make recommendations concerning limitations on providing log-in information, requiring inclusion on contacts lists, changing privacy settings and otherwise accessing content of social media, cloud computing services that process and store student data and personal e-mail accounts of employees, applicants for employment, students and prospective students, as well as appropriate remedies for violations of restrictions; and be it further

**Sec. 5. Funding. Resolved:** That the committee shall seek funding contributions to fully fund the costs of the study. All funding is subject to approval by the Legislative Council in accordance with its policies. If sufficient contributions to fund the study have not been received within 30 days after the effective date of this resolve, no meetings are authorized and no expenses of any kind may be incurred or reimbursed; and be it further

**Sec. 6. Appropriations and allocations. Resolved:** That the following appropriations and allocations are made.

**LEGISLATURE**

**Study Commissions - Funding 0444**

Initiative: Provides an allocation to authorize the expenditure of contributions received to fund the costs of a study by the Joint Standing Committee on Judiciary.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2013-14</b>	<b>2014-15</b>
Personal Services	\$0	\$3,080
All Other	\$0	\$4,170
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$7,250</b>

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



# 126th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2014

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Legislative Document

No. 1780

S.P. 707

In Senate, February 18, 2014

**An Act To Prohibit Providers of Cloud Computing Service to  
Elementary and Secondary Educational Institutions from  
Processing Student Data for Commercial Purposes**

(AFTER DEADLINE)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

A handwritten signature in dark ink, appearing to read 'Darek M. Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator KATZ of Kennebec.

Cosponsored by Representative BERRY of Bowdoinham and

Senator: THOMAS of Somerset, Representatives: BECK of Waterville, MacDONALD of Boothbay, NELSON of Falmouth, POULIOT of Augusta.

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

2 Sec. 1. 20-A MRS §6006 is enacted to read:

3 §6006. Student privacy and cloud computing

4 1. Definitions. As used in this section, unless the context otherwise indicates, the  
5 following terms have the following meanings.

6 A. "Cloud computing service" means a service that enables convenient, on-demand  
7 network access to a shared pool of configurable computing resources to provide a  
8 student, teacher or staff member with account-based productivity applications such as  
9 e-mail, document storage and document editing that can be rapidly accessed and  
10 made available with minimal management effort or interaction by a cloud computing  
11 service provider.

12 B. "Cloud computing service provider" means a person, other than an educational  
13 institution, that operates a cloud computing service.

14 C. "Educational institution" means any public, private or charter school or school  
15 administrative unit serving students in kindergarten to grade 12.

16 D. "Person" means an individual, partnership, corporation, association, company or  
17 any other legal entity.

18 E. "Process" means to use, access, manipulate, scan, modify, transform, disclose,  
19 store, transmit, transfer, retain, aggregate or dispose of student data.

20 F. "Student data" means any information or materials in any media or format created  
21 or provided by:

22 (1) A student in the course of the student's use of a cloud computing service; or

23 (2) An employee or agent of an educational institution, if the information or  
24 materials are related to a student.

25 "Student data" includes, but is not limited to, the name, e-mail address, postal  
26 address, telephone number, unique identifier or metadata or any e-mail message or  
27 word processing document of a student.

28 2. Prohibition on the use of student data. A cloud computing service provider  
29 that, with knowledge that student data will be processed, provides a cloud computing  
30 service to an educational institution may not use that cloud computing service to process  
31 student data for any secondary use that benefits the cloud computing service provider or  
32 any 3rd party, including, but not limited to:

33 A. Collecting information relating to a student's online activity;

34 B. Creating or correcting an individual or household profile primarily for the benefit  
35 of the cloud computing service provider or any 3rd party;

36 C. Selling the student data for any commercial purpose; or

37 D. Providing for any other similar commercial for-profit activity, except that a cloud  
38 computing service may process or monitor student data solely to provide the cloud






OFFICE OF POLICY AND LEGAL ANALYSIS

March 5, 2014

To: Members, Joint Standing Committee on Education and Cultural Affairs

From: Phillip D. McCarthy, Ed.D., Senior Legislative Analyst 

Subj: **LD 1780, An Act To Prohibit Providers of Cloud Computing Service to Elementary and Secondary Educational Institutions from Processing Student Data for Commercial Purposes (Sen. Katz)**

**SUMMARY**

This bill prohibits a cloud computing service provider that provides a cloud computing service to an educational institution from using that service to process student data for any secondary use that benefits the provider or any 3<sup>rd</sup> party.

**TESTIMONY**

<b>Proponents</b>	<b>Opponents</b>
<p>⊕ Sen. Katz, sponsor, bill provides a tool to protect privacy during the information technology age; and prohibits mining student data and using it for commercial purposes; some “cloud” service providers do not respect privacy and this is a concern for student information stored ; Fordham Law School survey found discouraging results related to protection of student privacy; proposed an amendment to the bill that includes provisions adopted by other states</p> <p>⊕ Rep. Nelson, co-sponsor, many schools have contracts with cloud internet providers to store and share information within their own school; some share information from cloud to a third-party entities</p> <p>⊕ Rep. Berry, cosponsor, Legislature needs to support our schools and our students by protecting the privacy of student information</p> <p>⊕ Bob Hasson, MSBA and MSSA, support bill since security breaches are possible and information gathered from students by schools should only be used for their educational benefit</p> <p>⊕ Ryan Harkins, Microsoft attorney, support bill as amended; strikes the proper balance between protecting privacy and permitting innovation; benefits of cloud computing should not come at the expense of the privacy of student data; FERPA and COPPA (Children’s Online Privacy Protection Act) only applies to children under 13 years old; 75% of parents disapprove of using student data for advertising or marketing data; 10 legislatures have adopted legislation to protect student privacy; Microsoft; laws can drive bad practices out of industries bill would close gaps in existing laws; prohibits scanning student data; we not only have to protect students’ physical safety, but their privacy</p>	<p>⊕ Ron Barnes, Google, bill is a solution looking for a problem and an opportunity for one of our competitors to go after us and our Google “apps for education”; apps for education does not include ads unless the school decides to turn them on (elementary versus colleges); if turned on, apps for education ads are contextual as compared to interest-based ads; consumer product versus education products; heard lots of conditional (hypothetical) statements, but no examples of how security of data is breached; would like to continue conversation and focus on problems and discuss bad actors; schools have two separate data centers, student data and administration (grades, demographic info, secondary use, etc.); bill uses a number of broad and undefined terms: individual or household profile, 3<sup>rd</sup> parties, etc.; bill expands beyond advertising and not just about student data and concerned is an operational concern as compared to a financial concern</p> <p><b>Neither For Nor Against</b></p> <p>⊕ Jeff Mao, DOE, agree policies need to be developed to protect student data, however this is a complex set of policies and there must be a balance between data protection, using values of cloud computing to improve school services that benefit student learning and school performance</p> <p>⊕ Andy Cashman, Preti Flaherty representing Connections Academy, no problem with underlying policy in the bill, but would like to have virtual charter school to be excluded from the bill</p>

### Proponents (cont'd)

- ⊕ Bradley Schear, attorney for SafeGov.org, schools need responsible privacy solutions for student data stored on cloud; Fordham study found that less than 25% of agreements specify the purposes for disclosure of student data, less than 7% of contracts restrict the sale or marketing of student information by vendors and many agreements allow vendors to change the terms of service without prior notice; 91% of parents are concerned about the privacy of their children's data and 89% of the parents support stronger standards for cloud computing storage
- ⊕ Lois Kilby-Chesley, MEA, supports the development of effective standards to protect privacy of student data
- ⊕ Suzanne Lafreniere, Roman Catholic Diocese of Portland, support bill as students should be free to learn and realize their full potential in an atmosphere free from commercial exploitation
- ⊕ Oami Amarasingham, American Civil Liberties Union of Maine, particularly concerned with the indiscriminate collection and use of students' personal information (e.g., student health and behavioral information and what student buys or eats at school); school contracts with cloud computing providers must include provisions to protect student data

### POTENTIAL ISSUES OR TECHNICAL PROBLEMS:

- ⊕ Does bill address a serious public policy question or is it just a Microsoft versus Google bill?
- ⊕ Language in bill gets right to the core concern of protecting student information and data, but the provisions may need to clarify the definition of "processing student data for any secondary use"
- ⊕ There are three types of ads: placed ads, contextual ad (sports), and interest-based ads (connected to your personal interests)
- ⊕ 27% of cloud contracts with schools are "free", but there may be a cost to student data; bill would require a change in practices for a narrow sliver of providers
- ⊕ Blended learning and online learning; does bill need to be amended to support these learning approaches?
- ⊕ Other states are considering legislation to protect student privacy, including AZ, CA, ID, KY, MD, NY, VA
- ⊕ Should the legislation clarify the definition of "commercial"?
- ⊕ Need to clarify privacy versus "targeted" advertising concerns
- ⊕ DOE longitudinal data system protects individual data; do cloud service providers interfere with this data?
- ⊕ Seek balance between protecting student privacy and enabling service providers, to deal with their solutions
- ⊕ Implications for virtual charter schools, current policies or contracts that provide student privacy protection
- ⊕ Definition of cloud-based computing services is too narrow; more concerned with student performance data; definition of secondary use or secondary product data in the aggregate is too broad
- ⊕ Other issues that are not addressed in the bill, including data retention, conscription, etc.

### COMMITTEE REQUESTS FOR ADDITIONAL INFORMATION:

- ⊕ Rep. Hubbell - For MSMA, how many SAUs use free-internet services versus paying for service providers; and what providers are schools using (e.g., Microsoft, Google, Yahoo, etc.)
- ⊕ Rep. Hubbell - For Microsoft, provide privacy policy and examples of good and poor privacy policies
- ⊕ Rep. Daughtry - For Google, provide privacy policy

- ⊕ Sen. Millett - For Google, review amendment language and provide a written statement on the amendment
- ⊕ Rep. Daughtry - For Google, provide legislation language proposed in other states
- ⊕ Rep. MacDonald - For DOE, which provider does DOE use to provide its cloud-based services
- ⊕ Rep. MacDonald - For DOE, review amendment language and provide perspectives on broad or narrow language
- ⊕ Sen. Johnson - For DOE, inventory of the kind of services in use by Maine schools and providers

**PRELIMINARY FISCAL IMPACT STATEMENT:**

- ⊕ Not yet determined by the Office of Fiscal & Program Review (OFPR)



LINDA M. VALENTINO, District 5, Chair  
 JOHN L. TUTTLE, JR., District 3  
 DAVID C. BURNS, District 29



CHARLES R. PRIEST, Brunswick, Chair  
 KIM MONAGHAN-DERRIG, Cape Elizabeth  
 JENNIFER DECHANT, Bath  
 MATTHEW W. MOONEN, Portland  
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 MICHAEL G. BEAULIEU, Auburn  
 ANITA PEAVEY HASKELL, Milford  
 STACEY K. GUERIN, Glenburn  
 WAYNE T. MITCHELL, Penobscot Nation

MARGARET J. REINSCH, Legislative Analyst  
 SUSAN M. PINETTE, Committee Clerk

State of Maine  
 ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE  
 COMMITTEE ON JUDICIARY

September 5, 2014

TO: Speaker Mark W. Eves, Chair  
 President Justin L. Alford, Vice-Chair  
 Legislative Council

FROM: Senator Linda M. Valentino, Senate Chair  
 Representative Charles R. Priest, House Chair  
 Joint Standing Committee on Judiciary

Re: Freedom of Access requests

During the Second Regular Session, the Judiciary Committee discussed specific recommendations by Public Access Ombudsman Brenda Kielty with the Governor's Senior Policy Advisor Jonathan Nass. Ms. Kielty's recommendations, pursuant to Public Law 2013, chapter 229, section 3, focused on actions that Maine government agencies can take to help members of the public more easily request public records via the Internet.

Mr. Nass committed to the administrative implementation of the recommendations that were included in LD 1818. We are attaching his letter to the Judiciary Committee and our response. Mr. Nass recommended that the Legislature take similar action on its webpages, specifically that the public access officer (required by 1 MRSA §413) for each agency that maintains a website place his or her contact information or a link to his or her contact information on the homepage of the agency's publically accessible webpage. The other actions that the Executive Branch will be taking are standardizing search terms to include Freedom of Access terminology, as well as working with the Ombudsman to develop a process to track public records requests.

We believe that these steps maybe be very useful for the Legislature to take to ensure as much transparency and public accessibility as possible. There may be great benefit in coordinating how the Legislature and the Executive Branch handle public records requests. We respectfully request that the Legislative Council adopt measures to increase the ability of the public to make public records requests online, and that the Council discuss the extent to which the coordination with State agencies is feasible or desirable.

Please feel free to contact us or the Right to Know Advisory Committee if you have any questions.

Thank you.

attachments

c: Suzanne Gresser, Acting Executive Director  
 Nik Rende, Acting Director, Legislative Office of Information Technology  
 Brenda Kielty, Public Access Ombudsman  
 Members, Right to Know Advisory Committee



STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

Paul R. LePage  
GOVERNOR

March 27, 2014

The Honorable Linda Valentino  
The Honorable Charles R. Priest  
Chairs, Joint Standing Committee on the Judiciary  
C/O Legislative Information  
100 State House Station  
Augusta, ME, 04333

RE: LD 1818, *An Act to Facilitate Public Records Requests to State Agencies*

Dear Senator Valentino and Representative Priest:

Thank you for the opportunity to address the Judiciary Committee on LD 1818, *An Act to Facilitate Public Records Requests to State Agencies*. I am writing to memorialize that discussion.

Governor LePage is committed to a transparent government that allows the citizens of Maine to easily access information pertinent to their lives and well-being and that maintains confidence in state government and the democratic process. Therefore, the LePage Administration commits to administratively implement the provisions of LD 1818. These provisions include the actions that follow:

- The public access officer for each state agency that maintains a website will place his or her contact information or a link to his or her contact information on the home page of the agency's publically accessible website;
- The Department of Administrative and Financial Services will develop a standardized link to the Freedom of Access Act pages and develop a keyword match for "FOAA" in state agency website; and
- The Department of Administrative and Financial Services will work with the Public Access Ombudsman to develop and implement a system of consistent tracking and reporting of requests made pursuant to the Freedom of Access Act.

As we also discussed, I hope the Committee will make a similar request of the Legislative Council and the Legislature's own information technology office. If that office requires assistance in that effort, please have them contact my office, and I will facilitate assistance from the Office of Information Technology.

Thank you again for the opportunity to address the Judiciary Committee on this important topic.

Sincerely,

*Jonathan T. Nass*

Jonathan T. Nass, Esq.  
Senior Policy Advisor  
Governor Paul R. LePage



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2

LINDA M. VALENTINO, District 5, Chair  
 JOHN L. TUTTLE, JR., District 3  
 DAVID C. BURNS, District 29



CHARLES R. PRIEST, Brunswick, Chair  
 KIM MONAGHAN-DERRIG, Cape Elizabeth  
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 SUSAN M. PINETTE, Committee Clerk

State of Maine  
 ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE  
 COMMITTEE ON JUDICIARY

April 2, 2014

Jonathan T. Nass, Esq.  
 Senior Policy Advisory  
 Governor Paul R. LePage  
 1 State House Station  
 Augusta, Maine 04333-0001

Re: LD 1818, An Act To Facilitate Public Records Requests to State Agencies

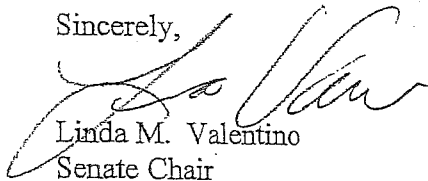
Dear Mr. Nass:

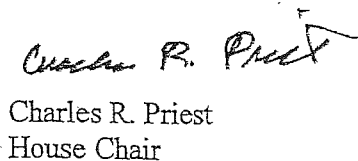
Thank you for engaging in the discussion about the Freedom of Access Act and some of the difficulties that often arise when governments are committed to transparency. We join the Governor in recognizing the importance in ensuring that citizens of Maine can easily access information pertinent to their lives and well-being. We agree that government transparency is essential in maintaining confidence in every level of government as well as the democratic process.

We accept your commitment to the administrative implementation of the recommendations for action in LD 1818 that we agree will help members of the public more easily access records, as well as increase their faith in the efficacy of government. We have confidence in Brenda Kielty's ability to work with OIT and others to develop and implement the tracking system that should help identify bottlenecks, as well as what the State is doing successfully in sharing information. We are very appreciative of your commitment to implement the tracking and reporting system using existing budgeted resources.

We look forward to continued cooperation in improving the transparency of Maine's state government. Thank you for coming forward and getting the process started.

Sincerely,

  
 Linda M. Valentino  
 Senate Chair

  
 Charles R. Priest  
 House Chair



STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

Paul R. LePage  
GOVERNOR

September 16, 2014

The Honorable Linda Valentino  
The Honorable Kimberly Monaghan-Derrig  
Chairs, Right to Know Advisory Committee  
C/O Office of Policy and Legal Analysis  
13 State House Station  
Augusta, ME 04333

RE: LD 1818, *An Act to Facilitate Public Records Requests to State Agencies*

Dear Senator Valentino and Representative Monaghan-Derrig:

I am writing to update you on the administrative implementation of the provisions of LD 1818, *An Act to Facilitate Public Records Requests to State Agencies*. This serves as a follow up to my March 27, 2014 letter to the Judiciary Committee on the same subject.

Since my original letter, the Department of Administrative and Financial Services (DAFS) has had a series of productive meetings resulting in significant progress toward implementation, including a meeting with the Attorney General's Public Access Ombudsman. Out of these meetings, both DAFS and the Public Access Ombudsman have identified the Footprints Incident Tracking System as the tool that will provide consistent tracking and reporting of requests for executive branch agencies. This system is currently used by the Department of Health and Human Services and can be easily adapted for use by other executive branch stakeholders.

The DAFS Communications Team and the Public Access Ombudsman will be meeting with executive branch public access officers and communications directors this fall to discuss the use and implementation of the Footprints system. Due to a significant upgrade of the Footprints software scheduled for later this year, both DAFS and the Public Access Ombudsman have agreed to an implementation date of January 1, 2015.

In addition to this important undertaking, the LePage Administration is committed to more immediate actions. The public access officer for each state agency that maintains a website will place his or her contact information, or a link to his or her contact information, on the home page of the agency's publically accessible website. A Freedom of Access Act (FOAA) graphic has been designed to serve as a standardized link to FOAA pages and will be posted on all executive branch department websites in a standard location. Finally, in an effort to improve the ability of the public to locate information on FOAA, the DAFS' Office of Information Technology has developed coding that will improve the search engine optimization for agency



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websites. This development improves the likelihood that users will locate the information they are seeking regardless of whether they are searching internally or externally of State of Maine websites.

Governor LePage is committed to a transparent government that allows the citizens of Maine to easily access information pertinent to their lives and well-being and maintains confidence in state government and the democratic process.

Thank you for the opportunity to provide you with this information. I hope that you will share it with the members of the Right to Know Advisory Committee.

Sincerely,

A handwritten signature in black ink that reads "Jonathan T. Nass". The signature is written in a cursive style and is enclosed within a hand-drawn oval shape.

Jonathan T. Nass, Esq.  
Senior Policy Advisor  
Governor Paul R. LePage



**Right to Know Advisory Committee**

State Approaches to Abusive, Repetitive, or Unduly Burdensome Public Records Requests

State and Citation	Declaratory or Injunctive Relief Available to Agency	Agency May Withhold Records or Limit Ability to Request Records	Advance Fees Required or Fines Imposed
<p><b>Alaska</b></p> <p>ALASKA STAT. §40.25.100 <i>et seq.</i></p>	<p>No relevant provisions.</p>	<p>No relevant provisions.</p>	<p>If production of records in a calendar month for a single requester exceeds five person-hours, an agency shall require the requester to pay personnel costs of compliance and may require such fees to be paid in advance.</p> <p>ALASKA STAT. §40.25.110.</p>
<p><b>California</b></p> <p>CAL. GOV'T CODE §6250 <i>et seq.</i></p>	<p><i>NOT ENACTED – Legislature considered but did not enact a bill that would allow an agency to petition a court for a protective order against an individual who has sought records “for an improper purpose, which includes, but is not limited to, the harassment of a public agency....”</i></p> <p>A.B. 520, introduced February 2009.</p>	<p>Agency may justify withholding a requested record where it can demonstrate, on the facts of the particular case, that the public interest served by not disclosing the record outweighs the public interest served by disclosure of the record.</p> <p>CAL. GOV'T CODE §6255.</p>	<p>No relevant provisions.</p>
<p><b>Connecticut</b></p> <p>CONN. GEN. STAT. §1-200 <i>et seq.</i></p>	<p>Freedom of Information Commission (FIC) hears appeals of denied requests.</p> <p>Where an individual’s appeal of a denied record request has been denied by the FIC, the agency may seek a court injunction to prevent the individual from filing any further appeals with the FIC that “would perpetrate an injustice or would constitute an abuse of the commission’s administrative process.”</p> <p>CONN. GEN. STAT. §1-241.</p>	<p>No relevant provisions.</p>	<p>The FIC may impose a civil penalty ranging from \$20 to \$1000 for an individual’s appeal of an agency denial of that is made “frivolously, without reasonable grounds and solely for the purpose of harassing the agency.”</p> <p>CONN. GEN. STAT. §1-206.</p>

State and Citation	Declaratory or Injunctive Relief Available to Agency	Agency May Withhold Records or Limit Ability to Request Records	Advance Fees Required or Fines Imposed
<p><b>Georgia</b></p> <p>GA. CODE ANN. §50-18-70 <i>et seq.</i></p>	<p>No relevant provisions.</p>	<p>No relevant provisions.</p>	<p>Agency may require prepayment of fees associated with a records request by an individual who has outstanding unpaid fees from previous requests.</p> <p>GA. CODE ANN. §50-18-71.</p>
<p><b>Illinois</b></p> <p>5 ILL. COMP. STAT. 140/1 <i>et seq.</i></p>	<p>No relevant provisions.</p>	<p>Agency may properly deny an “unduly burdensome” bulk records request where there is no way to narrow the request and “the burden on the public body outweighs the public interest in the information.”</p> <p>Repeated requests by the same individual for the same records that are unchanged or identical to records previously provided or properly denied may be deemed “unduly burdensome” and denied under this provision.</p> <p>5 ILL. COMP. STAT. 140/3.</p>	<p>Agency may require a “recurrent requestor” of records to pay in advance for the costs of compliance.</p> <p>5 ILL. COMP. STAT. 140/3.2.</p>
<p><b>Kansas</b></p> <p>KAN. STAT. ANN. §45-201 <i>et seq.</i></p>	<p>No relevant provisions.</p>	<p>Agency may properly deny a request (1) that places an unreasonable burden on the agency, or (2) if there is reason to believe that repeated requests are intended to disrupt other essential agency functions.</p> <p>A denial under this provision must be sustained by a preponderance of the evidence.</p> <p>KAN. STAT. ANN. §45-218.</p>	<p>No relevant provisions.</p>

State and Citation	Declaratory or Injunctive Relief Available to Agency	Agency May Withhold Records or Limit Ability to Request Records	Advance Fees Required or Fines Imposed
<p><b>Kentucky</b></p> <p>KY. REV. STAT. ANN. §61.800 <i>et seq.</i></p>	<p>No relevant provisions.</p>	<p>Agency may properly deny a request (1) that places an unreasonable burden on the agency, or (2) if there is reason to believe that repeated requests are intended to disrupt other essential agency functions.</p> <p>A denial under this provision must be sustained by clear and convincing evidence.</p> <p>KY. REV. STAT. ANN. §61.872.</p>	<p>No relevant provisions.</p>
<p><b>New Jersey</b></p> <p>N.J. STAT. ANN. §47:1a-1 <i>et seq.</i></p>	<p>No relevant provisions.</p>	<p>If a request for access to a record would substantially disrupt agency operations, the custodian may deny access after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.</p> <p>N.J. STAT. ANN. §47:1a-5.</p>	<p>No relevant provisions.</p>
<p><b>Pennsylvania</b></p> <p>65 PA. CONS. STAT. §67.101 <i>et seq.</i></p>	<p>No relevant provisions.</p>	<p>Agency may properly deny a request if the requester has made repeated requests for the same record and those requests have placed an unreasonable burden on the agency.</p> <p>65 PA. CONS. STAT. §67.506.</p>	<p>No relevant provisions.</p>
<p><b>Tennessee</b></p> <p>TENN. CODE ANN. §10-7-503 <i>et seq.</i></p>	<p>No relevant provisions.</p>	<p>No relevant provisions.</p>	<p>State Office of Open Records Counsel is statutorily authorized to establish a separate fee schedule for frequent and multiple requests for public records.</p> <p>TENN. CODE ANN. §8-4-604.</p>

State and Citation	Declaratory or Injunctive Relief Available to Agency	Agency May Withhold Records or Limit Ability to Request Records	Advance Fees Required or Fines Imposed
<p><b>Utah</b> UTAH CODE ANN. §63G-2-101 <i>et seq.</i></p>	<p>No relevant provisions.</p>	<p>Agency may refuse an individual's request if it unreasonably duplicates prior records requests from that person.  UTAH CODE ANN. §63G-2-201.</p>	<p>Under the schedule, an agency may charge a requester filing more than 4 requests per month for the necessary labor to provide the requested records.  Agency may require individuals with outstanding fees from previous requests to pay future estimated fees in advance.  UTAH CODE ANN. §63G-2-203.</p>
<p><b>Virginia</b></p>	<p><b>NOT ENACTED</b> – <i>Legislature considered but did not enact a bill that would provide an agency the ability to seek injunctive relief from abusive requests via the court system.</i>  <i>H.B. No. 449, introduced January 2010.</i></p>	<p>No relevant provisions.</p>	<p>No relevant provisions.</p>
<p><b>Washington</b></p>	<p><b>NOT ENACTED</b> – <i>Legislature considered but did not enact a bill that would allow an agency to petition a court for an injunction against an individual whose request, among other things, and as based upon a preponderance of the evidence, "was made to harass or intimidate" the agency; "was made in retaliation or to punish the [ ] agency for an action or actions [it] took or proposed to take"; or "creates an undue burden" on the agency.</i>  <i>H.B. 1128, introduced January 2013.</i></p>	<p>No relevant provisions.</p>	<p>No relevant provisions.</p>

### Other Notes

Additional Time for Compliance (New Mexico) – agency may deem a request excessively burdensome or broad and thereby allow itself additional time to comply with the request so long as appropriate notice is provided to the requestor (N.M. STAT. ANN. §14-2-10).

Attorney's Fees and Costs – a number of states, including New Hampshire, North Carolina, Oklahoma, Pennsylvania, and Rhode Island, will allow a court to award attorney's fees and other costs of litigation to a prevailing public agency if an individual's appeal of the agency's denial is determined to be frivolous.

Custodian of Records – two state public records statutes allow the custodian of records of a public agency some discretion in setting rules for complying with requests that might interfere with their duties:

- (1) *West Virginia* (W. VA. CODE §29B-1-3): Custodian of records may make reasonable rules and regulations necessary for the protection of records and to prevent interference with the regular discharge of their duties;
- (2) *Wyoming* (WYO. STAT. ANN §16-4-202): Custodian of records may make rules and regulations with reference to the inspection of the records as is reasonably necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

Unreasonable Burden/Substantial Disruption – Case Law – a number of states whose public records statutes provide exceptions for records requests placing a burden on/disrupting an agency have been interpreted by their courts in a variety of ways, as summarized below:

- (1) *Illinois* (5 ILL. COMP. STAT. 140/3):
  - o A records request that would have required the agency to examine 9,200 records by hand and to redact exempt information from those records would impede staff's ability to perform duties and thus constituted an unreasonable burden (*Shehadeh v. Mladigan*, 996 N.E.2d 1243 (Ill. App. Ct. 2013)).
- (2) *Kentucky* (KY. REV. STAT. ANN. §61.872):
  - o Just because complying to a request was tedious and time-consuming did not automatically constitute an unreasonable burden (*Com. v. Chestnut*, 250 S.W.3d (Ky. 2008));
  - o Hostile nature of the requestor did not impose an unreasonable burden in and of itself (*Op. Att'y Gen. 09-ORD-028* (Ky. 2008));
  - o Separating various requested records containing exempt and non-exempt information constituted an unreasonable burden (*Op. Att'y Gen. 97-ORD-88* (Ky. 1997)).
  - o A requestor's numerous and often duplicative requests constituted an unreasonable burden on the agency (*Op. Att'y Gen. 92-91* (Ky. 1992));
- (3) *New Jersey* (N.J. STAT. ANN. §47:1a-5):
  - o Where requestor did not specifically identify the documents it sought and the request was extensive, complying within the seven-day period would have substantially disrupted agency operations (*N.J. Builders Ass'n v. N.J. Council on Affordable Hous.*, 915 A.3d 23 (N.J. Super. Ct. App. Div. 2007)).
- (4) *Pennsylvania* (65 PA. CONS. STAT. §67.506):
  - o A records request submitted to an agency having only a small staff to handle such requests did not constitute an unreasonable burden (*Borough of W. Easton v. Mezzacappa*, 74 A.3d 417 (Pa. 2013)).

**Right to Know Advisory Committee**

Draft: Government relief from overly burdensome FOAA requests

Sec. 1. 1 MRSA §410-A is enacted to read:

**§410-A. Government remedy; just and proper cause**

**1. Petition for determination.** A body, agency or official who has custody or control of a public record may petition the Superior Court for a determination that a request by a person to inspect or copy the public record may be denied for just and proper cause. Petitions may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

**2. Order.** After a trial de novo, the court shall either dismiss the petition or enter an order appropriately limiting or denying the request to inspect or copy the public record.

**3. Just and proper cause.** For the purposes of this section, in determining whether a request to inspect or copy a public record may be denied with just and proper cause a court shall consider the identity of the requesting person and the historical frequency, scope and manner of the requesting person's requests for inspection or copying of records under section 408-A, and whether the probative value of the information to the public outweighs any substantial burden on the body, agency or official.

**SUMMARY**

This bill adds a statutory provision to allow a public body, agency or official to seek relief from overly burdensome requests under the Freedom of Access Act by filing an action in Superior Court seeking a determination whether the request may be denied. The court must determine if the request to inspect or copy a record may be denied for just and proper cause. In making the determination, the court must consider the identity of the requesting person and the historical frequency, scope and manner of the requesting person's requests for inspection or copying, and whether the probative value of the information to the public outweighs any substantial burden on the government body, agency or official. After a trial de novo the court may issue an order limiting or denying the request to inspect or copy the public record, or may dismiss the petition.



**Right to Know Advisory Committee**

Draft: New schedule for review of existing public records exceptions

**Sec. 1. 1 MRSA §433, sub-§2** is repealed and the following enacted in its place:

**2-A. Scheduling guidelines.** The advisory committee shall use the following list as a guideline for scheduling reviews of public records exceptions and reporting its recommendations to the review committee:

A. Exceptions enacted after 2004 and before 2013 are scheduled to be reviewed by the review committee no later than 2017.

B. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2019:

- (1) Title 1;
- (2) Title 2;
- (3) Title 3;
- (4) Title 4;
- (5) Title 5;
- (6) Title 6;
- (7) Title 7; and
- (8) Title 7-A.

B. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2021:

- (1) Title 8;
- (2) Title 9-A;
- (3) Title 9-B;
- (4) Title 10;
- (5) Title 11; and
- (6) Title 12.

C. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2023:

- (1) Title 13;
- (2) Title 13-B;
- (3) Title 13-C;
- (4) Title 14;
- (5) Title 15;
- (6) Title 16;
- (7) Title 17;
- (8) Title 17-A;
- (9) Title 18-A;
- (10) Title 18-B;
- (11) Title 19-A;
- (12) Title 20-A; and
- (13) Title 21-A.

**Right to Know Advisory Committee**

Draft: New schedule for review of existing public records exceptions

D. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2025:

- (1) Title 22;
- (2) Title 22-A;
- (3) Title 23;
- (4) Title 24; and
- (5) Title 24-A.

E. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2027:

- (1) Title 25;
- (2) Title 26;
- (3) Title 27;
- (4) Title 28-A;
- (5) Title 29-A;
- (6) Title 30;
- (7) Title 30-A;
- (8) Title 31; and
- (9) Title 32.

F. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2029:

- (1) Title 33;
- (2) Title 34-A;
- (3) Title 34-B;
- (4) Title 35-A;
- (5) Title 36;
- (6) Title 37-B;
- (7) Title 38; and
- (8) Title 39-A.

**Sec. 2. 1 MRSA §433, sub-§3** is amended to read:

**3. Scheduling changes.** The advisory committee may make adjustments to the scheduling guidelines provided in subsection 2 2-A as it determines appropriate and shall notify the review committee of such adjustments.

**SUMMARY**

This draft repeals the public records exceptions review schedule that was completed in 2014 and replaces it with a new review schedule. The advisory committee

**Right to Know Advisory Committee**

Draft: New schedule for review of existing public records exceptions

will review public records exceptions enacted after 2004 but before 2013 and report its recommendations to the review committee over the course of 2 years, with the final review by the review committee completed no later than 2017. The advisory committee will then begin to review all the public records exceptions codified in the statutes over a 12-year period. The review committee will conduct its review of the advisory committee's recommendations in 2019, 2021, 2023, 2025, 2027 and 2029. The "advisory committee" is the Right to Know Advisory Committee and the "review committee" is the joint standing committee of the Legislature having jurisdiction over judiciary matters.

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**Right to Know Advisory Committee**

Draft: Add Information Technology expert to RTK AC membership

of communication technologies to support meetings, including audio and web conferencing; databases for records management and reporting; and information technology system, development and support, appointed by the Governor.

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

**SUMMARY**

This bill adds one additional member to the Right to Know Advisory Committee, appointed by the Governor. The new position will bring information technology expertise to the Advisory Committee.

DRAFT

**Right to Know Advisory Committee**

Draft: Statutory changes to public records exceptions

**Sec. 1.** 22 MRSA c. 271, sub-c. 2 (§1696-A to §1696-F) is repealed.

**Sec. 2.** 26 MRSA §3 is repealed and the following enacted in its place:

**§3. Confidentiality of records**

**1. Confidential records.** Except as provided in subsections 2 and 3, all information and reports received by the director or the director's authorized agents under this Title are confidential for purposes of Title 1, section 402, subsection 3, paragraph A.

**2. Exceptions.** Reports of final bureau action taken under the authority of this Title are public records for the purposes of Title 1, chapter 13, subchapter 1.

**3. Authorized disclosure.** The director shall make or authorize any disclosure of information of the following types or under the following circumstances with the understanding that the confidentiality of the information will be maintained:

**A.** Information and reports to other government agencies if the director believes that the information will serve to further the protection of the public or assist in the enforcement of local, state and federal laws; and

**B.** Information and records pertaining to the work force, employment patterns, wage rates, poverty and low-income patterns, economically distressed communities and regions and other similar information and data to the Department of Economic and Community Development and to the Governor's Office of Policy and Management for the purposes of analysis and evaluation, measuring and monitoring poverty and economic and social conditions throughout the State and to promote economic development.

**Sec. 3.** 26 MRSA §934 is amended to read:

**§934. Conciliation; notification of dispute; proceedings in settlement; report**

Whenever it appears to the employer or employees concerned in a labor dispute, or when a strike or lockout is threatened, or actually occurs, he or they may request the services of the board.

If, when the request or notification is received, it appears that a substantial number of employees in the department, section or division of the business of the employer are involved, the board shall endeavor, by conciliation, to obtain an amicable settlement. If the board is unable to obtain an amicable settlement it shall endeavor to persuade the employer and employees to submit the matter to arbitration.

**Right to Know Advisory Committee**

Draft: Statutory changes to public records exceptions

The board shall, upon notification, as soon as practicable, visit the place where the controversy exists or arrange a meeting of the interested parties at a convenient place, and shall make careful inquiry into the cause of the dispute or controversy, and the board may, with the consent of the Governor, conduct the inquiry beyond the limits of the State.

The board shall hear all interested persons who come before it, advise the respective parties what ought to be done by either or both to adjust the controversy, and shall make a confidential written report to the Governor and the Executive Director of the Maine Labor Relations Board. The Governor or executive director ~~may~~ shall make the report public if, after 15 days from the date of its receipt, the parties have not resolved the controversy and the public interest would be served by publication. In addition, either the Governor or the executive director may refer the report and recommendations of the board to the Attorney General or other department for appropriate action when it appears that any of the laws of this State may have been violated.

**Sec. 4. 29-A MRSA §152, sub-§3** is amended to read:

**3. Central computer system.** Notwithstanding any other provisions of law, purchase and maintain a central computer system for purposes of administering this Title and conducting departmental operations. All other uses must be approved by the Secretary of State. The Secretary of State ~~shall adopt rules regarding the maintenance and use of data processing information files required to be kept confidential and shall distinguish those files from files available to the public;~~

**Sec. 5. 29-A MRSA §257** is repealed.

**Sec. 6. 29-A MRSA §517, sub-§4** is amended to read:

**4. Unmarked law enforcement vehicles.** An unmarked motor vehicle used primarily for law enforcement purposes, when authorized by the Secretary of State and upon approval from the appropriate requesting authority, is exempt from displaying a special registration plate. Records for all unmarked vehicle registrations are confidential.

~~Upon receipt of a written request by an appropriate criminal justice official showing cause that it is in the best interest of public safety, the Secretary of State may determine that records of a nongovernment vehicle may be held confidential for a specific period of time, which may not exceed the expiration of the current registration.~~

**Sec. 7. 35-A MRSA §8703, sub-§5** is amended to read:

**5. Confidentiality.** ~~Relay service communications must be~~ The providers of

**Right to Know Advisory Committee**  
Draft: Statutory changes to public records exceptions

telecommunications relay services must keep relay service communications confidential.

**Sec. 8. 38 MRSA §414, sub-§6** is amended to read:

**6. Confidentiality of records.** Any records, reports or information obtained under this subchapter is available to the public, except that upon a showing satisfactory to the department by any person that any records, reports or information, or particular part of any record, report or information, other than the names and addresses of applicants, license applications, licenses and effluent data, to which the department has access under this subchapter would, if made public, divulge methods or processes that are entitled to protection as trade secrets as defined in Title 10, section 1542, subsection 4, these records, reports or information must be confidential and not available for public inspection or examination. Any records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any party to a hearing held under this section on terms the commissioner may prescribe in order to protect these confidential records, reports and information, as long as this disclosure is material and relevant to any issue under consideration by the department.

**Sec. 9. 38 MRSA §585-B, sub-§6** is amended to read:

**6. Mercury reduction plans.** An air emission source emitting mercury in excess of 10 pounds per year after January 1, 2007 must develop a mercury reduction plan. Except as provided in subsection 7, the mercury reduction plan must be submitted to the department no later than September 1, 2008. The mercury reduction plan must contain:

A. Identification, characterization and accounting of the mercury used or released at the emission source; and

B. Identification, analysis and evaluation of any appropriate technologies, procedures, processes, equipment or production changes that may be utilized by the emission source to reduce the amount of mercury used or released by that emission source, including a financial analysis of the costs and benefits of reducing the amount of mercury used or released.

~~The department may keep information submitted to the department under this subsection confidential as provided under section 1310-B.~~

The department shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters no later than March 1, 2009 summarizing the mercury emissions and mercury reduction potential from those emission sources subject to this subsection. In addition, the department shall include an evaluation of the appropriateness of the 25-pound mercury standard established in subsection 5. The

**Right to Know Advisory Committee**

Draft: Statutory changes to public records exceptions

evaluation must address, but is not limited to, the technological feasibility, cost and schedule of achieving the standards established in subsection 5. The department shall submit an updated report to the committee by March 1, 2013. The joint standing committee of the Legislature having jurisdiction over natural resources matters is authorized to report out to the 126th Legislature a bill relating to the evaluation and the updated report.

**Sec. 10. 38 MRS §585-C, sub-§2, ¶D is repealed.**

**Sec. 11. 38 MRS §1310-B, sub-§2 is amended to read:**

**2. Hazardous waste information and information on mercury-added products and electronic devices and mercury reduction plans; chemicals.** Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6-A, ~~information relating to mercury reduction plans submitted to the department under section 585-B, subsection 6,~~ information related to priority toxic chemicals submitted to the department under chapter 27 or information related to products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to the department under section 1609 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Conservation and Forestry and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a



**Right to Know Advisory Committee**

Draft: Statutory changes to public records exceptions

decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.

**SUMMARY**

This proposed legislation implements the recommendations of the Right to Know Advisory Committee relating to existing public records exceptions in Title 22 and Titles 26 to 39-A. The legislation does the following.

Section 1 repeals the Community Right to Know Act, a program within the Department of Health and Human Services intended to provide disclosure of information about hazardous substances in the community that has never been implemented.

Section 2 makes clear that reports of final bureau action are public records, removing the language in current law that gives the director of the Bureau of Labor Standards the discretion to release reports.

Section 3 relates to reports of the State Board of Arbitration and Conciliation in a labor dispute. The amendment makes clear that the report must be released 15 days after its receipt by the Governor and Executive Director of the Maine Labor Relations Board if the conciliation process is not successful.

Section 4 repeals language authorizing the Secretary of State to adopt rules relating to maintenance and use of data processing files concerning motor vehicles as the confidentiality of personal information is already protected under federal law.

Section 5 repeals a provision relating to the Secretary of State's motor vehicle information technology system because the confidentiality of the system is already addressed in another provision of law.

Section 6 removes language that is redundant with another section of law.

Section 7 clarifies that it is the responsibility of the providers of telecommunications relay services to keep relay services communications confidential.

Section 8 adds a cross-reference to the definition of "trade secret".

Section 9 repeals language making mercury reduction plans for air emission source emitting mercury confidential.

**Right to Know Advisory Committee**

Draft: Statutory changes to public records exceptions

Section 10 repeals language making hazardous air pollutant emissions inventory reports confidential.

Section 11 removes language cross-referencing language repealed by Section 9 of this bill relating to the confidentiality of mercury reduction plans for air emission sources emitting mercury.

DRAFT

**Right to Know Advisory Committee**  
Draft: FOAA deadlines and appeals (PL 2013, c. 350)

**Sec. 1. 1 MRSA §408-A** is amended 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~~ A body, 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 body, 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 body, agency or official having custody of the public record during reasonable office hours or may request that the body, agency or official having custody of the record provide a copy. The body, 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 body, agency or official shall mail the copy upon request.

**3. Acknowledgment; clarification; time estimate; cost estimate.** The body, agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within 5 working days of receiving the request, ~~and~~ The body, agency or official may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, the body, agency or official shall provide a good faith, nonbinding estimate of the time within which the body, agency or official will comply with the request, as well as a cost estimate as provided in subsection 9. The body, agency or official shall make a good faith effort to fully respond to the request within the estimated time. For purposes of this section, the date a request is received is the date a sufficient description of the public record is received by the body, agency or official at the office responsible for maintaining the public record.

**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 receipt of the request for inspection or copying. Failure to ~~comply with~~ provide the notice required by this subsection within 10 working days of the receipt of the request is considered ~~failure a~~ denial to allow inspection or copying and is subject to appeal as provided in section 409.

**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

**Right to Know Advisory Committee**  
Draft: FOAA deadlines and appeals (PL 2013, c. 350)

that will not delay or inconvenience the regular activities of the body, agency or official having custody or control of the public record requested. If the body, agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the body's, agency's or official's records must be posted in a conspicuous public place and at the office of the body, agency or official, if an office exists.

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

**7. Electronically stored public records.** An A body, 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 body, agency or official is not required to provide access to an electronically stored public record as a computer file if the body, 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 body, 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 body, 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 a body, 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 a body, agency or official having custody of a public record may charge fees for public records as follows.

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

B. The body, 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 body, 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~~ The body, agency or official may not charge for inspection unless the

**Right to Know Advisory Committee**

Draft: FOAA deadlines and appeals (PL 2013, c. 350)

public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies.

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

**9. Estimate.** The body, 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 body, 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 body, 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 body, 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 body, 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. 2. 1 MRSA §409, sub-§1 is amended to read:**

**§409. Appeals**

**1. Records.** Any person aggrieved by a ~~refusal or denial~~ to inspect or copy a record ~~or the failure to allow the inspection or copying of a record~~ under section 408-A may appeal the ~~refusal, denial or failure~~ within 30 calendar days of the receipt of the written notice of ~~refusal, denial or failure~~ or 40 days from the date of the request if no written notice is provided under section 408-A, subsection 4 to any the Superior Court within the State as a trial de novo for the county in which the person resides or in which

**Right to Know Advisory Committee**

Draft: FOAA deadlines and appeals (PL 2013, c. 350)

the body or agency maintains an office to which the person made the request. The body, agency or official shall file an answer a statement of position within 14 calendar days of service of the appeal. If a court, after a trial de novo review and taking testimony and other evidence it determines necessary, determines such refusal, denial or failure was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

**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.

**3. Proceedings not exclusive.** The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.

**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~~ denial under subsection 1 or the illegal action under subsection 2 if the court determines that the ~~refusal~~ denial 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.

## SUMMARY

This bill amends the Freedom of Access Act to clarify that the date of receipt of a request to copy or inspect a public record is the date a sufficient description of the public record is received by the body, agency or official at the office responsible for maintaining the public record.

Current law requires a body, agency or official to provide, within 5 days of the receipt of a request to inspect or copy a public record, a written notice that the request is denied. This bill clarifies that refusing to allow inspection or copying is considered a denial, as is the failure, within 10 days of the receipt of a request, to provide a written notice that the request is denied.

**Right to Know Advisory Committee**  
Draft: FOAA deadlines and appeals (PL 2013, c. 350)

This bill amends the Freedom of Access Act with regard to appeals of denials of requests to inspect or copy public records. Under current law, a person whose request has been denied may appeal the denial to any Superior Court within 30 calendar days of receipt of the written notice of denial. If no written notice of denial is provided, the requestor may file an appeal within 40 calendar days of the request. The bill provides that the appeal must be filed in the Superior Court for the county where the requestor resides or where the body or agency maintains an office to which the request was made. Current law requires the agency or official to file an answer within 14 calendar days. This bill requires the body, agency or official to file a statement of position within 14 calendar days of service of the appeal. This bill provides that the court does not have to convene a trial, but must conduct a de novo review and take testimony and other evidence it determines necessary, and if it determines that the denial was not for just and proper cause, the court shall enter an order for disclosure.

This bill revises the language in sections 408-A and 409 to clarify that the provisions apply to public bodies as well as agencies and officials.

**Right to Know Advisory Committee**

Draft: Deadlines and appeals (proposed by Attorney General's Office)

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

**4. Refusals; denials.** If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide written notice of the denial, stating the reason for the denial or the expectation that the request will be denied in full or in part following a review, within 5 working days of the receipt of the request for inspection or copying. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

**Sec. 2. 1 MRSA §409, sub-§1** is amended to read:

**1. Records.** Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may appeal the refusal, denial or failure within 30 calendar days of the receipt of the written notice of refusal, denial or failure to ~~any~~ the Superior Court within the State for the county where the person resides or the agency has its principal office a trial de novo. The agency or official shall file ~~an answer~~ a statement of position explaining the basis for denial within 14 calendar days of service of the appeal. If a court, after a ~~trial~~ trial de novo review, with taking of testimony and other evidence as determined necessary, determines such refusal, denial or failure was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

**Sec. 3. 1 MRSA §413, sub-§1** is amended to read:

**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 5 working days of receiving the request 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.

**SUMMARY**

This draft amends the Freedom of Access Act to make clear that an agency's or official's written notice of denial in response to a request to copy or inspect records may be a statement that the agency or official expects to deny the request in full or in part, but that decision can be made only after reviewing the records subject to the request. The



**Right to Know Advisory Committee**

Draft: Deadlines and appeals (proposed by Attorney General's Office)

agency or official shall provide the written response within 5 days of the receipt of the request.

This draft clarifies the procedures for an appeal from a denial of a request to inspect or copy public records. Current law allows the appeal to be filed in any Superior Court; this draft requires the appeal to be filed in the Superior Court for the county in which either the request lives or in which the agency or official has its principal office. Instead of filing an answer to the complaint, the agency or official may file a more informal statement of position explaining the basis for denial with 14 days of the service of the appeal. This draft eliminates the need for a de novo trial, and instead requires the Superior Court to conduct a review de novo, taking whatever testimony or other evidence the Court determines is necessary. The basis for the decision – whether the refusal, denial or failure was not for just and proper cause – is not changed from current law.

This draft amends the laws governing public access officers by specifically requiring that a request for public records be acknowledged within 5 working days of the receipt of the request. This is consistent with the current acknowledgement deadline in the Maine Revised Statutes, Title 1, section 408-A, subsection 3.

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Draft



SEN. CHRISTOPHER K. JOHNSON, SENATE CHAIR  
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MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

July 31, 2014

Honorable Janet Mills  
Attorney General  
6 State House Station  
Augusta, Maine 04333-0006

Honorable Matthew Dunlap  
Secretary of State  
148 State House Station  
Augusta, Maine 04333-0148

Dear Attorney General Mills and Secretary of State Dunlap:

In the months since the Office of Program Evaluation and Government Accountability released its December 2013 report on Healthy Maine Partnerships' FY13 Contracts and Funding, our committee has been considering potential actions on associated issues with records retention policies and practices at the Maine Center for Disease Control and Prevention, as well as Statewide. Chief Deputy Attorney General Linda Pistner, FOAA Ombudsman Brenda KIELTY, Senior Attorney General Phyllis Gardiner and State Archivist David Cheever have provided information and perspective that have helped us to understand where weaknesses exist in the State's records retention and management framework and helped brainstorm possible ideas for improvements. We greatly appreciate their interest and assistance in these matters.

As a result of these discussions, the Government Oversight Committee would like to accept the offer extended by your offices for the FOAA Ombudsman and Director of the State Archives Records Management to convene a working group to develop and/or make specific recommendations to the GOC regarding improvements to the State's Records Retention framework. Specifically, the GOC requests that:

- A. A working group be convened by the FOAA Ombudsman and the Director of Maine State Archives Records Management and include, at a minimum, representatives of the Attorney General's Office, the Office of Information Technology, the Bureau of Human Resources and the Department of Audit.

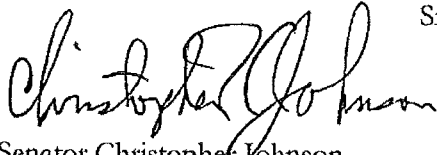
82 State House Station, Room 107 Cross Building  
Augusta, Maine 04333-0082  
TELEPHONE 207-287-1901 FAX: 207-287-1906

- B. The working group make specific recommendations concerning the following:
  - a. improved guidance for agencies on record retention, including specifically the issue of draft documents and the appropriate criteria for determining the extent to which drafts should be retained;
  - b. model policies on record retention;
  - c. training requirements, including additional requirements for supervisors, and a system of accountability to assure that all state employees receive appropriate training on record retention policies, schedules and procedures; and
  - d. establishing, or promoting/enhancing existing, avenues for employees to get consistent and accurate answers to records retention questions.
  
- C. The working group also make suggestions on how best to implement the following ideas with the goal of ensuring expectations regarding records retention are clear and well understood by all employees and that all employees are accountable for complying with those expectations:
  - 1. All executive branch agencies shall review and update their record retention policies, procedures and schedules consistent with the improved guidance and model policies; train incoming and existing employees and supervisors on those updated record retention policies and procedures (in addition to, or in conjunction with FOAA training); and require staff to review and acknowledge receipt of the State of Maine Policy on Preservation of State Government Records on an annual basis.
  - 2. Consistent with collective bargaining agreements, civil service law and rule and other applicable law, compliance with record retention policies, procedures and schedules should be included as part of each employee's performance expectations. Employees who fail to fulfil their obligations under applicable record retention policies, procedures and schedules will be subject to disciplinary action, up to and including discharge.
  - 3. The FOAA Ombudsman's ongoing training of state agency personnel continue to address the importance of record retention, as well as the obligation of each agency to update their record retention schedules, policies and procedures, and to assure that all agency staff receive training on those policies and procedures.
  
- D. The working group make recommendations on guidelines that should be used by agencies in determining costs for responding to a FOAA such that costs are reasonable, consistent across State government and do not present an unnecessary barrier to FOAA requests.
  
- E. In developing its recommendations and suggestions, that the working group seek input from the Right to Know Advisory Committee, other State agencies and/or stakeholders as appropriate.
  
- F. The working group report back to the GOC by February 1, 2015, on the results of its work and include recommendations for any additional steps, including those that may require legislative action.

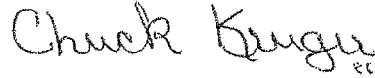
We understand that your offices have very limited staff resources to support this effort and, consequently, there may not be time or resources to involve or seek feedback from a broad stakeholder group, even if the working group feels that would be appropriate. If it seems that the working group's recommendations should be vetted with stakeholders more than you have opportunity to do before February 1<sup>st</sup>, the GOC can do so through its public consideration of those recommendations.

Please confirm with OPEGA Director Beth Ashcroft that your offices intend to honor this request. Director Ashcroft can also answer any questions you may have.

Sincerely,



Senator Christopher Johnson  
Senate Chair



Representative Chuck Kruger  
House Chair

Cc: Members of the Government Oversight Committee

# **Records Management**

## **Basic Principles for All State Employees**

### **Why Does the Records Management Program Exist?**

**The program was established under Title 5, Chp. 6, §95 and states:**

**7.** The head of each state agency or local government agency shall establish and maintain an active, continuing program for the economical and efficient management of any records in compliance with the standards, procedures and regulations issued by the State Archivist.

**8. Transfer of state records.** To provide for the transfer to the archives of state records, disposed of under subsection 7, paragraph C, that have archival value;

**9. Destruction of state records.** To authorize and receive confirmation of the destruction of the state records of any state or local agency that, in the opinion of the head of the agency, are no longer of value to the state or local government agency, and that, in the opinion of the State Archivist and the Archives Advisory Board, have no archival value to the State.

### **What is Records Management?**

Records management is the continuous and efficient program by which we identify and classify records, establish schedules and manage records throughout their lifecycle. In other words, what to keep, how long you keep it and whether or not it is destroyed or kept as Archival.

### **What are Your Responsibilities?**

According to the Rules of Chapter 1 (Under APA Rule 29/255) it is the responsibility of the head of each agency to maintain an efficient and continuous records management program. It is also the responsibility of the head of each agency to appoint a Records Officer.

The appointed Records Officer will appoint Assistants as needed. The Records Officer will have a thorough knowledge of the agency, its records and functions. The Records Officer will create and maintain appropriate records schedules.

All state employees are responsible for creating records needed to do the business of their agency, and documenting activities for which they are responsible. As a government employee, you are responsible for managing any and all public records (including email) for which you are the custodian.

All state employees are responsible for maintaining records so that information can be found when needed. This means setting up good directories and files, and properly filing records in a manner that allows them to be stored and efficiently retrieved when necessary.

All employees are responsible for carrying out the disposition of records under their control in accordance with agency records schedules. All employees should be made aware of records schedules and which records they are responsible for keeping (custodian of the record).

## **Why Is Records Management Important?**

Agencies produce records every day. They are the vital component to the functionality of the agency for administrative, fiscal, legal and historical purposes. Not knowing what to keep is not the answer to Records Management and neither is keeping everything. There are implications for both.

An effective records management program offers several benefits:

### **Promotes a positive reputation for State Agencies**

In the height of public access, government agencies need to remain accountable for the records they create and maintain. Public records document agency business and with proper management agencies can show they are taking the correct action for the appropriate amount of time and for the right reasons. When an agency demonstrates proper public records organization, a management program where records are controlled, and destroyed in accordance to law, the state's reputation is improved as is the public's confidence in state government.

### **Helps the Agency Fulfill its Mission**

It will help identify and protect the essential records of your agency; those records needed to keep the agency functional. Locating what you need, when you need it is a vital component to running an agency effectively.

### **Promotes Cost Effective Business Practice**

A proper records management program will reduce the volume of records stored; improve storage and retrieval systems and help to get the right record to the right person effectively and efficiently. Records on current schedules will be destroyed when they should be, making the best use of physical and digital space (both which state agencies can pay for). An efficient records program will limit the risk and cost associated with FOIA requests and any possible litigation. Any penalties for the inability to produce requests could be avoided by having an organized program where employees can locate records.

## **What is a Record?**

"Record" means all documentary material (books, papers, photographs, maps or other documentation, including digital records such as e-mail messages and attachments), made or received and maintained by an agency in accordance with law or rule or in the transaction of its official business; because they serve as evidence of the agency's functions, policies, decision, procedures, operations and other activities; or because of their informational value. Records can have varying purposes per agency. What are vital records to one agency, another agency may not even have or produce; different laws and statutes can mandate record retention periods for the different types of agencies. Therefore, it is very difficult to impose a "global" records program and give a tidy two column list of what to keep and what not to keep.

**Examples of records:**

- Board and Commission Minutes of Meetings
- Contracts
- Commissioner’s Correspondence
- Project files
- Client Case Files
- Personnel files

**Non-record examples:**

- Duplicate copies of documents maintained in the same file
- Informational copies on which no administrative action is recorded or taken
- Documents received that provide information but are not connected to the transaction of agency business
- Extra copies of printed or processed materials for which complete record sets exist

**How Do Agencies Manage Their Records?**

Records are managed by creating agency schedules. Schedules provide the guidance necessary to prevent unneeded records from cluttering agency offices help preserve mid to long-term records until they have served their purpose. The purpose of the Records Management Division is to apply retention periods to ALL state government records and update them as changes occur.

**Four Key Items Every Employee Needs to Know**

- Records must be managed throughout their life cycle, according to their retention schedules
- All agency records should be on up-to-date retention schedules
- All agencies should have an active Records Officer
- There are General Schedules and Agency Specific Schedules
  - ✓ General Records Schedules (for records common to most agencies):  
[www.maine.gov/sos/arc/records/state/gensched2.html](http://www.maine.gov/sos/arc/records/state/gensched2.html)
  - ✓ State Agency Schedules (pertaining to specific agencies):  
[www.maine.gov/sos/arc/records/state/stsched.html](http://www.maine.gov/sos/arc/records/state/stsched.html)

**The Records Everyone Has - General Schedules**

General Record Schedules are issued by the Maine State Archives to provide retention and disposition standards for records common to several or all State agencies. They are located on our website. Before an agency schedule is created, be sure a General Schedule does not already exist.

### **Determining Retention Periods**

In order to dispose of records at the appropriate time, it is necessary to evaluate them in relation to their period of usefulness to the department.

**Total Retention Period** - Time kept in your agency **PLUS** Time kept in the Records Center **EQUALS Total Retention Period**

### **Some specific questions in determining how long records are retained:**

- **Administrative use:** *What is the value of the records in carrying out the functions of your department? How long will you need to be able to retrieve them immediately?* Day to day business operation; correspondence, memos, reports – typically need for these records is short lived
- **Legal requirements:** *Are there any State Statutes or Federal regulations involved?* Records mandated by law or regulation; may be needed as evidence in legal cases or leases, titles, contracts, court case files
- **Fiscal requirements:** *How much time must you allow for the completion of fiscal activities such as audit or budget?* (Typically 7 years) Document an agency's fiscal responsibilities; invoices, receipts, purchase orders
- **Historical/Archival:** *Do these records document important events, or the history and development of your department?* Document history of the agency; board minutes, agency policy decisions, Commissioner's correspondence

### **Disposition Archives or Destroy?**

Five hundred years from now, may someone want or need to look at these records? Will they be needed that far in the future for any legal or historical reasons?

- *Non-archival (non-permanent) retention* is based completely on the record's time-value to the business functions of the agency, including audit or other statutory requirements, and reasonable access by interested parties.
- *Archival (Permanent) retention* is based on the record's value after it no longer serves the agency's business.

### **The Structure of the Archives**

The State Records Center, located in Hallowell is for those records which have a disposition destroy. The State Archives is for permanent records with historical/archival value. All records in Records Center status, including pre-archival records, remain under legal control of the agency that created them. Records in the Records Center are released only to cardholders of the creating agency. Any records sent to the Records Center must first be on an approved records retention schedule before they will be accepted for transfer.





AG Opinion  
Decision over  
telephone

1 of 100 DOCUMENTS

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF MAINE

[NO NUMBER IN ORIGINAL]

1979 Me. AG LEXIS 133

June 15, 1979

**REQUESTBY:**

[\*1]  
Honorable Frank P. Wood  
House of Representatives  
State House  
Augusta, Maine 04333

**OPINIONBY:**

STEPHEN L. DIAMOND, Deputy Attorney General

**OPINION:**

In your letter of May 24, 1979 and in a subsequent conversation, you have raised two questions concerning the provisions of *1 M.R.S.A. § 401*, et seq (1979)(Maine's Freedom of Access Law) in connection with meetings held by boards of county commissioners. In particular, you have inquired whether a decision to expend public funds, made over the telephone and not at a public meeting but later approved (by means of an article in the warrant) by the commissioners at their next regularly scheduled meeting, complies with the Freedom of Access Law. n1 You have stated your inquiries as follows:

"(1) Does an after the fact instrument such as a warrant fulfill the requirements of Maine's [Freedom of Access] Law?

(2) Is voting over the phone allowed under the [Freedom of Access] Law and if it is under what circumstances can this practice occur?" n2

n1 For the purposes of this opinion, I assume that these facts, as stated in your letter of May 24, 1979, are true.

[\*2]

n2 In your letter you refer to Maine's "Right to Know Law," which is more appropriately referred to as the "Freedom of Access Law."

As recently articulated by the Maine Supreme Judicial Court, the Legislature's purpose in enacting the Freedom of Access Law was to assure "that to a maximum extent the public's business must be done in public." *Moffett v. City of*

*Portland, Me. 400 A.2d 340, 347-48 (1979)*. See also 1 M.R.S.A. § 401 (1979). n3 In furtherance of this declared purpose, the Legislature has statutorily mandated that, except as otherwise specifically provided,

"all public proceedings shall be open to the public, any person shall be permitted to attend any public proceeding and any record or minutes of such proceedings that is required by law shall be made promptly and shall be open to public inspection."

n3 1 M.R.S.A. § 401 (1979) provides in relevant part:

"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."

[\*3]

1 M.R.S.A. § 403(1979). The term "public proceedings" includes meetings of a board of county commissioners. n4 See 1 M.R.S.A. § 402(2) (c)(1979). n5

n4 The commissioners for each county are statutorily required to conduct meetings at certain times each year. See 30 M.R.S.A. § 151 (1978).

n5 1 M.R.S.A. § 402(2)(c)(1979) provides in pertinent part:

"The term 'public proceedings' as used in this subchapter shall mean the transactions of any functions affecting any or all citizens of the State by any of the following:

\* \* \*

C. Any board, commission, agency or authority of any county, municipality, school district or any other political or administrative subdivision." (emphasis supplied).

While the Freedom of Access Law mandates that public proceedings be open to the public, this legislative policy of openness in government business [\*4] would be seriously compromised if the public remained ignorant of the time and place of such proceedings. Accordingly, 1 M.R.S.A. § 406 (1979) provides that

"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 and the body or agency will deal with the expenditure of public funds or taxation, or will adopt policy at the meeting. This notice shall be given in ample time to allow public attendance." n6

n6 The board of commissioners for each county consists of a chairman and two other commissioners. See 30 M.R.S.A. § 101 (1978).

Finally, although *1 M.R.S.A. § 405(1979)* permits governmental bodies or agencies falling within the scope of the Freedom of Access Law to conduct executive sessions under certain circumstances, "no ordinances, orders, rules, resolutions, regulations, contracts, [\*5] appointments or other official actions shall be finally approved at executive sessions." *1 M.R.S.A. § 405(2) (1979)*.

We now turn to a consideration of your specific inquiry, which is, whether a decision made over the telephone by a board of county commissioners, concerning the expenditure of public funds, complies with Maine's Freedom of Access Law. After a review of the relevant opinions from both the Maine Law Court and this office, it is our conclusion that such a telephone vote does not comply with the provisions of *1 M.R.S.A. § 401 et seq. (1979)*.

A decision made by the members of a board of county commissioners concerning the expenditure of public funds is a "public proceeding" within the meaning of *1 M.R.S.A. § 402(2) (1979)* since it involves the transaction of a government function affecting citizens of this State. See note 5, *supra*. Consequently, that decision, being a "public proceeding," is subject to the provisions of the Freedom of Access Law, including the requirement that it be open to the public and that it be preceded by public notice sufficient to allow public attendance. See *1 M.R.S.A. § 402 [\*6] , 406 (1979)*.

The practice, by public officials, of voting on the expenditure of public funds over the phone does not comply with the Freedom of Access Law. By the very nature of the practice, the public is not afforded the opportunity to observe and participate in the actions and deliberations of those who conduct public business. *1 M.R.S.A. § 401(1979)*. See also *Op. Atty.Gen., July 3, 1974*. The practice of conducting "public proceedings" over the telephone is inimical to the fundamental purpose embodied in the Freedom of Access Law that, except in those instances where executive sessions are authorized,<sup>7</sup> all "public proceedings" are to be conducted openly and subject to the public's eye. See *1 M.R.S.A. § 403 (1979)*. See also *Op. Atty.Gen., May 17, 1977; Op. Atty. Gen., April 6, 1977; Op. Atty.Gen., March 25, 1977*.

n7 It should be observed that there are very stringent restrictions on the authority of a body or agency to convene in executive session. See *1 M.R.S.A. § 405(1979)*. Among other limitations, 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." *1 M.R.S.A. § 405(3)(1979)*.

[\*7]

The Legislature recognized that circumstances may arise which necessitate the convening of emergency meetings by bodies and agencies subject to the Freedom of Access Law, and provided:

"In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding."

*1 M.R.S.A. S 406(1979)*.

In such situations the Freedom of Access Law permits a relaxation of the notice requirements which must precede all public proceedings. However, the requirement that the meeting be public is not eliminated by its emergency nature. Thus, the practice of conducting a "public proceeding" by telephone cannot be justified, under the Freedom of Access Law, on the ground that an emergency exists. Cf. *Op. Atty.Gen. July 3, 1974* (telephone poll of commission members held to violate statute governing Lottery Commission).

The subsequent approval by a board of county commissioners at their next regularly scheduled meeting n8 of a prior decision made during the course of a private telephone conversation, [\*8] does not alter the fact that the initial telephone decision did not comply with the "open meeting" and "notice" requirements of the Freedom of Access Law. The underlying purpose of the Freedom of Access Law is to permit and encourage the citizens of this State to attend those meetings at which the public's business will be discussed and to provide an opportunity for them to present their views, on particular matters, to those officials charged with the responsibility of conducting the "people's business." To the maximum extent possible, the Freedom of Access Law contemplates that the public's business will not be discussed

or conducted without public notice and the opportunity to be heard. See *Moffett v. City of Portland, supra*. As stated in the Legislature's declaration of policy appearing in 1 M.R.S.A. § 401(1979)

"it is... 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."

n8 For the purposes of this opinion, I assume that the regularly scheduled commissioner's meeting referred to above, was conducted in accordance with the Freedom of Access Law.

[\*9]

This principle has been emphasized in numerous opinions from this office. See, e.g., Op. Atty. Gen., May 17, 1977; Op. Atty. Gen., April 6, 1977; Op. Atty. Gen., March 25, 1977; Op. Atty. Gen., November 23, 1976. Stated simply, the subsequent ratification or approval by a board of county commissioners, of a decision previously reached over the telephone, cannot make public a "telephone vote" which was, in fact, private. n9

n9 I wish to emphasize that I intimate no opinion as to the legal validity of the decision ultimately approved by the county commissioners at a meeting which, I assume, complied with the requirements of the Freedom of Access Law. See, e.g., 1 M.R.S.A. § 409(2)(1979).

I hope this information is helpful. Please feel free to call upon me if I can be of further assistance.

**Legal Topics:**

For related research and practice materials, see the following legal topics:  
GovernmentsLocal GovernmentsFinance

**Right to Know Advisory Committee**  
 Summary of State Provisions Concerning Remote Participation By Members of Public Bodies

**1. Remote participation by member of a public body**

Statute silent	<p><b>Arkansas:</b> AG opinion that public body may take a vote by telephone if public can hear or monitor the conversation</p> <p><b>Maine:</b> AG interpretation that remote participation not permitted unless expressly authorized by statute</p> <p><b>Michigan:</b> Case law and AG: legal to use telecommunications technology to allow participation in meetings in which members can't be physically present</p> <p><b>Pennsylvania:</b> Case law: remote participation permitted unless prohibited by bylaws or policy (statute allows agency to adopt rules and regulations necessary to conduct its meetings and maintain order, as long as they do not violate intent of open meeting chapter)</p> <p><b>Washington:</b> AG interpretation that one member can attend by telephone if speaker phone available at official location of meeting, but only if member unable to travel</p> <p><b>Wisconsin:</b> AG opinion that a telephone conference call is very similar to an in-person conversation and thus qualifies as a convening of members</p>
Prohibited	<p><b>Louisiana:</b> statute prohibits "proxy voting" which AG interprets as prohibiting participation by telephone to reach a quorum or to vote</p> <p><b>Ohio:</b> statute requires a member of a public body to be present in person to be considered present, to determine a quorum and to vote</p>
General policy statement only	<p><b>Alabama:</b> Electronic communications shall not be used to circumvent any provisions of this chapter</p> <p><b>Massachusetts:</b> AG may by regulation or letter authorize remote participation by members not present if all are clearly audible to each other and chair and quorum are physically present at meeting location (AG has developed regulations that authorize remote participation)</p>
Included in definition or description of "meeting" and no other details in statute	<p><b>Arizona:</b> meeting means the gathering, in person or through technological devices, of a quorum of a public body . . .</p> <p><b>Connecticut:</b> meeting means any hearing or other proceeding . . . whether in person or by means of electronic equipment</p> <p><b>Kansas:</b> meeting means any gathering or assembly in person or through the use of a telephone or any other medium for interactive communication</p> <p><b>Montana:</b> meeting means the convening of a quorum . . . whether corporal or by means of electronic equipment</p> <p><b>New Jersey:</b> meeting includes any gathering whether corporeal or by means of communication equipment</p> <p><b>New York:</b> meeting means the official convening . . . including the use of videoconferencing for attendance and participation by the members</p> <p><b>South Carolina:</b> meeting means the convening of a quorum . . . whether corporal or by means of electronic equipment</p> <p><b>West Virginia:</b> meetings may be held by telephone conference or other electronic means</p>

**Right to Know Advisory Committee**  
Summary of State Provisions Concerning Remote Participation By Members of Public Bodies

Statutes specifically allow and provide details for circumstances and procedures	<p><b>Alaska</b></p> <p><b>California</b></p> <p><b>Colorado</b></p> <p><b>Delaware</b> (statute prohibits use by a public body in which members are elected by the public to serve on the public body)</p> <p><b>Florida</b> (but only for State bodies; members of local bodies must be physically present unless extraordinary circumstances)</p> <p><b>Georgia</b> (only for bodies with statewide jurisdiction; others only if emergency conditions)</p> <p><b>Hawaii</b></p> <p><b>Idaho</b></p> <p><b>Illinois</b></p> <p><b>Indiana</b></p> <p><b>Iowa</b></p> <p><b>Kentucky</b></p> <p><b>Maryland</b></p> <p><b>Minnesota</b></p> <p><b>Missouri</b></p> <p><b>Mississippi</b></p> <p><b>Nebraska</b></p> <p><b>Nevada</b></p> <p><b>New Hampshire</b></p> <p><b>New Mexico</b></p> <p><b>North Carolina</b></p> <p><b>North Dakota</b></p> <p><b>Oklahoma</b></p> <p><b>Oregon</b></p> <p><b>Rhode Island</b> (statute allows electronic communication for scheduling only, except that a member can use for a meeting while on active duty or if the member has a disability)</p> <p><b>South Dakota</b></p> <p><b>Tennessee</b></p> <p><b>Texas</b></p> <p><b>Utah</b></p> <p><b>Virginia</b> (local governments prohibited except during Governor-declared emergency)</p> <p><b>Vermont</b></p> <p><b>Wyoming</b></p>
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**Right to Know Advisory Committee**  
 Summary of State Provisions Concerning Remote Participation By Members of Public Bodies

**2. Medium: description of allowable media or characteristics**

- Teleconferencing
- Technological devices
- Electronic equipment
- Telephone, electronically or other means of communication
- Video-conferencing
- Interactive conference technology
- Telecommunications devices which allow all members to communicate with each other
- Video or audio conference, telephone call, electronic chat, instant messaging or other means of contemporaneous interactive communication
- Electronic means
- Video teleconferences
- Telephone, internet or satellite enabled audio or video conferencing or any other technology that enables all persons to be clearly audible (MA AG rule)
- Telecommunication technology
- Interactive television
- Conference call, video conference, internet chat or internet message board
- Audible at location specified
- Audio or both audio and video
- All participants can communicate with each other at the same time
- Allows interaction among all members and the public
- Meeting must be terminated if audio communications can't be continued at all locations even if quorum is physically present
- All members can see and hear one another and all discussion and testimony presented at any location at which at least one member is present
- Each member is visible and audible to each other and the public
- Must be able to simultaneously hear each other and speak during the meeting
- Cannot be used if verbatim transcript is required for court proceeding

**3. Quorum**

Must be physically present	<p><b>Florida</b> (local only: quorum must be physically present)</p> <p><b>Georgia</b></p> <p><b>Illinois</b> (quorum must be physically except for body with statewide jurisdiction)</p> <p><b>Indiana</b> (minimum number present must be the greater of 2 or 1/3 of the members) (statute provides that a local government member participating remotely may not be counted as present or take part in final action unless expressly authorized by statute; state member participating remotely counts as present and may vote unless policy prohibits)</p> <p><b>Massachusetts</b> (AG rules)</p> <p><b>Missouri</b> (but only if participation is by telephone, facsimile, internet or any other voice or electronic means)</p> <p><b>Tennessee</b> (except can make a determination that necessity exists to conduct without a quorum physically present)<sup>1</sup></p> <p><b>Texas</b></p> <p><b>Utah</b></p> <p><b>Virginia</b></p>
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<sup>1</sup> Tennessee statute provides that member participating remotely is not eligible for per diem, but can be reimbursed for communication costs

**Right to Know Advisory Committee**  
 Summary of State Provisions Concerning Remote Participation By Members of Public Bodies

Remote participant counted for quorum	<p><b>California</b> (at least one member must be physically present)</p> <p><b>Delaware</b></p> <p><b>Hawaii</b></p> <p><b>Idaho</b> (at least one member must be physically present)</p> <p><b>Iowa</b></p> <p><b>Maryland</b> (joint physical access not a prerequisite)</p> <p><b>Minnesota</b> (at least one member must be physically present)</p> <p><b>Nebraska</b> (at least one member must be physically present at each location)</p> <p><b>New Hampshire</b> (quorum not required in an emergency)</p> <p><b>Oklahoma</b></p> <p><b>Oregon</b> (no member required to be present where public has access)<sup>2</sup></p> <p><b>Vermont</b> (at least one member or staff at each designated location)</p>
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<b>4. Adopt policy</b>	<p><b>Indiana</b> (required)</p> <p><b>Utah</b> (may prohibit by policy; must vote to allow participation electronically)</p>
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**5. Executive/closed sessions**

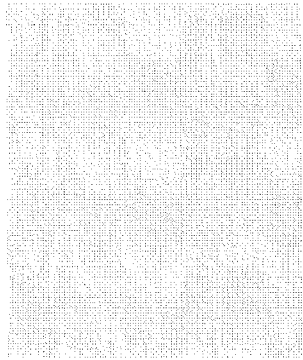
Permitted	<p><b>California</b></p> <p><b>Indiana</b> (state permitted)</p> <p><b>Iowa</b></p> <p><b>Massachusetts</b> (AG rules: remote member must state that no other person present or able to hear discussion unless body approves presence)</p> <p><b>Oregon</b></p> <p><b>South Dakota</b></p>
Prohibited	<p><b>Indiana</b> (local prohibited)</p> <p><b>Kentucky</b></p> <p><b>Oklahoma</b></p>

<b>6. Reasons may participate remotely</b>	<p><b>Florida:</b> If absence is due to extraordinary circumstances (AG interpretation)</p> <p><b>Georgia:</b> Under circumstances necessitated by emergency conditions involving public safety or the preservation of property or public services                  Written opinion of a physician or other health professional that reasons of health prevent a member's presence (but no more than twice a year)</p> <p><b>Hawaii:</b> Member with a disability that limits or impairs ability to physically attend (must identify where and who else is there)</p> <p><b>Iowa:</b> Only in circumstances where impossible or impractical and minutes must include why</p>
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<sup>2</sup> Oregon statute provides that member participating remotely is not eligible for compensation for attendance

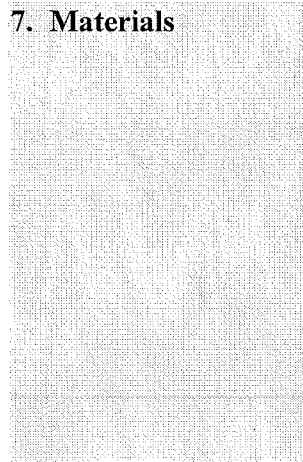


**Right to Know Advisory Committee**  
Summary of State Provisions Concerning Remote Participation By Members of Public Bodies



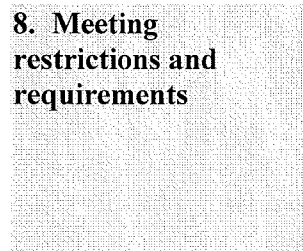
**Massachusetts:** Chair must determine if the following makes physical attendance unreasonably difficult: (1) personal illness; (2) personal disability; (3) emergency; (4) military service; or (5) geographic distance (AG rules)  
**Michigan:** Can't be physically present (Case law and AG interpretation)  
**New Mexico:** Otherwise difficult or impossible to attend  
**Rhode Island:** A member can use for a meeting while on active duty or if the member has a disability  
**Texas:** Only if only location is difficult or impossible  
**Washington:** Only if member is unable to travel to meeting location

**7. Materials**



**Arkansas:** agency materials that are to be considered at the meeting shall be made available at the teleconference locations if practicable  
**Hawaii:** if visual aids not available at all locations where audio only, that topic cannot be acted upon  
**Kentucky:** available at all video teleconference locations  
**Nebraska:** at least one copy available at all locations  
**Oklahoma:** any materials shared electronically between members before the videoconference shall also be immediately available to the public in the same form and manner as shared with members  
**Tennessee:** member not physically present must be provided before the meeting with any documents that will be discussed, with substantially the same content  
**Virginia:** materials must be available at all locations and to the public

**8. Meeting restrictions and requirements**



**Georgia:** a member may not attend remotely more than twice a year  
**Nebraska:** no more than 1/2 of all the meetings in a calendar year are held by videoconference or telephone conference  
**Virginia:** at least one meeting annually where members in attendance are physically assembled in one location and no electronic communication; report annually to Virginia Freedom of Information Advisory Council about electronic meetings

**Right to Know Advisory Committee**  
Detailed State Statutes About Remote Participation

Indiana

**IC 5-14-1.5**

(g) A policy adopted by a governing body to govern participation in the governing body's meetings by electronic communication may do any of the following:

(1) Require a member to request authorization to participate in a meeting of the governing body by electronic communication within a certain number of days before the meeting to allow for arrangements to be made for the member's participation by electronic communication.

(2) Subject to subsection (e), limit the number of members who may participate in any one (1) meeting by electronic communication.

(3) Limit the total number of meetings that the governing body may conduct in a calendar year by electronic communication.

(4) Limit the number of meetings in a calendar year in which any one (1) member of the governing body may participate by electronic communication.

(5) Provide that a member who participates in a meeting by electronic communication may not cast the deciding vote on any official action.

(6) Require a member participating in a meeting by electronic communication to confirm in writing the votes cast by the member during the meeting within a certain number of days after the date of the meeting.

(7) Provide that in addition to the location where a meeting is conducted, the public may also attend some or all meetings of the governing body, excluding executive sessions, at a public place or public places at which a member is physically present and participates by electronic communication. If the governing body's policy includes this provision, a meeting notice must provide the following information:

(A) The identity of each member who will be physically present at a public place and participate in the meeting by electronic communication.

(B) The address and telephone number of each public place where a member will be physically present and participate by electronic communication.

(C) Unless the meeting is an executive session, a statement that a location described in clause (B) will be open and accessible to the public.

(8) Require at least a quorum of members to be physically present at the location where the meeting is conducted.

(9) Provide that a member participating by electronic communication may vote on official action only if, subject to subsection (e), a specified number of members:

(A) are physically present at the location where the meeting is conducted; and

(B) concur in the official action.

(10) Establish any other procedures, limitations, or conditions that govern participation in meetings of the governing body by electronic communication and are not in conflict with this chapter.

(h) The policy adopted by the governing body must be posted on the Internet web site of the governing body, the charter school, or the public agency.

**Right to Know Advisory Committee**  
Detailed State Statutes About Remote Participation

New Hampshire

**91-A:2**

III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.

(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.

(b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.

(c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location. Any member participating in such fashion shall identify the persons present in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

(d) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

(e) A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.

**Right to Know Advisory Committee**  
Detailed State Statutes About Remote Participation

Utah

**52-4-207. Electronic meetings -- Authorization -- Requirements.**

(1) Except as otherwise provided for a charter school in Section 52-4-209, a public body may convene and conduct an electronic meeting in accordance with this section.

(2) (a) A public body may not hold an electronic meeting unless the public body has adopted a resolution, rule, or ordinance governing the use of electronic meetings.

(b) The resolution, rule, or ordinance may:

(i) prohibit or limit electronic meetings based on budget, public policy, or logistical considerations;

(ii) require a quorum of the public body to:

(A) be present at a single anchor location for the meeting; and

(B) vote to approve establishment of an electronic meeting in order to include other members of the public body through an electronic connection;

(iii) require a request for an electronic meeting to be made by a member of a public body up to three days prior to the meeting to allow for arrangements to be made for the electronic meeting;

(iv) restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability; or

(v) establish other procedures, limitations, or conditions governing electronic meetings not in conflict with this section.

(3) A public body that convenes or conducts an electronic meeting shall:

(a) give public notice of the meeting:

(i) in accordance with Section 52-4-202; and

(ii) post written notice at the anchor location;

(b) in addition to giving public notice required by Subsection (3)(a), provide:

(i) notice of the electronic meeting to the members of the public body at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present; and

(ii) a description of how the members will be connected to the electronic meeting;

(c) establish one or more anchor locations for the public meeting, at least one of which is in the building and political subdivision where the public body would normally meet if they were not holding an electronic meeting;

(d) provide space and facilities at the anchor location so that interested persons and the public may attend and monitor the open portions of the meeting; and

(e) if comments from the public will be accepted during the electronic meeting, provide space and facilities at the anchor location so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(4) Compliance with the provisions of this section by a public body constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-201 and 52-4-202.

## Public Proceedings: remote participation by members

Email responses from query to State FOA Contacts in 2013

AGENCY	REMOTE PARTICIPATION
State Treasurer	Do not have regularly scheduled meetings where off-site members participate
Maine Turnpike Authority	No remote participation; would be nice for a member with a conflict to call in
State Auditor	No public body
Office of Professional and Occupational Regulation, Department of Professional and Financial Regulation	OPOR and affiliated licensing boards do not permit board members to participate in board meetings via phone or other electronic connections. (Witnesses are permitted to testify at adjudicatory hearings via telephone.)
Maine State Board of Nursing	Board conducts public meetings, but participate in person only
Department of Corrections	No public meetings in the way other departments do, so probably does not apply
Department of Environmental Protection	Do not hold public meetings remotely, although do provide access to the public to listen to rulemakings over the website. Although they cannot participate remotely, they can listen.
Department of Marine Resources	In rare circumstances some of the boards and advisory councils do allow members to conference call into a meeting, normally only when a quorum may not be met and depends on topics to be discussed (meetings include discussing changes in regulation, consideration and approval for special licenses, legislative updates, etc.): <ol style="list-style-type: none"> <li>1. DMR Advisory Council</li> <li>2. Lobster Advisory Council</li> <li>3. Lobster Zone Councils</li> <li>4. Sea Urchin Zone Council</li> <li>5. Scallop Advisory Council</li> <li>6. Commercial Fishing Safety Council</li> <li>7. Shellfish Advisory Council</li> </ol>
Maine Human Rights Commission	May conduct an emergency telephonic Commission meeting if notify local representatives of the media and make a reasonable effort to notify the parties affected by the meeting. See 2009 memo.

**Public Proceedings: remote participation by members**

AGENCY	REMOTE PARTICIPATION
Public Utilities Commission	<p>Three commissioners who typically hold public deliberations once a week. Occasionally, one or two may be out of town and telephone into deliberations which would be broadcast throughout the Commission’s hearing room for those in the room and can be heard over the internet at the PUC’s website. The sound recording is also archived on the PUC website.</p> <p>No quorum or attendance requirements apply to hearings; all hearings are transcribed so absent commissioner can read the transcript.</p>
Maine Emergency Management Agency, Department of Defense, Veterans and Emergency Management	<ul style="list-style-type: none"> <li>• State Emergency Response Commission: meets quarterly, occasionally has members participate remotely via teleconference and/or webinar-style internet connection</li> <li>• River Flow Advisory Commission: meets at least annually, occasionally also has similar remote participation</li> </ul>
Maine Historic Preservation Commission	<p>Quarterly meetings – made one exception in last ten years: member participated by speaker phone (could not drive from York to Augusta for health reasons)</p>
Maine Drug Enforcement Agency, Department of Public Safety	<p>MDEA Advisory Board meetings using teleconferencing if one or more members participate from a location other than the actual location of the proceedings.</p>
University of Maine System	<p>UMS Board of Trustees Bylaws: A Trustee who cannot be in physical attendance may participate and vote by telephone, or other similar interactive technology where the Chair has determined on the record that the physical presence of the non-attending Trustee is prevented by an exceptional occasion which makes it inadvisable or impossible to attend the meeting. The presence of the non-attending Trustee in this manner shall be counted towards a quorum.</p> <p>Committees and subcommittees may meet by interactive technology.</p>
<p>Department of Agriculture, Conservation and Forestry</p> <ul style="list-style-type: none"> <li>• Integrated Pest Council</li> <li>• Arborist Advisory Council</li> <li>• Board of Pesticide Control</li> </ul>	<p>Connect through use of telephone</p>

**Public Proceedings: remote participation by members**

AGENCY	REMOTE PARTICIPATION
Workers' Compensation Board	<p>Specifically authorized in <b>39-A §151, sub-§5</b>  <i>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.</i></p>
Finance Authority of Maine (FAME)	<p>Authorized; used only in rare and unique cases  <b>10 §971. Actions of the members</b>  <i>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.</i>  <i>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.</i>  <b>1. Placement of call.</b> <i>A conference call to the members must be placed by ordinary commercial means at an appointed time.</i>  <b>2. Record of call.</b> <i>The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.</i>  <b>3. Notice of emergency meeting.</b> <i>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.</i></p>
Maine Emergency Medical Services Board, Department of Public Safety	<p>Specifically authorized <b>32 §88, sub-§1, ¶D</b>  <i>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, its 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.</i></p>

**Public Proceedings: remote participation by members**

AGENCY	REMOTE PARTICIPATION
<p>Commission on Governmental Ethics and Election Practices</p>	<p>Authorized to hold telephonic meetings under certain circumstances:  <b>21-A §1002, sub-§2</b>  <i>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:</i>  <i>A. During the 28 days prior to an election when the commission is required to meet within 2 business days of the filing of any complaint with the commission; or</i>  <i>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.</i></p>

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**Right to Know Advisory Committee**  
 Remote Participation: Comparison of 2013 RTK AC Majority recommendations with  
 Judiciary Committee Majority Report

Recommendation of Majority of Right to Know Advisory Committee (2013)		LD 1809 Majority Report of Judiciary Committee
		Sec. 1. 1 MRSA §403-A is enacted to read:
§403-A. Public proceedings through communication technology		§403-A. Public proceedings using communications technology; governing bodies of quasi-municipal corporations and districts
This section governs public proceedings, including executive sessions, during which public or governmental business is transacted through telephonic, video, electronic or other means of communication.	<ul style="list-style-type: none"> <li>• Application</li> </ul>	<p><b>1. Application.</b> This section applies to public proceedings conducted by governing bodies, including boards of trustees, of quasi-municipal corporations or districts, defined in Title 30-A, section 2351, subsection 4, that provide water, sewer or sanitary services.</p>
<p><b>1. Requirements.</b> A body subject to this subchapter may conduct a public proceeding during which one or more members of the body participate 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.</p>	<ul style="list-style-type: none"> <li>• Can have member participating remotely only if all of the following are met</li> </ul>	<p><b>2. Authorized participation.</b> A governing body may conduct a public proceeding during which one or more members of the governing body participate in the discussion or transaction of public or governmental business when not physically present only if all of the following requirements are met:</p>
<p>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 must establish criteria that must be met before a member may participate when not physically present. If the policy allows a member who is not physically present to participate in an executive session, the policy must specifically address the circumstances under which the executive session may be conducted to ensure privacy.</p>	<p>Policy:</p> <ul style="list-style-type: none"> <li>• Type of technology that may be used</li> <li>• Criteria</li> <li>• Application to executive session</li> </ul>	<p>A. The governing body has adopted a written policy that authorizes a member of the governing body who is not physically present to participate in a public proceeding through combined audio and video means of communication in accordance with this section. The policy must establish criteria that must be met before a member may participate when not physically present. The policy may not allow a member who is not physically present to participate in an executive session;</p>
<p>B. Notice of the public proceeding has been given in accordance with section 406.</p>	<ul style="list-style-type: none"> <li>• Notice</li> </ul>	<p>B. Notice of the public proceeding has been given in accordance with section 406;</p>

<p><b>Right to Know Advisory Committee</b>                  Remote Participation: Comparison of 2013 RTK AC Majority recommendations with                  Judiciary Committee Majority Report</p>
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Recommendation of Majority of Right to Know Advisory Committee (2013)		LD 1809 Majority Report of Judiciary Committee
<p>C. Except as provided in subsection 3, a quorum of the body is assembled physically at the location identified in the notice required by section 406.</p>	<ul style="list-style-type: none"> <li>• Quorum must be physically present</li> </ul>	<p>C. Except as provided in subsection 4, a quorum of the governing body is assembled physically at the location identified in the notice required by section 406;</p>
<p>D. Each member of the body participating in the public proceeding is able to hear all the other members and speak to all the other members during the public proceeding, and 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.</p>	<ul style="list-style-type: none"> <li>• “hear” vs. “hear and see” each other</li> <li>• Public can “hear” vs. “hear and see”</li> <li>• Documents and visual materials – see while discussed or distributed</li> </ul>	<p>D. Each member of the governing body participating in the public proceeding is able to see and hear all the other members and speak to all the other members during the public proceeding, and members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to see and hear all members participating from other locations. If documents or materials that include pictures, graphs, illustrations or other information presented in a visual format are part of the discussion, either the communications technology used must ensure that all members can see the documents and materials while the documents and materials are being discussed or the documents and materials must be provided to all members not physically present before or during the proceeding;</p>
<p>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.</p>	<ul style="list-style-type: none"> <li>• Identify persons at remote location</li> </ul>	<p>E. Each member who is not physically present and who is participating through combined audio and video means of communication identifies the persons present at the location from which the member is participating;</p>
<p>F. All votes taken during the public proceeding are taken by roll call vote.</p>	<ul style="list-style-type: none"> <li>• All votes by roll call</li> </ul>	<p>F. All votes taken during the public proceeding are taken by roll call vote; and</p>

**Right to Know Advisory Committee**  
 Remote Participation: Comparison of 2013 RTK AC Majority recommendations with  
 Judiciary Committee Majority Report

<b>Recommendation of Majority of Right to Know Advisory Committee (2013)</b>		<b>LD 1809 Majority Report of Judiciary Committee</b>
<p>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. Failure to comply with this paragraph does not invalidate the action of a body in a public proceeding.</p>	<ul style="list-style-type: none"> <li>• Received materials</li> </ul>	<p>G. Each member who is not physically present and who is participating through combined audio and video 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. Failure to comply with this paragraph does not invalidate the action of a body in a public proceeding.</p>
<p><b>2. Voting, quasi-judicial or judicial proceeding.</b> 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.</p>	<ul style="list-style-type: none"> <li>• Right to vote: if testimony provided, quasi-judicial proceeding</li> <li>• Participation</li> <li>• Definition of “quasi-judicial”</li> </ul>	<p><b>3. Voting; quasi-judicial proceeding.</b> A member of a governing body who is not physically present and who is participating through combined audio and video means of communication may vote in all proceedings other than quasi-judicial proceedings. A member of a governing body who is not physically present may participate in a quasi-judicial public proceeding through combined audio and video means of communication, but may not vote on any issue concerning testimony or other evidence provided during the quasi-judicial public proceeding. For the purposes of this section “quasi-judicial proceeding” means a proceeding in which the governing body is obligated to objectively determine facts and draw conclusions from the facts so as to provide the basis of an official action when that action may affect the legal rights, duties or privileges of specific persons.</p>
<p><b>3. Exception to quorum requirement.</b> A body may convene a</p>	<ul style="list-style-type: none"> <li>• Exception to quorum:</li> </ul>	<p><b>4. Exception to quorum requirement.</b> A governing body may</p>

<p><b>Right to Know Advisory Committee</b>                  Remote Participation: Comparison of 2013 RTK AC Majority recommendations with                  Judiciary Committee Majority Report</p>
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Recommendation of Majority of Right to Know Advisory Committee (2013)		LD 1809 Majority Report of Judiciary Committee
public proceeding by telephonic, video, electronic or other means of communication without a quorum under subsection 1, paragraph C if:		convene a public proceeding by combined audio and video means of communication without a quorum under subsection 2, paragraph C if:
A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742, and:	<ul style="list-style-type: none"> <li>• emergency</li> </ul>	A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742 and:
(1) The public proceeding is necessary to take action to address the emergency; and		(1) The public proceeding is necessary to take action to address the emergency; and
(2) The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency; or		(2) The governing body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency; or
B. The body is specifically authorized by its governing statute to convene a public proceeding by telephonic, video, electronic or other means of communication with less than a quorum assembled physically at the location identified in the notice required by section 406.	<ul style="list-style-type: none"> <li>• Statutory authority to meet without quorum present</li> </ul>	B. The governing body is expressly authorized by its governing statute to convene a public proceeding by combined audio and video means of communication with less than a quorum of the body assembled physically at the location identified in the notice required by section 406.
<b>4. Annual meeting.</b> 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.	<ul style="list-style-type: none"> <li>• At least one meeting annually without remote participation</li> </ul>	<b>5. Annual meeting.</b> If a governing 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 governing body in attendance are physically assembled at one location and where no members of the governing body participate by combined audio and video means of communication from a different location.

## PUBLIC COMMUNICATIONS POLICY

1. **APPLICABILITY.** This policy applies to employees of the Maine Department of [REDACTED] and is intended to guide their contact with the public and media in their roles as state employees and representatives of the department.
2. **PURPOSE.** As part of its commitment to transparency and to creating and maintaining public understanding and support for its objectives and programs, the Maine Department of [REDACTED] will provide the public and media with accurate and consistent information in an accessible, professionally-presented and timely manner. It also ensures the appropriate, coordinated use of Department-related materials, including its logo.
3. **OVERVIEW OF PUBLIC COMMUNICATIONS POLICY.** The Department has a fundamental responsibility to communicate consistently, clearly and effectively with all constituents. Working effectively with the public and media is critical to achieving this goal. The Office of Communications within the Commissioner's Office directs all Department communications and education efforts, including the development and dissemination of all official agency announcements including media releases, weekly highlights, educational columns and other documents/materials of interest to the public and regulated community; coordinates, prepares and promotes department staff public presentations and media conferences; responds to requests for public information; and manages all Department web content, including the Department website and social media presence. The Director of Communications serves as the agency spokesperson.
4. **PROCEDURES.**
  - 4.1 Providing Public Access to Departmental Information and Proceedings
    - 4.1.1 The Maine Department of [REDACTED] conforms to the letter and spirit of the Freedom of Access Act (FOAA). All files, except enforcement, personnel, and others required by law to be kept confidential, are available for inspection during business hours. Staff must follow the Department's Freedom of Access Act Guidelines in determining the appropriate response to requests for confidential information or consult the Department's FOAA Coordinator or Director of Enforcement for guidance.
    - 4.1.2 Media representatives and members of the public have rights to observe the conduct of state business. The FOAA governs those rights, both regarding "public records" and "public proceedings."
    - 4.1.3 All official state business conducted electronically must be sent through the state's email system, to allow for retention under state archival statutes. Official state business may not be conducted through any other electronic means, including but not limited to unofficial email, text messaging and instant messaging.
  - 4.2 Providing Information to the Public and Media In a Timely Manner
    - 4.2.1 The Maine Department of [REDACTED] is committed to providing the highest level of transparency and customer service. A critical element of that commitment is to the extent practicable, to respond to all requests from members of the public or media in a timely manner. Responding to media inquiries is a high priority, given their deadlines. To the extent possible and in accordance with Sections 4.3 and 4.4 of this Policy, requests from the media will receive a response immediately upon receipt, unless additional time is

## Department LOGO

allowed by the requestor's articulated deadline. If staff cannot return the request, it should be forwarded directly to the Director of Communications.

### 4.3 Representing the Department on Departmental Policy or Position

The Commissioner and Director of Communications or their approved designee is responsible for articulating Department policy, positions and any public personnel information, including but not limited to budgetary matters, legislative and regulatory positions and staffing/structural decisions. Any media inquiries on these matters should be referred directly to the Director of Communications.

### 4.4 Responding to Press Inquiries Regarding Specific Projects, Technical Issues (non-policy) or Agency Processes

4.4.1 Upon the approval of the Director of Communications, staff has the authority to respond to a reporter's inquiries regarding specific projects or technical issues within their professional purview. The Director of Communications is always available to advise staff regarding effective communications and if requested, will respond on behalf of those uncomfortable performing this task. Inquiries regarding matters outside the request recipient's jurisdiction should be directly transferred to the appropriate agency contact if it known, or to the Director of Communications, who will either respond to the inquiry or forward it to the appropriate staff person for response.

4.4.2 Responding staff should provide objective facts and never engage in speculation or opinion. When answering questions, staff should take advantage of opportunities to cite additional background or Department-developed reference material, including relevant links to the Department's website.

4.4.3 Under no circumstances is it appropriate for a staff member to disclose a staff recommendation on an Order until it has been reviewed and approved according to Department policy. Typically this process requires bureau director involvement.

4.4.4 Many aspects of pending enforcement cases are not appropriate for discussion with the public or the media. (NOTE: A Notice of Violation that has been issued to the alleged violator is available as a public document. No other enforcement documents are in the public domain until they are final.) Any inquiries related to an active enforcement case should be reviewed with the Director of Enforcement in the Office of the Commissioner prior to a departmental response.

4.4.5 A Media Contact Form is used to document all calls or interviews with reporters. Copies of completed forms are to be sent electronically within the same day to appropriate bureau management and to the Director of Communications. If the form is inaccessible (for example, the staff person is in the field), a phone call or email to the Director of Communications and appropriate bureau management is an acceptable alternative.

### 4.5 Initiating Media Contacts

4.5.1 Media relations is the responsibility of the Office of the Commissioner. Suggestions for media releases, events and other public and media activities representing the Department to the public or media are welcomed and should be brought directly to the Director of Communications before any action is pursued with as much advanced notice as possible. If the suggestion is

## Department LOGO

approved, the Director of Communications will delegate roles and responsibilities to move it forward, in consultation with the appropriate bureau management.

4.5.2 All media releases and media-related activities (events/activities orchestrated for the press and public with the intent of heightening awareness) must be approved by the Director of Communications and the Commissioner or their designee. Media releases will conform to Associated Press Style, be distributed by the Director of Communications, and also be displayed on the Department's website newsroom.

### 4.6 Corrections/Letters to the Editor/Opinion Pieces

When the media seems to have erred or unfairly represented Department staff, their actions or Department policy positions, it is important to correct the misinformation and/or mischaracterization via a request for a correction, letter to the editor, etc. Please contact the Director of Communications who will determine and coordinate the appropriate response in partnership with staff.

### 4.7 Public Speaking/Presentation Engagements

4.7.1 When a staff member is requested to represent the Department in a public speaking engagement or exhibition or policy-related forum (not including mandated public meetings or hearings), he/she must inform the Director of Communications and the Bureau Director of the engagement, audience, objective, subject matter and resources required before accepting. The Director of Communications in partnership with the Bureau Director will review the request and advise on the response. Staff is not permitted to present on behalf of the Department unless approved.

4.7.2 Requests from external entities for Department speakers may be submitted directly to the Director of Communications & Education or their designee, who will decide whether it is appropriate for the Department to be represented and coordinate and help to prepare the appropriate representatives. Department staff is not to solicit speaking/presentation engagements but can bring suggestions for potential opportunities to the Office of Communications for consideration.

4.7.3 All Department presentations must utilize the Department PowerPoint template (available at location), and be reviewed and approved by the Director of Communications and/or their designee prior to the presentation being given. PowerPoints are to be provided to the Director of Communications no less than three full working days in advance of the staff person's departure for the presentation for review.

### 4.8 Department Education and Outreach Materials

Any outreach materials –including but not limited to letters, brochures, postcards, technical bulletins, issue profiles, print/broadcast/web advertisements or promotions, reports, etc. – not specific to an individual facility, policy, project, etc. must be approved by the Director of Communications, and as necessary, additionally by the Policy Director. If staff require an outreach piece to be developed or wish to partner on an advertising/promotional campaign, they are to contact the Director of Communications or their designee who will coordinate staff within the Office of Communications to develop the appropriate materials in partnership with the relevant program staff if appropriate advanced notice has been provided. The Office of Communications

## **Department LOGO**

has Department branded display materials available for use, including banners, tableskirts and general Department brochures and stands.

### **4.9 Sponsorships/Use of Department Logo**

A sponsorship by the Department –whether monetary, in-kind or via logo– suggests endorsement of the sponsored initiative. Therefore, all requests for sponsorship or Department endorsement must be approved by the Office of the Commissioner and by the appropriate Bureau Director. Requests should be reviewed by the appropriate Division Director with the request and a recommendation made concurrently to the Director of Communications and the Bureau Director. If the sponsorship and use of the Department logo is approved, the Director of Communications will provide the correct logo file to the requestor.





**Maine State Government  
Dept. of Administrative & Financial Services  
Office of Information Technology**

**Social Media Policy**

**I. Statement of Policy**

State of Maine (the "State") agencies may use social media technologies to enhance communication, collaboration, and information exchange with citizens under the following guidelines and procedures.

**II. Purpose**

The purpose of this policy is to define the use of social media by state employees while contributing to or overseeing agency social media sites or providing comments or updates to the agency's social media identities.

In addition to this policy, social media content must be in compliance with all state and agency policies. This includes policies on harassment and discrimination, confidentiality, ethics, and workplace violence, along with any applicable codes of conduct.

**III. Guidelines and Procedures**

A. Each agency head shall designate a Social Media Supervisor who will oversee all social media requests and interactions. For those agencies that designate someone other than their Web Coordinator, the designated person should work closely with the Web Coordinator. OIT will maintain a list of Social Media Supervisors. It is the responsibility of the agency to notify OIT of its agency's designation.

B. The Social Media Supervisor shall authorize use consistent with this policy and the agency head's direction. Agency employees shall consult with their Social Media Supervisor prior to engaging in social media to ensure that participation and representation on social media sites is sanctioned. Legal counsel should be sought, when appropriate, prior to the agency engaging in social media.

C. Each agency must read and accept the social media site's terms of use and be prepared to comply with the terms of the accepted agreement.

**D. Social Media Use:**

1. **Required Work-Related Use:** This includes use of social media that is sanctioned as part of employee's job function (e.g. when an employee, as part of their job responsibilities, tweets on behalf of the agency on the agency's Twitter account). When this type of use is authorized the agency must ensure that:

- a. Any social media sites used by an agency to provide information must be established in the name of the agency.
- b. Any information posted is authorized by the designated agency Social Media Supervisor.
- c. Only authorized employees post information on the agency sites.
- d. Information posted is in compliance with the agency's Terms of Comment (see V.A.2.).

- e. Personal opinions are not to be posted on agency sites.
- f. The purpose for using the social media site is defined and understood by any authorized poster.
- g. Any authorized poster monitor the social media site to ensure compliance with this policy and all other applicable state policies.
- h. Any authorized poster and the Social Media Supervisor remove any scandalous, libelous, defamatory, pornographic, etc. material that is posted.
- i. A process will be instituted to save and retain all postings, outgoing and incoming, as all posted material is a public record.

2. Personal use at work: This includes personal use of social media while at work by an employee (e.g. logging onto Facebook and providing personal updates to a Facebook page or Twitter account during work hours using their own or their agency's information technology resources, when such activity is outside of the employee's official job function).

- a. Any such use shall be consistent with the Policy Concerning the Use of State-Owned Information and Technology (I.T.) and Related Communications Equipment and Resources and any additional use policies adopted by the agency.
- b. Excessive personal use of social media during work hours is prohibited.

3. Personal use outside of work: This includes use of social media by an employee in his or her personal capacity outside of work.

- a. Employees are prohibited from posting official agency information on his or her personal media site.
- b. Employees' personal use should not be attributable to the agency or employee's job function at agency.

E. State harassment and discrimination policies, confidentiality policies, ethics rules, code of conduct, and workplace violence policies are applicable to all social media usage.

F. Agencies linking from a State web page to a non-State social media site or landing page must indicate to users that the site is not an official Maine State government site and that a third party's website policies apply.

G. Social media participants must abide by laws governing copyright and fair use of copyrighted material owned by others. Entire articles or publications should not be reprinted without first receiving written permission from the publication's author/owner. Never quote more than a short excerpt of someone else's work and, if possible, provide a link to the original. When referencing a law, regulation, policy, or other website, if possible, provide a link or the citation.

H. Social media sites contain communications sent to or received by state agency and are therefore public records subject to State Records Retention law. These retention requirements apply regardless of the form of the record (digital text, photos, audio, or video, for example). See the record managements section of the Secretary of State's website for full details: <http://www.maine.gov/sos/arc/records/state/index.html>. Each agency must ensure that it retains a copy of the social media content in accordance with the State's records retention requirements. Agencies must review the social media service provider's terms of service for its records retention practices. While social media providers may save content for some period of time, they generally will not save it indefinitely. To the extent that the social media providers' policies are inconsistent with Maine's records retentions requirements, an agency must retain its own copies of social media posts.

I. Agencies making use of social media sites are to be aware that social media providers may incorporate advertisements into its site. State procurement and ethics laws prohibit employees or agencies from endorsing products or vendors. In addition, the .GOV registration program guidelines (applicable for those websites that are hosted within the Maine.gov domain) generally prohibit ad campaigns and endorsements. Thus, the agency must limit its association with advertising by (1) amending the Terms of Service of the social media provider if possible; (2) using, whenever possible, non-branded landing pages within the social media website or (3) not joining the social media site.

#### IV. Applicability

This policy applies to social media participation by all Executive Branch and semi autonomous state agencies. As the technology evolves, this policy may be amended to ensure consistency in the use of technologies by state employees.

Each agency's statutes, policies and procedures regarding confidential information apply to the use of social media. All federal and state statues and policies apply including:

- Section 508 of the Rehabilitation Act of 1973
- Accessibility Policy on Effective Electronic Communications
- Information Technology Security Policy (PDF), Web Accessibility Policy for the State of Maine
- Policy on Access to Data and Information on State Owned Computer Devices
- Policy Concerning the Use of State-Owned Information and Technology I.T.) and Related Communications Equipment and Resources
- Maine State Archive - Record Retention Schedules.
- Maine's Freedom of Access Act

## V. Responsibility

### A. Agency

Once an agency has decided to engage in the use of social media, the agency will

1. Designate a Social Media Supervisor who will authorize specific employees to post, update and monitor the agency's social media identity or page.
2. Create a Terms of Comment which will describe how the agency intends to manage user contributions to the agency's social media site (such as an agency's wiki or a blog). The Terms of Comment shall also describe the review process prior to posting comments and the selection criteria for comment posting (e.g. on-topic, non-duplicative, not obscene or offensive etc.). Comments shall be monitored by authorized agency staff. The Terms of Comment must be provided to each employee authorized by the Social Media Supervisor to post information on behalf for the agency.
3. Clearly indicate to employees and public users when social media used by the agency is hosted by a third party that has its own privacy policy and terms of service.
4. Advise its employees using social media sites that social media providers used by the agency may collect personal information through use of the social media site; that this personal information will be disseminated online via the social media site; and that its dissemination will not be subject to the restrictions described in State of Maine technology policies.

B. OIT – OIT is responsible for maintaining a list of agency Social Media Supervisors.

C. Chief Information Officer of the State of Maine - Title 5, Maine Revised Statutes, Chapter 163 §1973, Section 1, Paragraph B authorized the Chief Information Officer to “set policies and standards for the implementation and use of information and telecommunications technologies, including privacy and security standards and standards of the Federal Americans with Disabilities Act (ADA), for information technology.

## VI. Definitions

A. Landing page - A landing page is the page website visitors arrive at after clicking on a link on another website. It could be a home page, or any other page in a site.

B. Semi-autonomous State Agency - An Agency created by an act of the Legislative Branch that is not a part of the Executive Branch. This term does not include the Legislative and Judicial Branches, Offices of the Attorney General, Secretary of State, State Treasurer, and Audit Department.

C. Social Media Identity – A social media identity is a user identity or account that has been registered on a third party social media site.

D. Social Media or Networking – The terms social media and social networking are used interchangeably. Social media is a set of technologies and channels targeted at forming and enabling a potentially massive community of participants to productively collaborate. Social media includes: blogs, wikis, microblogging sites, such as Twitter™; social networking sites, such as Facebook™ and LinkedIn™; video sharing sites, such as YouTube™; and bookmarking sites such as Del.icio.us™.

E. Social Media Sites – Social media sites refer to websites that facilitate user participation, networking and collaboration through the submission of user generated content.

F. Social Media Supervisor – The Social Media Supervisor is an individual within an agency who oversees all agency social media sites and ensures compliance with this and all other applicable state policies. This individual is responsible for authorizing employees to post on state sites and for the content of such postings. OIT will maintain a list of Social Media Supervisors as designated by each respective agency.

G. Web Coordinator – The Web Coordinator develops website management plans for their agencies and submits these plans to OIT. A website management plan identifies roles and responsibilities, site monitoring and evaluation, content maintenance, oversight, user feedback and other aspects of an agency's website. OIT maintains a list of agency Web Coordinators.

## VII. References

A. IT Policies, Standards and Procedures

B. Website Standards

## VIII. Document Information

A. Document Reference Number: 37

B. Category: Computing Environment and Platform

C. Adoption Date: August 3, 2010

D. Effective Date: August 3, 2010

E. Review Date: August 3, 2011

F. Point of Contact: Director, OIT Project Management Office

G. Approved By: Greg McNeal, Acting Chief Information Officer, State House Station #138, Augusta, ME 04333, (207) 624-8800.

H. Position Title(s) or Agency responsible for enforcement: Director, OIT Project Management Office

I. Legal Citation: Title 5, Maine Revised Statutes, Chapter 163 §1973, Section 1, Paragraph B authorizes the CIO to “set policies and standards for the implementation and use of information and telecommunications technologies.

J. Waiver Policy: <http://www.maine.gov/oit/policies/waiver.html>

**Right to Know Advisory Committee**  
 Summary of Selected Social Media Policies Used by States

	<b>Maine State Government Office of Information Technology: Social Media Policy</b> <i>(under review)</i>	<b>North Carolina Office of Governor and IT Services: Best Practices for State Agency Social Media Usage</b>	<b>Texas Department of Information Resources: Social Media Guidelines</b>	<b>New York Office of IT Services: Social Media Policy</b>	<b>Kansas: Social Media Policy</b>	<b>Washington Office of the Governor: Guidelines and Best Practices for Social Media Use</b>
<b>Purpose</b>	Define the use of social media by state employees while contributing to or overseeing agency social media sites or providing comments or updates to agency's social media identities	Ensure that state agencies' social networking sites are secure and appropriately used and managed by outlining "best practices"; Designed to protect state employees and ensure consistency across agencies	Provide guidance for agencies and employees regarding use of social media for official state business	Encourage state entities to permit responsible use of social media; Set minimum requirements for use of social media; Help make NY State government accountable and more transparent	Establish standards for use of social media by agencies and employees; social media can facilitate information sharing and serve communication and outreach goals	Encourages use of social media to advance goals of State and missions of its agencies; Decision to use social media is business decision, not technology-based decision; provide guidelines for use of social media
<b>Oversight/Authorization</b>	Each agency shall designate social media supervisor to oversee all social media requests and interactions and notify OIT of that designation	Agency public information officers should evaluate and approve all requests for usage, verify staff authorized to use social media tools and provide training for use of social media	Must be authorized by each agency based on agency's specific needs and the appropriate scope of its use	Each agency's Public Information Officer must authorize all use of social media sites	Agency public information officers and communications directors are charged with administering the use of social media by the agencies in which they are employed	Requests to use social media should be approved by social media advisory board in each agency: deputy director, public affairs or communications team, information technology director, public disclosure and records retention officer, contracts administration officer and assistant attorney general

**Right to Know Advisory Committee**  
 Summary of Selected Social Media Policies Used by States

	<p><b>Maine State Government Office of Information Technology: Social Media Policy</b>  <i>(under review)</i></p> <p>Use and posted information must be authorized prior to engaging in social media</p> <p>Personal opinions may not be posted on agency sites</p>	<p><b>North Carolina Office of Governor and IT Services: Best Practices for State Agency Social Media Usage</b></p> <p>All use should be consistent with applicable state, federal and local laws, regulations and policies</p>	<p><b>Texas Department of Information Resources: Social Media Guidelines</b></p> <p>Only public information may be posted on social media websites</p> <p>If personal information or other confidential information is posted, agency must remove as soon as practicable following discovery</p>	<p><b>New York Office of IT Services: Social Media Policy</b></p> <p>Content must comply with all applicable Federal and State laws, regulations and policies</p>	<p><b>Kansas: Social Media Policy</b></p> <p>Information may not be posted unless it has been verified as factual and been approved for release</p> <p>Material may not be posted that is inappropriate for public release or that is personal opinion or editorial comment</p>	<p><b>Washington Office of the Governor: Guidelines and Best Practices for Social Media Use</b></p> <p>All use is subject to all applicable state, federal and local laws, regulations and policies</p>
<p>Acceptable Use</p>						
<p>Moderation, Monitoring and Terms of Comment</p>	<p>Agency must ensure that any authorized poster and the social media supervisor monitor the social media site and “remove any scandalous, libelous,</p>		<p>Agency must determine if it will allow public comment on social media websites; if public comment permitted, agency must determine how</p>	<p>State entities may disable features that allow users to post content such as comments, videos or other types of shared files</p>	<p>Information will be posted on each site regarding under what circumstances posts will be removed: Comments not topically related;</p>	<p>To allow moderation of comments without running afoul of the First Amendment, agencies should consider creating a comment and moderation policy and disclose that policy to the public</p>

**Right to Know Advisory Committee**  
 Summary of Selected Social Media Policies Used by States

<p><b>Maine State Government Office of Information Technology: Social Media Policy</b>  <i>(under review)</i></p>	<p>defamatory, pornographic, etc. information that is posted”</p>	<p><b>North Carolina Office of Governor and IT Services: Best Practices for State Agency Social Media Usage</b></p>	<p><b>Texas Department of Information Resources: Social Media Guidelines</b></p>	<p><b>New York Office of IT Services: Social Media Policy</b></p>	<p><b>Kansas: Social Media Policy</b></p>	<p><b>Washington Office of the Governor: Guidelines and Best Practices for Social Media Use</b></p>
			<p>social media content will be monitored</p> <p>Criteria for removing, rejecting or disavowing public content should be determined by each agency and communicated to the public</p> <p>Extent to which agency restricts or limits speech requires careful consideration of First Amendment</p>	<p>Entity reserves right to delete any content and block or remove users who violate terms of participation</p>	<p>profane or inappropriate language; sexual content or links to sexual content; solicitations of commerce; conduct or encouragement of illegal activity; information that may compromise safety and security of public; content that violates legal ownership interest of any party; content that holds the State of Kansas, its agencies, officials or employees in false light; or</p>	

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<p>Employee Access and Conduct</p>	<p>Only authorized employees may post information on agency sites</p> <p>Employees are prohibited from posting official agency information on personal social media sites and personal use of social media should not be attributable to the agency or the employee's job function at the agency</p>	<p>All agency-related communication through social media should remain professional in nature</p> <p>Employees must not use agency social media sites for political purposes, to conduct private commercial transactions or to engage in private business activities</p> <p>Employees may have personal social networking websites that must remain personal in nature and not be used to share</p>	<p>When using social media in any fashion connected to their agency position or job duties and when presenting oneself in a social media setting as an agency representative, agency employees must comply with applicable agency policies governing employee behavior and acceptable use of</p>	<p>State workforce members must obtain necessary authorization before communicating on behalf of state government entity</p> <p>Workforce members may not discuss or release proprietary, confidential or otherwise restricted information</p> <p>Employees' use of social</p>	<p>information that violates operational security or is protected by law</p> <p>Updating or posting to agency sites by employees as part of employee's official duties must be done with knowledge and approval of employee's supervisor</p> <p>Employees may have personal social media sites, but these may not be represented as official state agency sites and may not be used</p>	<p>Employees may not participate on social media websites or online forums on behalf of an agency without authorization</p> <p>Employees may not post or release proprietary, confidential, sensitive or personally identifiable information on state agency sites</p> <p>Employees' use of social networking for personal purposes is not permitted on agency equipment</p>



**Right to Know Advisory Committee**  
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<p>Freedom of Access</p>	<p>Maine State Government Office of Information Technology: Social Media Policy <i>(under review)</i></p>	<p>North Carolina Office of Governor and IT Services: Best Practices for State Agency Social Media Usage</p>	<p>Texas Department of Information Resources: Social Media Guidelines</p>	<p>New York Office of IT Services: Social Media Policy</p>	<p>Kansas: Social Media Policy</p>	<p>Washington Office of the Governor: Guidelines and Best Practices for Social Media Use</p>
<p></p>	<p>work-related information</p>	<p>work-related information</p>	<p>electronic and information resources</p>	<p>networking for personal purposes must not substantially interfere with the operation of the State or a State government entity</p>	<p>during work hours unless approved; use of personal social media during work hours shall not interfere with work duties</p>	<p></p>
<p></p>	<p>Social media sites contain communications sent to or received by a state agency and are therefore public records</p>	<p>Like email, communication via agency-related social networking websites is a public record, including posts made by the agency and any feedback from citizens</p> <p>Agencies should disclose on social networking site that communication may be considered a public record and subject to disclosure</p>	<p>Social media content posted by an agency or the public on an agency's social media website is a state record</p>	<p>Policy notes that Freedom of Information law may apply to social media content; makes clear that entities should be aware of legal implications</p>	<p></p>	<p>All content published and received by the agency using social media in connection with the transaction of an agency's public business are public records</p>

**Right to Know Advisory Committee**  
 Summary of Selected Social Media Policies Used by States

<p><b>Maine State Government Office of Information Technology: Social Media Policy</b> <i>(under review)</i></p>	<p><b>North Carolina Office of Governor and IT Services: Best Practices for State Agency Social Media Usage</b></p>	<p><b>Texas Department of Information Resources: Social Media Guidelines</b></p>	<p><b>New York Office of IT Services: Social Media Policy</b></p>	<p><b>Kansas: Social Media Policy</b></p>	<p><b>Washington Office of the Governor: Guidelines and Best Practices for Social Media Use</b></p>
<p>Records Retention</p> <p>Social media communications are subject to state records retention law and retention requirements apply regardless of form of the records</p> <p>Each agency must ensure that it retains a copy of the social media content in accordance with records retention requirements; to the extent that social media provider's records retention practices are inconsistent with state requirements, agency must retain own copies</p>	<p>Agencies must assume responsibility for and adhere to schedule for retention established by state archives</p> <p>Department of Cultural Resources may perform automated harvesting of social media content on behalf of an agency and, if agency does not participate, agency must manually archive the public content</p>	<p>Social media content posted by an agency or the public on an agency's social media website is subject to state records retention requirements</p> <p>Agencies may consider common exceptions to records retention requirements when evaluating social media content: duplicate content and transitory information</p>	<p>Policy notes that Freedom of Information law may apply to social media content and, accordingly, may be subject to records retention requirements; makes clear that entities should be aware of legal implications</p>	<p>Social media public records are subject to records retention schedules</p> <p>Agency is responsible for capturing electronic copies of its public records made or received using social media, including those records made or received using third-party websites and must establish mechanisms/procedures for capturing social media public records</p>	

**Right to Know Advisory Committee**  
 Summary of Selected Social Media Policies Used by States

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Intellectual Property Rights	Social media participants must abide by laws governing copyright and fair use of copyrighted material owned by others	Content and communication on social media should include no form of copyright violations	Agency must ensure that it has right to post all social media content and is not infringing on intellectual property rights of others  Intellectual property rights of content provided by the public will be governed by federal copyright law and the terms of service of the social media provider	Agencies must abide by copyright and other applicable laws relating to libel, defamation and data protection		Agencies must comply with laws governing copyright  When posting materials, agencies should obtain copyright releases for all material to be posted or indemnification from the copyright owner  If agency receives proper notice of possible copyright infringement, agency will remove or disable access to allegedly infringing material and terminate accounts of repeat infringers  Agencies should consider how to prevent fraud or unauthorized access to social media sites and use best practices to mitigate
Security	State statutes and policies apply, including information technology security policy	In order to prevent potential harm, users should minimize the amount of information an attacker is likely to	Agency must comply with its own IT security policies, standards and guidelines	Agencies must ensure that security policies are in place and provide training for employees to		

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		<p>gain from a successful attack</p> <p>Employees/authorized users should be educated about specific social media threats before being granted access to social media website</p>		<p>identify and defend against potential attacks</p>		<p>security risks</p>

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SEN. CHRISTOPHER K. JOHNSON, SENATE CHAIR  
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MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

July 31, 2014

Honorable Janet Mills  
Attorney General  
6 State House Station  
Augusta, Maine 04333-0006

Honorable Matthew Dunlap  
Secretary of State  
148 State House Station  
Augusta, Maine 04333-0148

Dear Attorney General Mills and Secretary of State Dunlap:

In the months since the Office of Program Evaluation and Government Accountability released its December 2013 report on Healthy Maine Partnerships' FY13 Contracts and Funding, our committee has been considering potential actions on associated issues with records retention policies and practices at the Maine Center for Disease Control and Prevention, as well as Statewide. Chief Deputy Attorney General Linda Pistner, FOAA Ombudsman Brenda KIELTY, Senior Attorney General Phyllis Gardiner and State Archivist David Cheever have provided information and perspective that have helped us to understand where weaknesses exist in the State's records retention and management framework and helped brainstorm possible ideas for improvements. We greatly appreciate their interest and assistance in these matters.

As a result of these discussions, the Government Oversight Committee would like to accept the offer extended by your offices for the FOAA Ombudsman and Director of the State Archives Records Management to convene a working group to develop and/or make specific recommendations to the GOC regarding improvements to the State's Records Retention framework. Specifically, the GOC requests that:

- A. A working group be convened by the FOAA Ombudsman and the Director of Maine State Archives Records Management and include, at a minimum, representatives of the Attorney General's Office, the Office of Information Technology, the Bureau of Human Resources and the Department of Audit.

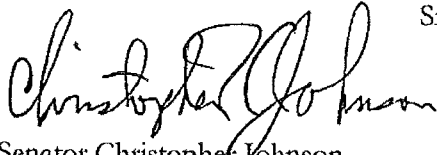
82 State House Station, Room 107 Cross Building  
Augusta, Maine 04333-0082  
TELEPHONE 207-287-1901 FAX: 207-287-1906

- B. The working group make specific recommendations concerning the following:
  - a. improved guidance for agencies on record retention, including specifically the issue of draft documents and the appropriate criteria for determining the extent to which drafts should be retained;
  - b. model policies on record retention;
  - c. training requirements, including additional requirements for supervisors, and a system of accountability to assure that all state employees receive appropriate training on record retention policies, schedules and procedures; and
  - d. establishing, or promoting/enhancing existing, avenues for employees to get consistent and accurate answers to records retention questions.
- C. The working group also make suggestions on how best to implement the following ideas with the goal of ensuring expectations regarding records retention are clear and well understood by all employees and that all employees are accountable for complying with those expectations:
  - 1. All executive branch agencies shall review and update their record retention policies, procedures and schedules consistent with the improved guidance and model policies; train incoming and existing employees and supervisors on those updated record retention policies and procedures (in addition to, or in conjunction with FOAA training); and require staff to review and acknowledge receipt of the State of Maine Policy on Preservation of State Government Records on an annual basis.
  - 2. Consistent with collective bargaining agreements, civil service law and rule and other applicable law, compliance with record retention policies, procedures and schedules should be included as part of each employee's performance expectations. Employees who fail to fulfil their obligations under applicable record retention policies, procedures and schedules will be subject to disciplinary action, up to and including discharge.
  - 3. The FOAA Ombudsman's ongoing training of state agency personnel continue to address the importance of record retention, as well as the obligation of each agency to update their record retention schedules, policies and procedures, and to assure that all agency staff receive training on those policies and procedures.
- D. The working group make recommendations on guidelines that should be used by agencies in determining costs for responding to a FOAA such that costs are reasonable, consistent across State government and do not present an unnecessary barrier to FOAA requests.
- E. In developing its recommendations and suggestions, that the working group seek input from the Right to Know Advisory Committee, other State agencies and/or stakeholders as appropriate.
- F. The working group report back to the GOC by February 1, 2015, on the results of its work and include recommendations for any additional steps, including those that may require legislative action.

We understand that your offices have very limited staff resources to support this effort and, consequently, there may not be time or resources to involve or seek feedback from a broad stakeholder group, even if the working group feels that would be appropriate. If it seems that the working group's recommendations should be vetted with stakeholders more than you have opportunity to do before February 1<sup>st</sup>, the GOC can do so through its public consideration of those recommendations.

Please confirm with OPEGA Director Beth Ashcroft that your offices intend to honor this request. Director Ashcroft can also answer any questions you may have.

Sincerely,



Senator Christopher Johnson  
Senate Chair



Representative Chuck Kruger  
House Chair

Cc: Members of the Government Oversight Committee





# **Records Management**

## **Basic Principles for All State Employees**

### **Why Does the Records Management Program Exist?**

**The program was established under Title 5, Chp. 6, §95 and states:**

**7.** The head of each state agency or local government agency shall establish and maintain an active, continuing program for the economical and efficient management of any records in compliance with the standards, procedures and regulations issued by the State Archivist.

**8. Transfer of state records.** To provide for the transfer to the archives of state records, disposed of under subsection 7, paragraph C, that have archival value;

**9. Destruction of state records.** To authorize and receive confirmation of the destruction of the state records of any state or local agency that, in the opinion of the head of the agency, are no longer of value to the state or local government agency, and that, in the opinion of the State Archivist and the Archives Advisory Board, have no archival value to the State.

### **What is Records Management?**

Records management is the continuous and efficient program by which we identify and classify records, establish schedules and manage records throughout their lifecycle. In other words, what to keep, how long you keep it and whether or not it is destroyed or kept as Archival.

### **What are Your Responsibilities?**

According to the Rules of Chapter 1 (Under APA Rule 29/255) it is the responsibility of the head of each agency to maintain an efficient and continuous records management program. It is also the responsibility of the head of each agency to appoint a Records Officer.

The appointed Records Officer will appoint Assistants as needed. The Records Officer will have a thorough knowledge of the agency, its records and functions. The Records Officer will create and maintain appropriate records schedules.

All state employees are responsible for creating records needed to do the business of their agency, and documenting activities for which they are responsible. As a government employee, you are responsible for managing any and all public records (including email) for which you are the custodian.

All state employees are responsible for maintaining records so that information can be found when needed. This means setting up good directories and files, and properly filing records in a manner that allows them to be stored and efficiently retrieved when necessary.

All employees are responsible for carrying out the disposition of records under their control in accordance with agency records schedules. All employees should be made aware of records schedules and which records they are responsible for keeping (custodian of the record).

## **Why Is Records Management Important?**

Agencies produce records every day. They are the vital component to the functionality of the agency for administrative, fiscal, legal and historical purposes. Not knowing what to keep is not the answer to Records Management and neither is keeping everything. There are implications for both.

An effective records management program offers several benefits:

### **Promotes a positive reputation for State Agencies**

In the height of public access, government agencies need to remain accountable for the records they create and maintain. Public records document agency business and with proper management agencies can show they are taking the correct action for the appropriate amount of time and for the right reasons. When an agency demonstrates proper public records organization, a management program where records are controlled, and destroyed in accordance to law, the state's reputation is improved as is the public's confidence in state government.

### **Helps the Agency Fulfill its Mission**

It will help identify and protect the essential records of your agency; those records needed to keep the agency functional. Locating what you need, when you need it is a vital component to running an agency effectively.

### **Promotes Cost Effective Business Practice**

A proper records management program will reduce the volume of records stored; improve storage and retrieval systems and help to get the right record to the right person effectively and efficiently. Records on current schedules will be destroyed when they should be, making the best use of physical and digital space (both which state agencies can pay for). An efficient records program will limit the risk and cost associated with FOIA requests and any possible litigation. Any penalties for the inability to produce requests could be avoided by having an organized program where employees can locate records.

## **What is a Record?**

"Record" means all documentary material (books, papers, photographs, maps or other documentation, including digital records such as e-mail messages and attachments), made or received and maintained by an agency in accordance with law or rule or in the transaction of its official business; because they serve as evidence of the agency's functions, policies, decision, procedures, operations and other activities; or because of their informational value. Records can have varying purposes per agency. What are vital records to one agency, another agency may not even have or produce; different laws and statutes can mandate record retention periods for the different types of agencies. Therefore, it is very difficult to impose a "global" records program and give a tidy two column list of what to keep and what not to keep.

**Examples of records:**

- Board and Commission Minutes of Meetings
- Contracts
- Commissioner’s Correspondence
- Project files
- Client Case Files
- Personnel files

**Non-record examples:**

- Duplicate copies of documents maintained in the same file
- Informational copies on which no administrative action is recorded or taken
- Documents received that provide information but are not connected to the transaction of agency business
- Extra copies of printed or processed materials for which complete record sets exist

**How Do Agencies Manage Their Records?**

Records are managed by creating agency schedules. Schedules provide the guidance necessary to prevent unneeded records from cluttering agency offices help preserve mid to long-term records until they have served their purpose. The purpose of the Records Management Division is to apply retention periods to ALL state government records and update them as changes occur.

**Four Key Items Every Employee Needs to Know**

- Records must be managed throughout their life cycle, according to their retention schedules
- All agency records should be on up-to-date retention schedules
- All agencies should have an active Records Officer
- There are General Schedules and Agency Specific Schedules
  - ✓ General Records Schedules (for records common to most agencies):  
[www.maine.gov/sos/arc/records/state/gensched2.html](http://www.maine.gov/sos/arc/records/state/gensched2.html)
  - ✓ State Agency Schedules (pertaining to specific agencies):  
[www.maine.gov/sos/arc/records/state/stsched.html](http://www.maine.gov/sos/arc/records/state/stsched.html)

**The Records Everyone Has - General Schedules**

General Record Schedules are issued by the Maine State Archives to provide retention and disposition standards for records common to several or all State agencies. They are located on our website. Before an agency schedule is created, be sure a General Schedule does not already exist.

### **Determining Retention Periods**

In order to dispose of records at the appropriate time, it is necessary to evaluate them in relation to their period of usefulness to the department.

**Total Retention Period** - Time kept in your agency **PLUS** Time kept in the Records Center **EQUALS Total Retention Period**

### **Some specific questions in determining how long records are retained:**

- **Administrative use:** *What is the value of the records in carrying out the functions of your department? How long will you need to be able to retrieve them immediately?* Day to day business operation; correspondence, memos, reports – typically need for these records is short lived
- **Legal requirements:** *Are there any State Statutes or Federal regulations involved?* Records mandated by law or regulation; may be needed as evidence in legal cases or leases, titles, contracts, court case files
- **Fiscal requirements:** *How much time must you allow for the completion of fiscal activities such as audit or budget?* (Typically 7 years) Document an agency's fiscal responsibilities; invoices, receipts, purchase orders
- **Historical/Archival:** *Do these records document important events, or the history and development of your department?* Document history of the agency; board minutes, agency policy decisions, Commissioner's correspondence

### **Disposition Archives or Destroy?**

Five hundred years from now, may someone want or need to look at these records? Will they be needed that far in the future for any legal or historical reasons?

- *Non-archival (non-permanent) retention* is based completely on the record's time-value to the business functions of the agency, including audit or other statutory requirements, and reasonable access by interested parties.
- *Archival (Permanent) retention* is based on the record's value after it no longer serves the agency's business.

### **The Structure of the Archives**

The State Records Center, located in Hallowell is for those records which have a disposition destroy. The State Archives is for permanent records with historical/archival value. All records in Records Center status, including pre-archival records, remain under legal control of the agency that created them. Records in the Records Center are released only to cardholders of the creating agency. Any records sent to the Records Center must first be on an approved records retention schedule before they will be accepted for transfer.

DRAFT PROPOSAL TO ADDRESS UNDULY BURDENSOME OR OPPRESSIVE FOAA  
REQUESTS

Amend 1 MRS Sec. 408-A(4):

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 receipt of the request for inspection or copying. A request for inspection or copying may be denied, in whole or in part, on the basis that the request is unduly burdensome or oppressive provided that the procedures established in subsection 4-A are followed. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

[following para. all underlined, new language]

4-A. Action for protection. An agency or official may seek protection from a request for inspection or copying that is unduly burdensome or oppressive by filing an action for an order of protection in the Superior Court for the county where the request for records was made within 14 days of receipt of the request.

A. If the following information is not included in the complaint, it shall be provided to the parties and filed with the court no less than five days before any scheduled hearing:

1. The terms of the request and any modifications agreed to by the requesting party;
2. A statement of the facts that demonstrate the burdensome or oppressive nature of the request, with a good faith estimate of the time required to search for, retrieve, redact if necessary and compile the records responsive to the request and the resulting costs calculated in accordance with subsection 8; and
3. A description of the efforts made by the agency or official to inform the requesting party of the good faith estimate of costs and to discuss possible modifications of the request that would reduce the burden of production.

B. Any appeal that may be filed by the requesting party under section 409 may be consolidated herewith.

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

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

## **RIGHT TO KNOW ADVISORY COMMITTEE**

### **MEETING AGENDA**

November 17, 2014

9:00 a.m.

Room 438, State House, Augusta

#### **Convene**

1. Welcome and introductions
2. Public Access Ombudsman update
3. Remedies for abusive/burdensome public records requests – discussion
4. Deadlines and appeals for public records requests– discussion
5. Review draft legislative recommendations approved at Nov. 6<sup>th</sup> meeting
  - a. Public records exceptions
  - b. RTKAC membership – IT expertise
  - c. Reporting date for Public Access Ombudsman
  - d. New existing public records review schedule
6. Remote participation by members of public bodies – discussion
7. Review draft report
8. Other?

#### **Adjourn**





**Right to Know Advisory Committee**

Linda Pistner: recommendations re unduly burdensome or oppressive requests

**DRAFT PROPOSAL TO ADDRESS UNDULY BURDENSOME OR OPPRESSIVE FOAA  
REQUESTS**

Amend 1 MRS Sec. 408-A(4):

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 receipt of the request for inspection or copying. A request for inspection or copying may be denied, in whole or in part, on the basis that the request is unduly burdensome or oppressive provided that the procedures established in subsection 4-A are followed. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

[following para. all underlined, new language]

4-A. Action for protection. An agency or official may seek protection from a request for inspection or copying that is unduly burdensome or oppressive by filing an action for an order of protection in the Superior Court for the county where the request for records was made within 14 days of receipt of the request.

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

1. The terms of the request and any modifications agreed to by the requesting party;
2. A statement of the facts that demonstrate the burdensome or oppressive nature of the request, with a good faith estimate of the time required to search for, retrieve, redact if necessary and compile the records responsive to the request and the resulting costs calculated in accordance with subsection 8; and
3. A description of the efforts made by the agency or official to inform the requesting party of the good faith estimate of costs and to discuss possible modifications of the request that would reduce the burden of production.

**B.** Any appeal that may be filed by the requesting party under section 409 may be consolidated herewith.

**Right to Know Advisory Committee**

Linda Pistner: recommendations re unduly burdensome or oppressive requests

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

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

**Right to Know Advisory Committee**  
Chris Parr: recommendations re deadlines

Using the relevant parts of bill section D-1 (copied below) from LD 1821 of last Session, I have indicated in **bold blue font** the changes to 1 M.R.S.A. § 408-A, sub-§§ 3 and 4 that DPS wants to have included in any draft bill text re: section 408-A that the RTKAC considers at its next meeting.

These changes are needed to ensure that MSP (and, presumably, other similarly-situated State, County, and Municipal government agencies) would no longer be perpetually out of compliance with those subsections.

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



**3. Acknowledgment; clarification; time estimate; cost**

**estimate.** The body, agency or official having custody or control of a public record shall acknowledge receipt of a request made

according to this section within ~~5 working days of a reasonable~~

**period of time after** receiving the request and . The body, agency or official may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, the body, agency or official shall provide a good faith, nonbinding estimate of the time within which the body, agency or official will comply with the request, as well as a cost estimate as provided in subsection 9. The body, agency or official shall make a good faith effort to fully respond to the request within the estimated time. For purposes of this subsection, the date a request is received is the date a sufficient description of the public

record is received by the body, agency or official at the office

responsible for maintaining the public record. An office of a

body, agency or official that receives a request for a public

record that is not maintained by the office shall forward the

request to the office of the body, agency or official that

maintains the record, without willful delay.

**4. Refusals; denials.** If a ~~body or an~~ body, 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~~ body, agency or official shall provide written notice of the denial, stating the reason for the

**Right to Know Advisory Committee**  
Chris Parr: recommendations re deadlines

denial, within ~~5 working days of a reasonable period of time after~~ the receipt of the request for inspection or copying. Failure to comply with provide the notice required by this subsection within 10 working days of a reasonable period of time after the receipt of the request is considered failure a denial to allow inspection or copying and is subject to appeal as provided in section 409.

**§ 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; cost 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 5 working days of receiving the request and may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, 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, as well as a cost estimate as provided in subsection 9. 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 receipt of the request for inspection or copying. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

**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.

#### §409. Appeals

**1. Records.** Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may appeal the refusal, denial or failure within 30 calendar days of the receipt of the written notice of refusal, denial or failure to any Superior Court within the State as a trial de novo. The agency or official shall file an answer within 14 calendar days. If a court, after a trial de novo, determines such refusal, denial or failure was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

**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.

**3. Proceedings not exclusive.** The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.

**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.

**Right to Know Advisory Committee**  
Comments and suggestions about remote participation

Mark Grover, Cumberland County

Ladies and Gentlemen:

Thank you for asking for my personal views on this topic.

Regarding extending public meetings to include electronic participation by members of a body, I believe that it is essential that the public be able to hear and see any comment or other input from each member to the same extent as other members of the body. For example, if a member of a body participates by telephone, then members of the public who are in attendance at the meeting must also be able to hear that member equally. Extending it further, if the public has the ability to record a public meeting, that recording should also be able to include the participation of each member equally. Finally, I believe that any electronic recording for transmission or rebroadcast should include the input of all members of the body.

I further believe that public notice of any "emergency" meetings must be provided to the media (which includes social media) and general public as expeditiously and completely as technically possible under the emergency circumstances, by all electronic means available. I also believe that public bodies should maintain email lists of any interested citizens who wish to receive public notices, including for emergency meetings.

Thank you for considering my views.

=MDG=

**Mark D. Grover, County Commissioner**  
County of Cumberland (Maine), Third District  
142 Federal Street #102, Portland, ME 04101-6433  
Office/Messages: (207) 871-8380  
Cell: (207) 653-9370  
Skype: mark.d.grover  
Fri 11/7/2014 8:58 PM

Ken Capron

Hi Peggy,

I have a lot of comments I'd like to make about the FOAA work that has gone on. Suffice it to say it has become terribly more difficult to use – extremely more confusing.

That said, the objective of allowing someone to attend a meeting by remote is to come as close as possible to them seeming to be present. I would hope that budget restraints are kept in mind because eventually people will ask for reimbursement for phone

**Right to Know Advisory Committee**  
Comments and suggestions about remote participation

charges. I would like to recommend a FREE Internet service I use with a couple of groups in the U.S.. It is <https://www.zoom.us/> and allows video+voice+sharing of documents live real-time. I also believe it has a recording function. It allows up to 25 people to communicate at once. It has been 100% reliable for us.

If the remote person is in attendance in every way except physically, then their contribution to a meeting can be treated as if they were in actual attendance. The audio from zoom could be piped into a microphone plug-in so it would be picked up in the Internet Stream from the meeting.

If I can add one more comment – you need a new ombudsperson. The current one is NOT very helpful – she almost seems to be working against the FOAA rather than for ‘the people.’ Sorry.

Ken Capron  
Kaycen [kaycen@maine.rr.com](mailto:kaycen@maine.rr.com)  
Sat 11/8/2014 1:00 AM

Vicki Wallack, Maine School Management Association

Hello,

We support the original position of the Right to Know Advisory Committee i.e. the one you sent out dated Dec. 13, 2013. I have pasted below some of the reasons we support it, quoting our testimony against LD 1809. Hope this helps. Vicki

“In today’s world, when we are looking for people who not only have a passion about public education, but also understand how to read a budget spreadsheet, do contract negotiations, hire personnel, oversee evaluation systems, and approve a curriculum – to name just a few of the school board member’s responsibilities – we welcome people who have professional experience.

Those same people often travel for business and this law would prohibit their participation in a board meeting when they are out of town.

It also would exclude participation of a board member who is temporarily housebound and make it more difficult to get a quorum in some of our districts that encompass significant geography, particularly in winter.

Rather than prohibit the use of electronic communications to conduct public proceedings, we suggest instead that this practice be allowed with certain parameters. Electronic communications should be used to encourage participation by all board members, for example, not to shut out the public.

Our association would advise boards to adopt policies around electronic communication to make sure technology is used to support open communication and not be an impediment to it. Prohibiting the use of electronic communication altogether, however,



**Right to Know Advisory Committee**  
Comments and suggestions about remote participation

ignores the benefits technology can bring to produce better and more inclusive governance. “

Vicki Wallack [VWallack@msmaweb.com](mailto:VWallack@msmaweb.com)  
MSMA position on remote participation  
Mon 11/10/2014 2:26 PM

Garrett Corbin, Maine Municipal Association

Hello Senator Valentino,

It is my understanding that the Right to Know Advisory Committee may be interested in advancing another proposal to implement some level of “remote access” opportunity within Maine’s open meeting law, and you were interested in hearing about approaches that the Maine Municipal Association, as well as other affected interest groups, could support.

MMA’s Legislative Policy Committee supported the original remote access legislation developed by the Right to Know Advisory Committee (submitted in 2013 as LD 258, attached). There is a provision in that original version that MMA would like to see slightly amended, but we are generally supportive of the LD 258 approach. I think it is fair to say the current Legislative Policy Committee would be likely to continue to support that legislation even if no amendments were allowed.

I happened to attend a conference of northeastern municipal leagues last week, with representatives from all the New England municipal associations as well as New York’s. At that conference I learned that Massachusetts, New Hampshire, New York and Vermont all allow some level of remote access to public meetings by board members with various limitations similar to what is being proposed in LD 258. I have included a compilation of the pertinent remote access laws from those other states for your information.

I hope this information is helpful to you and the Committee.

Best,  
Garrett

Garrett H. Corbin  
Legislative Advocate  
Maine Municipal Association  
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Mon 11/10/2014 3:35 PM

**Right to Know Advisory Committee**  
Comments and suggestions about remote participation

**Massachusetts**

*Title 30A §20*

*(d) The attorney general may by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.*

*940 CMR 29.10*

*(1) Preamble. Remote participation may be permitted subject to the following procedures and restrictions. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. By promulgating these regulations, the Attorney General hopes to promote greater participation in government. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of the Open Meeting Law, namely promoting transparency with regard to deliberations and decisions on which public policy is based.*

*(2) Adoption of Remote Participation. Remote participation in meetings of public bodies is not permitted unless the practice has been adopted as follows:*

*(a) Local Public Bodies. The Chief Executive Officer, as defined in M.G.L. c. 4, sec. 7, must authorize or, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that authorization or vote applying to all subsequent meetings of all local public bodies in that municipality.*

*(b) Regional or District Public Bodies. The regional or district public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.*

*(c) Regional School Districts. The regional school district committee must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.*

*(d) County Public Bodies. The county commissioners must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of all county public bodies in that county.*

*(e) State Public Bodies. The state public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.*

**Right to Know Advisory Committee**  
Comments and suggestions about remote participation

*(f) Retirement Boards. A retirement board created pursuant to M.G.L. c. 32, sec. 20 or M.G.L. c. 34B, § 19 must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.*

*(3) Revocation of Remote Participation. Any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) may revoke that adoption in the same manner.*

*(4) Minimum Requirements for Remote Participation.*

*(a) Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other;*

*(b) A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location, as required by M.G.L. c. 30A, sec 20(d);*

*(c) Members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of M.G.L. c. 39, sec. 23D.*

*(5) Permissible Reasons for Remote Participation. If remote participation has been adopted in accordance with 940 CMR 29.10(2), a member of a public body shall be permitted to participate remotely in a meeting, in accordance with the procedures described in 940 CMR 29.10(7), if the chair or, in the chair's absence, the person chairing the meeting, determines that one or more of the following factors makes the member's physical attendance unreasonably difficult:*

*(a) Personal illness;*

*(b) Personal disability;*

*(c) Emergency;*

*(d) Military service; or*

*(e) Geographic distance.*

*(6) Technology.*

*(a) The following media are acceptable methods for remote participation. Remote participation by any other means is not permitted. Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.*

*(i) telephone, internet, or satellite enabled audio or video conferencing;*

**Right to Know Advisory Committee**  
Comments and suggestions about remote participation

*(ii) any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.*

*(b) When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location.*

*(c) The public body shall determine which of the acceptable methods may be used by its members.*

*(d) The chair or, in the chair's absence, the person chairing the meeting, may decide how to address technical difficulties that arise as a result of utilizing remote participation, but is encouraged, wherever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred shall be noted in the meeting minutes.*

*(e) The amount and source of payment for any costs associated with remote participation shall be determined by the applicable adopting entity identified in 940 CMR 29.10(2).*

**(7) Procedures for Remote Participation.**

*(a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.*

*(b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely and the reason under 940 CMR 29.10(5) for his or her remote participation. This information shall also be recorded in the meeting minutes.*

*(c) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.*

*(d) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by a simple majority vote of the public body.*

*(e) When feasible, the chair or, in the chair's absence, the person chairing the meeting, shall distribute to remote participants, in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting, and shall be listed in the meeting minutes and retained in accordance with M.G.L. c. 30A, sec. 22.*

**(8) Further Restriction by Adopting Authority.** *These regulations do not prohibit any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) from*

**Right to Know Advisory Committee**  
Comments and suggestions about remote participation

*enacting policies, laws, rules or regulations that prohibit or further restrict the use of remote participation by public bodies within that person or entity's jurisdiction, provided those policies, laws, rules or regulations do not violate state or federal law.*

*(9) Remedy for Violation. If the Attorney General determines, after investigation, that 940 CMR 29.10 has been violated, the Attorney General may resolve the investigation by ordering the public body to temporarily or permanently discontinue its use of remote participation.*

**New Hampshire**

**RSA 91-A (2)(III)**

*III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.*

*(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.*

*(b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.*

*(c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location. Any member participating in such fashion shall identify the persons present in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.*

*(d) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.*

*(e) A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.*

**New York**

**Public Officers (PBO) Law Article 7 – Open Meetings Law**

*§ 103. Open meetings and executive sessions. (a) Every meeting of a public body shall be open to the general public, except that an*

**Right to Know Advisory Committee**  
Comments and suggestions about remote participation

*executive session of such body may be called and business transacted thereat in accordance with section ninety-five of this article.*

*(b) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision five of section fifty of the public buildings law.*

***(c) A public body that uses videoconferencing to conduct its meetings shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates.***

*\* (d) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in an appropriate facility which can adequately accommodate members of the public who wish to attend such meetings.*

*\* NB There are 2 sub (d)'s*

*\* (d) 1. Any meeting of a public body that is open to the public shall be open to being photographed, broadcast, webcast, or otherwise recorded and/or transmitted by audio or video means. As used herein the term "broadcast" shall also include the transmission of signals by cable.*

*2. A public body may adopt rules, consistent with recommendations from the committee on open government, reasonably governing the location of equipment and personnel used to photograph, broadcast, webcast, or otherwise record a meeting so as to conduct its proceedings in an orderly manner. Such rules shall be conspicuously posted during meetings and written copies shall be provided upon request to those in attendance.*

*\* NB There are 2 sub (d)'s*

*(e) Agency records available to the public pursuant to article six of this chapter, as well as any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion by a public body during an open meeting shall be made available, upon request therefor, to the extent practicable as determined by the agency or the department, prior to or at the meeting during which the records will be discussed. Copies of such records may be made available for a reasonable fee, determined in the same manner as provided therefor in article six of this chapter. If the agency in which a public body functions maintains a regularly and routinely updated website and utilizes a high speed internet connection, such records shall be posted on the website to the extent practicable as determined by the agency or the department, prior to the meeting. An agency may, but shall not be required to, expend additional moneys to implement the provisions of this subdivision.*

**Rhode Island**

***§ 42-46-5 Purposes for which meeting may be closed – Use of electronic communications – Judicial proceedings – Disruptive conduct. – (a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 for one or more of the following purposes:***

**Right to Know Advisory Committee**  
Comments and suggestions about remote participation

*(1) Any discussions of the job performance, character, or physical or mental health of a person or persons provided that such person or persons affected shall have been notified in advance in writing and advised that they may require that the discussion be held at an open meeting.*

*Failure to provide such notification shall render any action taken against the person or persons affected null and void. Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any persons to be discussed have been so notified and this statement shall be noted in the minutes of the meeting.*

*(2) Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to collective bargaining or litigation.*

*(3) Discussion regarding the matter of security including, but not limited to, the deployment of security personnel or devices.*

*(4) Any investigative proceedings regarding allegations of misconduct, either civil or criminal.*

*(5) Any discussions or considerations related to the acquisition or lease of real property for public purposes, or of the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public.*

*(6) Any discussions related to or concerning a prospective business or industry locating in the state of Rhode Island when an open meeting would have a detrimental effect on the interest of the public.*

*(7) A matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest. Public funds shall include any investment plan or matter related thereto, including, but not limited to, state lottery plans for new promotions.*

*(8) Any executive sessions of a local school committee exclusively for the purposes: (i) of conducting student disciplinary hearings; or (ii) of reviewing other matters which relate to the privacy of students and their records, including all hearings of the various juvenile hearing boards of any municipality; provided, however, that any affected student shall have been notified in advance in writing and advised that he or she may require that the discussion be held in an open meeting.*

*Failure to provide such notification shall render any action taken against the student or students affected null and void. Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any students to be discussed have been so notified and this statement shall be noted in the minutes of the meeting.*

*(9) Any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement.*

*(10) Any discussion of the personal finances of a prospective donor to a library.*

**Right to Know Advisory Committee**  
Comments and suggestions about remote participation

*(b) No meeting of members of a public body or use of electronic communication, including telephonic communication and telephone conferencing, shall be used to circumvent the spirit or requirements of this chapter; provided, however, these meetings and discussions are not prohibited.*

*(1) Provided, further however, that discussions of a public body via electronic communication, including telephonic communication and telephone conferencing, shall be permitted only to schedule a meeting.*

*(2) Provided, further however, that a member of a public body may participate by use of electronic communication or telephone communication while on active duty in the armed services of the United States.*

*(3) Provided, further however, that a member of that public body, who has a disability as defined in chapter 87 of title 42 and:*

*(i) Cannot attend meetings of that public body solely by reason of his or her disability; and*

*(ii) Cannot otherwise participate in the meeting without the use of electronic communication or telephone communication as reasonable accommodation, may participate by use of electronic communication or telephone communication in accordance with the process below.*

*(4) The governor's commission on disabilities is authorized and directed to:*

*(i) Establish rules and regulations for determining whether a member of a public body is not otherwise able to participate in meetings of that public body without the use of electronic communication or telephone communication as a reasonable accommodation due to that member's disability;*

*(ii) Grant a waiver that allows a member to participate by electronic communication or telephone communication only if the member's disability would prevent him/her from being physically present at the meeting location, and the use of such communication is the only reasonable accommodation; and*

*(iii) Any waiver decisions shall be a matter of public record.*

*(c) This chapter shall not apply to proceedings of the judicial branch of state government or probate court or municipal court proceedings in any city or town.*

*(d) This chapter shall not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.*

*History of Section.*

*(G.L. 1956, § 42-46-5; P.L. 1976, ch. 330, § 2; P.L. 1982, ch. 352, § 1; P.L. 1988, ch. 659, § 1; P.L. 1995, ch. 265, § 1; P.L. 1998, ch. 379, § 1; P.L. 2000, ch. 330, § 1; P.L. 2000, ch. 463, § 1; P.L. 2005, ch. 91, § 1; P.L. 2005, ch. 98, § 1; P.L. 2005, ch. 103, § 1; P.L. 2005, ch. 134, § 1; P.L. 2006, ch. 602, § 1; P.L. 2007, ch. 433, § 1.)*



**Right to Know Advisory Committee**  
Comments and suggestions about remote participation

Vermont

*1 V.S.A. § 312. Right to attend meetings of public agencies*

*(a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under subdivision 313(a)(2) of this title. A meeting of a public body is subject to the public accommodation requirements of 9 V.S.A. chapter 139. A public body shall electronically record all public hearings held to provide a forum for public comment on a proposed rule, pursuant to 3 V.S.A. § 840. The public shall have access to copies of such electronic recordings as described in section 316 of this title.*

*(2) Participation in meetings through electronic or other means.*

*(A) As long as the requirements of this subchapter are met, one or more of the members of a public body may attend a regular, special, or emergency meeting by electronic or other means without being physically present at a designated meeting location.*

*(B) If one or more members attend a meeting by electronic or other means, such members may fully participate in discussing the business of the public body and voting to take an action, but any vote of the public body shall be taken by roll call.*

*(C) Each member who attends a meeting without being physically present at a designated meeting location shall:*

*(i) identify himself or herself when the meeting is convened; and*

*(ii) be able to hear the conduct of the meeting and be heard throughout the meeting.*

*(D) If a quorum or more of the members of a public body attend a meeting without being physically present at a designated meeting location, the following additional requirements shall be met:*

*(i) At least 24 hours prior to the meeting, or as soon as practicable prior to an emergency meeting, the public body shall publicly announce the meeting, and a municipal public body shall post notice of the meeting in or near the municipal clerk's office and in at least two other designated public places in the municipality.*

*(ii) The public announcement and posted notice of the meeting shall designate at least one physical location where a member of the public can attend and participate in the meeting. At least one member of the public body, or at least one staff or designee of the public body, shall be physically present at each designated meeting location.*

**Right to Know Advisory Committee**  
Comments and suggestions about remote participation

*(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Minutes shall include at least the following minimal information:*

*(A) all members of the public body present;*

*(B) all other active participants in the meeting;*

*(C) all motions, proposals, and resolutions made, offered, and considered, and what disposition is made of same; and*

*(D) the results of any votes, with a record of the individual vote of each member if a roll call is taken.*

Jeff McNelly, Maine Water Utilities Association

Please pass these comments onto the RTK Committee; I hope to be there for their meeting on Monday.

Remote Participation:

The point that there is “confusion as to what is legal and permitted under the law” is an interesting one, in that nobody has stepped up and definitively stated that the remote participation practice being utilized by water districts, etc. (in some situations for years now) is not legal.

The AG’s Office has stated that they are “advising” public bodies to do such and such (or not).

Frankly, and as much as I respect the attorneys, that is of no help at all; we suggest that this “confusion” is a created conundrum.

Concerning the 2013 draft:

I have attached our testimony in opposition to LD 1809, which conveys the essence of the concerns we have relative to the direction the RTK Committee appears tempted to be headed.

A major issue is the fact that a person who is not physically present cannot be counted toward a quorum.

The requirements re: public proceedings through communications technology, while perhaps perceived (but not by us) as well intentioned, could create quagmire-ish situations that could cripple a public body - to the extent that they would be unable to make timely and critical decisions.

Recognize and acknowledge that few water/wastewater trustees will be unduly hamstrung by any public proceedings requirements that may be enacted.

**Right to Know Advisory Committee**  
Comments and suggestions about remote participation

These boards operate in an open and transparent fashion; however, if critical decisions need to be made during times of crisis it is our belief that actions which need to be implemented to protect public health will be implemented.

If there are any questions, I would certainly be willing to address them on Monday. If, for some reason, I am not at the meeting and there is an issue the RTK Committee wants feedback on, feel free to call me on my cell phone.

In closing, I do have a request:

Could I get contact information for all the RTK Committee members, to include their names, addresses, phone numbers and emails?

Thank you.

Have a great weekend,

Jeff

Jeffrey McNelly, Executive Director  
Maine Water Utilities Association  
150 Capitol Street, Suite 5  
Augusta, ME 04330  
(207) 623-9511  
(207) 623-9522 – fax  
(207) 462-2263 – cell



March 20, 2014

**Testimony in Opposition to LD 1809 An Act Concerning Meetings  
of Public Bodies Using Communications Technology**

Maine Water Utilities Association represents and advocates for the water supply profession in Maine. We offer this testimony in opposition to LD 1809.

It is no secret that Maine's median age is one of the highest, if not the highest, in the nation. Maine has a significant retirement population. Many of those retirees are smart enough to not

**Right to Know Advisory Committee**  
Comments and suggestions about remote participation

want to spend every day of winter in Maine. Fortunately, many of our water and wastewater district have been fortunate in enticing them to serve as trustees.

Some of our member's trustees have served for decades. They possess a depth of institutional knowledge and insight that makes them valued assets to the operation of the organization.

We are aware of districts that have invested in the technology to enable trustees to participate via Skype and other technologies. Those systems that are making the effort to participate remotely have done that because they are committed to the concept of active involvement of their trustees. It is not unusual for those trustees who participate in this manner to be the ones who champion dialogue that results in informed and intelligent decisions.

Some of these boards have only three trustees. Not being able to have a quorum to a scheduled meeting may pose obvious difficulties in obtaining timely board permissions to undertake necessary operational or financial functions.

Remote attendance in executive sessions can be challenging in that it is critical to ensure that only board members are "attending". There are several ways to address that situation; these boards are capable of doing that.

Woven throughout a discussion of this issue is the key word: participation. There is little or no benefit to be derived by being so prescriptive and there is much to be gained by allowing remote attendance at these meetings. It is not always easy, particularly in a small community, to find qualified board members who can commit the time necessary to effectively contribute. What we don't need is another reason to not run for these offices.

During the pandemic scare a few years ago health officials recommended that, in the event of such a situation, group meetings should be limited as much as possible so as to minimize the threat of spread of infectious disease. Some water systems have actually modified their bylaws in order to function via that practice, should the need arise. Do we want to force attendance at trustee meetings during an influenza epidemic and risk infecting the personnel who operate our water systems? We think not.

We have heard that there are concerns, perhaps even opinions, that votes of trustees who are participating remotely could be challenged.

I have attended Right to Know Advisory Committee and subcommittee meetings over the past several months. I asked the question of one of the attorneys present: "Does Maine statute prohibit district trustees from participating remotely, should the need arise?" The answer I received was: "No."

In a letter to that committee dated October 25, 2013, in which we provided comments relative to (1) serial FOIA filers, (2) meetings of public bodies, and (3) the provision of customer information, we stated that: "It is our understanding that there is no statutory prohibition against this practice" (remote participation). There has been no communication back to us that our understanding concerning this matter is in error.

**Right to Know Advisory Committee**  
Comments and suggestions about remote participation

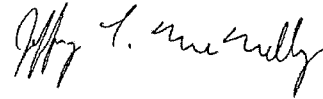
It is ironic that, in spite of the fact that there has only been two days' public notice for the hearing on LD 1809, we have been able to communicate with our members and some of them have been able to poll their governing boards, in order to develop and deliver positions to the committee.

Recognize that this is the communication network and protocol our profession often needs to rely on. Take comfort in the fact that they will continue to operate this way as they strive to continue to provide the public with safe and adequate water service every minute of every day.

Remote attendance is a practice that has become Standard Operations Practice for many businesses. We should not establish a policy that makes it more difficult for the districts to achieve a quorum, that could greatly impede the ability to govern during times of epidemic, or that discourages committed trustees. This bill does that.

We urge the committee to report out this bill with a unanimous Ought Not to Pass recommendation. Alternatively, if that does not happen, we request that you exempt water and wastewater utilities.

Thank you for your consideration of this testimony.



Jeffrey L. McNelly  
Executive Director

See separate comments from Maine Community College System

See separate comments from Univeristy of Maine System

See separate testimony from the PUC



# Maine Community College System

OFFICE OF THE PRESIDENT  
323 State Street, Augusta, Maine 04330-7131  
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By Email

November 13, 2014

Right to Know Advisory Committee  
c/o Margaret J. Reinsch, Esq.  
Office of Policy and Legal Analysis  
13 State House Station

Re: Remote Participation in Public Meetings

Dear Ms. Reinsch:

Thank you for the opportunity to comment on the Right to Know Advisory Committee's potential legislation governing remote participation by members of a entities covered by Maine's Freedom of Access Act. This is an important issue for entities like the Maine Community College System who have a truly statewide mission and representation on its Board of Trustees and committees.

MCCS operates campuses from Wells to Presque Isle. Accordingly, our Board of Trustees has members who must travel statewide. As an example, we currently have a Trustee that resides in Fort Fairfield and when meetings are held in Wells, it requires that he travel 652 miles roundtrip to attend Board meetings. The Board typically meets six times per year. Although these meetings typically do in fact have an in-person quorum, there are instances when we need to rely on technology. Weather is often the biggest factor, but so too are the many personal and professional competing demands that our distinguished trustees face. The Board also has five standing and occasionally several ad hoc committees that also typically meet at least six times per year. These meetings are more often done by use of technology to ensure that our decisions are timely and responsive to the changing needs of the students and communities that we serve.

Technology has clearly enabled more trustees to participate both more often and more efficiently in the important work of our Board and its committees. Because MCCS is also sensitive to the issues of concern to the Right to Know Committee, MCCS has already taken steps to address those concerns. The bylaws of our Trustees currently provide the Board and its committees "may meet by use of interactive technology provided that there is a physical location designated as the meeting site for inclusion of the public; that each trustee can see or hear and understand the proceedings in process; and provided further that the public is able to see or hear the trustees participating by interactive technology. All Board members participating by such technology shall be considered present, counted for the quorum and eligible to vote." *MCCS Bylaws Sections 4.5 (Board) and 3.7.3 (Committees).*

The draft legislation would change our current approach in one very important and very burdensome way. Proposed *1 M RSA §403-A (1)(C)* would prohibit counting our Board and committee members who participate by phone or video link in their respective meetings from being counted towards the quorum. With no quorum, no action can be taken, so this would significantly interfere with our ability to conduct timely committee and Board work, particularly during the winter months when our colleges are the busiest and our travel is the most unpredictable and hazardous. Likewise, the exceptions proposed in *1 M RSA §403-A (3)(A) and (B)* are much too narrow to be ever be useful to MCCS.

MCCS requests striking proposed sections 1(C) and (3)(A) and (B), thereby permitting members who comply with all of the other requirements of the bill to have their attendance counted towards the quorum. If an entity complies with all of the other standards and requirements of the proposed legislation, a member participating by technology should be able to have both their attendance and vote counted.

Thank you for your consideration. If you require additional information, please let me know.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "John Fitzsimmons".

John Fitzsimmons, Ed. D  
President

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Maine's  
Public  
Universities

UNIVERSITY OF MAINE SYSTEM

November 13, 2014

Margaret J. Reinsch, Esq., Legislative Analyst  
Joint Standing Committee on Judiciary  
Maine State Legislature  
Office of Policy and Legal Analysis  
13 State House Station  
Room 215, Cross State Office Building  
Augusta, Maine 04333

From: Kelley Wiltbank, General Counsel

RE: University of Maine Comments on Remote Participation by Members of a Public  
Body

The University of Maine

Members of the Right to Know Advisory Committee:

University of Maine  
at Augusta

University of Maine  
at Farmington

University of Maine  
at Fort Kent

University of Maine  
at Machias

University of Maine  
at Presque Isle

University of  
Southern Maine

The University of Maine System is submitting these comments to the Right to Know Advisory Committee's request for input regarding members of public bodies participating in public proceedings while not physically present at the publically announced location of the meeting. We offer these recommendations and comments to assist in the improvement of the laws regarding best practices in providing optimal public access while also maintaining the integrity of the Freedom of Access Act. The current FOAA statute nor other State law provide guidance in the use of rapidly developing interactive technology which without exception can provide for greater participation in the public process by the citizens of this State with the concurrent accountability for those entrusted with the public's business. The Legislative mandate is that public proceedings exist to aid in the conduct of the people's business and that actions and deliberations are taken openly with ample opportunity for attendance by the public.

The Board of Trustees is a body with a state wide mission. It consists of 16 members, 14 of which routinely serve two successive five year terms, it also includes the Commissioner of the Department of Education and Cultural Services and a student trustee. The Board's primary responsibility is the formulation, review and evaluation of education policy and the administration of its seven dispersed institutions. Each campus has a faculty representative and there are nine student representatives,



including one each from the two graduate schools. These are supported by academic and administrative officers and staff from each institution and the System office which provide the information, administration and staffing in order that the Board accomplish its role. In his appointment of Trustees the governor is to consider an equitable geographical selection and meetings must be held "from time to time at each campus", as well as provide an opportunity for citizens to address the Board at its meetings. Although the Board is only required to meet once in each quarter, its regular schedule has been six full meetings per year. However, due to the exponential increase in activities required of it over recent years between its six Board meetings and separate committee meetings it has had to hold as many as 60 or more committee meetings beyond its regularly scheduled meetings. Without the use of interactive technology the ability for any Board member or other members of the administration to commit the time necessary to fulfil the current demands of travel to a fixed site and expense of holding such meetings would further deplete necessary resources. It would likewise reduce the number of members of the public who could participate in these proceedings.

Meetings by interactive technology have allowed UMS to effectively conduct its business without excluding the participation and the oversight of the public. Through its By-Laws the Board has incorporated all those elements necessary under the Maine Freedom of Access law as well as those of other states that allow public proceedings by interactive technology, including many beyond the three examples provided in the invitation to comment.<sup>1</sup>

As either required or suggested in the laws of other states and as previously considered this by committee, a public body should at the minimum have stated in its By-laws or operating documents the provisions for off-site participation. The UMS has done so in its By-laws and has done so effectively.

For Board meetings:

It required that a "[M]ajority of the current membership of the Board shall constitute a quorum for the transaction of business. Except as otherwise provided in these By-Laws. A Trustee who cannot be in physical attendance may participate and vote by telephone, Polycom, or other similar interactive technology where the Chair has determined on the record that the physical presence of the non-attending Trustee is prevented by an exceptional occasion which makes it inadvisable or impossible to attend the meeting. The presence of the non-attending Trustee in this manner shall be counted towards a quorum. In order to exercise this option the Trustees must be able to hear clearly the non-attending Trustee and understand the proceedings in process and the public must be able to clearly hear the non-attending Trustee."

For Committee Meetings:

"Committee meetings held at time other than a regular meeting of the Board may be conducted using interactive technology and all members participating by such technology shall be considered as present, count towards the quorum, and are eligible to vote provided there is a physical location designated as the meeting site for inclusion of the public and that each Trustee

---

<sup>1</sup> Arizona, California, Georgia, Illinois, Maryland, Michigan, Minnesota, Missouri, Nevada, New Jersey, New York, North Carolina, Pennsylvania, Virginia.

must be able to clearly see or hear and understand the proceedings in process and the public is able to see or hear the Trustees participating by interactive technology. Actions taken by the Committee requiring full Board approval will be placed on the Consent Agenda of a regular meetings.”

In addition:

1. Materials necessary for an agenda item are provided in advance to all members participating by interactive technology.
2. All Meeting Agendas and Materials for Board Meetings are placed on the Board of Trustee’s Website and accessible the other participants and the public.
3. Notices of all meetings are posted in the Building as well as the Board of Trustees Website and the External Affairs Office provides information to the media regarding key items being discussed or acted upon.
4. An “anchor” site is always made available. The interactive component is primarily two way video (polycom). The public may participate from either the “anchor” or other video sites.

Conclusion:

In order that public entities with state wide functions and responsibilities are able to provide greater participation by its members within the resources available and the intended participation and oversight by the public is included and actually enhanced, the University of Maine System recommends that interactive technology become a key and acceptable component to public proceedings.



STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

THOMAS L. WELCH  
CHAIRMAN

DAVID P. LITTELL  
MARK A. VANNOY  
COMMISSIONERS

HARRY LANPHEAR  
ADMINISTRATIVE DIRECTOR

November 14, 2014

Honorable Linda M. Valentino, Chair  
Right to Know Advisory Committee  
13 State House Station  
Augusta, Maine 04333

**Re: Remote Participation By Members of Public Bodies**

Dear Senator Valentino:

The Public Utilities Commission (Commission) appreciates having the opportunity to submit comments on potential legislation to clarify Maine's Freedom of Access Act (FOAA) with regard to members of public bodies participating in public proceedings while not physically present at the meeting location (remote participation).

The Commission understands that the Right to Know Advisory Committee is seeking comments on 2013 draft legislation considered by the Advisory Committee. This draft legislation is nearly identical to LD 258, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Meetings of Public Bodies, which was considered by the Judiciary Committee during the 2013 session and which the Commission provided testimony on.

As drafted, the 2013 draft legislation would limit the Commission's ability to conduct its public deliberations concerning adjudicatory and quasi-adjudicatory matters with two of three Commission members participating by telephone except in specifically defined emergency situations. The 2013 draft legislation also provides that a member of a body who is not physically present and who is participating in the public proceeding remotely 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. If applied to the Commission's proceedings, this requirement would create substantial practical difficulties for the Commission in carrying out its work. Much of the Commission's work occurs in adjudicatory or quasi-adjudicatory proceedings. The Commission's three Commissioners currently deliberate cases once a week, typically on Tuesday at 10:00 a.m. The Commission deliberates and votes on cases at each deliberative session. In 2013, the Commission acted on approximately 537 cases or rulemaking proceedings. Cases are the subject of sometimes voluminous prefiled testimony and adjudicatory hearings in front of the Commissioners and staff. Much of the testimony and evidence relied upon by the Commission is presented in technical conferences presided over

by a hearing examiner, and there are occasions where technical and/or evidentiary hearings are held simultaneously. While at least one Commissioner attends every rulemaking hearing (as required by the Administrative Procedure Act), and one or more Commissioners typically attends evidentiary hearings in adjudicatory cases, a requirement that all Commissioners attend all evidentiary hearings would impose an unnecessary and substantial burden. Each Commissioner reviews the record in each case prior to deciding it. Notice of the Commission's deliberative sessions is posted on the Commission's website and all parties and interested persons to cases to be deliberated are notified of the deliberation on the previous Wednesday. The Commission broadcasts its deliberations over the internet and they are also recorded and archived on our website so anyone interested can listen to the deliberations as, or after, they occur.

Title 35-A M.R.S. § 108-A, of the Commission's governing statutes, establishes that a quorum of two of three Commissioners is necessary for the Commission to act. Occasionally a Commissioner needs to call into deliberations, typically due to weather or attendance at a regional utility meeting. On rare occasions, two Commissioners may need to call into deliberations. The Commission's telebridge is connected to the sound system in the Commission's hearing room, so anyone participating by phone can be heard in the room and clearly recorded. Besides Commission deliberations, it also could be necessary for two Commissioners to call into a hearing or other meeting which meets the FOAA law's definition of public proceeding.

LD 258 noted that some State agencies are authorized to use remote-access technology to conduct public meetings in their governing statutes and LD 258 would have provided a specific exemption from the new requirements of LD 258 for those State agencies. The 2013 draft legislation that the Right to Know Advisory Committee is currently seeking comments on would do the same. In our testimony on LD 258, we respectfully requested that the bill be amended to allow for similar language in the Commission's governing statutes regarding the use of remote access technology by Commissioners in public proceedings and a similar exemption from the new requirements of LD 258.

LD 258 was not enacted. Subsequently, in July of 2013, the Commission adopted a policy for Commissioner participation in hearings and deliberations remotely by telephonic, video, electronic or other similar means. Specifically, the policy provides that one or more Commissioners may participate in deliberations remotely if the following requirements are met:

- 1) Notice of the deliberations has been provided pursuant to 1 M.R.S. § 406 and 35-A M.R.S. § 108-A;
- 2) The Commission's sound system is operating in a manner that allows all Commissioners to hear and speak to each other during the deliberations;
- 3) The Commission's sound system is operating in a manner that allows persons attending deliberations to hear all Commissioners participating in the deliberations; and
- 4) Any Commissioner participating remotely has all documents or materials to be discussed at the deliberations.

The policy provides that if these requirements have been met, the deliberations and any votes that take place will be treated in the same manner as if the Commissioner was attending in person. With respect to hearings, the policy provides that a Commissioner may participate in hearings remotely and that participating in a hearing remotely is the same as if the Commissioner was attending in person.

If the Committee moves forward with the 2013 draft legislation, the Commission respectfully requests, as we did when we testified on LD 258, that language be added to Section B of the draft legislation to amend 35-A M.R.S. § 108-A of the Commission's statutes to read:

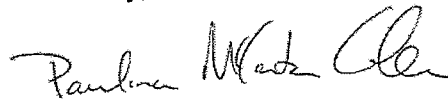
35-A M.R.S. § 108-A. Commission action; quorum; notice

A majority of the duly appointed commissioners constitutes a quorum and the act or decision of a majority of commissioners present, if at least a quorum is present, is the act or decision of the commission in any formal proceeding before the commission. Notwithstanding Title 1, section 403-A, commissioners may participate in proceedings through telephone, video, electronic or other similar means of communication.

Finally, the Commission notes that we have been considering whether to put legislation in during the upcoming session to amend 35-A M.R.S. § 108-A to provide that Commissioners may participate in public proceedings through telephone video, electronic or other similar means of communication.

The Commission appreciates having the opportunity to provide comments on this issue and looks forward to working with the Committee as it moves forward with this legislation.

Sincerely,



Paulina McCarter Collins, Esq.  
Legislative Liaison

cc: Margaret Reinsch, Colleen McCarthy Reid, Dan Tartakoff, Legislative Analysts





**STATE OF MAINE  
127<sup>TH</sup> LEGISLATURE  
FIRST REGULAR SESSION**

**Ninth Annual Report  
of the  
RIGHT TO KNOW ADVISORY COMMITTEE**

**January 2015**

**Members:**

**Sen. Linda M. Valentino  
Rep. Kimberly Monaghan-Derrig  
Perry Antone Sr.  
Percy Brown Jr.  
Richard Flewelling  
Suzanne Goucher  
Frederick Hastings  
Mal Leary  
William Logan  
Mary Ann Lynch  
Judy Meyer  
Kelly Morgan  
Christopher Parr  
Linda Pistner  
Harry Pringle  
Luke Rossignol**

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[www.maine.gov/legis/opla/righttoknow.htm](http://www.maine.gov/legis/opla/righttoknow.htm)**





## Table of Contents

	Page
<b>Executive Summary</b> .....	i
<b>I. Introduction</b> .....	1
<b>II. Advisory Committee Duties</b> .....	2
<b>III. Recent Court Decisions Related to Freedom of Access Issues</b> .....	3
<b>IV. Right to Know Advisory Committee Process</b> .....	5
<b>V. Actions Related to Right to Know Advisory Committee Recommendations Contained in Seventh Annual Report</b> .....	14
<b>VI. Right to Know Advisory Committee Recommendations</b> .....	16
<b>VII. Future Plans</b> .....	20

### Appendices

- A. Authorizing legislation, 1 MRSA § 411
- B. Membership list, Right to Know Advisory Committee
- C. Recommended Draft Legislation: Add an IT professional to the membership of the Right to Know Advisory Committee
- D. Recommended Draft Legislation: Align the annual reporting date for the Public Access Ombudsman with the annual reporting date for the Right to Know Advisory Committee
- E. Recommended Draft Legislation: Continue without modification, amend or repeal the existing public records exceptions in Title 26 through 39-A
- F. Recommended Draft Legislation: Repeal the Community Right-to-Know Act
- G. Recommended Draft Legislation: Establish a process for continuing the review of public records exceptions
- H. *Recommended Draft Legislation: Amend Public Law 2013, chapter 350 concerning deadlines and appeals (????)*
- I. *Recommended Draft Legislation: Enact legislation authorizing the use of technology to permit remote participation in public meetings (????)*
- J. *Recommended Draft Legislation: Enact legislation to address unduly burdensome or oppressive FOAA requests (????)*
- K. Veto letters: LDs 1809, 1821



## EXECUTIVE SUMMARY

This is the ninth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The 16 members are appointed by the Governor, the Chief Justice of the Supreme Judicial Court, the Attorney General, the President of the Senate and the Speaker of the House of Representatives. More information is available on the Advisory Committee's website:

[www.maine.gov/legis/opla/righttoknow.htm](http://www.maine.gov/legis/opla/righttoknow.htm). The Office of Policy and Legal Analysis provides staffing to the Advisory Committee while the Legislature is not in session.

By law, the Advisory Committee must meet at least four times per year. During 2014, the Advisory Committee met on August 19, September 17, November 6 and November 17.

As in previous annual reports, this report includes a brief summary of the legislative actions taken in response to the Advisory Committee's January 2014 recommendations and a summary of relevant Maine court decisions from 2014 on the freedom of access laws.

For its ninth annual report, the Advisory Committee makes the following recommendations, [although not all the recommendations are unanimous]:

- Enact legislation to add an IT professional to the membership of the Right to Know Advisory Committee**
- Enact legislation to align the annual reporting date for the Public Access Ombudsman with the annual reporting date for the Right to Know Advisory Committee**
- Continue without modification, amend or repeal the existing public records exceptions in Title 26 through 39-A**
- Repeal the Community Right-to-Know Act because the program has never been implemented and public information is available through other means**
- Establish a process for continuing the review of public records exceptions**
- Enact legislation to amend Public Law 2013, chapter 350 concerning deadlines and appeals (????)*
- Enact legislation authorizing the use of technology to permit remote participation in public meetings (????)*
- Enact legislation to address unduly burdensome or oppressive FOAA requests (????)*
- Take no action to investigate the privacy and confidentiality issues presented in Resolves 2013, chapter 112 (????)*

In 2015, the Right to Know Advisory Committee will continue to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access and the recommendations of the Advisory Committee for existing public records exceptions in Titles 26 through 39-A.

The Advisory Committee looks forward to a full year of activities and working with the Public Access Ombudsman, the Governor, the Legislature and the Chief Justice of the Maine Supreme Judicial Court to implement the recommendations contained in this its ninth annual report.

## I. INTRODUCTION

This is the ninth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. Title 1, section 411 is included as Appendix A. Previous annual reports of the Advisory Committee can be found on the Advisory Committee's webpage at [www.maine.gov/legis/opla/righttoknowreports.htm](http://www.maine.gov/legis/opla/righttoknowreports.htm).

The Right to Know Advisory Committee has 16 members. The chair of the Advisory Committee is elected annually by the members. The Advisory Committee members are:

Sen. Linda M. Valentino Chair	<i>Senate member of Judiciary Committee, appointed by the President of the Senate</i>
Rep. Kimberly Monaghan-Derrig	<i>House member of Judiciary Committee, appointed by the Speaker of the House</i>
Perry Antone Sr.	<i>Representing law enforcement interests, appointed by the President of the Senate</i>
Percy Brown Jr.	<i>Representing county or regional interests, appointed by the President of the Senate</i>
Richard Flewelling	<i>Representing municipal interests, appointed by the Governor</i>
Suzanne Goucher	<i>Representing broadcasting interests, appointed by the Speaker of the House</i>
Frederick Hastings	<i>Representing newspapers and other press interests, appointed by the President of the Senate</i>
Mal Leary	<i>Representing broadcasting interests, appointed by the President of the Senate</i>
William Logan	<i>Representing the public, appointed by the Speaker of the House</i>
Mary Ann Lynch	<i>Representing the Judicial Branch, appointed by the Chief Justice of the Supreme Judicial Court</i>
Judy Meyer	<i>Representing newspaper interests, appointed by the Speaker of the House</i>

Kelly Morgan	<i>Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House</i>
Christopher Parr	<i>Representing state government interests, appointed by the Governor</i>
Linda Pistner	<i>Attorney General's designee</i>
Harry Pringle	<i>Representing school interests, appointed by the Governor</i>
Luke Rossignol	<i>Representing the public, appointed by the President of the Senate</i>

The complete membership list of the Advisory Committee, including contact information, is included as Appendix B.

## **II. RIGHT TO KNOW ADVISORY COMMITTEE DUTIES**

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

- ❑ Providing guidance in ensuring access to public records and public proceedings;
- ❑ Serving as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know;
- ❑ Supporting the provision of information about public access to records and proceedings via the Internet;
- ❑ Serving as a resource to support training and education about Maine's freedom of access laws;
- ❑ Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the state of Maine's freedom of access laws and the public's access to public proceedings and records;
- ❑ Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;
- ❑ Examining inconsistencies in statutory language and proposing clarifying standard language; and

- Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

In carrying out these duties, the Advisory Committee may conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss and consider solutions to problems concerning access to public proceedings and records.

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws. The Advisory Committee is pleased to be able to work with the Public Access Ombudsman, former Special Assistant Attorney General Brenda Kielty. Ms. Kielty is a valuable resource to the public and public officials and agencies.

By law, the Advisory Committee must meet at least four times per year. During 2014, the Advisory Committee met on August 19, September 17, November 6 and November 17. All of the meetings were held in the Judiciary Committee Room of the State House in Augusta and were open to the public. Each meeting was also accessible through the audio link on the Legislature's webpage.

The Advisory Committee has also established a webpage that can be found at [www.maine.gov/legis/opla/righttoknow.htm](http://www.maine.gov/legis/opla/righttoknow.htm). Agendas, meeting materials and summaries of the meetings are included on the webpage.

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

By law, the Advisory Committee serves as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know. In carrying out this duty, the Advisory Committee believes it is useful to include in its annual reports a digest of recent developments in case law relating to Maine's freedom of access laws. The Advisory Committee identified the following court decisions summarized below.

#### 2013-2014 Maine Supreme Judicial Court Decisions

##### **Duffy v. Town of Berwick**

In *Duffy v. Town of Berwick*, 2013 ME 105, 82 A.3d 148, the Law Court considered the appeal of a metal and automobile recycling business from a Superior Court judgment vacating the Berwick Planning Board's decision to grant a conditional use and site plan permit to the business to allow the operation of a metal shredder on its property. At issue, among other things, were a number of non-public proceedings and ex parte communications that had occurred during the Planning Board's consideration of the business's permit application. Noting that an earlier Superior Court decision had resolved many of these alleged due process deficiencies, the Law Court focused only on the Planning Board's ex parte communication with the business asking

and receiving approval of the Board's selection of an independent consultant to conduct a peer review of conflicting air emissions studies; a communication not made available to the public or to a group of abutting landowners. Recognizing first that the State's Freedom of Access Act requires meetings, records, actions, and deliberations of government actors, with very limited exceptions, to be open to the public (1 M.R.S. §§403, 405), the Law Court further explained that such proceedings must be conducted consistent with due process such that an objective participant, win or lose, would conclude that he or she had been heard, that the result was not preordained and that the process was fair. Because the communication merely sought the business's approval for a decision the Board had already made, the abutters had full opportunity to respond to the selection and findings of the consultant at a public hearing, and as there was sufficient evidence to support the Board's determination as to air emissions based, in part, on the consultant's findings, the Law Court concluded that the ex parte communication did not taint the Board's decision under the circumstances. Accordingly, the Court vacated the judgment and remanded the case for entry of judgment affirming the Planning Board's approval of the permit.

#### **Preti Flaherty Beliveau & Pachios LLP v. State Tax Assessor**

In *Preti Flaherty Beliveau & Pachios LLP v. State Tax Assessor*, 2014 ME 6, 86 A.3d 30, the Law Court found that the confidentiality provisions of Title 36, section 191 apply to all information appearing in any report, return or other information provided pursuant to Title 36, including the methodologies, formulas or calculations relating to apportionment of Maine income tax liability for nonresident partners of a professional services partnership entity based in or with a significant business presence in Maine. Such information, even if provided by Maine Revenue Services, is excepted from the definition of "public records" in the Freedom of Access Act (FOAA) because it is designated confidential, an express exception to the definition of public record in Title 1, section 402, subsection 3, paragraph A.

Preti sued Maine Revenue Services under the FOAA seeking documents containing methodologies, formulas or calculations relating to apportionment of Maine income tax liability for nonresident partners of a professional services partnership based in or with a significant business presence in Maine. Maine Revenue Services had denied the request, citing the privacy protections in 36 M.R.S. §191(1). The Superior Court sided with Maine Revenue Services and Preti appealed. The Law Court affirmed, finding that the documents covered by the request for information consist entirely of information deemed confidential pursuant to §191(1), so no redacted document is available for release. The Law Court disagreed with Preti's argument that the only information that is confidential is information provided by the taxpayer. The Court, required to strictly construe all exceptions to the FOAA, interpreted §191(1) as applying to all information, from whatever source, provided pursuant to Title 36, including information generated by Maine Revenue Services. The Law Court said the statutory context confirms that interpretation because §191 includes many detail exemptions from the privacy protections, some of which would not be necessary if Preti's interpretation was correct.

#### **Turcotte v. Human Society Waterville Area**

In *Turcotte v. Human Society Waterville Area*, 2014 ME 123, an individual appealed a Superior Court dismissal of her complaint against the Human Society Waterville Area (HSWA) to compel HSWA to permit inspection of certain records pursuant to Maine's Freedom of Access Act (FOAA). The central issue in this appeal concerned whether HSWA is in fact a public agency whose records are subject to FOAA (see 1 M.R.S. §402(3)). Citing prior precedent (*Dow*



*v. Caribou Chamber of Commerce & Indus.*, 2005 ME 113), the Law Court recognized that whether an entity qualifies as a public agency under FOAA hinges on an analysis of four factors: (1) whether the entity performs a governmental function; (2) whether the entity's funding is governmental; (3) the extent of governmental involvement in or control of the entity; and (4) whether the entity was created by statute or by private action. Applying this analysis to the facts at hand, the Court first held that HSWA does not perform a traditional governmental function, but merely provides services under a contract with a public agency, namely the City of Waterville. Next, the Court noted that HSWA receives the bulk of its funding from private donations rather than public funds. Turning to the third prong of the analysis, the Court determined that HSWA's need to comply with the terms of its contract with the City and to abide by certain licensing requirements merely constituted limited governmental interaction, but not involvement or control. Finally, the Court recognized that HSWA was created by private action rather than by statute. Based on its analysis of these four factors, the Court concluded that, although HSWA performs a function benefitting the public and assisting municipalities, it is not a public agency subject to FOAA. Accordingly, the Court affirmed the Superior Court's dismissal of the individual's complaint.

#### **IV. RIGHT TO KNOW ADVISORY COMMITTEE PROCESS**

In previous years, the Right to Know Advisory Committee has divided its workload among two or more subcommittees, which have reported recommendations back to the full Advisory Committee for action. This year, the Advisory Committee chose to handle its work in the four full Advisory Committee meetings.

##### **Summary of August 19, 2014 meeting.**

###### **Public Access Ombudsman update**

Public Access Ombudsman Brenda Kielty provided the Advisory Committee with an update on her recent activities and presented the Annual Report that summarizes the activities of the Ombudsman. Ms. Kielty explained the contacts she recorded and resolved; the bulk are from private citizens seeking advice. She also engaged in outreach and training and continues to provide information. Ms. Kielty stated that she has received lots of questions about whether the public have a right to speak at public meetings. She has also fielded questions about whether a public body can meet remotely and encouraged the Advisory Committee to make clarification of that question a priority. There have also been questions about whether certain organizations are subject to the FOAA.

Ms. Kielty reported that the Administration had committed to following through with the recommendations about coordinated access throughout the Executive Branch, but that she had not yet received an update on those activities.

Ms. Kielty mentioned that many people don't understand that it is important for the process of deliberation to be open. Members of a public body cannot use GoogleDocs or other types of

technology to collect comments and make changes to proposals; those activities should be conducted in open public proceedings.

### **Update on Government Oversight Committee's request to Attorney General Mills and Secretary of State Matthew Dunlap**

The Government Oversight Committee requested that both Attorney General Mills and Secretary of State Dunlap address the Committee's concerns that were identified when reviewing the document shredding and the contract award process within DHHS. Deputy Attorney General Linda Pistner explained that the two key questions of the inquiry are whether documents were properly retained and disposed of and whether there was appropriate supporting documentation for contracts that were out to bid. In response, a work group has been established to regularize document retention, work out retention schedules with Archives and establish training. Senator Valentino acknowledged that GOC would keep the Advisory Committee apprised as a courtesy.

Tammy Marks, Director of Records Management, Maine State Archives, introduced herself and explained how her office is working with state agencies. She recommends that each agency appoint a records officer to ensure that the appropriate records are retained for the established time periods. Ms. Marks said that her office is working on retention policies and procedures for saving email.

### **Existing public records exceptions review process**

The Advisory Committee will not be reviewing any existing public records exceptions this year.

### **Public records exceptions on the web**

Staff updated the Advisory Committee on the public records exceptions search function on the Internet, which may be accessed from the State's Freedom of Access webpage.

### **Collection and maintenance of state agency documents**

Adam Fisher of the Maine State Library explained the project the library has undertaken to collect and maintain documents from state agencies. No action by the Advisory Committee is required at this time.

### **Summary of September 17, 2014 meeting.**

#### **Discussion of technology, cloud computing and social media**

Greg McNeal, Chief Technology Officer at the Office of Information Technology, Department of Administrative and Financial Services; Jennifer Smith, Director of Legislative Affairs and Communications, Department of Administrative and Financial Services; and Brenda Kielty, Public Access Ombudsman briefed the Advisory Committee on these matters. Mr. McNeal generally described for the Advisory Committee the various types of technologies utilized by state agency employees, noting that pursuant to a recent executive order, email is the official form of communication to be used by executive branch employees. While he acknowledged that some state agencies do have a Facebook, Twitter, or other social media presence, he suggested that these communication technologies are typically used to provide information to the public rather than to engage in a dialogue with individuals. Each agency individually manages its social

media presence pursuant to the executive branch's social media policy as well as the agency's own corresponding policy. Advisory Committee members expressed interest in reviewing a copy of this social media policy, as well as any social media policy in place for the Legislature or legislative offices.

Mr. McNeal also described the use of cloud storage technology by executive branch agencies, noting that while state government servers are technically "cloud storage," unlike commercial storage providers, these servers are located on site and the State has complete control over the security, privacy, and management of stored data. State agency use of commercial cloud storage appears to be rare.

Regarding retention of emails, social media posts, and other electronic communications, Mr. McNeal noted that his office can typically recover deleted emails, which are archived nightly, while retention of social media records depends on the site in question, although most of these sites have some sort of data recovery ability. Mr. McNeal acknowledged that the government has no control over personal email accounts of employees. Ms. Kielty added that under FOAA, it is irrelevant what sort of account or technology medium government business is transacted on; if it qualifies as a public record, an agency, office, etc. has a duty to reasonably try to acquire those records if a request is filed. She recalled dealing with a number of requests for records contained in an employee's or official's personal email accounts, noting that in all of these cases, the individual in question has voluntarily facilitated production of the records.

There was further discussion of the recent executive order instituting email as the official form of communication for executive branch employees and restricting cell phone use in the transaction of government business. The Advisory Committee requested that a copy of this order be produced for review. The Advisory Committee also agreed to discuss at the next meeting whether it should recommend that a spot check or audit of executive branch employee compliance with this order be conducted.

Ms. Smith explained to the Advisory Committee that, while there is an overarching communications policy for the executive branch, each agency has also developed its own communications policy incorporating those directives, which include retention rules for communications utilized by each agency. Ms. Kielty reiterated that all of these forms of communications the Advisory Committee had been discussing, when used to transact government business, are considered public records under FOAA. The major issue to be addressed here instead concerns retention of these often dynamic, changing records. For example, she noted, how do you adequately "capture" and then retain various iterations of a social media page as it is updated? Neither FOAA nor the retention schedules adequately answer this question in her opinion. Ms. Kielty agreed to bring back to the Advisory Committee some suggestions for addressing these specific issues.

Mr. McNeal also discussed document centric collaboration platforms, such as Google Docs or Office 365. To his knowledge, Google Docs is not utilized by state employees to conduct business; however, his office is looking into implementing Office 365 for executive agency use in the near future. Ms. Kielty noted that with these platforms, major areas of concern are the retention of drafts – does an agency have to, or can they even retain all versions of a document –

and public meetings issues – if multiple members of a board, body, etc. are collaborating in real time on one of these documents, does this constitute a public meeting under FOAA?

### **Other state approaches**

Advisory Committee staff described various approaches to these issues taken by different states, noting initially that many states are just starting to address concerns raised by new communication technology within their public records and open meetings laws. Staff noted that, like Maine's FOAA, most state's public records laws are very broad and their definition of public record encompasses all new forms of communication. Instead, as Ms. Kielty had suggested, the issues to be dealt with in this context largely concern records retention and what constitutes a public meeting. Staff described pending legislation in Minnesota that, as originally proposed, would have exempted social media use from public meeting requirements so long as certain criteria were met. Staff shared a Mississippi ethics commission opinion finding that text messages contained on private phones of government officials, but used to conduct government business, were subject to the state's public records law. Staff provided an example of a state social media policy (Ohio), noting that a number of states had set forth similar comprehensive social media and communications policies for government employees and agencies. Advisory Committee members requested that staff compile a spreadsheet comparing and contrasting Maine's social media and communications policies with approaches taken by other states, municipalities, etc.

### **Resolve 2013, c. 112: Study of Social Media Privacy in School and the Workplace**

Advisory Committee staff summarized two bills – LDs 1194 and 1780 – that the Judiciary Committee and the Education Committee, respectively, worked on during the Second Regular Session. These bills, whose topics overlapped somewhat, were combined into Resolve 2013, chapter 112 to be studied over the interim. However, because the study did not receive the necessary outside funding, it was suggested that the Advisory Committee might consider addressing some of these privacy issues during its interim work. After discussion, however, Advisory Committee members decided that the issues to be addressed by the study were beyond the scope of the Advisory Committee and those members present unanimously voted to take no further action on this resolve.

### **Update on activities relating to LD 1818**

Advisory Committee staff updated the Advisory Committee on activities related to LD 1818, An Act to Facilitate Public Records Requests to State Agencies. Staff noted that since the last meeting, the Judiciary Committee had written a letter to the Legislative Council, requesting that the Council adopt measures to increase the ability of the public to make records requests online and to discuss coordination with State agencies on these goals. Additionally, Jonathan Nass, Senior Policy Advisor to Governor LePage wrote a letter to the Advisory Committee updating it on actions taken by the executive branch with respect to LD 1818, namely coordinating meetings between DAFS staff and the Public Access Ombudsman to implement a tracking and reporting tool for requests made to executive branch agencies. Ms. Kielty, the Public Access Ombudsman, stated that she was thus far pleased with the progress made in implementing the goals outlined in LD 1818.

## Summary of November 6, 2014 meeting.

### **Public Access Ombudsman update**

Brenda Kielty, Public Access Ombudsman, updated the Advisory Committee on the activities of the Work Group on State's Records Retention Framework. The work group is working to complete a review of the State's records retention requirements and policies at the request of the Government Oversight Committee and will report to the GOC by February 15, 2015. Ms. Kielty anticipates that GOC will provide additional opportunities for public input and input from state agencies following submission of the report. Ms. Kielty reviewed a summary chart outlining the tasks requested by the GOC and the group's work plan to complete the report. The Advisory Committee requested that Ms. Kielty provide the members with a copy of the draft report so that individual members may provide comments. Formal comments from the Advisory Committee cannot be provided since the draft report will not be completed until after the Committee's final meeting of 2014 on November 17<sup>th</sup>. Harry Pringle suggested that the work group take into account the practical impact of its recommendations for records retention on custodians of public records, particularly the impact and burden on local government officials. Guidance on records retention, especially electronic records, is a crucial issue.

### **Social media policies**

Advisory Committee staff reviewed a summary chart comparing state social media policies, including Maine. The Maine Office of Information Technology, Department of Administrative and Financial Services, has posted a social media policy (adopted in 2011) on its website. Although Jennifer Smith, Director of Legislative Affairs and Communications, Department of Administrative and Financial Services, informed staff that the policy was not the "official" policy and was currently under review by the Bureau of Human Resources, staff provided copies of the policy to the Advisory Committee and included it for comparison purposes in the chart. Ms. Smith told Advisory Committee staff that the Executive Branch does not have a current social media policy applicable to all state agencies. Christopher Parr remarked that it was important for the Executive Branch to clarify the status of its policy and educate employees about the use of social media by government.

With regard to Freedom of Access and records retention, staff noted that all state social media policies make it clear that all social media content, when used to transact government business, are considered public records under FOAA and subject to state records retention requirements.

The Legislature and the Judicial Branch have not adopted social media policies. MaryAnn Lynch said the primary reason the Judicial Branch does not have a policy is because it only uses social media in a limited way, using Twitter to make public announcements of court schedules and the release of court decisions. Ms. Lynch stated that it would be inappropriate and contrary to how judges decide cases to use Facebook or other social media sites which provide an opportunity for public comment.

At the September 17<sup>th</sup> meeting, Ms. Smith advised the Advisory Committee that state agencies were required by executive order to conduct all official state business through email and told the Advisory Committee she would provide copies of that Executive Order. Following the meeting, Ms. Smith told staff that there was no executive order, but the communications policy for all

executive branch agencies applies. The communications policy includes a directive that all employees use email as the official form of electronic communication to allow for the retention of records in a more efficient manner. Sen. Valentino noted that the Advisory Committee was given inaccurate information by Ms. Smith at the September 17<sup>th</sup> meeting relating to the existence of an executive order and requested that it be reflected in the Committee's meeting summary.

### **Electronic communications between legislators and the public during hearings, work sessions and House and Senate sessions**

At the request of Mr. Parr, the Advisory Committee discussed electronic communications between legislators and the public during hearings, work sessions and House and Senate sessions. Currently, there is no uniform prohibition on the use of email, texting or other forms of electronic communication between legislators and the public. Staff researched the issue and reported that there are no statutes in other states that govern the use of electronic communication by legislators, although chamber rules in some legislatures prohibit texting by legislators during certain proceedings.

Sen. Valentino and Rep. Monaghan both felt that rules related to electronic communications would be difficult to enforce and wondered how different it was from the passing of written notes or personal conversations in the halls. Legislators are becoming more adept at using technology to become informed on the issues. Mr. Parr's concerns relate to the lack of courtesy to a member of the public testifying at a public hearing and to the lack of transparency if electronic communications are being used. Perry Antone and Suzanne Goucher reiterated Mr. Parr's concern about transparency, stating that the public needs to know how legislative decisions are being made and records of those decisions must be retained.

Ms. Goucher moved that the Advisory Committee write a letter to the Legislative Council asking them to adopt the Executive Branch's directive that email is the official form of communication. Mr. Parr seconded the motion. Linda Pistner stated her belief that this was not a FOA issue as all forms of communication, whether a written note or text, would be considered a public record. Ms. Lynch didn't think these types of communications among legislators was that different than partisan caucuses, which are not considered public proceedings. Ms. Lynch also stressed that the public and the lobby must be able to petition the government. Mr. Parr withdrew his second of the motion; the fact is that electronic communications are public records.

### **Remote participation by members of public bodies**

The Advisory Committee discussed the issue of remote participation by public bodies and reviewed the legislative recommendation made last year. Because the bill was not enacted, Sen. Valentino stated that she didn't think the Advisory Committee would be successful if the same proposal was submitted again, but she welcomed further discussion.

Mr. Parr agreed, but noted that the failure of the legislation was related to differing legal opinions from the Attorney General's Office and the Maine Municipal Association about whether current law permits public bodies to meet remotely. Since the interpretation of the current law is not consistent, Mr. Parr suggested that the Legislature clarify the issue one way or another. Fred Hastings stated he would not be comfortable if the Advisory Committee did not

discuss the issue further. Mr. Hastings pointed to the Utah statute included in the background materials prepared by staff as an approach for the Advisory Committee to consider. Judy Meyer also expressed concern that, if the Advisory Committee did not make a recommendation, other proposals might come forward that the Advisory Committee would not support.

If the Advisory Committee wants to continue the discussion, Sen. Valentino suggested that representatives of the Maine Municipal Association and other stakeholders be invited to provide comments. Although he could not speak to the MMA's position, Richard Flewelling stated that MMA representatives would be available to participate in a discussion at the next meeting. The Advisory Committee agreed to discuss remote participation by public bodies at the next meeting and directed staff to invite comments from MMA and other stakeholders. Mr. Pringle noted that this issue was an important one to the Maine School Management Association, which he represents on the Committee. Mr. Pringle asked if a representative of Maine School Management Association could sit in for him as he would be absent from the next meeting. Sen. Valentino said that no one could replace Mr. Pringle at the table, but that MSMA would be invited to provide comments during the discussion.

#### **Remedies for abusive/burdensome public records requests**

Staff reviewed a chart comparing other states approaches to abusive, repetitive or unduly burdensome public records requests. While legislation was proposed in California, Virginia and Washington, Connecticut appears to be the only state that provides a statutory authority to a state agency to seek declaratory or injunctive relief from abusive, repetitive or unduly burdensome public records requests. Several states—California, Illinois, Kansas, Kentucky, New Jersey, Pennsylvania and Utah—have laws allowing agencies to deny records requests if the request is unduly burdensome or meets other criteria. Alaska, Connecticut, Georgia, Illinois, Tennessee and Utah are examples of states that provide authority for an agency to require fees to be paid in advance or to impose fines for frivolous or repetitive requests.

The Advisory Committee reviewed draft language recommended to the Judiciary Advisory Committee last year. The proposed draft was not put forward in a bill by the Judiciary Committee. The draft would add a statutory provision to allow a public body, agency or official to seek relief from overly burdensome requests under the Freedom of Access Act by filing an action in Superior Court seeking a determination whether the request may be denied.

The Advisory Committee also reviewed an alternative draft proposal suggested by Ms. Pistner. While the proposal was vetted internally, the draft had not been reviewed and approved by the Attorney General. Ms. Pistner told the Advisory Committee the draft is intended to achieve the same goal as the previously recommended draft. Instead of establishing a "new" standard for the court to interpret, the draft uses a standard and process similar to the one used by the courts to grant exemptions from discovery. The burden remains on the state agency to seek relief from the court before denying a public records request on the basis that the request is unduly burdensome or oppressive. Mr. Parr inquired whether the draft would preclude an agency from asking requesters of public records to narrow their request. Ms. Pistner stated that the intent was to allow negotiation and discussion to continue between parties. Mr. Parr also asked if Ms. Pistner has considered language authorizing the State to seek attorney's fees. Ms. Pistner responded that she did not consider such a provision, preferring to leave that issue out. Mr. Pringle

complimented the draft as proposed; he noted that that the Advisory Committee had considered the attorney's fee provision in the past, but felt it might have a more chilling effect on records requests than the Advisory Committee was comfortable with. Ms. Lynch said she was concerned about the language requiring a scheduled hearing by the court because of the potential impact on court resources. Ms. Lynch wondered whether the court could use other summary approaches to resolve an agency's request for relief. Ms. Pistner agreed that a formal hearing would not be necessary in all instances; the language could be revised. The Advisory Committee unanimously voted to recommend the draft legislation to the Judiciary Committee, subject to review of a revised draft at the November 17<sup>th</sup> meeting.

#### **New existing public records review schedule**

Advisory Committee staff outlined proposed draft language to codify the new existing public records review schedule, which was recommended to the full Advisory Committee by the Public Records Subcommittee in 2013. Under the new schedule, the Advisory Committee will begin its review of existing public records exceptions enacted after 2004 and before 2013 during 2015 or 2016. The Advisory Committee unanimously voted to recommend the draft legislation to the Judiciary Committee.

#### **Review of other legislative recommendations from 2013**

The Advisory Committee reviewed draft legislation to implement the recommendations made to the Judiciary Committee last year, which were incorporated into LD 1821, An Act to Implement the Recommendations of the Right to Know Advisory Committee. LD 1821 was enacted by the Legislature, but the bill was vetoed by the Governor. The Advisory Committee directed staff to prepare individual drafts according to the subject matter; the Advisory Committee reviewed four separate draft legislative proposals.

*Public records exceptions.* The proposed draft incorporates the same provisions relating to existing public records exceptions in Title 22 and Titles 26 to 39-A that were included in draft legislation recommended to the Judiciary Advisory Committee in 2013. The Advisory Committee unanimously voted to recommend the draft legislation to the Judiciary Committee.

*RTKAC membership—IT expertise.* The proposed draft adds a representative with expertise in information technology as a member of the Committee. The Advisory Committee unanimously voted to recommend the draft legislation to the Judiciary Committee.

*Reporting date for Public Access Ombudsman.* The proposed draft changes the reporting date for the annual report of the Public Access Ombudsman to January 15<sup>th</sup>, which is the same date by which the Advisory Committee is required to submit its annual report to the Legislature. The Advisory Committee unanimously voted to recommend the draft legislation to the Judiciary Committee.

*Deadlines and appeals.* The Advisory Committee reviewed two draft proposals addressing deadlines and appeals for public records requests. One proposal was recommended last year to the Judiciary Committee. That draft clarifies that the date of receipt of a request to copy or inspect a public record is the date a sufficient description of the public record is received by the body, agency or official at the office responsible for maintaining the public record; clarifies that



refusing to allow inspection or copying is considered a denial, as is the failure, within 10 days of the receipt of a request, to provide a written notice that the request is denied; and provides that, if no written notice of denial is provided, the requestor may file an appeal within 40 calendar days of the request.

The Advisory Committee also reviewed an alternative draft suggested by the Attorney General's Office. This draft makes clear that an agency's or official's written notice of denial in response to a request to copy or inspect records may be a statement that the agency or official expects to deny the request in full or in part, but that decision can be made only after reviewing the records subject to the request; eliminates the need for a de novo trial, and instead requires the Superior Court to conduct a review of an appeal de novo; and amends the laws governing public access officers by specifically requiring that a request for public records be acknowledged within 5 working days of the receipt of the request to be consistent with the current acknowledgement deadline in the Maine Revised Statutes, Title 1, section 408-A, subsection 3.

Ms. Meyer expressed concern that the draft put forward by the Attorney General's Office removed the "grace period" for acknowledgment of FOA requests. Ms. Meyer recalled that language was added to accommodate representatives of certain water districts that have limited business hours and limited staff available to respond to FOA requests. Ms. Kielty and Ms. Pistner understood the concern, but noted that this wasn't a significant area of complaint from the public. Ms. Kielty stated that the larger concern in preparing the draft was to be consistent and address the timeline and process for making appeals.

The Advisory Committee tabled discussion of the drafts until the next meeting. Ms. Pistner agreed to review both drafts and amend the proposal to address the concerns raised by the Committee.

### **FOA Training for Elected Officials**

Advisory Committee staff asked whether the Advisory Committee had suggestions for changes to the FOA training required for elected officials, including Legislators. Mr. Pringle noted that there is no need for additional training or changes in the way training is provided, but that many issues are in need of clarification for elected officials, e.g., responsibility for retention of electronic records and authority to conduct meetings remotely. Once these issues are clarified, they can be incorporated into existing training materials. At this time, the Advisory Committee has no suggestions for changes.

### **FAQs**

Advisory Committee staff asked whether the Advisory Committee had suggestions for changes or updates to the "Frequently Asked Questions" document. Ms. Kielty has assumed responsibility for management and oversight of the State's Freedom of Access website and periodically updates the content, including the FAQs. At this time, the Advisory Committee has no suggestions for changes or updates.

### **Draft report**

The Advisory Committee approved the general format for the draft report and agreed to include copies of the veto letters of bills implementing Advisory Committee recommendations in the

Appendices. Mr. Flewelling advised that the Law Court had issued a decision related to FOA on November 4<sup>th</sup>; staff agreed to summarize the decision and include it in the report along with summaries of other FOA-related cases decided in 2013 and 2014.

**Summary of November 17, 2014 meeting.**

*(to be added)*

**V. ACTIONS RELATED TO RIGHT TO KNOW ADVISORY COMMITTEE  
RECOMMENDATIONS CONTAINED IN EIGHTH ANNUAL REPORT**

The Right to Know Advisory Committee made several recommendations in its eighth annual report. The actions taken in 2014 as a result of those recommendations are summarized below.

<p><b>Recommendation:</b> Enact legislation to expand the membership of the Right to Know Advisory Committee to include an information technology professional</p>	<p><b>Action:</b> The Judiciary Committee voted “Ought to Pass as Amended” on the recommendations of the Advisory Committee contained in <i>LD 1821, An Act To Implement Recommendations of the Right To Know Advisory Committee</i>. The recommendation to expand the membership of the Right to Know Advisory Committee to add a member experienced in information technology issues was included as Part B of LD 1821. Governor LePage vetoed LD 1821 as amended, and the veto was sustained. <i>(See veto letter in Appendix K.)</i></p>
<p><b>Recommendation:</b> Communicate to the Joint Standing Committee on Veterans and Legal Affairs about the public records exception in Title 28-A, section 755 relating to business and financial records of liquor licensees</p>	<p><b>Action:</b> Letter from the Advisory Committee to the Veterans and Legal Affairs Committee; no legislative action taken.</p>
<p><b>Recommendation:</b> Continue without modification, amend and repeal the specified existing public records exceptions in Titles 26 through 39-A</p>	<p><b>Action:</b> The Judiciary Committee voted “Ought to Pass as Amended” on the recommendations of the Advisory Committee with regard to specific public records exceptions as proposed in <i>LD 1821, An Act To Implement Recommendations of the Right To Know Advisory Committee</i>. The Judiciary Committee made a date change with regard to when a report submitted by the State Board on Arbitration and Conciliation must be made public, but otherwise accepted the Advisory Committee’s recommendations, printed as Part A of LD 1821. Governor LePage vetoed LD 1821 as amended, and the veto was</p>

	sustained. <i>(See veto letter in Appendix K.)</i>
<b>Recommendation:</b> Make no change to the confidentiality provision in the sentinel events reporting law	<b>Action:</b> No action was taken.
<b>Recommendation:</b> Repeal the Community Right-to- Know Act in Title 22	<b>Action:</b> The Judiciary Committee voted “Ought to Pass as Amended” on the Advisory Committee’s recommendation to repeal the Community Right-to-Know Act because it has never been implemented. The Judiciary Committee received written comments from the Health and Human Services Committee supporting the proposed repeal. The repeal of the Act was included as section 1 of Part A of <i>LD 1821, An Act To Implement Recommendations of the Right To Know Advisory Committee</i> . Governor LePage vetoed LD 1821 as amended, and the veto was sustained. <i>(See veto letter in Appendix K.)</i>
<b>Recommendation:</b> Establish a future process for review of public records exceptions	<b>Action:</b> No legislative action recommended for 2014 but new proposed schedule expected for review in 2015.
<b>Recommendation:</b> Enact legislation authorizing the use of technology to permit remote participation in public meetings (divided report)	<b>Action:</b> A majority of the Judiciary Committee voted “Ought to Pass as Amended” on the recommendations of the Advisory Committee with regard to remote participation in meetings as proposed in <i>LD 1809, An Act Concerning Meetings of Public Bodies Using Communications Technology</i> . The majority report, with the new title of <i>An Act Concerning Meetings of Boards of Trustees and Governing Bodies of Quasi Municipal Corporations and Districts That provide Water, Sewer and Sanitary Services</i> , limited the bill’s application to the governing bodies of quasi-municipal corporations and districts. Governor LePage vetoed LD 1809 as amended, and the veto was sustained. <i>(See veto letter in Appendix K.)</i>
<b>Recommendation:</b> Enact legislation to address overly burdensome FOAA requests	<b>Action:</b> The Judiciary Committee decided to not support the proposed legislation, and no bill was printed or considered during the Second Regular Session of the 126th Legislature.
<b>Recommendation:</b> Enact legislation to amend Public Law 2013, chapter 350 concerning deadlines and appeals (divided report)	<b>Action:</b> The Judiciary Committee voted “Ought to Pass as Amended” on the recommendations of the Advisory Committee contained in <i>LD 1821, An Act To Implement Recommendations of the Right To Know Advisory Committee</i> . The Judiciary Committee made changes in the recommended

	language to clarify the date of receipt of a request to inspect or copy a public record, and modified other proposed language concerning appeals and deadlines, all incorporated as Part D of LD 1821. Governor LePage vetoed LD 1821 as amended, and the veto was sustained. <i>(See veto letter in Appendix K.)</i>
<b>Recommendation:</b> Enact legislation to align the annual reporting date for the Public Access Ombudsman with the annual reporting date for the Right to Know Advisory Committee	<b>Action:</b> The Judiciary Committee voted “Ought to Pass as Amended” on the recommendations of the Advisory Committee contained in <i>LD 1821, An Act To Implement Recommendations of the Right To Know Advisory Committee</i> . The recommendation to align the reporting date of the Public Access Ombudsman with the annual report date of the Right to Know Advisory Committee was included as Part C of LD 1821. Governor LePage vetoed LD 1821 as amended, and the veto was sustained. <i>(See veto letter in Appendix K.)</i>
<b>Recommendation:</b> Communicate with the Joint Standing Committee on State and Local Government about issues identified by the Registers of Deeds relating to the redaction of Social Security numbers from filed documents	<b>Action:</b> Letter from the Advisory Committee to the State and Local Government Committee; no legislative action taken.

## VI. RECOMMENDATIONS

During 2014, the Advisory Committee engaged in the following activities and makes the recommendations summarized below.

**Enact legislation to add an IT professional to the membership of the Right to Know Advisory Committee**

The Advisory Committee recommends the enactment of legislation to add an Information Technology (IT) professional (someone experienced in digital communications) to the membership of the Right to Know Advisory Committee to be appointed by the Governor. The Advisory Committee made the same recommendation in its Eighth Annual Report, but it did not become law.

*See draft legislation in Appendix C.*

**Enact legislation to align the annual reporting date for the Public Access Ombudsman with the annual reporting date for the Right to Know Advisory Committee**

The Advisory Committee recommends legislation changing the date of the Public Access Ombudsman annual report to January 15 to align the date with the annual report of the Advisory Committee. The Advisory Committee made the same recommendation in its Eighth Annual Report, but it did not become law.

*See draft legislation in Appendix D.*

**❑ Continue without modification, amend or repeal the existing public records exceptions in Title 26 through 39-A**

As required by law, the Advisory Committee reviewed existing public records exceptions identified in Title 26 through Title 39-A. The Advisory Committee's recommendations are summarized below and are also posted at [www.maine.gov/legis/opla/righttoknow.htm](http://www.maine.gov/legis/opla/righttoknow.htm). The Advisory Committee made the same recommendations in its Eighth Annual Report, but they did not become law.

The Advisory Committee recommends that the following exceptions in Titles 26 through 39-A be continued without modification.

- ◆ Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force
- ◆ Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force
- ◆ Title 32, section 2599, relating to medical staff reviews and hospital reviews – osteopathic physicians
- ◆ Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees
- ◆ Title 32, section 13006, relating to real estate grievance and professional standards committees hearings
- ◆ Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act
- ◆ Title 34-A, section 5210, subsection 4, relating to the State Parole Board report to the Governor
- ◆ Title 35-A, section 1311-B, subsections 1, 2 and 4, relating to public utility technical operations information
- ◆ Title 35-A, section 1316-A, relating to Public Utilities Commission communications concerning utility violations
- ◆ Title 35-A, section 9207, subsection 1, relating to information about communications service providers
- ◆ 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
- ◆ Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans
- ◆ Title 37-B, section 708, subsection 3, relating to documents collected or produced by the Homeland Security Advisory Council

- ◆ 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
- ◆ Title 38, section 470-D, related to individual water withdrawal reports
- ◆ Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans
- ◆ 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
- ◆ Title 38, section 1661-A, subsection 4, relating to information submitted to the DEP concerning mercury-added products
- ◆ Title 38, section 2307-A, relating to information submitted to the DEP concerning toxic use and hazardous waste reduction
- ◆ Title 39-A, section 153, subsection 9, relating to the Workers' Compensation Board audit working papers
- ◆ Title 39-A, section 355-B, subsection 11, relating to records and proceedings of the Workers' Compensation Supplemental Benefits Oversight Committee concerning individual claims
- ◆ Title 39-A, section 403, subsection 3, relating to workers' compensation self-insurers proof of solvency and financial ability to pay
- ◆ Title 39-A, section 403, subsection 15, relating to records of workers' compensation self-insurers
- ◆ 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

The Advisory Committee recommends that the following public records exceptions be amended, including provisions previously recommended for changes in LD 420, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Public Records Exceptions.

- ◆ Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor
- ◆ Title 26, section 934, relating to report of the State Board of Arbitration and Conciliation in labor dispute
- ◆ Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles
- ◆ Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system
- ◆ Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles
- ◆ Title 35-A, section 8703, subsection 5, relating to telecommunications relay service communications
- ◆ Title 38, section 585-B, subsection 6, paragraph C, relating to mercury reduction plans for air emission source emitting mercury
- ◆ Title 38, section 585-C, subsection 2, relating to the hazardous air pollutant emissions inventory

*See draft legislation in Appendix E.*

- Repeal the Community Right-to-Know Act because the program has never been implemented and public information is available through other means**

The “Community Right-to-Know Act” was enacted in 1985 to give individuals more control over exposure to hazardous substances in their communities. The confidentiality provisions of the Act are broad and ambiguous about the public’s right to access information collected by the Department of Health and Human Services. Trade secrets are completely protected. The Advisory Committee understands that the Community Right-to-Know Act has never been implemented by the Department of Health and Human Services so no records subject to the confidentiality provisions exist. Based on this information, the Advisory Committee recommends repeal of the Act. The Advisory Committee made the same recommendation in its Eighth Annual Report, but it did not become law.

*See draft legislation in Appendix F.*

- Establish a process for continuing the review of public records exceptions**

The Advisory Committee discussed draft legislation, proposed by the Public Records Exception Subcommittee in the Eight Annual Report, to require the Advisory Committee to review public records exceptions according to a new schedule, starting in 2015. The Advisory Committee recommends that the Judiciary Committee pass legislation implementing the new public records exceptions review schedule, starting in 2015.

*See draft legislation in Appendix G.*

- Enact legislation to amend Public Law 2013, chapter 350 concerning deadlines and appeals (????)**

*See draft legislation in Appendix H.*

- Enact legislation authorizing the use of technology to permit remote participation in public meetings (????)**

*See draft legislation in Appendix I.*

- Enact legislation to address unduly burdensome or oppressive FOAA requests (????)**

*See draft legislation in Appendix J.*

- Take no action to investigate the privacy and confidentiality issues presented in Resolves 2013, chapter 112 (????)**

## **VII. FUTURE PLANS**

In 2015, the Right to Know Advisory Committee will continue to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access and the recommendations of the Advisory Committee for existing public records exceptions in Titles 26 through 39-A. The Advisory Committee looks forward to a full year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations included in this report.



C

**Right to Know Advisory Committee**  
Draft: Add Information Technology expert to RTK AC membership

**Sec. 1. 1 M RSA §411, sub-§2** is amended to read:

**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; and

N. One member with broad experience and understanding of issues and costs in multiple areas of information technology, including practical applications concerning creation, storage, retrieval and accessibility of electronic records; use

C

**Right to Know Advisory Committee**

Draft: Add Information Technology expert to RTK AC membership

of communication technologies to support meetings, including audio and web conferencing; databases for records management and reporting; and information technology system, development and support, appointed by the Governor.

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

**SUMMARY**

This bill adds one additional member to the Right to Know Advisory Committee, appointed by the Governor. The new position will bring information technology expertise to the Advisory Committee.

DRAFT

**Right to Know Advisory Committee**  
Draft: Change reporting date for Public Access Ombudsman

**Sec. 1. 5 MRS §200-I, sub-§5** is amended to read:

**§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.

**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;
- B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws;
- 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;
- 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;
- E. Make recommendations concerning ways to improve public access to public records and proceedings; and
- F. Coordinate with the state agency public access officers the compilation of data through the development of a uniform log to facilitate record keeping and annual reporting of the number of requests for information, the average response time and the costs of processing requests.

**3. Assistance.** The ombudsman may request from any public agency or official such assistance, services and information as will enable the ombudsman to effectively carry out the responsibilities of this section.

**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

**Right to Know Advisory Committee**

Draft: Change reporting date for Public Access Ombudsman

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.

**5. Report.** The ombudsman shall submit a report not later than ~~March~~ January 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;
- B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials;
- C. The number of complaints received concerning respectively public records and public meetings;
- 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;
- E. The number of inquiries and complaints that were resolved;
- F. The total number of written advisory opinions issued and pending; and
- G. Recommendations concerning ways to improve public access to public records and proceedings.

**SUMMARY**

Current law requires the Public Access Ombudsman to submit an annual report to the Right to Know Advisory Committee and the Legislature by March 15th of each year. This bill changes the reporting date to January 15th of each year, which is the same date by which the Right to Know Advisory Committee is required to submit its annual report.

EF

**Right to Know Advisory Committee**  
Draft: Statutory changes to public records exceptions

F

→ **Sec. 1.** 22 MRSA c. 271, sub-c. 2 (§1696-A to §1696-F) is repealed.

**Sec. 2.** 26 MRSA §3 is repealed and the following enacted in its place:

**§3. Confidentiality of records**

**1. Confidential records.** Except as provided in subsections 2 and 3, all information and reports received by the director or the director's authorized agents under this Title are confidential for purposes of Title 1, section 402, subsection 3, paragraph A.

**2. Exceptions.** Reports of final bureau action taken under the authority of this Title are public records for the purposes of Title 1, chapter 13, subchapter 1.

**3. Authorized disclosure.** The director shall make or authorize any disclosure of information of the following types or under the following circumstances with the understanding that the confidentiality of the information will be maintained:

**A.** Information and reports to other government agencies if the director believes that the information will serve to further the protection of the public or assist in the enforcement of local, state and federal laws; and

**B.** Information and records pertaining to the work force, employment patterns, wage rates, poverty and low-income patterns, economically distressed communities and regions and other similar information and data to the Department of Economic and Community Development and to the Governor's Office of Policy and Management for the purposes of analysis and evaluation, measuring and monitoring poverty and economic and social conditions throughout the State and to promote economic development.

**Sec. 3.** 26 MRSA §934 is amended to read:

**§934. Conciliation; notification of dispute; proceedings in settlement; report**

Whenever it appears to the employer or employees concerned in a labor dispute, or when a strike or lockout is threatened, or actually occurs, he or they may request the services of the board.

If, when the request or notification is received, it appears that a substantial number of employees in the department, section or division of the business of the employer are involved, the board shall endeavor, by conciliation, to obtain an amicable settlement. If the board is unable to obtain an amicable settlement it shall endeavor to persuade the employer and employees to submit the matter to arbitration.

EF

**Right to Know Advisory Committee**  
Draft: Statutory changes to public records exceptions

The board shall, upon notification, as soon as practicable, visit the place where the controversy exists or arrange a meeting of the interested parties at a convenient place, and shall make careful inquiry into the cause of the dispute or controversy, and the board may, with the consent of the Governor, conduct the inquiry beyond the limits of the State.

The board shall hear all interested persons who come before it, advise the respective parties what ought to be done by either or both to adjust the controversy, and shall make a confidential written report to the Governor and the Executive Director of the Maine Labor Relations Board. The Governor or executive director ~~may~~ shall make the report public if, after 15 days from the date of its receipt, the parties have not resolved the controversy and the public interest would be served by publication. In addition, either the Governor or the executive director may refer the report and recommendations of the board to the Attorney General or other department for appropriate action when it appears that any of the laws of this State may have been violated.

**Sec. 4. 29-A MRSA §152, sub-§3** is amended to read:

**3. Central computer system.** Notwithstanding any other provisions of law, purchase and maintain a central computer system for purposes of administering this Title and conducting departmental operations. All other uses must be approved by the Secretary of State. ~~The Secretary of State shall adopt rules regarding the maintenance and use of data processing information files required to be kept confidential and shall distinguish those files from files available to the public;~~

**Sec. 5. 29-A MRSA §257** is repealed.

**Sec. 6. 29-A MRSA §517, sub-§4** is amended to read:

**4. Unmarked law enforcement vehicles.** An unmarked motor vehicle used primarily for law enforcement purposes, when authorized by the Secretary of State and upon approval from the appropriate requesting authority, is exempt from displaying a special registration plate. Records for all unmarked vehicle registrations are confidential.

~~Upon receipt of a written request by an appropriate criminal justice official showing cause that it is in the best interest of public safety, the Secretary of State may determine that records of a nongovernment vehicle may be held confidential for a specific period of time, which may not exceed the expiration of the current registration.~~

**Sec. 7. 35-A MRSA §8703, sub-§5** is amended to read:

**5. Confidentiality.** ~~Relay service communications must be~~ The providers of

**Right to Know Advisory Committee**

Draft: Statutory changes to public records exceptions

telecommunications relay services must keep relay service communications confidential.

**Sec. 8. 38 MRSA §414, sub-§6** is amended to read:

**6. Confidentiality of records.** Any records, reports or information obtained under this subchapter is available to the public, except that upon a showing satisfactory to the department by any person that any records, reports or information, or particular part of any record, report or information, other than the names and addresses of applicants, license applications, licenses and effluent data, to which the department has access under this subchapter would, if made public, divulge methods or processes that are entitled to protection as trade secrets as defined in Title 10, section 1542, subsection 4, these records, reports or information must be confidential and not available for public inspection or examination. Any records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any party to a hearing held under this section on terms the commissioner may prescribe in order to protect these confidential records, reports and information, as long as this disclosure is material and relevant to any issue under consideration by the department.

**Sec. 9. 38 MRSA §585-B, sub-§6** is amended to read:

**6. Mercury reduction plans.** An air emission source emitting mercury in excess of 10 pounds per year after January 1, 2007 must develop a mercury reduction plan. Except as provided in subsection 7, the mercury reduction plan must be submitted to the department no later than September 1, 2008. The mercury reduction plan must contain:

A. Identification, characterization and accounting of the mercury used or released at the emission source; and

B. Identification, analysis and evaluation of any appropriate technologies, procedures, processes, equipment or production changes that may be utilized by the emission source to reduce the amount of mercury used or released by that emission source, including a financial analysis of the costs and benefits of reducing the amount of mercury used or released.

~~The department may keep information submitted to the department under this subsection confidential as provided under section 1310-B.~~

The department shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters no later than March 1, 2009 summarizing the mercury emissions and mercury reduction potential from those emission sources subject to this subsection. In addition, the department shall include an evaluation of the appropriateness of the 25-pound mercury standard established in subsection 5. The

**Right to Know Advisory Committee**  
Draft: Statutory changes to public records exceptions

evaluation must address, but is not limited to, the technological feasibility, cost and schedule of achieving the standards established in subsection 5. The department shall submit an updated report to the committee by March 1, 2013. The joint standing committee of the Legislature having jurisdiction over natural resources matters is authorized to report out to the 126th Legislature a bill relating to the evaluation and the updated report.

**Sec. 10. 38 MRSA §585-C, sub-§2, ¶D is repealed.**

**Sec. 11. 38 MRSA §1310-B, sub-§2 is amended to read:**

**2. Hazardous waste information and information on mercury-added products and electronic devices and mercury reduction plans; chemicals.** Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6-A, ~~information relating to mercury reduction plans submitted to the department under section 585-B, subsection 6,~~ information related to priority toxic chemicals submitted to the department under chapter 27 or information related to products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to the department under section 1609 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Conservation and Forestry and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a



**Right to Know Advisory Committee**

Draft: Statutory changes to public records exceptions

decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.

**SUMMARY**

This proposed legislation implements the recommendations of the Right to Know Advisory Committee relating to existing public records exceptions in Title 22 and Titles 26 to 39-A. The legislation does the following.

Section 1 repeals the Community Right to Know Act, a program within the Department of Health and Human Services intended to provide disclosure of information about hazardous substances in the community that has never been implemented.

Section 2 makes clear that reports of final bureau action are public records, removing the language in current law that gives the director of the Bureau of Labor Standards the discretion to release reports.

Section 3 relates to reports of the State Board of Arbitration and Conciliation in a labor dispute. The amendment makes clear that the report must be released 15 days after its receipt by the Governor and Executive Director of the Maine Labor Relations Board if the conciliation process is not successful.

Section 4 repeals language authorizing the Secretary of State to adopt rules relating to maintenance and use of data processing files concerning motor vehicles as the confidentiality of personal information is already protected under federal law.

Section 5 repeals a provision relating to the Secretary of State's motor vehicle information technology system because the confidentiality of the system is already addressed in another provision of law.

Section 6 removes language that is redundant with another section of law.

Section 7 clarifies that it is the responsibility of the providers of telecommunications relay services to keep relay services communications confidential.

Section 8 adds a cross-reference to the definition of "trade secret".

Section 9 repeals language making mercury reduction plans for air emission source emitting mercury confidential.

**Right to Know Advisory Committee**  
Draft: Statutory changes to public records exceptions

Section 10 repeals language making hazardous air pollutant emissions inventory reports confidential.

Section 11 removes language cross-referencing language repealed by Section 9 of this bill relating to the confidentiality of mercury reduction plans for air emission sources emitting mercury.

DRAFT

G

**Right to Know Advisory Committee**  
Draft: New schedule for review of existing public records exceptions

**Sec. 1.** 1 MRS §433, sub-§2 is repealed and the following enacted in its place:

**2-A. Scheduling guidelines.** The advisory committee shall use the following list as a guideline for scheduling reviews of public records exceptions and reporting its recommendations to the review committee:

A. Exceptions enacted after 2004 and before 2013 are scheduled to be reviewed by the review committee no later than 2017.

B. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2019:

- (1) Title 1;
- (2) Title 2;
- (3) Title 3;
- (4) Title 4;
- (5) Title 5;
- (6) Title 6;
- (7) Title 7; and
- (8) Title 7-A.

B. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2021:

- (1) Title 8;
- (2) Title 9-A;
- (3) Title 9-B;
- (4) Title 10;
- (5) Title 11; and
- (6) Title 12.

C. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2023:

- (1) Title 13;
- (2) Title 13-B;
- (3) Title 13-C;
- (4) Title 14;
- (5) Title 15;
- (6) Title 16;
- (7) Title 17;
- (8) Title 17-A;
- (9) Title 18-A;
- (10) Title 18-B;
- (11) Title 19-A;
- (12) Title 20-A; and
- (13) Title 21-A.

G

**Right to Know Advisory Committee**  
Draft: New schedule for review of existing public records exceptions

D. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2025:

- (1) Title 22;
- (2) Title 22-A;
- (3) Title 23;
- (4) Title 24; and
- (5) Title 24-A.

E. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2027:

- (1) Title 25;
- (2) Title 26;
- (3) Title 27;
- (4) Title 28-A;
- (5) Title 29-A;
- (6) Title 30;
- (7) Title 30-A;
- (8) Title 31; and
- (9) Title 32.

F. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2029:

- (1) Title 33;
- (2) Title 34-A;
- (3) Title 34-B;
- (4) Title 35-A;
- (5) Title 36;
- (6) Title 37-B;
- (7) Title 38; and
- (8) Title 39-A.

**Sec. 2. 1 MRSA §433, sub-§3** is amended to read:

**3. Scheduling changes.** The advisory committee may make adjustments to the scheduling guidelines provided in subsection 2 2-A as it determines appropriate and shall notify the review committee of such adjustments.

**SUMMARY**

This draft repeals the public records exceptions review schedule that was completed in 2014 and replaces it with a new review schedule. The advisory committee

**Right to Know Advisory Committee**

Draft: New schedule for review of existing public records exceptions

will review public records exceptions enacted after 2004 but before 2013 and report its recommendations to the review committee over the course of 2 years, with the final review by the review committee completed no later than 2017. The advisory committee will then begin to review all the public records exceptions codified in the statutes over a 12-year period. The review committee will conduct its review of the advisory committee's recommendations in 2019, 2021, 2023, 2025, 2027 and 2029. The "advisory committee" is the Right to Know Advisory Committee and the "review committee" is the joint standing committee of the Legislature having jurisdiction over judiciary matters.

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 258

H.P. 195

House of Representatives, February 5, 2013

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**An Act To Implement the Recommendations of the Right To Know  
Advisory Committee Concerning Meetings of Public Bodies**

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Reported by Representative PRIEST of Brunswick for the Joint Standing Committee on  
Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph  
G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint  
Rule 218.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND

Clerk

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

2 PART A

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

4 **§403-A. Public proceedings through other means of communication**

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

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

12 A. The body has adopted a policy that authorizes a member of the body who is not  
13 physically present to participate in a public proceeding through telephonic, video,  
14 electronic or other similar means of communication in accordance with this section.  
15 The policy may establish circumstances under which a member may participate when  
16 not physically present;

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

18 C. Except as provided in subsection 3, a quorum of the body is assembled physically  
19 at the location identified in the notice required by section 406;

20 D. Each member of the body participating in the public proceeding is able to hear all  
21 the other members and speak to all the other members during the public proceeding,  
22 and members of the public attending the public proceeding in the location identified  
23 in the notice required by section 406 are able to hear all members participating from  
24 other locations;

25 E. Each member who is not physically present and who is participating through  
26 telephonic, video, electronic or other similar means of communication identifies the  
27 persons present at the location from which the member is participating;

28 F. All votes taken during the public proceeding are taken by roll call vote; and

29 G. Each member who is not physically present and who is participating through  
30 telephonic, video, electronic or other similar means of communication has received  
31 prior to the public proceeding any documents or other materials that will be discussed  
32 at the public proceeding, with substantially the same content as those documents  
33 actually presented. Documents or other materials made available at the public  
34 proceeding may be transmitted to the member not physically present during the  
35 public proceeding if the transmission technology is available. Failure to comply with  
36 this paragraph does not invalidate the action of a body in a public proceeding.

37 **2. Voting; judicial or quasi-judicial proceeding.** A member of a body who is not  
38 physically present and who is participating in a judicial or quasi-judicial public  
39 proceeding through telephonic, video, electronic or other similar means of



1 communication may not vote on any issue concerning testimony or other evidence  
2 provided during the judicial or quasi-judicial public proceeding.

3 **3. Exception to quorum requirement.** A body may convene a public proceeding  
4 by telephonic, video, electronic or other similar means of communication without a  
5 quorum under subsection 1, paragraph C if:

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

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

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

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

16 **PART B**

17 **Sec. B-1. 10 MRSA §384, sub-§5** is enacted to read:

18 **5. Meetings.** The board shall have a physical location for each meeting.  
19 Notwithstanding Title 1, section 403-A, board members may participate in meetings by  
20 teleconference. Board members participating in the meeting by teleconference are not  
21 entitled to vote and are not considered present for the purposes of determining a quorum,  
22 except in cases in which the chair of the board determines that the counting of members  
23 participating by teleconference and the allowance of votes by those members is necessary  
24 to avoid undue hardship to an applicant for an investment.

25 **Sec. B-2. 32 MRSA §88, sub-§1, ¶D**, as amended by PL 2007, c. 274, §19, is  
26 further amended to read:

27 D. A majority of the members appointed and currently serving constitutes a quorum  
28 for all purposes and no decision of the board may be made without a quorum present.  
29 A majority vote of those present and voting is required for board action, except that  
30 for purposes of either granting a waiver of any of its rules or deciding to pursue the  
31 suspension or revocation of a license, the board may take action only if the proposed  
32 waiver, suspension or revocation receives a favorable vote from at least 2/3 of the  
33 members present and voting and from no less than a majority of the appointed and  
34 currently serving members. ~~The Notwithstanding Title 1, section 403-A, the board~~  
35 ~~may use video conferencing and other technologies to conduct its business but is not~~  
36 ~~exempt from Title 1, chapter 13, subchapter 1.~~ Members of the board, its  
37 subcommittees or its staff may participate in a meeting of the board, subcommittees  
38 or staff via video conferencing, conference telephone or similar communications  
39 equipment by means of which all persons participating in the meeting can hear each  
40 other, and participation in a meeting pursuant to this subsection constitutes presence  
41 in person at such meeting.



1           7. Each member who is not physically present and who is participating through  
2 telephonic, video, electronic or other similar means of communication must have  
3 received, prior to the proceeding, any documents or other materials that will be discussed  
4 at the public proceeding, with substantially the same content as those documents actually  
5 presented.

6           8. A member of a body who is not physically present may not vote on any issue  
7 concerning testimony or other evidence provided during the public proceeding if it is a  
8 judicial or quasi-judicial proceeding.

9           9. If a body conducts one or more public proceedings using remote-access  
10 technology, the body must also hold at least one public proceeding annually during which  
11 all members of the body in attendance are physically assembled at one location.

12           Under current law, the following state agencies are authorized to use remote-access  
13 technology to conduct meetings: the Finance Authority of Maine, the Commission on  
14 Governmental Ethics and Election Practices, the Emergency Medical Services' Board and  
15 the Workers' Compensation Board. Part B provides a specific exemption from the new  
16 requirements for the Small Enterprise Growth Board, the Emergency Medical Services'  
17 Board and the Workers' Compensation Board.

