

RIGHT TO KNOW ADVISORY COMMITTEE  
PUBLIC RECORDS EXCEPTION REVIEW SUBCOMMITTEE

Friday, September 20, 2019  
1:00 p.m.  
State House Room 438

**DRAFT** Meeting Agenda

1. Introductions
2. Review recommendations for modification to exceptions included in LD 1511, An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions (*see attached*)
3. Review of Remaining Public Records Exception Exceptions in Titles 1 through 7-A Not Completed in 2018 (*see attached chart*)
4. Consider modification of exception in 1 MRSA §402, sub-§3, ¶ U related to records of railroad company concerning hazardous materials shipments (*see attached suggested amendment from Chris Parr*)
5. Schedule additional meeting (*if necessary*)
6. Adjourn

FIR RTKAC Subcommittee  
Review 9/20/19

ADVISORY COMMITTEE 2-1  
RECOMMENDATIONS  
in 2018 (not enacted)



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1511

H.P. 1103

House of Representatives, April 4, 2019

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

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Reported by Representative BAILEY of Saco 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.

*Robert B. Hunt*

ROBERT B. HUNT  
Clerk

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

2 **Sec. 1. 1 MRSA §402, sub-§3, ¶C-1,** as enacted by PL 2011, c. 264, §1, is  
3 amended to read:

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

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

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

9 (b) Credit or financial information;

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

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

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

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

19 **Sec. 2. 1 MRSA §402, sub-§3, ¶K,** as amended by PL 2003, c. 392, §1, is further  
20 amended to read:

21 K. Personally identifying information concerning minors that is obtained or  
22 maintained by a municipality in providing recreational or nonmandatory educational  
23 programs or services, ~~if the municipality has enacted an ordinance that specifies the~~  
24 ~~circumstances in which the information will be withheld from disclosure.~~ This  
25 paragraph does not apply to records governed by Title 20-A, section 6001 and does  
26 not supersede Title 20-A, section 6001-A;

27 **Sec. 3. 1 MRSA §402, sub-§3, ¶M,** as amended by PL 2011, c. 662, §2, is  
28 further amended to read:

29 M. Records or information describing the architecture, design, access authentication,  
30 encryption or security of information technology infrastructure, systems and  
31 software, including records or information maintained to ensure government  
32 operations and technology continuity and to enable disaster recovery. Records or  
33 information covered by this paragraph may be disclosed to the Legislature or, in the  
34 case of a political or administrative subdivision, to municipal officials or board  
35 members under conditions that protect the information from further disclosure;

36 **Sec. 4. 3 MRSA §997, sub-§§1 and 3,** as enacted by PL 2001, c. 702, §2, are  
37 amended to read:

1           **1. Review and response.** Prior to the presentation of a program evaluation under  
 2 this chapter to the committee by the office, the director of the evaluated state agency or  
 3 other entity must have an opportunity to review a draft of the program evaluation report.  
 4 Within 15 calendar days of receipt of the draft report, the director of the evaluated state  
 5 agency or other entity may provide to the office comments on the draft report. If  
 6 provided to the office by the comment deadline, the comments must be included in the  
 7 final report when it is presented to the committee. Failure by the director of an evaluated  
 8 agency or other entity to submit its comments on the draft report by the comment  
 9 deadline may not delay the submission of a report to the committee or its release to the  
 10 public.

11 All documents, writings, drafts, electronic communications and information transmitted  
 12 pursuant to this subsection are confidential and may not be released to the public prior to  
 13 the time the office issues its program evaluation report pursuant to subsection 3. A  
 14 person violating the provisions of this subsection regarding confidentiality is guilty of a  
 15 Class E crime.

16           **3. Confidentiality.** ~~The director shall issue program evaluation reports, favorable or~~  
 17 ~~unfavorable, of any state agency or other entity, and these reports are public records,~~  
 18 ~~except that, prior to the release of a program evaluation report pursuant to subsection 2 or~~  
 19 ~~the point at which a program evaluation is no longer being actively pursued, all papers,~~  
 20 ~~physical and electronic records and correspondence and other supporting materials~~  
 21 ~~comprising the working Working papers in the possession of the director or other entity~~  
 22 ~~charged with the preparation of a program evaluation report an entity with which the~~  
 23 ~~director has contracted for the conduct of program evaluations pursuant to section 995,~~  
 24 ~~subsection 2 are confidential and exempt from disclosure pursuant to Title 1, chapter 13,~~  
 25 ~~including disclosure to the Legislative Council or an agent or representative of the~~  
 26 ~~Legislative Council.~~ All other records or materials in the possession of the director or  
 27 other entity charged with the preparation of a program evaluation report under this  
 28 chapter an entity with which the director has contracted for the conduct of program  
 29 evaluations pursuant to section 995, subsection 2 that would otherwise be confidential or  
 30 exempt from disclosure are exempt from disclosure pursuant to the provisions of Title 1,  
 31 chapter 13. Prior to the release of a program evaluation report pursuant to subsection 2 or  
 32 the point at which a program evaluation is no longer being actively pursued, all papers,  
 33 physical and electronic records and correspondence and other supporting materials  
 34 comprising the working papers in the possession of the director or other entity charged  
 35 with the preparation of a program evaluation report are confidential and may not be  
 36 released or disclosed by the director to the Legislative Council or an agent or  
 37 representative of the Legislative Council. This subsection may not be construed to  
 38 prohibit or prevent public access to the records of a state agency or other entity in the  
 39 possession of the director that would otherwise be subject to disclosure pursuant to the  
 40 provisions of Title 1, chapter 13. The director shall refer requests for access to those  
 41 records directly to the state agency or other entity that is the official custodian of the  
 42 requested records, which shall respond to the request for public records.

43           **Sec. 5. 5 MRSA §4572, sub-§2, ¶C,** as enacted by PL 1995, c. 393, §13, is  
 44 amended to read:

1 C. A covered entity may require a medical examination after an offer of employment  
2 has been made to a job applicant and prior to the commencement of the employment  
3 duties of the applicant and may condition an offer of employment on the results of the  
4 examination, if:

5 (1) All entering employees are subjected to the same examination regardless of  
6 disability;

7 (2) Information obtained regarding the medical ~~condition or~~ and disability  
8 information and history of the applicant is collected and maintained on separate  
9 forms and in separate medical files and is treated as a confidential medical  
10 record, except that:

11 (a) Supervisors and managers may be informed regarding necessary  
12 restrictions on the work or duties of the employee and necessary  
13 accommodations;

14 (b) First aid and safety personnel may be informed, when appropriate, if the  
15 disability might require emergency treatment; and

16 (c) Government officials investigating compliance with this Act are provided  
17 relevant information on request; and

18 (3) The results of the examination are used only in accordance with this Act.

19 **Sec. 6. 5 MRSA §4572, sub-§2, ¶E**, as enacted by PL 1995, c. 393, §13, is  
20 amended to read:

21 E. A covered entity may conduct voluntary medical examinations, including  
22 voluntary medical ~~histories~~ and disability information and history, that are part of an  
23 employee health or wellness program available to employees at that work site. A  
24 covered entity may make inquiries into the ability of an employee to perform job-  
25 related functions. Information obtained under this paragraph regarding the medical  
26 ~~condition or~~ and disability information and history of an employee is subject to the  
27 requirements of paragraph C, subparagraphs (2) and (3).

28 **Sec. 7. 5 MRSA §4573, sub-§2**, as amended by PL 1995, c. 393, §16, is further  
29 amended to read:

30 **2. Records.** After employment or admission to membership, to make a record of  
31 such features of an individual as are needed in good faith for the purpose of identifying  
32 them, provided the record is intended and used in good faith solely for identification, and  
33 not for the purpose of discrimination in violation of this Act. Records ~~of features~~  
34 regarding physical or mental disability that are collected must be collected and  
35 maintained on separate forms and in separate files and be treated as confidential records;

36 **SUMMARY**

37 This bill implements statutory changes recommended by the Right To Know  
38 Advisory Committee pursuant to its responsibility to review existing public records  
39 exceptions.

1           The bill eliminates specific protection for social security numbers in the context of  
2 constituent communications because social security numbers are designated as not public  
3 records for all contexts.

4           Current law provides that personally identifying information concerning minors that  
5 is obtained or maintained by a municipality in providing recreational or nonmandatory  
6 educational programs or services is not a public record as long as the municipality has  
7 adopted an ordinance that protects the information from disclosure. The bill repeals the  
8 requirement that a municipality adopt such an ordinance in order to protect the  
9 information about minors.

10          Current law provides a public record exception for records or information describing  
11 the architecture, design, access authentication, encryption or security of information  
12 technology infrastructure, systems and software. The bill amends the provision to  
13 specifically include records or information maintained to ensure government operations  
14 and technology continuity and to enable disaster recovery.

15          The bill amends the statutes governing the confidentiality of the working papers of  
16 the Office of Program Evaluation and Government Accountability to clarify that the  
17 working papers, whether in the possession of the office or an entity with which the office  
18 director has contracted, remain confidential even after the report is released to the public.  
19 It removes duplicative language that is already captured in the definition of "working  
20 papers."

21          The bill amends the Maine Human Rights Act to update and clarify the language  
22 describing medical history and information about disabilities, as well as to update a  
23 reference to employee health and wellness programs.

**Existing Public Records Exceptions For Review by Public Records Exception Review Subcommittee:  
Remaining Exceptions Pending Final Subcommittee Action as of Sept. 2019**  
Titles 1 through 7-A

REF. NO.	TITLE	SECTION	SUB-§, ¶	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	STATUS IN SUBCOMMITTEE	SUBCOMMITTEE ACTION
6	1	402	3, ¶ E	<i>Title 1, section 402, subsection 3, paragraph E, relating to records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System</i>	Maine Maritime Academy; Maine Community College System; University of Maine System	No change	Follow up: could exception be more narrowly tailored?	
11	1	402	3, ¶ J	<i>Title 1, section 402, subsection 3, paragraph J, relating to 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</i>			Follow up: Too broad? What are these boards/commissions? Conflict of interest considerations?	
16	1	402	3, ¶ O	<i>Title 1, section 402, subsection 3, paragraph O relating to personal contact information concerning public employees other than elected officials</i>	DAFS Bureau of Human Resources	Expand to include social media accounts	No change  Note concern re: social media	
24	1	538	3	<i>Title 1, section 538, subsection 3, relating to InforME subscriber information</i>	InforME; DAFS Office of Information Technology			
27	1	1013	3-A	<i>Title 1, section 1013, subsection 3-A, relating to a complaint alleging a violation of legislative ethics</i>	Maine Commission on Governmental Ethics and Election Practices	No change	No change, pending inquiry to full Advisory Committee re: whether complaints should be confidential if not	

**Existing Public Records Exceptions For Review by Public Records Exception Review Subcommittee:  
 Remaining Exceptions Pending Final Subcommittee Action as of Sept. 2019  
 Titles 1 through 7-A**

REF. NO.	TITLE	SECTION	SUB-§, ¶	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	STATUS IN SUBCOMMITTEE	SUBCOMMITTEE ACTION
							pursued	
35A	4	17	3	<i>Title 4, section 17, subsection 15, relating to State Court security records</i>	Judicial Branch			
53	5	7070	2	<i>Title 5, section 7070, subsection 2, relating to state employees' personal information</i>	DAFS Bureau of Human Resources and Employee Relations	Expand to include social media accounts	Possibly expand to include gender orientation and genetic information? <i>[addressed by PL 2019, c. 451]</i>	
73	5	244-E	2	<i>Title 5, section 244-E, subsection 2, relating to the contents of a complaint alleging fraud, waste, inefficiency or abuse</i>	Office of the State Auditor	Amend to allow Auditor to forward complaints to other agencies that are expected to follow up on the complaint		
85	7	4204	10	<i>Title 7, section 4204, subsection 10, relating to nutrient management plans</i>	Department of Agriculture	No change		
86	7	4205	2	<i>Title 7, section 4205, subsection 2, relating to livestock operation permits and nutrient management plans</i>	Department of Agriculture	No change		
88	7	2992-A	1	<i>Title 7, subsection 2992-A, subsection 1, paragraph C, subparagraph (2), relating to records and meetings of Maine Dairy Promotion Board which may be closed to public when disclosure would adversely affect</i>	Maine Dairy Promotion Board	No change		



**Existing Public Records Exceptions For Review by Public Records Exception Review Subcommittee:  
 Remaining Exceptions Pending Final Subcommittee Action as of Sept. 2019  
 Titles 1 through 7-A**

REF. NO.	TITLE	SECTION	SUB-§, ¶	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	STATUS IN SUBCOMMITTEE	SUBCOMMITTEE ACTION
				<i>competitive position of milk industry</i>				
89	7	2998-B	1	<i>Title 7, section 2998-B, subsection 1, paragraph C, subparagraph (2), relating to records and meetings of Maine Dairy and Nutrition Council which may be closed to public when disclosure would adversely affect competitive position of milk industry</i>	Maine Dairy and Nutrition Council	No change		
90	7	306-A	3	<i>Title 7, section 306-A, subsection 3, relating to agricultural development grant program, market research or development activities</i>	Department of Agriculture	No change		
92	7	951-A		<i>Title 7, section 951-A, relating to minimum standards for planting potatoes</i>	Department of Agriculture, Food and Rural Resources	No change		

FOR REVIEW 9/20/19  
by SUBCOMMITTEE 4-1

**From:** Parr, Christopher [mailto:Christopher.Parr@maine.gov]  
**Sent:** Tuesday, September 10, 2019 12:12 PM  
**To:** Reinsch, Margaret  
**Subject:** RE: RTKAC - upcoming schedule

Hi, Peggy:

Would it be possible to add this proposed amendment to the FOAA to the Exceptions Subcommittee's 9/20 agenda as an item for discussion?:

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

**Sec. 1. 1 M.R.S.A. § 402, sub-§ 3, ¶ U**, as amended by PL 2017, c. 118, § 2, is further amended to read:

U. Records provided by a railroad company describing hazardous materials transported by the railroad company in this State, the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes that are in the possession of a state or local emergency management entity or law enforcement agency, a fire department or other first responder. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5. Records subject to this paragraph become publicly accessible after the shipments to which the records relate have occurred; and

Best, C

Chris

CHRISTOPHER PARR  
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**From:** Reinsch, Margaret <Margaret.Reinsch@legislature.maine.gov>  
**Sent:** Monday, September 09, 2019 7:50 PM  
**To:** Parr, Christopher <Christopher.Parr@maine.gov>  
**Subject:** Automatic reply: RTKAC - upcoming schedule

Thank you for your email.

4-2

I am planning on being out of the Office until Tuesday, September 17th. I will be monitoring my email and will respond as soon as possible.

If you need to reach someone else in the Office of Policy and Legal Analysis before I return, please call (207) 287-1670.

Thanks

Peggy

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Maine State Legislature  
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