



**STATE OF MAINE
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SECOND REGULAR SESSION**

**Third Annual Report
of the
RIGHT TO KNOW ADVISORY COMMITTEE**

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Table of Contents

	Page
Executive Summary	i
I. Introduction	1
II. Advisory Committee Duties	2
III. Recent Court Decisions Related to Freedom of Access Issues	3
IV. Right to Know Advisory Committee Subcommittees	4
V. Actions Related to Right to Know Advisory Committee Recommendations Contained in Second Annual Report	5
VI. Right to Know Advisory Committee Recommendations	8
VII. Future Plans	13
 Appendices	
A. Authorizing Legislation, Maine Revised Statutes, Title 1, Section 441	
B. Membership List, Right to Know Advisory Committee	
C. Chart: Recommendations Concerning Existing Public Records Exceptions, Titles 10 - 21-A	
D. Draft Legislation: Proposed Statutory Changes to Existing Public Records Exceptions and Technical Changes to Title 1, Chapter 13	
E. Draft Legislation: Proposed Changes to Teacher Confidentiality Provisions	

EXECUTIVE SUMMARY

This is the third 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, 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: <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. During the spring of 2008, the Advisory Committee also had the assistance of a legal extern from the University of Maine School of Law.

By law, the Advisory Committee must meet at least four times per year. During 2008, the Advisory Committee met five times: January 30, May 28, July 30, September 10 and November 17. The Advisory Committee has three subcommittees. This year, two subcommittees—the Education and Training Subcommittee and the Legislative Subcommittee—held meetings and made recommendations for the Advisory Committee's consideration.

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 the developments in case law relating to Maine's Freedom of Access laws. For the second time, this report includes a summary of pending Supreme Judicial Court cases and recent Supreme Judicial Court decisions.

The report also includes a brief summary of the legislative actions taken since January 2008 in response to the Advisory Committee's recommendations in its second annual report.

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

- Continue, amend and repeal certain existing public records exceptions in Titles 10 to 21-A;**
- Reenact the teacher confidentiality provisions in Title 20-A to clearly codify Department of Education policy and request that the Judiciary Committee consider whether the reasons for actions taken by the Department of Education with regard to credentials of public school personnel should be disclosed publicly;**
- Request that the Judiciary Committee review the following exceptions in Title 12 relating to marine resources fisheries statistics and consider whether the circumstances of certain fisheries may have the effect of limiting public disclosure of aggregate information: Title 12 § 6173, sub-§ 1, relating to marine resource statistics; Title 12**

§ 6445, relating to logbooks for lobster harvesters; and Title 12 § 6749-A, sub-§ 1, relating to logbooks for sea urchin buyers and processors;

- Implement technical changes to Title 1, chapter 13 after review of suggested revisions submitted by Christopher Parr, Staff Attorney Maine State Police; and**
- Defer action on the following proposed exceptions to public records laws and request that the exceptions be introduced before relevant policy committees: records relating to engineering estimates and negotiations for and appraisals of real property held by the Department of Transportation and Maine Turnpike Authority; security plans for state and county correctional facilities; food safety and meat inspections records held by the Department of Agriculture; and information shared by Maine service men and women and their families with the Commission to Protect the Lives and Health of Members of the Maine National Guard.**

In 2009, 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 10 through 21-A. The Advisory Committee expects to have assistance during the First Regular Session of the 124th Legislature from a legal extern, a law student at the University of Maine Law School. The Advisory Committee looks forward to a full year of activities and working with the Governor and Legislature to implement the recommendations contained in its third annual report.

I. INTRODUCTION

This is the third 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. Public Law 2005, chapter 631 is included as Appendix A. The first and second annual reports of the Advisory Committee can be found on the Legislature's webpage at www.maine.gov/legis/opla/reportsnew.htm.

The Right to Know Advisory Committee has 16 members; 15 members are currently serving on the Advisory Committee and there is one vacancy. During 2008, the Speaker of the House of Representatives appointed Eric Conrad to represent newspaper publishing interests to fill a vacancy on the Advisory Committee. The chair of the Advisory Committee is elected annually by the members. The Advisory Committee members are:

Sen. Barry Hobbins Chair	<i>Senate member of Judiciary Committee, appointed by President of the Senate</i>
Rep. Deborah Simpson	<i>House member of Judiciary Committee, appointed by Speaker of the House</i>
Shenna Bellows	<i>Representing the public, appointed by the President of the Senate</i>
Karla Black	<i>Representing State Government interests, appointed by the Governor</i>
Eric Conrad	<i>Representing newspaper publishers, appointed by the Speaker of the House</i>
Robert Devlin	<i>Representing county or regional interests, appointed by the President of the Senate</i>
Sheriff Mark Dion	<i>Representing law enforcement interests, appointed by the President of the Senate</i>
Richard Flewelling	<i>Representing municipal interests, appointed by the Governor</i>
James T. Glessner	<i>Member of the Judicial Branch</i>
Suzanne Goucher	<i>Representing broadcasting interests, appointed by the Speaker of the House</i>

Mal Leary	<i>Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House</i>
Judy Meyer	<i>Representing the Press, appointed by the President of the Senate</i>
Maureen O'Brien	<i>Representing broadcasting interests, appointed by the President of the Senate</i>
Linda Pistner	<i>Attorney General's designee</i>
Harry Pringle	<i>Representing school interests, appointed by the Governor</i>
Chris Spruce	<i>Representing the public, appointed by the Speaker of the House</i>

The complete membership list of the Advisory Committee, including contact information, is included as Appendix B. The Office of Policy and Legal Analysis provides staffing to the Advisory Committee while the Legislature is not in session. During the spring of 2008, the Advisory Committee also had the assistance of a legal extern from the University of Maine School of Law.

By law, the Advisory Committee must meet at least four times per year. During 2008, the Advisory Committee met five times: January 30, May 28, July 30, September 10 and November 17. The Education and Training Subcommittee met on November 17. The Legislative Subcommittee met on June 20, July 16, July 30, September 10, October 6 and November 13. All of the meetings were held in the Judiciary Committee Room of the State House in Augusta and open to the public. Each meeting was also accessible through the audio link on the Legislature's webpage. The Advisory Committee also established a webpage which can be found at www.maine.gov/legis/opla/righttoknow.htm. Agendas and summaries of the meetings are included on the webpage.

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, publicize the needs of 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.

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 the developments in case law relating to Maine's Freedom of Access laws. In its second annual report, the Advisory Committee briefly summarized relevant Law Court decisions since 2004 and cases pending before the Law Court on Freedom of Access issues. During 2008, the Advisory Committee identified the following Law Court decisions; no pending cases on Freedom of Access issues were identified.

2008 Maine Supreme Judicial Court Opinions involving Maine's Freedom of Access laws

- Blethen Maine Newspapers, Inc. v. Portland School Committee, 2008 ME 69 (2008) (unanimous decision) : In July 2007, the Portland School Committee held an executive session to question the school superintendent and two other school officials

about a \$2.5 million shortfall. The Portland Press Herald asserted that the closed meeting was improper, because budget matters cannot be discussed in executive session, and sued to obtain notes taken in the meeting. The Maine Supreme Judicial Court held that the committee did not violate the section of the Freedom of Access law prohibiting a public entity from discussing budgets or budget shortfalls and documents prepared for use during executive session were not public records since public was legitimately excluded from executive session and committee was discussing job performance of personnel in relation to budget shortfall.

- James P. Moore v. Charles Abbott, Esq., Hon. Eugene Beaulieu and Marvin Glazier, 2008 ME 100 (2008) (3-2 decision). The Attorney General created in 2004 an independent panel to investigate allegations that prosecutors and police misled the jury, altered notes, ignored alternative suspects and destroyed evidence concerning the 1988 murder of 12-year-old Sarah Cherry. A citizen, James Moore, asked for the records of the panel that supported its four-page report finding no misconduct. The majority of the Maine Supreme Judicial Court ruled that the panel did not fall under the Freedom of Access laws because the panel was not created by executive or legislative action, was not performing a government function, was independent from government control and received no government funding.

IV. RIGHT TO KNOW ADVISORY COMMITTEE SUBCOMMITTEES

Given the broad scope of the Advisory Committee's ongoing duties and responsibilities, the Advisory Committee created three subcommittees to organize and focus its work: 1) Education and Training; 2) Legislative; and 3) Compliance and Resources. Each of the subcommittees was charged with a specific duty as outlined in Title 1, section 411, subsection 6; all of the subcommittees agreed to include the authority to make recommendations for statutory changes as one of its charges as described in Title 1, section 411, subsection 6, paragraph G. The Chair and Vice-chair of the Advisory Committee are ex officio members of each subcommittee.

Education and Training Subcommittee. The Education and Training Subcommittee's focus is to serve as a central source and coordinator of information about Maine's Freedom of Access laws; to serve as a resource to support training and education about Maine's Freedom of Access laws; and to support the provision of information about public access to records and proceedings via the Internet. See Title 1, section 411, subsection 6, paragraphs B, C, and D. Judy Meyer is the chair the subcommittee, and the following serve as members: Karla Black, Richard Flewelling, Sheriff Mark Dion, Mal Leary, Maureen O'Brien, Linda Pistner and Harry Pringle.

During 2008, the Education and Training Subcommittee met once on November 17. The subcommittee discussed the agenda and materials to be used for a FOA training seminar for members of the 124th Legislature to fulfill the statutory requirements for mandatory training of elected officials pursuant to Title 1, Section 412.

Legislative Subcommittee. The Legislative Subcommittee’s focus is to serve as an adviser to the Legislature when legislation affecting public access is proposed; to participate in the review and evaluation of public records exceptions, both existing and those proposed in new legislation; and to examine inconsistencies in statutory language and to propose clarifying standard language. See Title 1, section 411, subsection 6, paragraphs E, F and H. Christopher Spruce is the chair of the subcommittee and the following serve as members: Shenna Bellows, Karla Black, Suzanne Goucher, Mal Leary, Linda Pistner and Harry Pringle.

During 2008, the Legislative Subcommittee had six meetings. The subcommittee reviewed the existing public records exceptions in Titles 10 through 21-A. The subcommittee made a recommendation to the Advisory Committee to continue, amend or repeal those exceptions in Titles 10 through 21- A that were reviewed; the remaining exceptions in these titles will be reviewed in 2009. By request, the subcommittee also reviewed the exception in Title 23, section 63 related to records of the Department of Transportation and Maine Turnpike Authority; reviewed the exception in Title 21-A related to confidentiality of educational credentialing records; reviewed suggested revisions to the Freedom of Access laws suggested by Christopher Parr; and reviewed the statutory requirements for minutes of public proceedings. See discussion of Advisory Committee recommendations in Section VI.

Compliance and Resources Subcommittee. The Compliance and Resources Subcommittee’s focus is to provide guidance in ensuring access to public records and public proceedings and to help establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws; and to 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. See Title 1, section 411, subsection 6, paragraphs A and J. James T. Glessner is the chair of the subcommittee and the following serve as members: Shenna Bellows, Karla Black, Robert Devlin, Mal Leary and Linda Pistner.

The Compliance and Resources Subcommittee did not have any meetings in 2008.

V. ACTIONS RELATED TO RIGHT TO KNOW ADVISORY COMMITTEE RECOMMENDATIONS CONTAINED IN SECOND ANNUAL REPORT

The Right to Know Advisory Committee made several recommendations in its second annual report. The actions taken in 2008 as a result of those recommendations are summarized below.

<p>Recommendation: Continue to support the establishment of an ombudsman position</p>	<p>Action: The Advisory Committee supported the enactment of LD 1923, An Act to Implement the Recommendations of the Right to Know Advisory Committee Creating the Public Access Ombudsman, which was carried over by the Judiciary Committee. As drafted and supported by the Advisory Committee, LD 1923 would establish a Public Access Ombudsman, a funded half-time position within the Department of the Attorney General. Because no General Fund appropriation was made to provide funding, LD 1923 was amended by the Judiciary Committee to</p>
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	<p>authorize the Attorney General to establish the Public Access Division and appoint the Public Access Ombudsman as a pilot project if funding is available. The provisions establishing the Public Access Division and the Public Access Ombudsman are repealed June 30, 2009. LD 1923 was later enacted with these amendments. See Public Law 2007, chapter 603.</p>
<p>Recommendation: Implement changes to Public Law 2007, chapter 349 to address difficulties identified with the practical application of the mandatory training law</p>	<p>Action: The Advisory Committee proposed statutory changes to PL 2007, chapter 349 to address the difficulties identified with the practical application of the mandatory training law as first enacted. The proposed changes included amending the training requirements to establish minimum content requirements for the training programs; specifically stating that a thorough review of the information contained under the Frequently Asked Questions heading on the State's Freedom of Access law website would meet the minimum requirements; deleting the requirement that the Advisory Committee establish standards and approve training courses; and requiring elected officials to make a written record of the completion of training. The Advisory Committee also proposed to clarify the elected officials who are subject to the training and to clarify that the training requirement applies to legislators elected after November 1, 2008. The Judiciary Committee accepted the draft legislation recommended by the Advisory Committee and submitted LD 2198, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Training for Elected Officials. LD 2198 was later enacted. See Public Law 2007, chapter 576.</p>
<p>Recommendation: Continue, amend and repeal existing public records exceptions in Titles 1-9-B</p>	<p>Action: As required by law, the Advisory Committee reviewed the existing public records exceptions identified in Title 1 through Title 9-B. The Advisory Committee made recommendations for each exception in the following categories: continue exceptions without change; make statutory amendments to the exceptions; and refer for further discussion and review by Judiciary Committee. The Advisory Committee submitted draft legislation to the Judiciary Committee to make the recommended statutory changes. LD 2212, An Act Concerning Public Records Exceptions (which included the Advisory Committee's recommended changes) was reported out as a bill by the Judiciary Committee and later enacted. See Public Law 2007, chapter 597.</p>
<p>Recommendation: Review Freedom of Access laws revision proposed by Christopher Parr</p>	<p>Action: Christopher Parr, Staff Attorney for the State Police within the Department of Public Safety, proposed revisions to the Freedom of Access laws as part of the Department of Public Safety's response to a survey of state agencies conducted by the Advisory Committee in 2007. While the Advisory Committee did not make specific recommendations that the amendments be adopted, the Advisory Committee did recommend that the Judiciary Committee review the proposed revisions during the Second Regular Session of the 123rd Legislature. Some of Attorney Parr's suggested changes were incorporated into the Advisory Committee's recommendations to the Judiciary Committee related to LD 1881, An Act</p>

	<p>to Improve Transparency and Accountability in Government, and became part of Public Law 2007, chapter 501. The Judiciary Committee referred the remainder of Mr. Parr's suggested changes back to the Advisory Committee for review this year. See discussion of Mr. Parr's suggested revisions in Advisory Committee Recommendations, Section VI.</p>
<p>Recommendation: Amend LD 1881, An Act to Improve the Transparency and Accountability in Government (<i>not supported by one member</i>)</p>	<p>Action: The Advisory Committee spent considerable time discussing the provisions included in LD 1881, An Act to Improve the Transparency and Accountability in Government. The Advisory Committee reviewed the original bill and a discussion draft prepared for the Legislative Subcommittee but was concerned that the proposed changes would create more complexity than necessary. Instead of the discussion draft modeled on the provisions in LD 1881, the Advisory Committee recommended LD 1881 be amended to clarify Title 1, section 408 to require an agency or public official to acknowledge receipt of a public records request within a reasonable period of time and allow an agency or official to request clarification of a request to facilitate the response. The proposed language recommended by the Advisory Committee was suggested by Christopher Parr, Staff Attorney for the Maine State Police in the Department of Public Safety. The Advisory Committee voted 10-1 in favor of the recommendation. Shenna Bellows objected and stated that she would support LD 1881 as drafted. The Judiciary Committee accepted the majority's recommendation and included the changes in a Committee Amendment to LD 1881. LD 1881 as amended by the Committee Amendment was later enacted. See Public Law 2007, chapter 501.</p>
<p>Recommendation: Oppose LD 1878, An Act to Generate Savings by Changing Public Notice Requirements <i>[Unanimously reconsidered at January 30, 2008 meeting and item tabled with no further action taken]</i></p>	<p>Action: LD 1878, An Act to Generate Savings by Changing Public Notice Requirements, was carried over by the State and Local Government Committee for consideration during the Second Regular Session of the 123rd Legislature. In its original form, LD 1878 would phase out the statutory requirement that government entities publish legal or public notices in a newspaper and require instead that the notices be published on an accessible website. Initially as part of the recommendations in its second annual report, the Advisory Committee voted to submit a letter in opposition to LD 1878 to the State and Local Government Committee because of concerns that the statutory changes would restrict the public's notice of government meetings and activities. At its January 30th meeting, the Advisory Committee was presented with a draft amendment to LD 1878 by Representative Henry Joy on behalf of the bill's sponsor, Representative Teresa Hayes, and had further discussions about LD 1878. The draft amendment would require the development of a State-wide web portal to provide notices and information about public proceedings and make changes to the required items in public notices placed in paid newspaper advertisements. The Advisory Committee discussed the changes and shared their concerns about the proposed draft amendment to LD 1878, but did not reach consensus on the legislation. The Advisory Committee tabled consideration of LD 1878 and took no action on the bill or proposed amendment. During the Second Regular and First Special</p>

Session, LD 1878 as amended by Committee Amendment "B" was enacted by the House and Senate, but the bill was held by the Governor without his signature in the form of a pocket veto.

VI. 2008 RIGHT TO KNOW ADVISORY COMMITTEE RECOMMENDATIONS

During 2008, the Advisory Committee engaged in the following activities and makes the recommendations summarized below.

Continue, amend and repeal the following existing public records exceptions in Titles 10 to 21-A

As required by law, the Advisory Committee reviewed the existing public records exceptions identified in Title 10 through Title 21-A-B. The Advisory Committee's recommendations are summarized below. Further summary and explanation of the Advisory Committee's recommendations, including proposed statutory changes, descriptions of objections and issues identified for review by the Judiciary Committee, are included in Appendix C.

The Advisory Committee recommends that the following exceptions in Title 10 through 21-A be continued without change.

- ◆ Title 10 § 391, sub-§§ 2 and 3, relating to the Small Growth Enterprise Program
- ◆ Title 10 § 1107, relating to records in antitrust investigations
- ◆ Title 10 § 1188-A, relating to settlement conference discussions under the Maine Motor Vehicle Franchise Board
- ◆ Title 12 § 544-B, sub-§4, relating to location of a species or natural area
- ◆ Title 12 § 1827, sub-§ 3, relating to camper reservation records
- ◆ Title 12 § 6082, relating to aquaculture operations in other jurisdictions
- ◆ Title 12 § 6173-A, sub-§ 1, relating to proprietary information submitted under Working Waterfront Access Program
- ◆ Title 12 § 6310, sub-§ 3, relating to medical information pertaining to lobster and crab fishing license denials
- ◆ Title 12 § 8005, sub-§1, relating to social security numbers and other personal information of forest landowners
- ◆ Title 12 § 8424, sub-§ 2, relating to cutting plans under Maine Spruce Budworm Management Act
- ◆ Title 12 § 8611, sub-§ 1, relating to social security numbers and other personal information of forest landowners
- ◆ Title 12 § 8883-B, sub-§ 8, relating to social security numbers and other personal information of forest landowners
- ◆ Title 12 § 12551-A, sub-§ 10, relating to smelt dealer reports
- ◆ Title 12 § 12907, sub-§ 8, relating to records of whitewater outfitters

- ◆ Title 14, §164-A, sub-§3, relating to the Maine Assistance Program for Lawyers
- ◆ Title 15, §101-C, sub-§3, relating to records necessary to conduct an evaluation concerning mental responsibility for criminal conduct
- ◆ Title 15, §3301, sub-§6-A, relating to information about a juvenile against whom a juvenile petition has not been filed
- ◆ Title 15, § 3308, sub-§7, relating to juvenile proceedings
- ◆ Title 18-A § 2-901, relating to wills deposited in Probate Court
- ◆ Title 18-A § 9-304, sub-§ (a-1), relating to background checks for adoptions
- ◆ Title 18-A § 9-304, sub-§ (a-2), relating to background checks initiated by DHHS
- ◆ Title 18-A § 9-308, sub-§ (c), relating to final adoption decrees
- ◆ Title 18-A § 9-310, relating to adoption records after August 8, 1953
- ◆ Title 19-A § 651, sub-§ 2, relating to social security numbers on marriage applications
- ◆ Title 19-A MRSA §908, relating to Social Security Numbers on divorce records
- ◆ Title 19-A § 1565, sub-§ 4, relating to social security numbers in paternity actions
- ◆ Title 19-A §1653, sub-§6, relating to addresses of children and victims in cases concerning parental rights and responsibilities involving domestic abuse
- ◆ Title 19-A §1753, sub-§5, relating to identifying information under the Child Custody Jurisdiction and Enforcement Act if health, safety or liberty of a party of child would be jeopardized by disclosure
- ◆ Title 19-A § 2006, sub-§ 10, relating to social security numbers in child support actions
- ◆ Title 19-A § 2152, sub-§ 11, relating to information collected in child support and medical support enforcement actions
- ◆ Title 19-A § 2158, sub-§ 6, relating to records of child support obligors provided to wireless service provider
- ◆ Title 19-A § 3012, relating to specific identifying information in child support enforcement
- ◆ Title 19-A §4008, relating to identifying information under the Protection from Abuse statutes if health, safety or liberty of a party or child would be jeopardized by disclosure
- ◆ Title 20-A § 6101, sub-§ 2, relating to school records concerning employees and applicants
- ◆ Title 20-A § 7451, sub-§ 2, relating to Baxter Compensation Authority records
- ◆ Title 20-A § 10206, sub-§ 2, relating to Energy Testing Lab of Maine records
- ◆ Title 21-A, §22, sub-§2, relating to ballots
- ◆ Title 21-A, §22, sub-§3, ¶A, relating to records pertaining to a voter certified as a participant in the Address Confidentiality Program
- ◆ Title 21-A, §22, sub-§3, ¶B, relating to residence and mailing address of a voter when voter submits statement to registrar stating good reason to believe physical safety jeopardized
- ◆ Title 21-A, §22, sub-§§5 and 6, relating to registered voter applications

- ◆ Title 21-A, section 196, first ¶, relating to information contained electronically in the central voter registration system
- ◆ Title 21-A, §624, sub-§1, relating to that portion of the voter list relating to the Address Confidentiality Program participants
- ◆ Title 21-A, §737-A, sub-§7, relating to disputed ballots
- ◆ Title 21-A, §764, relating to applications and envelopes for absentee ballots

The Advisory Committee recommends that the following public records exceptions be continued without change, but with objections raised by a subcommittee member.

- ◆ Title 10 § 1109, sub-§ 4, relating to information concerning acquisition of gasoline and heating oil assets
- ◆ Title 10 § 1675, relating to information reported under Petroleum Market Share Act
- ◆ Title 10 § 1677, relating to name of retailers in report on concentration of retail outlets under Petroleum Market Share Act
- ◆ Title 10 § 8003, sub-2-A, relating to information received from other regulatory agencies

The Advisory Committee recommended statutory changes to the following public records exceptions. The objection of one Advisory Committee to the changes is reflected with respect to each provision below. See draft legislation in Appendix D.

- ◆ Title 12 §6072, sub-§10 relating to aquaculture lease seeding and harvesting reports
- ◆ Title 12 §6072-A, sub-§17-A, relating to aquaculture leasing research and development – *one member objected*
- ◆ Title 12 §6077, sub-§ 4, relating to the aquaculture monitoring program - *one member objected*
- ◆ Title 12 §6078-A, sub-§1, relating to the Aquaculture Monitoring, Research and Development Fund concerning harvest information from leaseholders - *one member objected*

The Advisory Committee reviewed the following exceptions in Titles 10 through 21-A, but makes no recommendation for action by the Judiciary Committee at this time. The Legislative Subcommittee will continue discussion of these exceptions.

- ◆ Title 10 § 945-J, relating to the Maine International Trade Center
- ◆ Title 10 § 975-A, §§ 2 and 3, relating to the Finance Authority of Maine
- ◆ Title 12 § 550-B, sub-§ 6, relating to water well information collected by Maine Geological Survey
- ◆ Title 12 § 549-B, sub-§ 5, relating to investigatory and exploratory mining work on public lands
- ◆ Title 12 § 6455, sub-§ 1-A, relating to market studies and promotional plans of the Lobster Promotion Council
- ◆ Title 12 § 8669, sub-§ 13, relating to forest policy experimental areas

- ◆ Title 12 § 8884, sub-§ 3, relating to landowner and wood processor reports of volume information
- ◆ Title 14, § 1254-A, sub-§ 7, relating to names of prospective jurors and questionnaire forms
- ◆ Title 14 § 1254-A, sub-§ 8, relating to names of jury pool
- ◆ Title 14 § 1254-B, sub-§ 2, relating to juror selection records
- ◆ Title 16, chapter 3, subchapter 8, relating to Criminal History Record Information Act
- ◆ Title 16 § 614, sub-§ 1-A, relating to personally identifying information of those who report animal cruelty violations
- ◆ Title 19-A § 4013, sub-§ 4, relating to Domestic Abuse Homicide Review Panel

☐ Reenact the teacher confidentiality provisions in Title 20-A to clearly codify Department of Education policy and request that the Judiciary Committee consider whether the reasons for actions taken by the Department of Education with regard to credentials of public school personnel should be disclosed publicly

The Advisory Committee recommends that the teacher confidentiality provisions in Title 20-A be reenacted to clearly codify the Department of Education’s policy with regard to actions on credentials of those who are certified, approved or authorized by the Department to work in the State’s education system. The relevant provisions are: Title 20-A § 6103, sub-§ 3, relating to school records concerning criminal history record checks of employees and applicants; Title 20-A § 13004, sub-§ 2, relating to teacher certification and registration; and Title 20-A § 13004, sub-§ 2-A, relating to complaint, charges and accusations concerning teacher certification and registration. The Advisory Committee has developed draft language to clarify Title 20-A, section 13004, subsection 2-A, but recommends that the Judiciary Committee consider whether additional clarifying or corresponding changes are needed in Title 20-A, section 6103, subsection 3 or Title 20-A, section 13004, subsection 2. The draft language amending Title 20-A, section 13004, subsection 2-A explicitly designates as public certain information concerning individuals whose certifications (intended to cover all credentials by the Department) are denied, revoked, suspended or surrendered. The draft language contains authorization for the Department of Education to release the grounds for the Commissioner’s actions to the national clearinghouse on teacher credentials. See draft legislation at Appendix E. The Advisory Committee did not include additional language in the draft proposal that would permit the public release of information about the reasons for discipline in certification actions. However, the Advisory Committee requests that the Judiciary Committee consider whether this language should be included after consultation with the Education Committee, the Department of Education, the Maine Education Association and other stakeholders.

☐ Request that the Judiciary Committee review the following exceptions in Title 12 relating to marine resources fisheries statistics and consider whether the circumstances of certain fisheries may have the effect of limiting public disclosure of aggregate information: Title 12 § 6173, sub-§ 1, relating to marine resource statistics; Title 12 § 6445, relating to logbooks for lobster harvesters; and Title 12 § 6749-A, sub-§ 1, relating to logbooks for sea urchin buyers and processors

The Advisory Committee recommends that the Judiciary Committee consider whether the circumstances of the industry (marine resources fisheries landings) require revision of the statutory language in the following exceptions in Title 12 to appropriately balance the public interest in the industry's information with the goal of avoiding release of information that identifies a particular licensee or vessel. The Advisory Committee believes further discussion of these issues by the Judiciary Committee, with input from the Department of Marine Resources and other stakeholders, is needed.

☐ Implement technical changes to Title 1, chapter 13 after review of suggested revisions submitted by Christopher Parr, Staff Attorney Maine State Police

The Advisory Committee, with the assistance of the Legislative Subcommittee, conducted a thorough review of the proposals submitted by Chris Parr, Attorney for the Maine State Police, to amend the Freedom of Access laws. The proposal was referred back to the Advisory Committee by the Judiciary Committee after the Advisory Committee took no action on it in 2007. The Advisory Committee recommends several technical, but not substantive, changes. The Advisory Committee declined to make substantive changes to statutory provisions that were wrestled with previously by the Advisory Committee and prior study committees without consensus. The Advisory Committee expects several of these issues to be revisited in the future. Draft legislation to implement the technical changes is included in Appendix D.

☐ Defer action on the following proposed exceptions to public records laws and request that the exceptions be introduced before relevant policy committees: records relating to engineering estimates and negotiations for and appraisals of real property held by the Department of Transportation and Maine Turnpike Authority; security plans for state and county correctional facilities; food safety and meat inspections records held by the Department of Agriculture; and information shared by Maine service men and women and their families with the Commission to Protect the Lives and Health of Members of the Maine National Guard

After discussion, the Advisory Committee determined that its primary role is as an advisor to the Judiciary Committee and the Legislature on proposed exceptions or changes to existing exceptions to public records laws. The Advisory Committee did not take action or make recommendations on these exceptions, but instead, suggested that each proposal be introduced before the relevant policy committees and follow the process set forth for review of proposed exceptions in Title 1, section 434. Each proposal is briefly outlined below.

At the request of Rep. Dawn Hill, the Advisory Committee reviewed the existing exception in Title 23, section 63 relating to records relating to engineering estimates and negotiations for and appraisals of real property held by the Department of Transportation and Maine Turnpike Authority. Under current law, there is no explicit exception allowing the public disclosure of records relating to engineering estimates on projects to be put out to bid. Concerns were raised with the Advisory Committee about the lack of public access to this information. The Maine Turnpike Authority indicated that the amount of the estimate (but not the methodology for the estimate or other data) is disclosed in a public meeting of the Maine Turnpike Authority when a

bid is awarded. The Maine Department of Transportation expressed concerns that the release of the methodology and other data used to produce engineering estimates would provide a competitive advantage to sophisticated bidders. While the Advisory Committee reviewed several options for making changes to the law, the Advisory Committee took no action.

Robert Devlin, Administrator for Kennebec County and Advisory Committee member, submitted a proposal to the Advisory Committee based especially on Kennebec County's experience with requests from the public and correctional facilities residents for the security plans of the correctional facilities. The draft proposal would specifically protect the public disclosure of security plans of state and county correctional facilities.

Department of Agriculture Deputy Commissioner Ned Porter brought before the Advisory Committee a proposed confidentiality provision relating to food safety and meat inspections. The federal Food and Drug Administration (FDA), with regard to food safety, and the United States Department of Agriculture (USDA), with regard to meat inspections, share certain information with state jurisdictions only if the recipient state can protect federally-confidential information from release. Current Maine law does not provide an exception from public records requirements for the information that would be shared by the FDA or the USDA. The Maine Department of Agriculture is concerned that the State may not be able to properly notify and protect the public without access to such information. The Department will be proposing a new public record exception to cover this issue in the upcoming legislative session.

The Commission to Protect the Lives and Health of Members of the Maine National Guard addressed the Advisory Committee about gaps they believe exist in the law concerning the collection and analysis of information about service members' health and their deaths. Ms. Barbara Damon-Day, Commission Chair, explained that the Commission has created a case review process to help identify cracks in the system in a no-fault way, but does not want to have to make public the private information the family members have shared in the review process. Peter Ogden, Director of Veterans' Affairs, expressed concerns about personal information collected about service members. Certain information needs to be shared with the Veterans' Administration in order to meet the needs the office serves, but personal information should not be released to the public. The Advisory Committee offered to serve as a resource to the Commission in the preparation of draft legislation for presentation to the 124th Legislature.

VII. FUTURE PLANS

In 2009, 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 10 through 21-A. The Advisory Committee has also targeted the following issues for discussion and consideration in the coming year: the confidentiality of Social Security numbers collected and contained in public records; the use of technology in public proceedings; statutory requirements for minutes or written records of public proceedings; and the classification of records of advisory panels conducting reviews of internal activities of state agencies or officials. The Advisory

Committee looks forward to a full year of activities and working with the Governor and Legislature to implement the recommendations contained in its third annual report.

APPENDIX A

Authorizing Legislation, Maine Revised Statutes, Title 1, Section 411

CURRENT LAW GOVERNING RIGHT TO KNOW ADVISORY COMMITTEE

§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.
- 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;

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

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

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

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

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

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

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

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

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

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

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

APPENDIX B

Membership List, Right to Know Advisory Committee

Right to Know Advisory Committee
1 MRSA § 411

Appointments by the Governor

Karla Black
161 Pleasant Street
Richmond, ME 04357

Representing State Government Interests

Richard Flewelling
P.O. Box 244
Freeport, ME 04102

Representing Municipal Interests

Harry Pringle
44 Neal Street
Portland, ME 04102

Representing School Interests

Appointments by the President

Sen. Barry J. Hobbins
110 Main Street
Suite 1508
Saco, ME 04072

Senate Member of the Judiciary Committee

Shenna Bellows
Maine Civil Liberties Union
401 Cumberland Ave.
Portland, ME 04101

Representing the Public

Robert Devlin
Kennebec County Administrator
125 State Street
Augusta, ME 04330

Representing County or Regional Interests

Mark Dion
Cumberland County Sheriff's Department
36 County Way
Portland, ME 04102

Representing Law Enforcement Interests

Judy Meyer
Lewiston Sun Journal
104 Park Street
Lewiston, ME 04243-4400

Representing the Press

Maureen O'Brien
WCSH 6
1 Congress Square
Portland, ME 04101

Representing Broadcasting Interests

Appointments by the Speaker of the House

Rep. Deborah L. Simpson

551 Turner Street
Auburn, ME 04210

House Member of the Judiciary Committee

Eric Conrad

Kennebec Journal
274 Western Avenue
Augusta, ME 04330

Representing Newspaper Publishers

Suzanne Goucher

Maine Association of Broadcasters
69 Sewell Street, Suite 2
Augusta, ME 04330

Representing Broadcasting Interests

Mal Leary

Capitol News Service
17 Pike Street
Augusta, ME 04330

Representing a Statewide Coalition of
Advocates of Freedom of Access

Chris Spruce

c/o Island Housing Trust
P.O. Box 851
Mount Desert, ME 04660

Representing the Public

Attorney General

Linda Pistner

Chief Deputy Attorney General
6 State House Station
Augusta, ME 04333

Designee

Chief Justice

James T. Glessner

State Court Administrator
P.O. Box 4820
Portland, ME 04112

Member of the Judicial Branch

Staff:

Peggy Reinsch & Colleen McCarthy Reid
Office of Policy and Legal Analysis
(207) 287-1670

APPENDIX C

Chart: Recommendations Concerning Existing Public Records Exceptions, Titles 10 - 21-A

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
1	391	2, 3	Title 10, section 391, subsections 2 and 3, relating to the Small Enterprise Growth Program	<ul style="list-style-type: none"> Small Enterprise Growth Board Finance Authority of Maine Department of Economic and Community Development 	<ul style="list-style-type: none"> SEGB: Seldom if any requests; no changes FAME: No longer administers 	No change 11/13/08
2	945-J		Title 10, section 945-J, relating to the Maine International Trade Center	Maine International Trade Center (Board of Directors?)	<ul style="list-style-type: none"> 	Amend, but hold until next year 11/13/08
3	975-A	2, 3	Title 10, section 975-A, subsections 2 and 3, relating to the Finance Authority of Maine	Finance Authority of Maine	<ul style="list-style-type: none"> Regularly applied; 3 denials for info per year; used to go into executive session; CHANGE: CLARIFY THAT APPLIES TO PERSONALLY IDENTIFIABLE INFORMATION OF MAINE CONSUMERS 	Amend, but hold until next year 11/13/08
4	1079	4	Title 10, section 1079, subsection 4, relating to persons who have family development accounts	Finance Authority of Maine	<ul style="list-style-type: none"> Never invoked; no changes 	OK, No change (7/30/08)

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
4-A	10	1107	Title 10, section 1107, relating to books records or correspondence summonsed in an antitrust investigation, at the choice of the person summonsed	<ul style="list-style-type: none"> Attorney General 	<ul style="list-style-type: none"> Requests unusual, denials rare; no changes 	No change 11/13/08
5.1	10	1188-A	Title 10, section 1188-A, relating to settlement conference discussions under the Maine Motor Vehicle Franchise Board "may not be disclosed"	<ul style="list-style-type: none"> Attorney General? 	<ul style="list-style-type: none"> No experience administering or applying; no changes 	Delete from list, but no change 11/13/08
5	10	1109	Title 10, section 1109, subsection 4, relating to information reported to the Attorney General concerning acquisition of gasoline and heating oil assets	<ul style="list-style-type: none"> Attorney General 	<ul style="list-style-type: none"> Requests unusual; no changes 	Divided: 4-1 in favor of no change 11/13/08
6	10	1392	Title 10, section 1392, subsection 2, relating to information reported to the consumer arbitration administrator concerning reported consumer arbitration (PL 2007, c. 250)	<ul style="list-style-type: none"> Bureau of Consumer Credit Regulation 	<ul style="list-style-type: none"> No FOA requests; no changes 	OK; No change (7/30/08)
7	10	1495-G	Title 10, section 1495-G, subsection 3, relating to payroll processing bonding	<ul style="list-style-type: none"> Bureau of Consumer Credit Regulation 	<ul style="list-style-type: none"> No FOA requests; no changes 	OK; No change (7/30/08)
8	10	1675	Title 10, section 1675, relating to information received by the Attorney General under the Petroleum Market Share Act	<ul style="list-style-type: none"> Attorney General 	<ul style="list-style-type: none"> Requests seldom, seldom denied; no changes 	Divided: 4-1 in favor of no change 11/13/08

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
8.1	1677		Title 10, section 1677, relating to the name of particular retailers or retail outlet in Attorney General's report concerning concentration of retail outlets under the Petroleum Market Share Act "without disclosing the name"	<ul style="list-style-type: none"> Attorney General 	<ul style="list-style-type: none"> Report public so seldom requests, seldom denied; no changes 	Divided: 4-1 in favor of no change 11/13/08
9	8002	10	Title 10, section 8002, subsection 10, relating to information provided to the Commissioner of Professional and Financial Regulation	<ul style="list-style-type: none"> Dept. of Professional and Financial Regulation 	<ul style="list-style-type: none"> No requests known; no changes 	OK; No change (9/10/08)
9.1	8003	2-A	Title 10, section 8003, subsection 2-A, paragraph 1, relating to information received by the Office of Licensing and Registration from other regulatory agencies that is shared only on condition that it not be disclosed "remains confidential . . . and may not be disclosed"	<ul style="list-style-type: none"> Department of Professional and Financial Regulation, OLR 	<ul style="list-style-type: none"> No change to sub-§2-A, ¶ I; CHANGE SUGGESTED TO RELATED PROVISION GOVERNING REQUIREMENT TO MAINTAIN RECORDS IN § 8003, SUB-§2-A, ¶ F Notes agreements with DHHS and Oil and Solid Fuel Board to share information 	Divided: 4-1 in favor of no change 11/13/08

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
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	<ul style="list-style-type: none"> Dept. of Professional and Financial Regulation Attorney General 	<ul style="list-style-type: none"> Invoked frequently; no changes No changes 	OK; No change (9/10/08)
11	9012	1	Title 10, section 9012, subsection 1, relating to information provided to the Department of Professional and Financial Regulation, Manufactured Housing Board	<ul style="list-style-type: none"> Manufactured Housing Board 	<ul style="list-style-type: none"> Requests 6-10 times each quarter; no changes 	OK; No change (7/30/08)
11.1	9202	1-B	Title 10, section 9202, subsection 1-B, relating to records of the Northern Maine Transmission Corporation - subject to same confidentiality provisions applicable to FAME under Title 10, section 975-A "subject to the disclosure and confidentiality provisions governing the records of the authority under section 975-A"	<ul style="list-style-type: none"> Northern Maine Transmission Corporation Finance Authority of Maine 	<ul style="list-style-type: none"> FAME: entity not active in recent years; records covered by §975-A; no changes 	OK; No change (7/30/08)
12	550-B	6	Title 12, section 550-B, subsection 6, relating to water well information collected by the Department of Conservation, Bureau of Geology and Natural Areas	<ul style="list-style-type: none"> Department of Conservation, Maine Geological Survey 	<ul style="list-style-type: none"> No FOA requests; exception cited few times per year No changes 	TABLED for more information, discussion

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

	Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
12.1	12	544-B	4	Title 12, section 544-B, subsection 4, relating to the location of a species or natural area “in the judgment of the commissioner, disclosure of this information would threaten the existence of that species or natural area”	<ul style="list-style-type: none"> Department of Conservation 	<ul style="list-style-type: none"> Never invoked; no changes 	No change 11/13/08
12.2	12	549-B	5	Title 12, section 549-B, subsection 5, paragraph D, relating to investigatory and exploratory work reported under a mining permit to the Bureau of Geology and Natural areas “shall not constitute records available for public inspection or disclosure”	<ul style="list-style-type: none"> Department of Conservation, Maine Geological Survey 	<ul style="list-style-type: none"> Never invoked bring claims process (2 claims pending); no changes 	TABLED for more information, discussion
13	12	1827	3	Title 12, section 1827, subsection 3, relating to Department of Conservation records concerning camper reservations at state parks	<ul style="list-style-type: none"> Department of Conservation 	<ul style="list-style-type: none"> Requests; CHANGE: EXPAND EXCEPTION TO GIVE BPL MORE AUTHORITY TO CONTROL RELEASE OF CAMPER INFORMATION 	No change 11/13/08
14	12	6072	10	Title 12, section 6072, subsection 10, relating to aquaculture lease seeding and harvesting reports	<ul style="list-style-type: none"> Department of Marine Resources 	<ul style="list-style-type: none"> One request more than 4 years ago; no changes 	AMEND - subcommittee vote 5-1 (10/06/08)

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
15	6072-A	17-A	Title 12, section 6072-A, subsection 17-A, relating to aquaculture leasing research and development	<ul style="list-style-type: none"> Department of Marine Resources 	<ul style="list-style-type: none"> No requests; CHANGE: MAKE SIMILAR TO §6072, sub-§10, ¶D 	AMEND - subcommittee vote 5-1 (10/06/08)
16	6077	4	Title 12, section 6077, subsection 4, relating to the aquaculture monitoring program	<ul style="list-style-type: none"> Department of Marine Resources 	<ul style="list-style-type: none"> One request more than 4 years ago; CHANGE: CLARIFY DMR's AUTHORITY TO RELEASE AGGREGATE DATA, CONSISTENT WITH 12 §6173 	AMEND - subcommittee vote 5-1 (10/06/08)
17	6078-A	1	Title 12, section 6078-A, subsection 1, relating to the Aquaculture Monitoring, Research and Development Fund concerning harvest information from leaseholders	<ul style="list-style-type: none"> Department of Marine Resources 	<ul style="list-style-type: none"> Outdated, but must keep for now; no changes 	AMEND - subcommittee vote 5-1 (10/06/08)
18	6082		Title 12, section 6082, relating to aquaculture operations in other jurisdictions obtained from other state, federal or foreign government agencies (PL 2007, c. 212)	<ul style="list-style-type: none"> Department of Marine Resources 	<ul style="list-style-type: none"> New; no changes 	No change 11/13/08
19	6173	1	Title 12, section 6173, subsection 1, relating to marine resources statistics	<ul style="list-style-type: none"> Department of Marine Resources 	<ul style="list-style-type: none"> Approx. 6 requests per month, approx. 2 must be modified to not release confidential data; no changes 	RECOMMEND review by Judiciary Committee

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
20	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	<ul style="list-style-type: none"> Department of Marine Resources 	<ul style="list-style-type: none"> No request for confidential info; no changes 	No change 11/13/08
21	6310	3	Title 12, section 6310, subsection 3, relating to medical information pertaining to lobster and crab fishing license denials	<ul style="list-style-type: none"> Department of Marine Resources 	<ul style="list-style-type: none"> No requests; no changes 	No change 11/13/08
21	6431-F	3	Title 12, section 6431-F, subsection 3, relating to medical information pertaining to trap tag denials	<ul style="list-style-type: none"> Department of Marine Resources 	Repealed by PL 2005, c. 239	
21.1	6445		Title 12, section 6445, relating to logbooks for lobster harvesters “disclosure of any data collected under this section is subject to the confidentiality provisions of section 6173”	<ul style="list-style-type: none"> Department of Marine Resources 	<ul style="list-style-type: none"> No requests; no changes 	RECOMMEND review by Judiciary Committee
22	6455	1-A	Title 12, section 6455, subsection 1-A, relating to market studies and promotional plans of the Lobster Promotion Council	<ul style="list-style-type: none"> Lobster Promotion Council 	<ul style="list-style-type: none"> Administered infrequently; no changes 	TABLED for more information, discussion

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

	Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
22.1	12	6749-S	1	Title 12, section 6749-S, subsection 1 relating to log book for sea urchin buyers and processors “disclosure of any date collected under this section is subject to the confidentiality provisions of section 6173	<ul style="list-style-type: none"> Department of Marine Resources 	<ul style="list-style-type: none"> No FOA denials; no changes 	RECOMMEND review by Judiciary Committee
23	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	<ul style="list-style-type: none"> Department of Conservation, Bureau of Forestry 	<ul style="list-style-type: none"> 1-2 requests per year; no changes 	No change 11/13/08
23.1	12	8424	2	Title 12, section 8424, subsection 2, relating to cutting plans under the Maine Spruce Budworm Management Act “but shall not constitute records available for public inspection or disclosure”	<ul style="list-style-type: none"> Department of Conservation, Bureau of Forestry 	<ul style="list-style-type: none"> No requests; no changes 	No change 11/13/08
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	<ul style="list-style-type: none"> Department of Conservation, Bureau of Forestry 	<ul style="list-style-type: none"> 1-2 requests per year; no changes 	No change 11/13/08
25	12	8869	13	Title 12, section 8869, subsection 13, relating to forest policy experimental areas	<ul style="list-style-type: none"> Department of Conservation, Bureau of Forestry 	<ul style="list-style-type: none"> No requests; no changes 	TABLED for more information, discussion

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
26	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	<ul style="list-style-type: none"> Department of Conservation, Bureau of Forestry 	<ul style="list-style-type: none"> Less than one request per year; no changes 	No change 11/13/08
27	8884	3	Title 12, section 8884, subsection 3, relating to landowner and wood processor reporting requirements concerning volume information	<ul style="list-style-type: none"> Department of Conservation, Bureau of Forestry 	<ul style="list-style-type: none"> No requests; no change 	TABLED for more information, discussion
28	12551-A	10	Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch	<ul style="list-style-type: none"> Department of Inland Fisheries and Wildlife 		No change 11/13/08
29	12907	8	Title 12, section 12907, subsection 8, relating to whitewater outfitters and affiliated outfitter records	<ul style="list-style-type: none"> Department of Inland Fisheries and Wildlife 	<ul style="list-style-type: none"> No requests; no changes 	No change 11/13/08
30	1957	8	Title 13, section 1957, subsection 8, relating to the members of associations of agricultural producers and purchasing information	<ul style="list-style-type: none"> Maine Agricultural Bargaining Board (Department of Agriculture) 	<ul style="list-style-type: none"> 2 hearings in past 8 years, but no request for documents; no changes 	OK; No change (7/30/08)

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
31	164-A	3	Title 14, section 164-A, subsection 3, relating to the Maine Assistance Program for Lawyers	<ul style="list-style-type: none"> • Judicial Branch • Attorney General • Maine Prosecutors Association • Maine Association of Criminal Defense Lawyers • Maine State Bar Association • Maine Trial Lawyers Association • Maine Assistance Program for Lawyers 	<ul style="list-style-type: none"> • JB: virtually no requests; no changes • AG • MPA • MACDL • MSBA (referred to MAP) • MTLA • MAP: no problems; no changes 	OK, no change (10/06/08)
32	1254-A	7	Title 14, section 1254-A, subsection 7, relating to names of prospective jurors and contents of juror qualification forms	<ul style="list-style-type: none"> • Judicial Branch • Attorney General • Maine Prosecutors Association • Maine Association of Criminal Defense Lawyers • Maine State Bar Association • Maine Trial Lawyers Association 	<ul style="list-style-type: none"> • JB: requests made at every jury term; seldom allow access absent compelling need; no changes • AG: if any changes, make consistent with SJC's Standing Order for Limited Access to Juror Information dated 08/25/06 	HOLD (10/06/08)

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
33	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	<ul style="list-style-type: none"> • Judicial Branch • Attorney General • Maine Prosecutors Association • Maine Association of Criminal Defense Lawyers • Maine State Bar Association • Maine Trial Lawyers Association 	<ul style="list-style-type: none"> • JB: requests made at every jury term; seldom allow access absent compelling need; no changes • AG: if any changes, make consistent with SJC's Standing Order for Limited Access to Juror Information dated 08/25/06 	HOLD (10/06/08)
34	14 1254-B	2	Title 14, section 1254-B, subsection 2, relating to juror selection records and information	<ul style="list-style-type: none"> • Judicial Branch • Attorney General • Maine Prosecutors Association • Maine Association of Criminal Defense Lawyers • Maine State Bar Association • Maine Trial Lawyers Association 	<ul style="list-style-type: none"> • JB: requests frequently made but seldom granted absent compelling need; no changes • AG: if any changes, make consistent with SJC's Standing Order for Limited Access to Juror Information dated 08/25/06 	HOLD (10/06/08)

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
35	101-C	3	Title 15, section 101-C, subsection 3, relating to records necessary to conduct an evaluation concerning mental responsibility for criminal conduct	<ul style="list-style-type: none"> • Judicial Branch • State Forensic Service 	<ul style="list-style-type: none"> • JB: presumptively confidential; no changes • Rarely used to deny FOA request; no changes 	OK; no change (10/06/08)
36	393	4-A	Title 15, section 393, subsection 4-A, paragraph G, relating to applications for relief and information of record concerning prohibition of firearm possession for mental health reasons (PL 2007, c. 670)	<ul style="list-style-type: none"> • Department of Public Safety • Department of Health and Human Services • NAMI-ME? • Maine Disability Rights Center? 	<ul style="list-style-type: none"> • DHHS: new • NAMI-ME: new; no changes 	OK; No change (7/30/08)
37	3009	2	Title 15, section 3009, subsection 2, relating to the reintegration of a juvenile into school	<ul style="list-style-type: none"> • Department of Corrections • Maine School Management Association • Public school and private school superintendents 	<ul style="list-style-type: none"> • Rarely cited; no changes • MSMA: Need to stay confidential 	OK; No change (7/30/08)

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
38	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	<ul style="list-style-type: none"> • Department of Corrections • Department of Health and Human Services? • Judicial Branch? 	<ul style="list-style-type: none"> • Rarely cited; no changes • DHHS: No experience • JB: occasional requests; no changes 	OK, no change (10/06/08)
39	3308	7	Title 15, section 3308, subsection 7, relating to juvenile proceedings	<ul style="list-style-type: none"> • Department of Corrections • Department of Health and Human Services • Judicial Branch • Police and sheriff departments? 	<ul style="list-style-type: none"> • Rarely cited; no changes • DHHS: No experience • JB: occasional requests; no changes 	OK, no change (10/06/08)
40	16		Title 16, Chapter 3, Subchapter 8: Criminal History Record Information Act	<ul style="list-style-type: none"> • Attorney General • Department of Public Safety • Maine Prosecutors Association • Maine Association of Criminal Defense Lawyers • Maine Trial Lawyers Association 	<ul style="list-style-type: none"> • DPS: Discussion needed; changes recommended 	HOLD

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
41	614	2 1-A	Title 16, section 614, subsection 2 1-A, relating to personally identifying information of persons who report cruelty to animals to the Department of Agriculture, Food and Rural Resources	<ul style="list-style-type: none"> Department of Agriculture, Food and Rural Resources 	<ul style="list-style-type: none"> Requests; no change 	HOLD
17-A	1176		Title 17-A, section 1176, relating to information that pertains to current address or location of crime victims		Repealed and replaced by PL 2007, c. 475 (see below)	
42-A	1176	1	Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims (PL 2007, c. 475)	<ul style="list-style-type: none"> Department of Corrections Attorney General Maine Prosecutors Association Maine Association of Criminal Defense Lawyers Victim-Witness advocates 	<ul style="list-style-type: none"> No requests; no changes 	OK; No change (7/30/08)

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

	Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
42-B	17-A	1176	5	Title 17-A, section 1176, subsection 5, relating to a crime victim's request for notice of release of a defendant (PL 2007, c. 475)	<ul style="list-style-type: none"> • Department of Corrections • Attorney General • Maine Prosecutors Association • Maine Association of Criminal Defense Lawyers • Victim-Witness advocates 	<ul style="list-style-type: none"> • No requests; no changes 	OK; No change (7/30/08)
43	18-A	2-901		Title 18-A, section 2-901, relating to wills deposited with the Probate Court	<ul style="list-style-type: none"> • Probate Court 	<ul style="list-style-type: none"> • Probate Registers: no requests; no changes 	No change 11/13/08
44	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	<ul style="list-style-type: none"> • Probate Court • Bureau of State Police 	<ul style="list-style-type: none"> • Probate Registers: no requests; no changes • BSP: Not applicable 	No change 11/13/08
45	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	<ul style="list-style-type: none"> • Probate Court • Bureau of State Police • Department of Health and Human Services 	<ul style="list-style-type: none"> • Probate Registers: no requests; no changes • BSP: Not applicable • DHHS: rarely deny because confidentiality so well known; no changes 	No change 11/13/08

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

	Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
46	18-A	9-308	(c)	Title 18-A, section 9-308, subsection (c), relating to final adoption decrees	<ul style="list-style-type: none"> • Probate Court • Department of Health and Human Services 	<ul style="list-style-type: none"> • Probate Registers: (court has discretion); no changes • DHHS: not often requests; no changes 	No change 11/13/08
47	18-A	9-310		Title 18-A, section 9-310, relating to adoption records concerning adoptions decreed on or after August 8, 1953	<ul style="list-style-type: none"> • Probate Court • Department of Health and Human Services 	<ul style="list-style-type: none"> • Probate Registers: no complaints; no changes • DHHS: occasional requests which are referred to the courts, expect more inquiries; no changes 	No change 11/13/08
48	19-A	651	2	Title 19-A, section 651, subsection 2, relating to social security numbers on marriage applications	<ul style="list-style-type: none"> • Department of Health and Human Services 	<ul style="list-style-type: none"> • Rarely get requests for info, no denials; no changes 	No change 11/13/08
49	19-A	908		Title 19-A, section 908, relating to social security numbers on divorce records	<ul style="list-style-type: none"> • Judicial Branch 	<ul style="list-style-type: none"> • No changes 	OK, no change (10/06/08)
50	19-A	1565	4	Title 19-A, section 1565, subsection 4, relating to Social Security numbers in paternity actions	<ul style="list-style-type: none"> • Department of Health and Human Services 	<ul style="list-style-type: none"> • Rarely get requests for info, no denials; no changes 	No change 11/13/08

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
51	19-A	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	<ul style="list-style-type: none"> • Judicial Branch • Department of Health and Human Services 	<ul style="list-style-type: none"> • JB: not unusual but not stats; no changes • <u>DHHS: frequently deny requests from media when high-profile case, otherwise requests not often; no changes</u> 	OK; no change (10/06/08)
51.1	19-A	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 of a party or child would be jeopardized by disclosure “if . . . health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, must be sealed and not disclosed to other party or the public”	<ul style="list-style-type: none"> • Judicial Branch • Department of Health and Human Services 	<ul style="list-style-type: none"> • JB: not possible to determine how often used; no changes • DHHS: Never used to deny FOA requests; no changes 	OK; no change (10/06/08)
52	19-A	10	Title 19-A, section 2006, subsection 10, relating to social security numbers in child support actions	<ul style="list-style-type: none"> • Department of Health and Human Services 	<ul style="list-style-type: none"> • Rarely get request to disclose; no changes 	No change 11/13/08
53	19-A	11	Title 19-A, section 2152, subsection 11, relating to information collected in child support enforcement and medical support recoupment	<ul style="list-style-type: none"> • Department of Health and Human Services 	<ul style="list-style-type: none"> • Occasional requests, but not disclosed; no changes 	No change 11/13/08

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
54	19-A 2158	6	Title 19-A, section 2158, subsection 6, relating to records of child support obligors provided to wireless service provider	<ul style="list-style-type: none"> Department of Health and Human Services 	<ul style="list-style-type: none"> No experience yet (awaiting federal legislation re SSNs); no changes 	No change 11/13/08
55	19-A 3012		Title 19-A, section 3012, relating to specific identifying information in child support enforcement	<ul style="list-style-type: none"> Department of Health and Human Services 	<ul style="list-style-type: none"> Very little used exception, but necessary; no changes 	No change 11/13/08
55.1	19-A 4008		Title 19-A, section 4008, relating to identifying information under the Protection from Abuse if health, safety or liberty of a party or child would be jeopardized by disclosure “if . . . health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, must be sealed and not disclosed to other party or the public”	<ul style="list-style-type: none"> Judicial Branch Attorney General 	<ul style="list-style-type: none"> JB: frequently requested, but no precise stats; no changes AG: used on a regular basis; no changes 	OK; No change (10/06/08)
56	19-A 4013	4	Title 19-A, section 4013, subsection 4, relating to the Domestic Abuse Homicide Review Panel	<ul style="list-style-type: none"> Attorney General 	<ul style="list-style-type: none"> Many records otherwise confidential, panel’s findings released when final; no changes 	HOLD 11/13/08
57	20-A 4008	2	Title 20-A, section 4008, subsection 2, relating to school counselor or social worker activities	<ul style="list-style-type: none"> Department of Education 	<ul style="list-style-type: none"> Records kept at local schools; no changes 	OK; No change (7/30/08)

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
58	20-A 5001-A	3	Title 20-A, section 5001-A, subsection 3, relating to homeschooling records	<ul style="list-style-type: none"> Department of Education 	<ul style="list-style-type: none"> FERPA applies; no denials since 1993; no changes 	OK; No change (7/30/08)
59	20-A 6001	3	Title 20-A, section 6001, subsection 3, relating to students education records	<ul style="list-style-type: none"> Department of Education 	<ul style="list-style-type: none"> Records kept at local schools; no changes 	OK; No change (7/30/08)
60	20-A 6101	2	Title 20-A, section 6101, subsection 2, relating to school records concerning employees and applicants	<ul style="list-style-type: none"> Department of Education Maine Education Association 	<ul style="list-style-type: none"> DOE: Records kept at local schools; except national criminal history background info; no changes 	No change 11/13/08
61	20-A 6103	3	Title 20-A, section 6103, subsection 3, relating to school records concerning criminal history record checks of employees and applicants	<ul style="list-style-type: none"> Department of Education Maine Education Association 	<ul style="list-style-type: none"> DOE: Exception applied about once a week; no changes 	Committee: no change 11/17/08
62	20-A 6205		Title 20-A, section 6205, relating to standards and assessments of student performance	<ul style="list-style-type: none"> Department of Education 	<ul style="list-style-type: none"> Infrequent requests - FERPA applies; no changes 	OK; No change (7/30/08)

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
63	20-A 6357	1	Title 20-A, section 6357, subsection 1, relating to student immunization records	<ul style="list-style-type: none"> Department of Education 	<ul style="list-style-type: none"> Use limited due to strict definition of "emergency"; CHANGE - FERPA COULD BE A BARRIER TO QUICK RESPONSE IN EVENT OF MAJOR OUTBREAK OF A VACCINE-PREVENTABLE DISEASE 	OK; No change (7/30/08)
63-A	20-A 7451	2	Title 20-A, section 7451, subsection 2, relating to Baxter Compensation Authority records (PL 2007, c. 597)	<ul style="list-style-type: none"> Attorney General 	<ul style="list-style-type: none"> New, but continuation of old law 	No change 11/13/08
64	20-A 10206	2	Title 20-A, section 10206, subsection 2, relating to records of the Energy Testing Laboratory of Maine	<ul style="list-style-type: none"> Energy Testing Laboratory of Maine 	<ul style="list-style-type: none"> APPARENTLY NO LONGER IN EXISTENCE 	No change 11/13/08 - Repeal?
65	20-A 11418	1, 2	Title 20-A, section 11418, subsections 1 and 2, relating to Maine Educational Loan Authority applicants and recipients	<ul style="list-style-type: none"> Maine Educational Loan Authority 	<ul style="list-style-type: none"> No requests; no changes 	OK; No change (7/30/08)
66	20-A 11444	1, 2	Title 20-A, section 11444, subsections 1 and 2, relating to the Student Financial Aid Supplemental Loan Program applicants and recipients	<ul style="list-style-type: none"> Finance Authority of Maine 	<ul style="list-style-type: none"> Program not active 	OK; No change (7/30/08)

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
67	20-A 11494	1, 2	Title 20-A, section 11494, subsections 1 and 2, relating to the Higher Education Loan Purchase Program borrowers	<ul style="list-style-type: none"> Finance Authority of Maine 	<ul style="list-style-type: none"> Has never invoked exception; no changes 	OK; No change (7/30/08)
68	20-A 13004	2	Title 20-A, section 13004, subsection 2, relating to certification and registration of teachers	<ul style="list-style-type: none"> Department of Education Maine Education Association 	<ul style="list-style-type: none"> DOE: On average once a week; CONSIDER CHANGE - SPECIFY WHAT INFO IS PUBLIC, COVER HOLDERS OF AUTHORIZATIONS AND APPROVALS 	Committee: no change 11/17/08
69	20-A 13004	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaint, charges and accusations concerning certification and registration of teachers (amended PL 2007, c. 666)	<ul style="list-style-type: none"> Department of Education Maine Education Association 	<ul style="list-style-type: none"> DOE: On average once a week; CONSIDER CHANGE; AMBIGUOUS AS WRITTEN 	Committee: recommend amendment, with comment 11/17/08
70	20-A 13015	5	Title 20-A, section 13015, subsection 5, relating to teacher action plans	<ul style="list-style-type: none"> Department of Education Maine Education Association 	<ul style="list-style-type: none"> DOE: Records kept at local schools; no changes 	OK; No change (7/30/08)
71	20-A 13034		Title 20-A, section 13034, relating to teacher qualifying exam scores	<ul style="list-style-type: none"> Department of Education Maine Education Association 	<ul style="list-style-type: none"> DOE: No requests other than individuals seeking own scores; no changes 	OK; No change (7/30/08)

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
72	21-A 22	2	Title 21-A, section 22, subsection 2, relating to ballots	<ul style="list-style-type: none"> • Secretary of State • Maine Municipal Association? 	<ul style="list-style-type: none"> • SOS: no issues, no requests for 13 years; no changes • MMA: No problems; no changes 	OK, no change (10/06/08)
73	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	<ul style="list-style-type: none"> • Secretary of State • Maine Municipal Association? 	<ul style="list-style-type: none"> • SOS: no FOA requests since adopted; no changes • MMA: No problems; no changes 	OK, no change (10/06/08)
74	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	<ul style="list-style-type: none"> • Secretary of State • Maine Municipal Association? 	<ul style="list-style-type: none"> • SOS: no FOA requests (but municipal until 2007); no changes • MMA: No problems; no changes 	OK, no change (10/06/08)
75	21-A 22	5, 6	Title 21-A, section 22, subsections 5 and 6, relating to registered voter applications	<ul style="list-style-type: none"> • Secretary of State • Maine Municipal Association? 	<ul style="list-style-type: none"> • SOS: no FOA requests since adopted; no changes • MMA: No problems; no changes 	OK, no change (10/06/08)
76	21-A 196		Title 21-A, section 196, first paragraph, relating to information contained electronically in the central voter registration system	<ul style="list-style-type: none"> • Secretary of State • Maine Municipal Association? 	<ul style="list-style-type: none"> • SOS: no FOA requests; not at present - report to LVA 3/1/09 • MMA: No problems; no changes 	OK, no change (10/06/08)

Existing Public Records Exceptions Subject to review by 2010

Final 11/17/08

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
76-A	624	1	Title 21-A, section 624, subsection 1, relating to that portion of the voter list relating to the Address Confidentiality Program participants (PL 2007, c. 515)	<ul style="list-style-type: none"> • Secretary of State • Maine Municipal Association 	<ul style="list-style-type: none"> • SOS: new; no changes • MMA: New; no changes 	OK, no change (10/06/08)
77	737-A	7	Title 21-A, section 737-A, subsection 7, relating to disputed ballots	<ul style="list-style-type: none"> • Secretary of State • Maine Municipal Association? 	<ul style="list-style-type: none"> • SOS: no FOA requests; no changes • MMA: No problems; no changes 	OK, no change (10/06/08)
78	764		Title 21-A, section 764, relating to applications and envelopes for absentee ballots	<ul style="list-style-type: none"> • Secretary of State • Maine Municipal Association? 	<ul style="list-style-type: none"> • SOS: no FOA requests; no changes • MMA: No problems; no changes 	OK, no change (10/06/08)
79	1003	3-A	Title 21-A, section 1003, subsection 3-A, relating to investigative working papers acquired, prepared or maintained by the Commission on Governmental Ethics and Election Practices during an investigation or audit (PL 2007, c. 571)	<ul style="list-style-type: none"> • Commission on Governmental Ethics and Election Practices 	<ul style="list-style-type: none"> • New; no changes 	OK; No change (7/30/08)
80	1125	3	Title 21-A, section 1125, subsection 3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet (PL 2007, c. 571)	<ul style="list-style-type: none"> • Commission on Governmental Ethics and Election Practices 	<ul style="list-style-type: none"> • New; no changes 	OK; No change (7/30/08)

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APPENDIX D

**Draft Legislation: Proposed Statutory Changes to Existing Public Records Exceptions and
Technical Changes to Title 1, Chapter 13**

PROPOSED DRAFT LEGISLATION:
Recommendations for Technical Changes to FOA laws, Title 1 chapter 13
and Statutory Changes to Title 12 Exceptions

Sec. 1. 1 MRSA § 403 is amended to read:

403. Meetings to be open to public

Except as otherwise provided by statute or by section 405, all public proceedings ~~shall~~ must be open to the public, any person ~~shall~~ must be permitted to attend any public proceeding and any public record or minutes of such proceedings that is required by law ~~shall~~ must be made promptly and ~~shall~~ must be open to public inspection.

Sec. 2. 1 MRSA § 405 is amended to read:

§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 shall~~ An executive session may not be used to defeat the purposes of this subchapter as stated in section 401.

2. Final approval of certain items prohibited. ~~No ordinances, orders, rules, resolutions, regulations, contracts, appointments~~ An ordinance, order, rule, resolution, regulation, contract, appointment or other official actions shall action may not be finally approved at ~~an executive sessions~~ session.

3. Procedure for calling of executive sessions. ~~Executive sessions~~ 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. ~~No other matters~~ 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 in during an executive sessions session ~~on the following matters and no others:~~

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

PROPOSED DRAFT LEGISLATION:
**Recommendations for Technical Changes to FOA laws, Title 1 chapter 13
and Statutory Changes to Title 12 Exceptions**

investigation or hearing of charges or complaints against a 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~~ that person so desires;
- (3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against ~~him~~ that person 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 ~~shall~~ must be permitted to be present.

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, provided that:

- (1) The student and legal counsel and, if the student be a minor, the student's parents or legal guardians shall be 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 ~~his~~ 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;

PROPOSED DRAFT LEGISLATION:
Recommendations for Technical Changes to FOA laws, Title 1 chapter 13
and Statutory Changes to Title 12 Exceptions

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.

Sec. 3. 1 MRSA § 407, sub-§ 2 is amended to read:

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 appraise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof ~~shall~~ must be kept by the agency and made available to any interested member of the public who may wish to review it.

Sec. 4. 1 MRSA § 408, sub-§ 6 is amended to read:

6. Waivers. The agency or official may waive part or all of the total fee if:

A. The requester is indigent; or

B. Release of the public record requested is in the public interest because it 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. 5. 1 MRSA § 409 is amended to read:

§409. Appeals

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

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

PROPOSED DRAFT LEGISLATION:
Recommendations for Technical Changes to FOA laws, Title 1 chapter 13
and Statutory Changes to Title 12 Exceptions

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 are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.

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

Sec. 6. 12 MRSA § 6072, sub-§ 10 is amended to read:

10. Notification of granted leases. After the granting of a lease:

- A. The lessee shall record the lease in the registry of deeds of each county in which the leased area is located;
- B. The department shall notify all riparian owners, intervenors and the municipality in which the lease is located that a lease has been granted. The notice must include a description of the area and how a copy of the lease may be obtained;
- C. The lessee shall mark the leased area in a manner prescribed by the commissioner; and
- D. The lessee shall annually submit to the department a seeding and harvesting report for the past year and a seeding and harvesting plan for the coming year. Upon written request, the department shall provide a copy of the report to the municipality or municipalities in which or adjacent to which the lease is located. The seeding and harvesting reports submitted by a lessee under this paragraph are considered ~~confidential business record information~~ proprietary information for the purposes of section 6077.

Sec. 7. 12 MRSA § 6072-A, sub-§ 17-A is amended to read:

17-A. Notification of granted leases. After the granting of a limited-purpose lease:

- A. The department shall notify all riparian owners, intervenors and the municipality in which the lease is located that a lease has been granted. The notice must include a description of the area and how a copy of the lease may be obtained;
- B. The lessee shall mark the leased area in a manner prescribed by the commissioner; ~~and~~
- C. The lessee shall annually submit to the commissioner a report for the past year on results of the scientific research or commercial research and development undertaken at the lease site and a plan for the coming year. Results of commercial research and development submitted to the commissioner are confidential records for the purposes of Title 1, section 402, subsection 3, paragraph A. ~~Upon written request, the commissioner shall provide a copy of the public records-~~

PROPOSED DRAFT LEGISLATION:
Recommendations for Technical Changes to FOA laws, Title 1 chapter 13
and Statutory Changes to Title 12 Exceptions

~~in the report to the municipality or municipalities in which or adjacent to which the lease is located;~~ and

D. The lessee shall annually submit to the department a seeding and harvesting report for the past year and a seeding and harvesting plan for the coming year. Upon written request, the commissioner shall provide a copy of the report to the municipality or municipalities in which or adjacent to which the lease is located. The seeding and harvesting reports submitted by a lessee under this paragraph are considered proprietary information for the purposes of section 6077.

Sec. 8. 12 MRSA § 6077, sub-§ 4 is amended to read:

4. Confidentiality. Notwithstanding section 6173 and except as provided in paragraphs A and B, information obtained by the department under this section is a public record as provided by Title 1, chapter 13, subchapter I.

In addition to remedies provided under Title 1, chapter 13, subchapter I, the Superior Court may assess against the department reasonable attorney's fees and other litigation costs reasonably incurred by an aggrieved person who prevails in the appeal of the department's denial for a request for information.

A. Information submitted to the department under this section may be designated by the submitter as proprietary information and being only for the confidential use of the department, its agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Services, the United States Department of Agriculture, the Attorney General and employees of the municipality in which the aquaculture facility 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 submitter 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 decision of the department may appeal to the Superior Court. Information that has been designated by the submitter as proprietary information may not be disclosed in a manner or form that permits identification of any person or vessel, except when required by court order or when specifically permitted under this section. All information provided by the department to the municipality under this paragraph is confidential and not a public record under Title 1, chapter

PROPOSED DRAFT LEGISLATION:
Recommendations for Technical Changes to FOA laws, Title 1 chapter 13
and Statutory Changes to Title 12 Exceptions

13. If a request for the 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 paragraph.

B. The commissioner may not release the designated information prior to the expiration of the time allowed for the filing of an appeal or to the rendering of the decision on any appeal.

C. Any information that is collected by any other state or federal agency or information required by the department for the purpose of obtaining a permit, license, certification or other approval may not be designated or treated as designated information under paragraph A.

D. The commissioner may adopt rules to carry out the purposes of this section. The rules must be consistent with the provisions of Title 1, chapter 13, subchapter I.

E. It is unlawful to disclose designated information to any person not authorized by this section.

(1) Any person who solicits, accepts or agrees to accept, or who promises, offers or gives any pecuniary benefit in return for the disclosure of designated information is guilty of a Class D crime.

(2) A person who knowingly discloses designated information, knowing that the disclosure is not authorized, commits a civil violation for which a penalty of not more than \$5,000 may be assessed.

(3) In any action under this paragraph, the court shall first declare that the information is proprietary information 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.

F. For the purposes of this subsection, "proprietary information" means information that 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.

Sec. 9. 12 MRSA § 6078-A, sub -§1 is amended to read:

1. Fund established. The Aquaculture Monitoring, Research and Development Fund, referred to in this section as "the fund," is established. All income received by the commissioner under this section must be deposited with the Treasurer of State, tracked according to its source and credited to the fund. Any balance remaining in the fund at the end of a fiscal year does not lapse but must be carried forward to the next fiscal year. Any interest earned on assets of the fund is credited to the fund. All records related to harvests submitted by aquaculture lease holders are considered ~~confidential business record~~ proprietary information for the purposes of section 6077.

PROPOSED DRAFT LEGISLATION:
Recommendations for Technical Changes to FOA laws, Title 1 chapter 13
and Statutory Changes to Title 12 Exceptions

SUMMARY

This draft implements the recommendations of the Right to Know Advisory Committee. The draft makes technical changes to Title 1, chapter 13. The draft also makes changes to several exceptions related to records maintained by the Department of Marine Resources to add a definition of “proprietary information” and use statutory language consistent with section 6173-A. This draft requires an aquaculture lessee to submit an annual seeding and harvesting report. The entire report is considered proprietary information and not public, but the Department of Marine Resources shall provide a copy of the report upon request to the municipalities in which or adjacent to which the lease is located. The draft also provides that confidential aquaculture monitoring program information may not be disclosed in a manner or form that permits identification of any person or vessel, except as required by court order or when otherwise specifically permitted.

APPENDIX E

Draft Legislation: Proposed Changes to Teacher Confidentiality Provisions

PROPOSED DRAFT LEGISLATION:
Recommendations for Statutory Changes to Teacher Confidentiality Provisions

Sec. 1. 20-A MRSA §13004, sub-§2-A is repealed and the following enacted in its place:

~~**2-A. Complaints confidential.** Complaints, charges or accusations made and investigated pursuant to section 13020, replies to those complaints, charges or accusations, and any other information or materials that may result in action to deny, revoke or suspend certification are confidential. Any charges or information filed by the commissioner with the District Court in support of a petition to revoke or suspend certification and any decision of the court are public records. The department shall report all denials, revocations, suspensions, surrenders and reinstatements of certification that are not under appeal or still subject to appeal to a national association of state directors of teacher education and certification within 30 days of the action. In reports to the national association of state directors of teacher education and certification, the department may not disclose any information designated in this subsection as confidential.~~

2-A. Complaints, replies, investigations, decisions; national clearinghouse.
This subsection governs the confidentiality of records concerning complaints, charges, accusations, replies, investigations and certification decisions.

A. Complaints, charges or accusations made and investigated pursuant to section 13020, replies to those complaints, charges or accusations, and any other information or materials that may result in action to deny, revoke or suspend certification are confidential.

B. Any charges or information filed by the commissioner with the District Court in support of a petition to revoke or suspend certification and any decision of the court are public records.

C. The following information concerning final written decisions relating to disciplinary action taken by the commissioner against persons holding certifications are public records:

(1) Name of the person;

(2) The type of action taken, consisting of denial, revocation, suspension, surrender or reinstatement;

(3) The relevant dates of the action;

(4) The type of certification and endorsements held, including relevant dates;

PROPOSED DRAFT LEGISLATION:
Recommendations for Statutory Changes to Teacher Confidentiality Provisions

(5) The schools where the person was or is employed; and

(6) The dates of employment.

D. The department shall report all denials, revocations, suspensions, surrenders and reinstatements of certification that are not under appeal or still subject to appeal, **and the grounds for the action taken**, to a national association of state directors of teacher education and certification within 30 days of the action. In reports to the national association of state directors of teacher education and certification, the department may not disclose any information designated in *paragraph A* as confidential.

(New language is in *italics*.)

Please note that this draft does not include public release of the reasons for action by the commissioner, the Right to Know Advisory Committee has asked the Judiciary Committee to consider whether such information should be released.