

**Subcommittee of the  
RIGHT TO KNOW ADVISORY COMMITTEE  
Public Records Exceptions Subcommittee**

**Thursday, October 24, 2024, 10 am**

Location: Cross Building, Room 202 (Hybrid Meeting)  
Public access also available through the Maine Legislature's livestream:  
<https://legislature.maine.gov/Audio/#202>

1. Introductions
2. Review of draft language regarding a proposed exception offered by the Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations
3. Review of draft language: Ref. #s 78, 89, 93, 94 and 96
4. Review of legislative history: Ref #79
5. Review of draft language and agency response: Ref #82
6. Review of existing exceptions: Ref. #s 2-3, 6-12, 14, 23- 25, 27, 29-30, 33, 48, 53-59, 67-70, and 84-88
7. Identify next meeting date and time
8. Adjourn

Proposed by Commission (EDITED):

5 MRSA §25012 is enacted to read:

**Confidentiality.** Personally identifiable information obtained in connection with the commission’s duties pursuant to section 25007, subsection 1(A) and (B) and the commission’s powers pursuant to subsection 2(C) are confidential and exempt from disclosure pursuant to Title 1, chapter 13. “Personally identifiable information” means information that permits the identity of an individual to whom the information applies to be able to be reasonably inferred or known by either direct or indirect means.

Option A

**Confidentiality.** Personally identifiable information obtained in furtherance of the commission’s duties pursuant to section 25007, subsection 1, paragraph A is confidential. “Personally identifiable information” means information that permits the identity of an individual to whom the information applies to be able to be reasonably inferred or known by either direct or indirect means.

Option B

**Confidentiality.** Personally identifiable information obtained in furtherance of the commission’s duties pursuant to section 25007, subsection 1, paragraph A is confidential. “Personally identifiable information” includes, but is not limited to, name, address, email address, date of birth, and any other personal demographic information that permits the identity of an individual to whom the information applies to be able to be reasonably inferred or known by either direct or indirect means. The executive director may authorize disclosure of personally identifiable information if the executive director has obtained the consent of the individual and determines that such disclosure is in the best interests of the commission and the individual to whom the information pertains.

Reference #78

32 MRSA §3300-A

**§3300-A. Confidentiality of personal information of applicant or licensee**

An applicant or licensee shall provide the board with a current professional address and telephone number, which will be their public contact address, and a personal residence address, ~~and telephone number and email address.~~ An applicant's or licensee's personal residence address, ~~and telephone number and email address~~ is are confidential information and may not be disclosed except as permitted by this section or as required by law; ~~unless.~~ However, if the personal residence address and telephone number have been provided as the public contact address, the personal residence address and telephone number are not confidential. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted by this section or as required by law. The personal health information and personal residence address, ~~and telephone number and email address~~ may be provided to other governmental licensing or disciplinary authorities or to any health care providers located within or outside this State that are concerned with granting, limiting or denying a physician's employment or privileges.

Reference #82

32 MRSA §6207-B

**§6207-B. Confidential information**

~~The nonbusiness address of a person licensed or certified under this chapter is confidential, not open to the public and not a public record as defined in Title 1, section 402, subsection 3.~~

The address and telephone number of an applicant for licensure or a person licensed under this chapter that are in the possession of the board are confidential. Nothing in this section prohibits the board and its staff from using and disclosing the address and telephone number of an applicant or licensee as necessary to perform the duties and functions of the board.

Reference #89

32 MRSA §11305, sub-§3

~~**3. Public information.** Notwithstanding any other provision of law, except as provided in paragraph A, all information collected, assembled or maintained by the administrator is public information and is available for the examination of the public.~~

~~A. The following are exceptions to this subsection:~~

- ~~(1) Information obtained in private investigations pursuant to section 11301;~~

~~(2) Information made confidential by rule or order of the administrator; or~~

~~(3) Information obtained from federal agencies which may not be disclosed under federal law.~~

**3. Public Information.** The following information collected, assembled, or maintained by the administrator is confidential:

A. Information obtained in private investigations pursuant to section 11301;

B. Information made confidential by rule or order of the administrator; and

C. Information obtained from federal agencies which may not be disclosed under federal law.

Reference #93

32 MRSA §16524

§16524. Confidentiality of personal information

Personal information contained in an application for restitution assistance under this subchapter is ~~not subject to disclosure to the extent the information is designated as not a public record by section 16607, subsection 2, paragraph B~~ is confidential.

Reference #94

32 MRSA §16607, sub-§2

2. Nonpublic records. The following records are ~~not public records~~ confidential and are not available for public examination under subsection 1:

A. A record obtained by the administrator in connection with an audit or inspection under section 16411, subsection 4 or an investigation under section 16602;

B. A part of a record filed in connection with a registration statement under section 16301 and sections 16303 to 16305 or a record under section 16411, subsection 4 that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

C. A record that is not required to be provided to the administrator or filed under this chapter and is provided to the administrator only on the condition that the record will be confidential and not be subject to public examination or disclosure;

D. A record received from a person specified in section 16608, subsection 1 that has been designated as confidential by the agency furnishing the record;

E. Any social security number, residential address unless used as a business address and residential telephone number unless used as a business telephone number contained in a record that is filed;

F. A record obtained by the administrator through a designee of the administrator that, pursuant to a routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A, or an order under this chapter, has been:

(1) Expunged from the administrator's records by the designee; or

(2) Determined to be nonpublic or nondisclosable by that designee if the administrator finds the determination to be in the public interest and for the protection of investors;

G. Records to the extent that they relate solely to the administrator's internal personnel rules and practices, including, but not limited to, protocols, guidelines, manuals and memoranda of procedure for employees of the Office of Securities;

H. Interagency or intra-agency memoranda or letters, including generally records that reflect discussions between or consideration by the administrator and employees of the Office of Securities of any action taken or proposed to be taken by the administrator or employees of the Office of Securities, including, but not limited to, reports, summaries, analyses, conclusions or other work product of the administrator or employees of the Office of Securities, except those that by law would routinely be discoverable in litigation; and

I. Records to the extent that disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Reference #96

32 MRSA §18509, sub-§6

6. Confidentiality. Information provided to the interstate commission or distributed by a member board is confidential ~~within the meaning of Title 1, section 402, subsection 3, paragraph A~~ and may be used only for investigatory or disciplinary matters under sections 18510 and 18511.



Ref # 79

APPROVED  
JUNE 27, 2019  
BY GOVERNOR

CHAPTER  
499  
PUBLIC LAW

STATE OF MAINE

ENACTED

IN THE YEAR OF OUR LORD  
TWO THOUSAND NINETEEN

H.P. 1142 - L.D. 1580

**An Act To Protect Licensing Information of Medical Professionals**

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

Sec. 1. 32 MRSA §2109-A is enacted to read:

**§2109-A. Inspection or copying of record; procedure**

**1. Request for record; redaction.** When the board receives a request to inspect or copy all or part of the record of an applicant or licensee, the board shall redact information that is not public before making the record available for inspection or copying.

**2. Notice and opportunity to review.** When the board acknowledges a request to inspect or copy an applicant's or a licensee's record as required by Title 1, section 408-A, subsection 3, the board shall send a notice to the applicant or licensee at the applicant's or licensee's last address on file with the board explaining that the request has been made and that the applicant or licensee may review the redacted record before it is made available for inspection or copying. The acknowledgment to the requester must include a description of the review process provided to the applicant or licensee pursuant to this section, including the fact that all or part of the record may be withheld if the board finds that disclosure of all or part of the redacted record creates a potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party. The applicant or licensee has 10 business days from the date the board sends the notice to request the opportunity to review the redacted record. If the applicant or licensee so requests, the board shall send a copy of the redacted record to the applicant or licensee for review. The board shall make the redacted record available to the requester for inspection or copying 10 business days after sending the redacted record to the applicant or licensee for review unless the board receives a petition from the applicant or licensee under subsection 4.

**3. Reasonable costs.** Reasonable costs related to the review of a record by the applicant or licensee are considered part of the board's costs to make the redacted record

available for inspection or copying under subsection 2 and may be charged to the requester.

**4. Action based on personal safety.** An applicant or licensee may petition the board to withhold the release of all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must petition the board to withhold all or part of the record within 10 business days after the board sends the applicant or licensee the redacted record. The petition must include an explanation of the potential safety risks and a list of items requested to be withheld. Within 60 days of receiving the petition, the board shall notify the applicant or licensee of its decision on the petition. If the applicant or licensee disagrees with the board's decision, the applicant or licensee may file a petition in Superior Court to enjoin the release of the record under subsection 5.

**5. Injunction based on personal safety.** An applicant or licensee may bring an action in Superior Court to enjoin the board from releasing all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must file the action within 10 business days after the board notifies the applicant or licensee under subsection 4 that the board will release all or part of the redacted record to the requester. The applicant or licensee shall immediately provide written notice to the board that the action has been filed, and the board may not make the record available for inspection or copying until the action is resolved.

**6. Hearing.** The hearing on an action filed under subsection 5 may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

**7. Application.** This section does not apply to requests for records from other governmental licensing or disciplinary authorities or from any health care providers located within or outside this State that are concerned with granting, limiting or denying an applicant's or licensee's employment or privileges.

**Sec. 2. 32 MRSA §2600-E is enacted to read:**

**§2600-E. Inspection or copying of record; procedure**

**1. Request for record; redaction.** When the board receives a request to inspect or copy all or part of the record of an applicant or licensee, the board shall redact information that is not public before making the record available for inspection or copying.

**2. Notice and opportunity to review.** When the board acknowledges a request to inspect or copy an applicant's or a licensee's record as required by Title 1, section 408-A, subsection 3, the board shall send a notice to the applicant or licensee at the applicant's or licensee's last address on file with the board explaining that the request has been made and that the applicant or licensee may review the redacted record before it is made available for inspection or copying. The acknowledgment to the requester must include a



description of the review process provided to the applicant or licensee pursuant to this section, including the fact that all or part of the record may be withheld if the board finds that disclosure of all or part of the redacted record creates a potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party. The applicant or licensee has 10 business days from the date the board sends the notice to request the opportunity to review the redacted record. If the applicant or licensee so requests, the board shall send a copy of the redacted record to the applicant or licensee for review. The board shall make the redacted record available to the requester for inspection or copying 10 business days after sending the redacted record to the applicant or licensee for review unless the board receives a petition from the applicant or licensee under subsection 4.

**3. Reasonable costs.** Reasonable costs related to the review of a record by the applicant or licensee are considered part of the board's costs to make the redacted record available for inspection or copying under subsection 2 and may be charged to the requester.

**4. Action based on personal safety.** An applicant or licensee may petition the board to withhold the release of all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must petition the board to withhold all or part of the record within 10 business days after the board sends the applicant or licensee the redacted record. The petition must include an explanation of the potential safety risks and a list of items requested to be withheld. Within 60 days of receiving the petition, the board shall notify the applicant or licensee of its decision on the petition. If the applicant or licensee disagrees with the board's decision, the applicant or licensee may file a petition in Superior Court to enjoin the release of the record under subsection 5.

**5. Injunction based on personal safety.** An applicant or licensee may bring an action in Superior Court to enjoin the board from releasing all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must file the action within 10 business days after the board notifies the applicant or licensee under subsection 4 that the board will release all or part of the redacted record to the requester. The applicant or licensee shall immediately provide written notice to the board that the action has been filed, and the board may not make the record available for inspection or copying until the action is resolved.

**6. Hearing.** The hearing on an action filed under subsection 5 may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

**7. Application.** This section does not apply to requests for records from other governmental licensing or disciplinary authorities or from any health care providers located within or outside this State that are concerned with granting, limiting or denying an applicant's or licensee's employment or privileges.

**Sec. 3. 32 MRSA §3300-H is enacted to read:**

## §3300-H. Inspection or copying of record; procedure

1. Request for record; redaction. When the board receives a request to inspect or copy all or part of the record of an applicant or licensee, the board shall redact information that is not public before making the record available for inspection or copying.

2. Notice and opportunity to review. When the board acknowledges a request to inspect or copy an applicant's or a licensee's record as required by Title 1, section 408-A, subsection 3, the board shall send a notice to the applicant or licensee at the applicant's or licensee's last address on file with the board explaining that the request has been made and that the applicant or licensee may review the redacted record before it is made available for inspection or copying. The acknowledgment to the requester must include a description of the review process provided to the applicant or licensee pursuant to this section, including the fact that all or part of the record may be withheld if the board finds that disclosure of all or part of the redacted record creates a potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party. The applicant or licensee has 10 business days from the date the board sends the notice to request the opportunity to review the redacted record. If the applicant or licensee so requests, the board shall send a copy of the redacted record to the applicant or licensee for review. The board shall make the redacted record available to the requester for inspection or copying 10 business days after sending the redacted record to the applicant or licensee for review unless the board receives a petition from the applicant or licensee under subsection 4.

3. Reasonable costs. Reasonable costs related to the review of a record by the applicant or licensee are considered part of the board's costs to make the redacted record available for inspection or copying under subsection 2 and may be charged to the requester.

4. Action based on personal safety. An applicant or licensee may petition the board to withhold the release of all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must petition the board to withhold all or part of the record within 10 business days after the board sends the applicant or licensee the redacted record. The petition must include an explanation of the potential safety risks and a list of items requested to be withheld. Within 60 days of receiving the petition, the board shall notify the applicant or licensee of its decision on the petition. If the applicant or licensee disagrees with the board's decision, the applicant or licensee may file a petition in Superior Court to enjoin the release of the record under subsection 5.

5. Injunction based on personal safety. An applicant or licensee may bring an action in Superior Court to enjoin the board from releasing all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must file the action within 10 business days after the board notifies the applicant or licensee under subsection 4 that the board will release all or part of the redacted record to the requester. The applicant or licensee shall immediately provide

written notice to the board that the action has been filed, and the board may not make the record available for inspection or copying until the action is resolved.

**6. Hearing.** The hearing on an action filed under subsection 5 may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

**7. Application.** This section does not apply to requests for records from other governmental licensing or disciplinary authorities or from any health care providers located within or outside this State that are concerned with granting, limiting or denying an applicant's or licensee's employment or privileges.



ORIGINAL BILL



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

---

Legislative Document

No. 1580

H.P. 1142

House of Representatives, April 16, 2019

### An Act To Protect Licensing Information of Medical Professionals

---

Reference to the Committee on Judiciary suggested and ordered printed.

*Robert B. Hunt*

ROBERT B. HUNT  
Clerk

Presented by Representative MOONEN of Portland.  
Cosponsored by Representatives: ALLEY of Beals, HYMANSON of York, McCREA of Fort  
Fairfield, O'NEIL of Saco, PERRY of Calais, Senators: CLAXTON of Androscoggin,  
GRATWICK of Penobscot.

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

2 **Sec. 1. 32 MRSA §2109-A** is enacted to read:

3 **§2109-A. Inspection or copying of record; procedure**

4 **1. Request for licensing file; redaction.** When the board receives a request to  
5 inspect or copy all or part of the licensing file of an applicant or licensee, the board shall  
6 redact information that is not public before making the file available for inspection or  
7 copying.

8 **2. Notice and opportunity to review.** When the board acknowledges a request to  
9 inspect or copy an applicant's or a licensee's licensing file as required by Title 1, section  
10 408-A, subsection 3, the board shall send a notice to the applicant or licensee at the  
11 applicant's or licensee's last address on file with the board explaining that the request has  
12 been made and that the applicant or licensee may review the redacted licensing file before  
13 it is made available for inspection or copying. The applicant or licensee has 10 business  
14 days from the date the board sends the notice to request the opportunity to review the  
15 redacted licensing file. If the applicant or licensee so requests, the board shall send a  
16 copy of the redacted licensing file to the applicant or licensee for review. The board shall  
17 make the redacted licensing file available to the requester for inspection and copying 10  
18 business days after sending the redacted licensing file to the applicant or licensee for  
19 review unless the board receives a petition from the applicant or licensee under  
20 subsection 4.

21 **3. Reasonable costs.** Reasonable costs related to the review of a licensing file by  
22 the applicant or licensee are considered part of the board's costs to make the redacted  
23 licensing file available for inspection and copying under subsection 2 and may be charged  
24 to the requester.

25 **4. Action based on personal safety.** An applicant or licensee may petition the  
26 board to withhold the release of all or part of a licensing file under subsection 2 based on  
27 the potential risk to the applicant's or licensee's personal safety or the personal safety of  
28 any 3rd party if the file is disclosed to the public. The applicant or licensee must petition  
29 the board to withhold all or part of the licensing file within 10 business days after the  
30 board sends the applicant or licensee the redacted licensing file. The petition must  
31 include an explanation of the potential safety risks and a list of items requested to be  
32 withheld. Within 30 days of receiving the petition, the board shall notify the applicant or  
33 licensee of its decision on the petition.

34 **Sec. 2. 32 MRSA §2600-D** is enacted to read:

35 **§2600-D. Inspection or copying of record; procedure**

36 **1. Request for licensing file; redaction.** When the board receives a request to  
37 inspect or copy all or part of the licensing file of an applicant or licensee, the board shall  
38 redact information that is not public before making the file available for inspection or  
39 copying.

1           **2. Notice and opportunity to review.** When the board acknowledges a request to  
2 inspect or copy an applicant's or a licensee's licensing file as required by Title 1, section  
3 408-A, subsection 3, the board shall send a notice to the applicant or licensee at the  
4 applicant's or licensee's last address on file with the board explaining that the request has  
5 been made and that the applicant or licensee may review the redacted licensing file before  
6 it is made available for inspection or copying. The applicant or licensee has 10 business  
7 days from the date the board sends the notice to request the opportunity to review the  
8 redacted licensing file. If the applicant or licensee so requests, the board shall send a  
9 copy of the redacted licensing file to the applicant or licensee for review. The board shall  
10 make the redacted licensing file available to the requester for inspection and copying 10  
11 business days after sending the redacted licensing file to the applicant or licensee for  
12 review unless the board receives a petition from the applicant or licensee under  
13 subsection 4.

14           **3. Reasonable costs.** Reasonable costs related to the review of a licensing file by  
15 the applicant or licensee are considered part of the board's costs to make the redacted  
16 licensing file available for inspection and copying under subsection 2 and may be charged  
17 to the requester.

18           **4. Action based on personal safety.** An applicant or licensee may petition the  
19 board to withhold the release of all or part of a licensing file under subsection 2 based on  
20 the potential risk to the applicant's or licensee's personal safety or the personal safety of  
21 any 3rd party if the file is disclosed to the public. The applicant or licensee must petition  
22 the board to withhold all or part of the licensing file within 10 business days after the  
23 board sends the applicant or licensee the redacted licensing file. The petition must  
24 include an explanation of the potential safety risks and a list of items requested to be  
25 withheld. Within 30 days of receiving the petition, the board shall notify the applicant or  
26 licensee of its decision on the petition.

27           **Sec. 3. 32 MRSA §3300-G is enacted to read:**

28           **§3300-G. Inspection or copying of record; procedure**

29           **1. Request for licensing file; redaction.** When the board receives a request to  
30 inspect or copy all or part of the licensing file of an applicant or licensee, the board shall  
31 redact information that is not public before making the file available for inspection or  
32 copying.

33           **2. Notice and opportunity to review.** When the board acknowledges a request to  
34 inspect or copy an applicant's or a licensee's licensing file as required by Title 1, section  
35 408-A, subsection 3, the board shall send a notice to the applicant or licensee at the  
36 applicant's or licensee's last address on file with the board explaining that the request has  
37 been made and that the applicant or licensee may review the redacted licensing file before  
38 it is made available for inspection or copying. The applicant or licensee has 10 business  
39 days from the date the board sends the notice to request the opportunity to review the  
40 redacted licensing file. If the applicant or licensee so requests, the board shall send a  
41 copy of the redacted licensing file to the applicant or licensee for review. The board shall  
42 make the redacted licensing file available to the requester for inspection and copying 10  
43 business days after sending the redacted licensing file to the applicant or licensee for

1 review unless the board receives a petition from the applicant or licensee under  
2 subsection 4.

3 **3. Reasonable costs.** Reasonable costs related to the review of a licensing file by  
4 the applicant or licensee are considered part of the board's costs to make the redacted  
5 licensing file available for inspection and copying under subsection 2 and may be charged  
6 to the requester.

7 **4. Action based on personal safety.** An applicant or licensee may petition the  
8 board to withhold the release of all or part of a licensing file under subsection 2 based on  
9 the potential risk to the applicant's or licensee's personal safety or the personal safety of  
10 any 3rd party if the file is disclosed to the public. The applicant or licensee must petition  
11 the board to withhold all or part of the licensing file within 10 business days after the  
12 board sends the applicant or licensee the redacted licensing file. The petition must  
13 include an explanation of the potential safety risks and a list of items requested to be  
14 withheld. Within 30 days of receiving the petition, the board shall notify the applicant or  
15 licensee of its decision on the petition.

16 **SUMMARY**

17 This bill allows applicants and licensees of the State Board of Nursing, the Board of  
18 Osteopathic Licensure and the Board of Licensure in Medicine to review their own  
19 redacted licensing files before the respective board makes the file available for inspection  
20 or copying after the licensing file has been requested.

21 The board must notify the applicant or licensee of the request to view the file at the  
22 same time the board acknowledges the request under the Freedom of Access Act. The  
23 board must use the most recent address on file for that applicant or licensee. If the  
24 applicant or licensee would like to review the redacted file before it is made publicly  
25 available, the applicant or licensee must notify the board within 10 business days. If  
26 requested by the applicant or licensee, the board must send a copy of the redacted file to  
27 the applicant or licensee, and the applicant or licensee has 10 business days from when  
28 the file is sent to stop the release of all or a part of the redacted licensing file by  
29 petitioning the board to withhold release of all or a part of the file because making all or  
30 part of the redacted file available to the public creates a potential risk to the personal  
31 safety of the applicant or licensee or any 3rd party.





11 Columbia St.  
Augusta, ME 04330  
Tel.: (207) 621-0313  
Fax: (207) 622-4437  
Pam@mnpa.us  
www.mnpa.us

---

***24 Years of Independent Practice as Healthcare Providers for the People of Maine***

May 1, 2019

**Testimony in Support of LD 1580  
An Act To Protect Licensing Information of Medical Professionals**

Senator Carpenter, Representative Bailey  
Members of the Judiciary Committee

My name is Pam Cahill. I live in Woolwich and am here today testifying in support of LD 1580. Currently there are more than 1900 nurse practitioners licensed in Maine. NPs provide healthcare services in primary care and other specialty areas throughout Maine. They work in hospitals, independent practices, medical practices, FQHC's, schools and colleges, clinics, prisons and mental health and behavioral health settings.

The subject of this legislation has been a matter of concerns for NPs for several years. As a matter of fact, this bill with the exactly same title passed in the 128<sup>th</sup> Legislature only to be vetoed by the Governor.

As we become more and more of a technically savvy world, the security of private information becomes imperative. While we understand that the public has rights to certain information, increasingly, healthcare professionals and their families become victims of threats, bullying and harassment.

Currently Maine licensing boards are required to release personal information, other than a licensee's home address and phone number, if requested through a Freedom of Access ACT (FOAA) as provided in Maine law. We do not believe that the FOAA was intended to provide tools for the public to harass and intimidate healthcare providers. In one case several years ago, the social security number of a nurse practitioner was mistakenly provided to a person making a FOAA request. While this may or may not have been a one-time human error, the nurse practitioner suffered repeated threats and the name of the person who requested the practitioner's information was never identified.

We believe LD 1580 is a reasonable way to protect healthcare providers while keeping the public's "right to know" intact.

MNPA urges you to support LD 1580

#####



Dan Davis  
Porter

Judiciary

Senator Carpenter, Representative Bailey and members of the Judiciary  
Joint Standing Committee:

I have no affiliation and am not a paid lobbyist, just opted to provide  
written considerations of the following bill(s):

(NO) LD 639 (Wed 1-5/1-May) - An Act To Protect Student Privacy â€” This  
should be public information, the title is misleading as the State is  
currently surveilling students. There should be an amendment that if a  
crime occurs or there is teacher mistreatment of students the information  
is disclosed to the public.

(YES) LD 1183 (Wed 1-5/1-May) - Resolve, To Implement the Recommendations  
of the Right To Know Advisory Committee Concerning Remote Participation by  
Members of Public Bodies â€” This is a competent and reasonable structural  
bill proposal to open up participation, ideas, competition, and to remove  
barriers to entry, as well as reducing taxpayer costs (infrastructure,  
fuel, tolls, time, wear-and-tear)

(YES) LD 1414 (Wed 1-5/1-May) - An Act To Implement the Recommendations of  
the Right To Know Advisory Committee Concerning Penalties for Violations  
of the Freedom of Access Act â€” This is a competent and reasonable bill  
that should be paired with LD 1066 and LD 1423. Many Maine laws have not  
been adjusted for inflation and nullify efficacy, purpose, equity, and the  
intent to prevent risk. Nothing is as it was in 1987, and if folks believe  
that, then they should not be representing this state.

(YES, with Amendment) LD 1416 (Wed 1-5/1-May) - An Act To Implement the  
Recommendations of the Right To Know Advisory Committee Concerning Freedom  
of Access Training for Public Officials â€” This is a competent and  
reasonable proposal that should be paired with the following efforts: LD  
1066 and LD 1423. The State also needs to re-visit Tort Reform as  
political subdivision law enforcement and municipal mismanagement is  
escalating and needs to be addressed. NOTE: It may be advised to at least  
up-date penalties based on 30 years of inflation, to assure behavior  
changes. The current penalties are embarrassingly insufficient.

(NO) LD 1511 (Wed 1-5/1-May) - An Act To Implement the Recommendations of  
the Right To Know Advisory Committee Concerning Public Records Exceptions  
â€” Concealing â€” LEGISLATIVE OVERSIGHT OF GOVERNMENT AGENCIES AND  
PROGRAMSâ€” from the public is disturbing, exposing social security  
numbers is disturbing as well. This State needs some serious Tort Reform  
to bring suit against the malfeasance of law enforcement and municipal  
officials, because things have been left attended for far too long and  
they are getting bad.

(YES) LD 1575 (Wed 1-5/1-May) - An Act To Improve the Freedom of Access  
Laws of Maine â€” This is competent and reasonable. More training is

needed for municipalities to honor this and to remove town risks of litigation. They may think they can get away with it because Maine defers all of the financial and time burden on impoverished Mainers to enact their own justice, but when they eventually run into the wrong individual, it will cost the towns significant amounts of money when not complying with simple public requests. This state desperately needs tort reform to bring suit against the malfeasance of law enforcement and municipal officials, because things are getting pretty bad, paralyzing healthy local economics and putting the benefit of many of the bills in the 129th intended to help the citizenry at risk of being totally wasted.

(NO) LD 1580 (Wed 1-5/1-May) - An Act To Protect Licensing Information of Medical Professionals " The State has validated the importance of this position, even giving them the police power to take away constitutional rights, emulate a police-state surveillance arm of the State, and force individuals to do something to their bodies that they do not want. They make good enough money, they can deal with the responsibility they've been charged with by the State apparatus. If the money is not worth the protection, then maybe remove the requirements of the State that medical professionals be spies and police for the State.

There appears to be a re-occurring theme that:

- A. ) Maine's socio-economic ills are self-inflicted (an incoherent, incomplete, and outdated legislative construct), and
- B. ) That the promises and will of political parties (both) to address them over multiple generations has never materialized. Maine has been poor and indigent for 40 years, nearly 6,000 legislators during that time (99% of them democrats or republicans, predominantly democrats) have produced over 30,000 bills to solve this, yet Maine is still poor and indigent, even more so.

There are three constants here, the two major political corporations and an outdated and mismanaged legislative construct.

Thank you,

Dan Davis  
(Porter - District 19 Senate, District 70 House)

Exegesis II: Like many other taxpayers, I forgo income when exercising the right to speak and participate in Augusta, as we are not lobbyists and do not have unlimited external resources to influence our state government on a daily basis:

☺ Sending a testimony is a medium that legislators have suggested is of lesser value than sacrificing a day's wage to travel four hours to Augusta to speak for three minutes every time a committee reviews any of their 2,200 plus bill proposals that effect my life (which all of them should, according to the Constitution of this State). If I attend them all, I would be unemployed (fired), if I am unemployed and want to attend, I can't afford it. This is not competent or reasonable and is a barrier to those who gave consent to be governed.

In a vast and impoverished state such as Maine, if taxpayer attendance is a prerequisite to consider any idea, then it is just another deep structural flaw in our way of governance and something to reflect on and explore.

Even when attempting to attend the affairs of one's state government, it is a wasteful endeavor as meetings are elusive, moving targets, and the order, consistency, and structure of meetings across committees are wildly inconsistent. Two week schedules are not accurate, notifications are not timely, meetings are pulled forward and hours are changed without ample notice, notifications are reduced to one week when sessions are at their peak (even at one week notifications are not accurate or timely), and the clock is not effectively used to manage time when high turn-out is present. Testimonies submitted in advance of hearings have not been shared with the sponsors and co-sponsors of legislative bills, further limiting the rigors of even, effective, and valuable debate on a given topic and wastes the time scheduled in which to debate.

If the State cannot schedule to two weeks, then no bill should introduce a 2-week scheduling mandate on the body politic, period (e.g. LD 1345, ironically called "An Act To Ensure a Fair Workweek"). Those who gave consent to be governed deserve the same respect.

In the midst of the most frenetic time of the legislative session, State politicians implemented an unplanned implementation of untested software and attempted to prohibit a method of communication that citizenry have been using for many years to reach their government. The system is slowly proving to be more efficient, but the timing was extremely poor, lacked best management practices, and there are still technical problems with the system regarding lack of receipt notices to those that testify that IT needs to quickly respond to.

If the Maine Municipal Association is interested in over 700 bills produced to-date, and they have expressed a core belief in and defense of the democratic system of local governance since 1936 (the legislative body being the citizenry), and MMA assists those who serve in local governments to meet the needs and common interests of the citizenry, then it is reasonable to believe then that citizenry in Maine would also have a common vested interest in all of those 700+ bills as well (not just one or two emotion-driven topics that are typically used to categorize all of society as being "single-issue simpletons" "Abortions or 2nd Amendment), and these disparaged, categorized citizens may wish to express voice and choice in the development of those "other" 698+ bills that affect their lives.

Beyond the examples above indicating the in-feasibility of citizen participation, the current process already does a disservice to the people of the State of Maine, as the constitutional authority of the legislature has been misconstrued to allow political corporations the power to disproportionately represent each congressional district and authorize each committee (representing 7% of this state) to disenfranchise 93% of the states citizenry and relieve those legislators representing the 93% of their constitutional duty (committees essentially determining the failure and success of bills rather than being performed by the upper and lower chambers).

As an example, the requirements to resurrect a bill that was "killed" in committee by 13 (often far less) has the same rule requirements as amending the constitution of this state. If a bill has a unanimous "ought-to-pass" in committee by 13 (often far less), it can circumvent multiple stages of scrutiny by the legislative chamber. The laws with the most integrity and need have sustained the fires and rigor of debate. Given these examples, it is fairly reasonable to say that the Joint Standing Committees "legislate by rule", which is not authorized by the State Constitution.

Historically, committees have also behaved largely on political party coercion rather than what is in the best interests of the people of Maine (another subversion of the State's constitution).

When the constitution is violated by the state that defines, administers, and enforces the rule of law, who would be the highest law enforcer in Maine charged with rectifying it? Is it our unregulated Constitutional and Statutory Officers who use taxpayer resources on their personal campaigns in conflict with current State Law? Is it reasonable then for these positions to "enforce" the rule of law? Is the only remedy of the body politic to test it in the courts in a civil claim? If reform is proposed via bills, will the legislators (largely under the boot of their corporate handlers) be willing to curtail customs and habits that hurt the citizenry and that do not align with the State's Constitution? Is a radical remedy required for rampant disease?

These problems are primarily the result of preexisting structural advantages afforded to political corporations of a bygone era that have been codified into our laws, advantages that undermine democracy, instill false relevance, and need critical and thoughtful reform.



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
BOARD OF NURSING  
158 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0158

KIM ESQUIBEL, PHD, M.S.N., R.N.  
EXECUTIVE DIRECTOR

May 1, 2019

Senator Michael Carpenter, Senate Chair  
Representative Donna Bailey, House Chair  
Joint Standing Committee on Judiciary  
100 State House Station  
Augusta, ME 04333-0100

**RE: LD 1580 - "An Act to Protect Licensing Information of Medical Professionals"**

Dear Senator Carpenter and Representative Bailey:

The Board of Nursing ("Board") licenses and regulates licensed practical nurses, registered professional nurses and advanced practice registered nurses in Maine. The Board is composed of 9 members: 7 nurses who actively practice nursing and 2 public members. The Board's mission is to protect the public by ensuring its licensees are ethical, professional and competent.

LD 1580 would amend the Board's statute to provide applicants and licensees with additional protections for requests for their application/licensing information pursuant to the Maine Freedom of Access Act (FOAA) by requiring that the Board:

1. Redact all information that is not public.
2. Provide notice to the applicant/licensee at the applicant's last address on file with the Board that:
  - a. A request has been made for his/her licensing information and that the licensee/applicant may review the file before it is provided to the requester;
  - b. The applicant/licensee has 10 business days to request to review the redacted information.
3. Send the redacted information to the applicant/licensee for review if he/she makes a timely request to review the redacted information.
4. Send the redacted information to the requester 10 days after providing it to the applicant/reviewer unless the board receives a petition from the applicant/licensee to withhold all or part of the licensing file "based on the potential risk to the applicant's or licensee's personal safety or the safety of a third party if the file is disclosed to the public."



PRINTED ON RECYCLED PAPER

OFFICES LOCATED AT: 161 CAPITOL ST., AUGUSTA, ME  
<http://www.maine.gov/boardofnursing/>

PHONE: (207) 287-1133

FAX: (207) 287-1149

5. Within 30 days of receiving the petition, the Board must notify the applicant/licensee of its decision on the petition.

With regards to LD 1580 the Board offers the following comments and questions:

1. A similar bill was introduced during the previous legislative session. Over 5 years ago, certain confidential licensing information of a licensee was inadvertently released. Since that time, the Board of Nursing has put into place additional safeguards in the form of a protocol for responding to requests for licensing information under the Maine Freedom of Access Act (attached). The protocol is designed to provide maximum protection to non-public licensing information. In the past 5 years, the Board has not received a single complaint from a licensee/applicant that his/her non-public information has been provided to anyone. Given this, is there data available to justify providing additional protections to non-public licensing information of nurses, which is already being protected by the Board's FOAA protocol? Is there data to support providing additional protections of licensing information for certain medical professionals over any other licensed professionals?
2. The Board meets quarterly for two full days. The bill's requirement that the Board notify an applicant/licensee of its decision on a petition within 30 days of receiving the petition may or may not be attainable for the Board.

The Board respectfully requests that this bill be referred to the Maine Right to Know Advisory Committee for study and review.

Thank you for the opportunity to provide this information regarding LD 1580. I would be happy to answer any questions you may have at the work session.

Sincerely,



Kim Esquibel, PhD, MSN, RN  
Executive Director



## **Maine State Board of Nursing**

### **Procedure for Responding to Requests for Licensing Information under the Maine Freedom of Access Act.**

**Purpose:** The Board's protocol for responding to requests for licensing information under the Maine Freedom of Access Act is designed to provide maximum protection to confidential information.

**Procedure:**

1. The Board's Secretary Associate makes a copy of the licensing information in electronic format using Adobe.
2. The Board's Secretary Associate reviews the licensing information page by page, and redacts the following information:
  - a. The licensee's/applicant's date of birth;
  - b. The licensee's/applicant's social security number;
  - c. The licensee's/applicant's home address;
  - d. The licensee's/applicant's home telephone number;
  - e. The licensee's/applicant's home email address;
  - f. The licensee's/applicant's confidential medical information;
  - g. The licensee's/applicant's passport, marriage, divorce, or birth certificates;
  - h. The licensee's/applicant's photo;
  - i. The licensee's/applicant's DEA registration number (if provided);
  - j. The National Practitioner Data Bank profile.
3. The Board's Secretary Associate then emails the redacted materials to the Board's Assistant Attorney General, who reviews the proposed redactions.
4. Following review and approval of the redactions by the Assistant Attorney General, the redacted materials are provided to the requester.





STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
HOUSE DEMOCRATIC OFFICE  
AUGUSTA, MAINE 04333-0002

MATT MOONEN  
MAJORITY LEADER

May 1, 2019

*Testimony of House Majority Leader Matt Moonen presenting*  
**LD 1580, An Act to Protect Licensing Information of Medical Professionals**  
*Before the Joint Standing Committee on Judiciary*

Good afternoon, Senator Carpenter, Representative Bailey, and honorable members of the Joint Standing Committee on Judiciary. My name is Matt Moonen and I have the honor of representing part of Portland in the House. I am here today to present LD 1580, "An Act to Protect Licensing Information of Medical Professionals."

Those of you who served on this committee last session will certainly remember this issue, but some background info would be helpful for those who did not. This originally came to us last session from Senator Roger Katz, so I'm going to hope that he won't mind my using his words to reiterate it again:

"Currently, Maine's public record laws allow for the release of a wide array of personal information that applicants must provide to the licensing boards of Medicine, Nursing and Osteopathy to secure a license to practice. Only personal addresses and phone numbers are protected from being released.

Doctors, physician assistants and nurse practitioners provide a wide range of services in complex environments including private practice, schools, hospitals, homeless shelters, nursing homes, prisons and any number of public and private agencies. They provide high quality care from general practice to behavioral and mental health to substance abuse. Unfortunately, safety is a concern in many of these settings.

Freedom of Access Act laws (FOAA) are designed to ensure the public has access to public information; they are not intended to serve as a tool to aid in the harassment and intimidation of medical practitioners. However, as currently applied, any licensed medical professional could find themselves a victim of harassment or worse as a result of the information released through these types of requests.

The goal of this legislation is to minimize the likelihood of medical practitioners being exposed to harassment or violence. Unfortunately through the fulfillment of these types of FOAA requests, some practitioners have already found themselves victim of harassment, intimidation, and experienced a loss of privacy. Tragically in some states, this information has been used to threaten and harm people. Suppressing personal information would help keep medical practitioners safe.

Recognizing the need for safety precautions in other occupations, the legislature has enacted additional privacy protections for certain licensed professionals in the past, including private investigators, social workers, and members of the Maine Gaming Board. State courts have also

weighed in on this issue most recently in New Hampshire, Maryland and Washington, where the courts determined that the risks were great enough to protect this personal information.

There is a public interest in keeping our medical providers safe and I submit this legislation as a practical approach to keeping personal information private. I look forward to your work on this bill and encourage you to vote ought to pass."

---Senator Roger Katz (R-Kennebec), LD 1267, 2017

While our committee certainly understood where Senator Katz and proponents of this bill were coming from and the issue they were trying to address, his bill proposed a dramatic overhaul of Maine's Freedom of Access Act. Currently, everything in a licensee's record is public, unless the law says it's private. But Senator Katz's bill proposed to flip that: everything in a licensee's record would be private, unless the law said it was public.

Judiciary is the committee tasked with the equally important, and often competing, priorities of both protecting the privacy of personal information of Mainers and protecting the public's right to know about its government, including those who are licensed by the government. Because of that, our committee was deeply uncomfortable with this proposal to turn the Freedom of Access Act on its head.

Still, we could not ignore that we had heard real examples of information being inappropriately released, including home addresses, social security numbers, photos, DEA registration numbers (which allows providers to write prescriptions for controlled substances) and significant concerns about future incidents of information being inappropriately released. And we understood that once personal information that should be kept confidential is released, there is no way to un-release it and make it private again.

The bill was carried over to the second session, and Senator Keim and I appointed a subcommittee that was assigned the specific task of coming up with something else that could address this issue. After a couple of work sessions, we came up with something that earned the unanimous support of the committee and easily flew through both chambers. Unfortunately, the bill was vetoed. The veto was unanimously overridden in the Senate, but came up a bit short in the House.

And so this bill is before you again today. I am immensely proud of the work our subcommittee and full committee did on this, and I'd like to quickly walk you through what we came up with:

1. When a record of an applicant or licensee of the State Board of Nursing, the Board of Osteopathic Licensure or the Board of Licensure in Medicine is requested, the board is required to redact anything that isn't public before making the record available for inspection or copying.
2. The board has to notify the applicant or licensee that their records have been requested and provide them the opportunity to review the redacted records before they're made available for inspection or copying.
3. The Boards are allowed to include reasonable costs associated with allowing the licensee or applicant to review the redacted records in the overall costs of complying with the records request.
4. An applicant or licensee may petition the Board to withhold the release of all or part of a licensing record based on potential risk to their personal safety or the personal safety of a 3rd party, and they must provide an explanation of the safety risk and a list of items requested to be withheld.

5. Finally, with the addition of my amendment, an applicant or licensee may bring an action in Superior Court to enjoin the Board from releasing all or part of a record, if they can satisfy the court that there is potential risk to their personal safety or the personal safety of a 3rd party.

The last thing I'll say on this bill is that I by no means wish to imply that the Boards aren't doing their best to protect information that should be kept confidential - I believe they are.

But these records can often be extensive - hundreds of pages, potentially. And information that should be kept private - such as social security numbers, home addresses, etc - often appear multiple times throughout an entire record. What that means is that there is an element of human error here - it is certainly understandable that the folks tasked with redacting a file could make a mistake and miss a spot on a page where they should have redacted something. If they successfully redact an SSN or home address 14 times, but miss it on the 15th spot, the information is still released to the public and potentially puts the licensee at risk.

This bill simply adds an additional layer of safeguard, providing the applicant or licensee the opportunity to review their own records and point out any of those places where the Board may have inadvertently missed a spot where they should have redacted personal information, as well as the opportunity to petition to prevent the release of their records if they can show that their personal safety is at risk.

I believe this is fair and reasonable, because it respects the right of medical and mental health professionals to keep their personal information private, while still ensuring the public's ability to obtain the information they should have about who our state licenses to be in these critical roles.

I ask for your support on LD 1580 and the amendment.

## An Act To Protect Licensing Information of Medical Professionals

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

Sec. 1. 32 MRS §2109-A is enacted to read:

### § 2109-A. Inspection or copying of record; procedure

1. Request for licensing file record; redaction. When the board receives a request to inspect or copy all or part of the licensing file record of an applicant or licensee, the board shall redact information that is not public before making the file record available for inspection or copying.

2. Notice and opportunity to review. When the board acknowledges a request to inspect or copy an applicant's or a licensee's licensing file record as required by Title 1, section 408-A, subsection 3, the board shall send a notice to the applicant or licensee at the applicant's or licensee's last address on file with the board explaining that the request has been made and that the applicant or licensee may review the redacted licensing file record before it is made available for inspection or copying. ***The acknowledgment to the requester must include a description of the review process provided to the licensee or applicant pursuant to this section, including the fact that all or part of the record may be withheld if the board finds that disclosure of all or part of the redacted record creates a potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party.*** The applicant or licensee has 10 business days from the date the board sends the notice to request the opportunity to review the redacted licensing file record. If the applicant or licensee so requests, the board shall send a copy of the redacted licensing file record to the applicant or licensee for review. The board shall make the redacted licensing file record available to the requester for inspection and copying 10 business days after sending the redacted licensing file record to the applicant or licensee for review unless the board receives a petition from the applicant or licensee under subsection 4.

3. Reasonable costs. Reasonable costs related to the review of a licensing file record by the applicant or licensee are considered part of the board's costs to make the redacted licensing file record available for inspection and copying under subsection 2 and may be charged to the requester.

4. Action based on personal safety. An applicant or licensee may petition the board to withhold the release of all or part of a licensing file record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal

safety of any 3rd party if the file record is disclosed to the public. The applicant or licensee must petition the board to withhold all or part of the licensing file record within 10 business days after the board sends the applicant or licensee the redacted licensing file record. The petition must include an explanation of the potential safety risks and a list of items requested to be withheld. Within 30 days of receiving the petition, the board shall notify the applicant or licensee of its decision on the petition. ***If the applicant or licensee disagrees with the board's decision, the applicant or licensee may file a petition in Superior Court to enjoin the release of the record under subsection 5.***

***5. Injunction based on personal safety. An applicant or licensee may bring an action in Superior Court to enjoin the board from releasing all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must file the action within 10 business days after the board notifies the applicant or licensee under subsection 4 that the board will release all or part of the redacted record to the requester. The applicant or licensee shall immediately provide written notice to the board that the action has been filed and that the board may not make the record available for inspection and copying until the action is resolved.***

***6. Hearing. The hearing on an action filed under subsection 5 may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.***

Sec. 2. 32 MRSA §2600-D is enacted to read:

**§ 2600-D. Inspection or copying of record; procedure**

**1. Request for licensing file record; redaction.** When the board receives a request to inspect or copy all or part of the licensing file record of an applicant or licensee, the board shall redact information that is not public before making the file record available for inspection or copying.

**2. Notice and opportunity to review.** When the board acknowledges a request to inspect or copy an applicant's or a licensee's licensing file record as required by Title 1, section 408-A, subsection 3, the board shall send a notice to the applicant or licensee at the applicant's or licensee's last address on file with the board explaining that the request has been made and that the applicant or licensee may review the redacted licensing file record before it is made available for inspection or copying. ***The acknowledgment to the requester must include a description of the review process provided to the licensee or applicant pursuant to this section, including the fact that all or part of the record may be withheld if the board finds that disclosure of all or part of the redacted record creates a potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party.*** The applicant or licensee has 10 business days from the date the board sends the notice to request the opportunity to review the redacted licensing file

record. If the applicant or licensee so requests, the board shall send a copy of the redacted licensing file record to the applicant or licensee for review. The board shall make the redacted licensing file record available to the requester for inspection and copying 10 business days after sending the redacted licensing file record to the applicant or licensee for review unless the board receives a petition from the applicant or licensee under subsection 4.

**3. Reasonable costs.** Reasonable costs related to the review of a licensing file record by the applicant or licensee are considered part of the board's costs to make the redacted licensing file record available for inspection and copying under subsection 2 and may be charged to the requester.

**4. Action based on personal safety.** An applicant or licensee may petition the board to withhold the release of all or part of a licensing file record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the file record is disclosed to the public. The applicant or licensee must petition the board to withhold all or part of the licensing file record within 10 business days after the board sends the applicant or licensee the redacted licensing file record. The petition must include an explanation of the potential safety risks and a list of items requested to be withheld. Within 30 days of receiving the petition, the board shall notify the applicant or licensee of its decision on the petition. *If the applicant or licensee disagrees with the board's decision, the applicant or licensee may file a petition in Superior Court to enjoin the release of the record under subsection 5.*

**5. Injunction based on personal safety.** An applicant or licensee may bring an action in Superior Court to enjoin the board from releasing all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must file the action within 10 business days after the board notifies the applicant or licensee under subsection 4 that the board will release all or part of the redacted record to the requester. The applicant or licensee shall immediately provide written notice to the board that the action has been filed and that the board may not make the record available for inspection and copying until the action is resolved.

**6. Hearing.** The hearing on an action filed under subsection 5 may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

Sec. 3. 32 MRSA §3300-G is enacted to read:

**§ 3300-G. Inspection or copying of record; procedure**

**1. Request for licensing file record; redaction.** When the board receives a request to inspect or copy all or part of the licensing file record of an applicant or licensee, the



board shall redact information that is not public before making the file *record* available for inspection or copying.

**2. Notice and opportunity to review.** When the board acknowledges a request to inspect or copy an applicant's or a licensee's licensing file *record* as required by Title 1, section 408-A, subsection 3, the board shall send a notice to the applicant or licensee at the applicant's or licensee's last address on file with the board explaining that the request has been made and that the applicant or licensee may review the redacted licensing file *record* before it is made available for inspection or copying. *The acknowledgment to the requester must include a description of the review process provided to the licensee or applicant pursuant to this section, including the fact that all or part of the record may be withheld if the board finds that disclosure of all or part of the redacted record creates a potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party.* The applicant or licensee has 10 business days from the date the board sends the notice to request the opportunity to review the redacted licensing file *record*. If the applicant or licensee so requests, the board shall send a copy of the redacted licensing file *record* to the applicant or licensee for review. The board shall make the redacted licensing file *record* available to the requester for inspection and copying 10 business days after sending the redacted licensing file *record* to the applicant or licensee for review unless the board receives a petition from the applicant or licensee under subsection 4.

**3. Reasonable costs.** Reasonable costs related to the review of a licensing file *record* by the applicant or licensee are considered part of the board's costs to make the redacted licensing file *record* available for inspection and copying under subsection 2 and may be charged to the requester.

**4. Action based on personal safety.** An applicant or licensee may petition the board to withhold the release of all or part of a licensing file *record* under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the file is disclosed to the public. The applicant or licensee must petition the board to withhold all or part of the licensing file *record* within 10 business days after the board sends the applicant or licensee the redacted licensing file *record*. The petition must include an explanation of the potential safety risks and a list of items requested to be withheld. Within 30 days of receiving the petition, the board shall notify the applicant or licensee of its decision on the petition. *If the applicant or licensee disagrees with the board's decision, the applicant or licensee may file a petition in Superior Court to enjoin the release of the record under subsection 5.*

**5. Injunction based on personal safety.** An applicant or licensee may bring an action in Superior Court to enjoin the board from releasing all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must file the action within 10 business days after the board notifies the applicant or licensee under subsection 4 that the board will release all or part of the redacted record to the requester. The applicant or licensee shall

immediately provide written notice to the board that the action has been filed and that the board may not make the record available for inspection and copying until the action is resolved.

6. Hearing. The hearing on an action filed under subsection 5 may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

## SUMMARY

Still to come

DRAFT



# MCEDV.

The Maine Coalition  
to End Domestic Violence

**Testimony of Regina Rooney  
Speaking in Support of L.D. 1580:  
"AAT Protect Licensing Information of Medical Professionals"  
Before the Joint Standing Committee on Judiciary  
Wednesday, May 1, 2019**

Hello Senator Carpenter, Representative Bailey, and Members of the Joint Standing Committee on Judiciary:

My name is Regina Rooney, I live in Hope, Maine, and I am writing today on behalf of the Maine Coalition to End Domestic Violence (MCEDV) in support of L.D. 1580, *An Act to Protect Licensing Information of Medical Professionals*.

In 2018, the Domestic Violence Resource Centers that comprise MCEDV provided services for more than 14,000 victims of domestic abuse and violence, sheltering 526 adults and 333 children, providing legal services for more than 3,100 people, and answering over 34,000 calls to their 24/7 domestic violence helplines. Through helplines, outreach offices, shelters, and transitional housing sites, advocates help Maine's victims of domestic abuse and violence move from circumstances of terror and hopelessness to circumstances of possibility with plans to increase their safety, protect and nurture their children, and establish economically sustainable and stable lives.

Our support for this bill is grounded in our concern for the safety and privacy of survivors of domestic abuse and stalking. We live in an increasingly interconnected world, in which information, once available, spreads rapidly. For survivors of abuse, this reality presents particular challenges. The process of survivors going into hiding in order to find safety has never been as simple as popular discourse would have us believe, but now it is even less so. What does a person do when so much information is easily available online—but they are trying to keep their location secret from a former partner who has stalked them relentlessly? How does one network, find a job, establish community, without leaving a trace online that can be found by a determined abuser? These are challenges that face survivors and their support systems in the 21<sup>st</sup> Century.

Here is one example of the vulnerabilities for survivors under Maine's current law: Knowing that their former partner is a nurse somewhere in the state, an abusive person could file FOIA requests until they obtain their partner's record, which may very well include highly sensitive information, such as the survivor's home address and/or their social security number. With this, an abusive person can cause serious harm. We are obviously concerned with physical safety – with what happens to the survivor and the children if their home address becomes known. We are also concerned with what happens when a controlling abuser gets access to the survivor's social security number, with which they can wreak havoc through credit manipulation and identity theft. As detailed in our recent report, *A Report on the Impact of Economic Abuse on Survivors of Domestic Violence in Maine*, impersonation of survivors by abusive partners is common. 40% of those surveyed said their partners falsely used their identity; 57% said their abusive partners incurred debt in their name. The most cited current economic concern among survivors in the study was how to manage the debt incurred by their partners in their name.<sup>1</sup> The ability to maintain control over one's personal information is a key part of safety planning in this digital age.

At the same time, we appreciate the purpose of maintaining publicly available records. While the vulnerabilities for survivors are real, we understand that some sharing of these materials is fitting and important, from a provider accountability and patient safety perspective.

We believe that LD 1580 achieves an appropriate balance in establishing a uniform set of shareable information across medical disciplines. It keeps a licensee's most personal data private, while providing the public with the relevant information it is suitable they have. We would like to see this model shared by more of Maine's licensed professions, since the same privacy vulnerabilities exist there, and also providers tell us about concerns for their own safety, based on the risks posed by the abusive people they either work with directly, or who are the abusive partners of their clients.

In closing, I would remind us that survivors are in all walks of life, and often do not share their experiences of violence widely. Privacy is key to safety for many people, whether they make their needs and risks known or not. Gender-based violence takes many forms, and MCEdV condemns all acts of threats, coercion and violence which cause people to live in fear. The belief that anyone has the right to control and terrorize another human being is antithetical to the world we seek to create by ending domestic abuse.

For all of these reasons, we respectfully ask that you vote LD 1580 "ought to pass."

---

<sup>1</sup> Maine Coalition to End Domestic Violence, *A Report on the Impact of Economic Abuse on Survivors of Violence in Maine*, 2019. [https://www.mcedv.org/wp-content/uploads/2019/02/Economic-Abuse-Report\\_FINAL.pdf](https://www.mcedv.org/wp-content/uploads/2019/02/Economic-Abuse-Report_FINAL.pdf)



Janet T. Mills  
GOVERNOR

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE  
137 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0137

Maroulla S. Gleaton, MD  
CHAIRMAN

Dennis E. Smith, JD  
EXECUTIVE DIRECTOR

Timothy E. Terranova  
ASSISTANT EXECUTIVE DIRECTOR

May 1, 2019

Senator Michael E. Carpenter, Chair  
Representative Donna Bailey, Chair  
Committee on Judiciary  
100 State House Station  
Augusta, ME 04333

**Re: LD 1580 – “An Act To Protect Licensing Information of Medical Professionals”**

Dear Senator Carpenter and Representative Bailey:

The Maine Board of Licensure in Medicine (“Board”) licenses and regulates allopathic physicians and physician assistants in Maine. The Board is composed of 10 members: 6 physicians who actively practice medicine; 1 physician assistant who actively renders medical services; and 3 public members. The Board’s mission is to protect the public by ensuring its licensees are ethical, professional and competent. It fulfills this mission by licensing, regulating, and educating physician and physician assistants.

LD 1580 would amend the Board’s statute to provide applicants and licensees with additional protections for requests for their application/licensing information pursuant to the Maine Freedom of Access Act (FOAA) by requiring that the Board:

- (1) “Redact all information that is not public.”
- (2) Provide notice to the applicant/licensee at the applicant’s last address on file with the Board that:
  - a. A request has been made for her/his licensing information and that the licensee/applicant may review the file before it is provided to the requester;
  - b. The applicant/licensee has 10 business days to request to review the redacted information.
- (3) Send the redacted information to the applicant/licensee for review if she/he makes a timely request to review the redacted information.
- (4) Send the redacted information to the requester 10 days after providing it to the applicant/reviewer unless the boards receive a petition from the applicant/licensee to withhold all or part of the licensing file “based on the potential risk to the applicant’s or licensee’s personal safety or the safety of a third party if the file is disclosed to the public.”

- (5) Within 30 days of receiving the petition, the Board must notify the applicant/licensee of its decision on the petition.

The Board opposes LD 1580, and offers the following comments and questions:

(1) What is the empirical data that supports providing greater protections of licensing information for medical professionals over any other licensed professionals such as teachers, law enforcement officers, dentists, dental hygiene therapists, psychologists, counselors, and many others?

(2) What is the empirical data that supports providing additional protections to non-public licensing information of physicians and physicians assistants, which is already being protected by an existing FOAA protocol of the Board? How many instances have there been of the inadvertent release of non-public information to justify these additional measures?

(3) The Board's protocol for responding to requests for licensing information under the Maine FOAA is designed to provide maximum protection to non-public licensing information:

- a. Following receipt of a FOAA request, the Board's Executive Director acknowledges the request and provides an estimated timeframe for a response, including the need to redact confidential information.
- b. The Executive Director makes a copy of the licensing information in electronic format using Adobe.
- c. The Executive Director reviews the licensing information page by page, and redacts non-public information, including:
  - i. The licensee's/applicant's date of birth;
  - ii. The licensee's/applicant's social security number;
  - iii. The licensee's/applicant's home address;
  - iv. The licensee's/applicant's home telephone number;
  - v. The licensee's/applicant's home email address;
  - vi. The licensee's/applicant's confidential medical information;
  - vii. The licensee's/applicant's passport, marriage, divorce, or birth certificates;
  - viii. The licensee's/applicant's personal family history in Dean's Letters;
  - ix. The licensee's/applicant's DEA registration number (if provided);

- x. The National Practitioner Data Bank profile.
- d. The Executive Director then emails the redacted materials to the Board's Assistant Attorney General, who reviews the proposed redactions.
- e. Following review and approval of the redactions by the Assistant Attorney General, the redacted materials are provided to the requester.

(4) The bill as written is too broad and would apply to requests for information from other state and federal agencies as well as licensing authorities from other jurisdictions. The boards receive requests all the time from other state and federal agencies (licensing boards, DEA, etc.), hospitals, and credentialing bodies for licensing information. Under the current law (32 M.R.S. 3300-A<sup>1</sup>), these agencies and credentialing bodies are entitled to ALL information in a licensee's file – including confidential home and medical information. Unless language is included in this bill to exempt these agencies/entities from this requirement, it will place an unreasonable and unnecessary burden upon the Board, and delay the sharing of information (which could possibly endanger the public).

(5) The Board is composed of physicians and a physician assistant who, like the members of the Maine Legislature, have full-time jobs. In light of this fact, the Board meets once a month to conduct its business. The bill's requirement that the Board notify an applicant/licensee of its decision on a petition within 30 days of receiving the petition is not reasonable. The Board's agenda is robust, and established several weeks in advance.

(6) What is the purpose of the requirement that the Board notify the applicant/licensee of its decision on the petition? Will it create a right of an applicant/licensee to appeal the Board's decision on the petition to court? If so, will the Board's decision on the petition be stayed pending appeal?

(7) The Board respectfully suggests that this bill should be referred to the Maine Right to Know Advisory Committee for study and review.

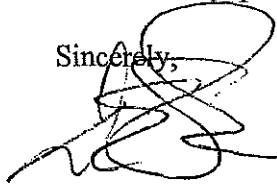
---

**<sup>1</sup> Confidentiality of personal information of applicant or licensee**

An applicant or licensee shall provide the board with a current professional address and telephone number, which will be their public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number is confidential information and may not be disclosed except as permitted by this section or as required by law, unless the personal residence address and telephone number have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted by this section or as required by law. The personal health information and personal residence address and telephone number may be provided to other governmental licensing or disciplinary authorities or to any health care providers located within or outside this State that are concerned with granting, limiting or denying a physician's employment or privileges.

Thank you for the opportunity to provide this information regarding LD 1580. I would be happy to answer any questions you may have at the work session.

Sincerely,

A handwritten signature in black ink, appearing to be "Dennis E. Smith", written over the word "Sincerely,".

Dennis E. Smith, Esq.  
Executive Director



Ref #82

**Senft, Samuel**

---

**From:** Head, Anne L <Anne.L.Head@maine.gov>  
**Sent:** Thursday, October 10, 2024 4:52 PM  
**To:** Senft, Samuel  
**Cc:** Davison, Anne; Racine, Kristin  
**Subject:** RE: follow up question re Right to Know exception

**This message originates from outside the Maine Legislature.**

Sam, thank you for requesting additional information on Reference #82. I provide the following for the Committee's consideration.

The Alcohol and Drug Counselor Board's licensing statute (32 MRS sec.6207-B) exempts only a licensee's address from public scrutiny. In comparison, the Social Worker Licensure Board licensing statute (32 MRS sec. 7032) exempts a licensee's address and telephone number from public scrutiny.

In addition to removing the word "non-business" from the Alc and Drug Counselor exemption, the Committee may wish to consider adding licensee telephone numbers to the exemption. The two exemptions would then align.

We would ask the Committee to consider striking the word "non-business" from the existing exemption and amending the Alcohol and Drug Counselor exemption to include licensee **telephone numbers** at 32 MRS sec. 6207-B.

I would be happy to attend the Committee's October 24<sup>th</sup> meeting to discuss this matter.

Best,  
Anne Head

*Anne L. Head, Commissioner  
Department of Professional and Financial Regulation*

207 624-6511 (office)  
207 462-2394 (cell)

**Sent:** Wednesday, October 9, 2024 11:47 AM  
**To:** Head, Anne L <Anne.L.Head@maine.gov>  
**Cc:** Davison, Anne <anne.davison@legislature.maine.gov>  
**Subject:** follow up question re Right to Know exception

Good morning Commissioner Head

I hope you are well. I am following up on a question that the Right to Know Subcommittee on Public Record Exceptions has regarding one of the responses OPOR provided pertaining to an existing public records exception. I have attached OPOR's response here. The subcommittee is open to considering OPOR's request that the reference to "nonbusiness" addresses be removed. They did request some more information prior to making that decision. Specifically, they asked if it was possible for OPOR to distinguish between nonbusiness and business addresses when gathering information from a licensee or potential licensee? Also, is there utility to collecting a nonbusiness address or not really? I do note that 32 M.R.S. §7032 does not make any distinction between business and nonbusiness addresses, and that OPOR suggested that this be used as a model.

Thank you for any further information you can provide!

Sam

Samuel Senft, Esq., MPH  
Legislative Analyst  
Office of Policy and Legal Analysis  
Maine State Legislature  
207-287-1670

**STATUTE:** 25 MRSA §2006, sub-§1

**AGENCY:** Department of Public Safety

**CONTACT PERSON:** Paul Cavanaugh

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

*This statute makes confidential all information submitted in application for a concealed handgun permit. We have not had a FOAA request that implicates this exception.*

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

*We support continuing this exception. Personally identifying information, and information used to determine if the applicant has "good moral character" should not be publicly available.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

4. Does your agency recommend changes to this exception?  
We do not recommend any changes.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**§2006. Access to information and proceedings**

**1. Application, refusals and collected information; proceedings.** All applications for a permit to carry concealed handguns and documents made a part of the application, refusals and any information of record collected by the issuing authority during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 2003 and 2005 are confidential and are not public records for the purposes of Title 1, chapter 13, subchapter 1. The applicant may waive this confidentiality by written notice to the issuing authority. All proceedings relating to the issuance, refusal, suspension or revocation of a permit to carry concealed handguns are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant. [PL 2013, c. 54, §1 (NEW).]

**2. Permanent record of permit.** The issuing authority shall make a permanent record of each permit to carry concealed handguns in a suitable book or file kept for that purpose. The record must include the information contained in the permit itself. The record is confidential except that the following information about each permit holder is not confidential and is a public record:

- A. The municipality of residence; [PL 2013, c. 54, §1 (NEW).]
- B. The date the permit was issued; and [PL 2013, c. 54, §1 (NEW).]
- C. The date the permit expires. [PL 2013, c. 54, §1 (NEW).]

This subsection does not limit disclosure of confidential information for criminal justice purposes or permitting purposes to law enforcement officers and issuing authorities. [PL 2013, c. 54, §1 (NEW).]

**SECTION HISTORY**

PL 1985, c. 478, §2 (NEW). RR 1999, c. 2, §28 (COR). PL 2011, c. 298, §11 (AMD). PL 2011, c. 662, §15 (AMD). PL 2013, c. 54, §1 (RPR).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

**PLEASE NOTE:** The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE:** 25 MRSA §2006, sub-§2

**AGENCY:** Department of Public Safety

**CONTACT PERSON:** Paul Cavanaugh

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

This statute protects the information in a concealed handgun permit but for the municipality of the permit holder; the date the permit was issued; and the date it expires. We have not had a FOAA request that implicated this exception.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

*We support continuing this exception to protect people's personal identifying information.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

4. Does your agency recommend changes to this exception?  
We do not recommend any changes.

**Reference # 3**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



**§2006. Access to information and proceedings**

**1. Application, refusals and collected information; proceedings.** All applications for a permit to carry concealed handguns and documents made a part of the application, refusals and any information of record collected by the issuing authority during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 2003 and 2005 are confidential and are not public records for the purposes of Title 1, chapter 13, subchapter 1. The applicant may waive this confidentiality by written notice to the issuing authority. All proceedings relating to the issuance, refusal, suspension or revocation of a permit to carry concealed handguns are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant. [PL 2013, c. 54, §1 (NEW).]

**2. Permanent record of permit.** The issuing authority shall make a permanent record of each permit to carry concealed handguns in a suitable book or file kept for that purpose. The record must include the information contained in the permit itself. The record is confidential except that the following information about each permit holder is not confidential and is a public record:

- A. The municipality of residence; [PL 2013, c. 54, §1 (NEW).]
- B. The date the permit was issued; and [PL 2013, c. 54, §1 (NEW).]
- C. The date the permit expires. [PL 2013, c. 54, §1 (NEW).]

This subsection does not limit disclosure of confidential information for criminal justice purposes or permitting purposes to law enforcement officers and issuing authorities. [PL 2013, c. 54, §1 (NEW).]

**SECTION HISTORY**

PL 1985, c. 478, §2 (NEW). RR 1999, c. 2, §28 (COR). PL 2011, c. 298, §11 (AMD). PL 2011, c. 662, §15 (AMD). PL 2013, c. 54, §1 (RPR).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE:** 25 MRSA §2929, sub-§§1,2,3,4

**AGENCY:** E-911 Bureau, Public Utilities Commission

**CONTACT PERSON:** FOAA.PUC@maine.gov; Amy Dumeny

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

Most requests that come in are not in the form of a FOA but rather by an email from public or law firms seeking information on certain calls to 911. The information could be 911 call detail records (date, time, location, caller's name, etc.) or actual recordings of 911 calls. We receive approximately 24 or less such inquiries a year.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

The Public Utilities Commission supports these exceptions as they protect the medical information of persons receiving care through 911, protect a victim's identity, prevent re-traumatizing victims, and preserve the administration of criminal justice.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

We believe the statute is sufficiently clear as what is intended to be confidential.

4. Does your agency recommend changes to this exception?

The statute only addresses processes for obtaining information identified as confidential for the administration of criminal justice. There is no process identified for civil litigation.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Public Safety Answering Points—see attached.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Although not part of this section of law, the Public Utilities Commission's Emergency Services Communication Bureau is not entitled to the protections of a Criminal Justice Agency in 16 MRSA Section 804 as it is not by definition a Criminal Justice Agency. This loophole has the potential to jeopardize active criminal investigations.

**§2929. Confidentiality of system information**

**1. Definition.** As used in this section, "confidential information" means the following information as contained in any database, report, audio recording or other record of the bureau or a public safety answering point:

- A. The names, addresses and telephone numbers of persons listed in E-9-1-1 databases; [PL 1997, c. 291, §3 (NEW).]
- B. Names, addresses and telephone numbers that are omitted from a telephone utility directory list at the request of a customer; [PL 2011, c. 623, Pt. D, §1 (AMD).]
- C. Personally identifying information of a caller to a public safety answering point; [PL 2015, c. 153, §1 (AMD).]
- D. Personally identifying information of and any medical information about a person receiving emergency services through the E-9-1-1 system; or [PL 2015, c. 153, §1 (AMD).]
- E. Personally identifying information of any 3rd party, including, but not limited to, a minor, given during a telephone call to a public safety answering point. [PL 2015, c. 153, §1 (NEW).]

For the purposes of this subsection, "personally identifying information" means any information that directly or by reasonable inference might disclose the identity of or personal information about a specific person or persons, including, but not limited to, a person's name, home address, telephone number, mailing address, e-mail address, date of birth, physical residence location, approximate physical location, global positioning system coordinate location information and social security number. "Personally identifying information" does not include the name, title, official agency contact information or, when applicable, official agency identifying number of a public employee involved in a response to an emergency call in the course of carrying out the public employee's official duties.

For the purposes of this subsection, "medical information" includes, but is not limited to, any information revealing or concerning a person's injury or injuries, physical health status, mental health status, medication use, medical history or medical treatment. [PL 2015, c. 153, §1 (AMD).]

**2. Confidentiality.** Confidential information may not be utilized for commercial purposes and may not be disclosed in any manner except as follows:

- A. A public safety answering point may disclose confidential information to public or private safety agencies and emergency responders for purposes of processing emergency calls and providing emergency services; [PL 1997, c. 291, §3 (NEW).]
- B. A public safety answering point may disclose confidential information to a criminal justice agency, as defined in Title 16, section 803, subsection 4, for the purposes of the administration of criminal justice, as defined in Title 16, section 803, subsection 2, and the administration of juvenile justice, as defined in Title 15, section 3003, subsection 1-A related to a 9-1-1 call; [PL 2021, c. 365, §29 (AMD); PL 2021, c. 365, §37 (AFF).]
- C. A public safety answering point may disclose confidential information to designees of the bureau director for the purpose of system maintenance and quality control; and [PL 1997, c. 291, §3 (NEW).]
- D. The bureau director may disclose confidential information to public safety answering points, public or private safety agencies, emergency responders or others within the E-9-1-1 system to the extent necessary to implement and manage the E-9-1-1 system. [PL 1997, c. 291, §3 (NEW).]

Confidential information that is required to be disclosed to providers of emergency services and providers of emergency support services pursuant to 47 United States Code, Section 222(g) remains subject to the confidentiality provisions of this section, and a provider of emergency services and

emergency support services that acquires such confidential information pursuant to that provision of federal law may use the information solely for the purposes of delivering or assisting in the delivery of emergency notification services as defined in 47 United States Code, Section 222(h)(6). System databases, including, but not limited to, those disclosed pursuant to 47 United States Code, Section 222(g), remain the property of the bureau pursuant to section 2926, subsection 6. The name, address and telephone number of any person to whom any outgoing emergency notification call is made using confidential information acquired pursuant to 47 United States Code, Section 222(g) are confidential and may not be disclosed except as provided in this section.

[PL 2021, c. 365, §29 (AMD); PL 2021, c. 365, §37 (AFF).]

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

[PL 2011, c. 662, §16 (AMD).]

**4. Audio recordings of 9-1-1 calls; confidential.** Audio recordings of 9-1-1 calls are confidential and may not be disclosed except as provided in this subsection. Except as provided in subsection 2, information contained in the audio recordings is public information and must be disclosed in transcript form in accordance with subsection 3. Subject to all the requirements of subsection 2, the bureau or a public safety answering point may disclose audio recordings of 9-1-1 calls in the following circumstances:

A. To persons within the E-9-1-1 system to the extent necessary to implement and manage the E-9-1-1 system; [PL 1997, c. 291, §3 (NEW).]

B. To a criminal justice agency, as defined in Title 16, section 803, subsection 4, for the purposes of the administration of criminal justice, as defined in Title 16, section 803, subsection 2, and the administration of juvenile justice, as defined in Title 15, section 3003, subsection 1-A, related to a 9-1-1 call; [PL 2021, c. 365, §30 (AMD); PL 2021, c. 365, §37 (AFF).]

B-1. Directly to the clerk's office of a court presiding over a protection from abuse or protection from harassment action if a party in the action made one or more 9-1-1 calls relevant to the action and that party, or that party's attorney, contacts the custodian of the audio recordings of the call or calls and requests that the recordings be forwarded to that clerk's office for use in a hearing on the complaint for protection from abuse or complaint for protection from harassment. At its discretion, the court presiding over the action may permit the parties to the action, and their attorneys if the parties are represented, to access the recordings and, on a finding of good cause, may permit copies of the recordings to be provided to the parties and their attorneys if the parties are represented. In making a request for recordings pursuant to this paragraph, the party making the request, or that party's attorney, shall provide to the custodian of the audio recordings the names of the parties to the protection from abuse or protection from harassment action, the name of the court presiding over the action and the docket number of the action. The request must be made in writing, including, but not limited to, by electronic mail, and must be made so as to provide a reasonable amount of time for the custodian to search for, retrieve and send the recordings to the clerk's office of the presiding court. The recordings must be sent in a format used by the custodian of the recordings and the courts; [PL 2019, c. 339, §7 (AMD).]

C. To designees of the bureau director for the purpose of system maintenance and quality control; [PL 2015, c. 153, §3 (AMD).]

C-1. To a person accused of a crime or that person's agent or attorney for trial and sentencing purposes if authorized by:

- (1) The responsible prosecutorial office or prosecutor; or
- (2) A rule or order of a court of competent jurisdiction.

As used in this paragraph, "agent" means a licensed professional investigator or an expert witness, or a parent, foster parent or guardian if the accused person has not attained 18 years of age; and [PL 2015, c. 153, §4 (NEW).]

D. In accordance with an order issued on a finding of good cause by a court of competent jurisdiction. [PL 1997, c. 291, §3 (NEW).]  
[PL 2021, c. 365, §30 (AMD); PL 2021, c. 365, §37 (AFF).]

**5. Unlisted telephone numbers.** The name and address associated with the number of a telephone company customer with an unlisted telephone number may be furnished to the E-9-1-1 system for processing a request for E-9-1-1 services from that number and for the provision of emergency services resulting from the request.  
[PL 1997, c. 291, §3 (NEW).]

**6. Penalty for disseminating information.** Knowingly disclosing confidential information in violation of subsection 2 or knowingly disclosing audio recordings of 9-1-1 calls in violation of subsection 4 is a Class E crime.  
[PL 2019, c. 339, §8 (AMD).]

#### SECTION HISTORY

PL 1997, c. 291, §3 (NEW). PL 2003, c. 124, §1 (AMD). PL 2007, c. 209, §6 (AMD). PL 2011, c. 623, Pt. D, §1 (AMD). PL 2011, c. 662, §16 (AMD). PL 2015, c. 153, §§1-4 (AMD). PL 2019, c. 84, §1 (AMD). PL 2019, c. 339, §§6-8 (AMD). PL 2021, c. 365, §§29, 30 (AMD). PL 2021, c. 365, §37 (AFF).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.





**STATUTE:** 25 MRSA §2957

**AGENCY:** Maine Drug Enforcement Agency, Department of Public Safety

**CONTACT PERSON:** Paul Cavanaugh

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

The public records exception is applied both directly by the Maine Drug Enforcement Agency (MDEA) and through coordination with the Office of the Attorney General. The exception, 25 M.R.S. §2957, provides that all investigative records of the agency are confidential. The exception is either cited or a relevant consideration in almost every release of records by MDEA outside of the criminal discovery process that is set forth in the Maine Rules of Unified Criminal Procedure. In the specific context of the Freedom of Access Act, our records indicate that of the 21 requests since 2020, it has been cited in five responses.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

MDEA supports the continuation of this exception. Although all law enforcement intelligence and investigative record information is subject to limited dissemination pursuant to 16 M.R.S. §804, the additional protections provided by the statutory confidentiality in 25 M.R.S. §2957 are important to the work done by MDEA. This is true in several different respects. The flow of information is essential to the effective investigation of drug crimes. The confidentiality of investigative records of the agency

provides an important protection to those who are willing to provide information to MDEA, as any records of their cooperation can only be released in the context of a specific prosecution and subject to protective orders by the court. Confidentiality also protects those never charged with a crime. In the course of their work, MDEA agents will often receive information that individuals are involved in drug trafficking and other criminal activity. That initial information can provide the basis for an investigation and eventual prosecution if sufficient evidence is obtained. However, in other instances that initial information might not be able to be corroborated or there may be insufficient evidence to prosecute. As written, 25 M.R.S. §2957 ensures that unverified information and information from investigations that do not result in criminal charges remains confidential. Finally, given the subject matter of MDEA investigations, namely illegal drugs, agents often interact and interview individuals with substance use disorder. Interviews may include sensitive information about that person's substance use disorder, prior trauma, other personal information, as well as information about the subsistence use of other individuals. The current exception provides protection against the dissemination of this information.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

None that we are aware of.

4. Does your agency recommend changes to this exception?

None at this time.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

By statute, most MDEA cases are prosecuted of the Office of the Attorney General, making that office a relevant stakeholder. The best point of contact would be AAG John Risler, who can be reached at 207-626-8559 or [john.risler@maine.gov](mailto:john.risler@maine.gov).

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**§2957. Confidentiality**

Notwithstanding any provision of law to the contrary, the investigative records of the agency are confidential. [PL 2021, c. 36, §19 (AMD).]

**SECTION HISTORY**

PL 1987, c. 411, §5 (NEW). PL 1991, c. 837, §B15 (AMD). PL 1991, c. 841, §13 (AMD). PL 1999, c. 790, §A33 (RPR). PL 2011, c. 662, §17 (AMD). PL 2021, c. 36, §19 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE:** 25 MRSA §4202, sub-§1

**AGENCY:** Department of Public Safety

**CONTACT PERSON:** Paul Cavanaugh

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

*The first ever FOAA request for critical incident debriefing records was received during the overwhelming requests for records relating to the mass shooting in Lewiston. The request was denied with reference to this statute.*

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

*The continuation of this exception is critical for law enforcement officers. Critical incident debriefing supports first responders and lets them speak freely about the incident and their response. If these records were able to be made public, it would have a chilling effect on sharing such personal information.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

*With only one request, no problems have been identified.*

4. Does your agency recommend changes to this exception?

*No changes recommended.*

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
  
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**§4202. Critical incident stress management teams**

**1. Information confidential.** Except as provided in subsection 2, all proceedings, communications and records, including, but not limited to, information concerning the identity of a person seeking or being furnished assistance, connected in any way with the work of a critical incident stress management team, including critical incident stress management peer support persons, are confidential and are not subject to compulsory legal process or otherwise discoverable or admissible in evidence in any civil action unless the confidentiality is waived by the affected person. Statistical data not identifying a person seeking the assistance of a critical incident stress management team must be made available for statistical evaluation and may not be made available for any other purpose. [PL 2019, c. 89, §6 (AMD).]

**2. Mandatory disclosure of information.** Unless protected by a privilege of law recognized by this State, a member of a critical incident stress management team must disclose to appropriate federal, state or local government agencies or law enforcement agencies the following types of information:

- A. An admission by a person seeking the assistance of the critical incident stress management team that the person has committed a crime; [PL 2009, c. 289, §1 (NEW).]
- B. A disclosure of information by a person seeking the assistance of a critical incident stress management team that must be reported pursuant to any applicable law; or [PL 2009, c. 289, §1 (NEW).]
- C. A disclosure of information by a person seeking the assistance of a critical incident stress management team that would lead one to reasonably think that the person seeking assistance is a danger to that person or to another person. [PL 2009, c. 289, §1 (NEW).]

Information disclosed under this subsection is no longer confidential unless it is otherwise designated confidential by statute. [PL 2009, c. 289, §1 (NEW).]

**SECTION HISTORY**

PL 2009, c. 289, §1 (NEW). PL 2019, c. 89, §6 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

**PLEASE NOTE:** The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.





**STATUTE:** 26 MRSA §3

**AGENCY:** Department of Labor

**CONTACT PERSON:** FOAA.DOL@maine.gov, Kimberly Smith

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

*Agency Response: 26 MRSA §3 exempts "...all information and reports received by the director..." from FOA. The director in this reference is the Director of the Bureau of Labor Standards. Information and reports submitted largely fall under investigations of labor law or workplace safety and health. The Department receives 2-3 requests annually for information that are subsequently denied due to this exemption.*

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

*Agency Response: The Department supports continuation of this exception. Maintaining the confidentiality of individuals and information provided during an investigation is critical for continued participation in agency investigations and for preventing retaliation or other actions against individuals who participated.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

*Agency Response: The statute is clear and no discrepancies are noted.*

4. Does your agency recommend changes to this exception?

*Agency Response: No.*

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

*Agency Response: Stakeholders are the Department, Office of the Attorney General, and the public at large.*

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

*Agency Response: None.*

**§3. Confidentiality of records**

**1. Confidential records.** Except as provided in subsections 2 and 3, all information and reports received by the director or the director's authorized agents under this Title are confidential for the purposes of Title 1, section 402, subsection 3, paragraph A.  
[PL 2015, c. 250, Pt. C, §2 (NEW).]

**2. Exceptions.** Reports of final bureau action taken under the authority of this Title are public records for the purposes of Title 1, chapter 13, subchapter 1.  
[PL 2015, c. 250, Pt. C, §2 (NEW).]

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

A. Information and reports to other government agencies if the director believes that the information will serve to further the protection of the public or assist in the enforcement of local, state and federal laws; and [PL 2015, c. 250, Pt. C, §2 (NEW).]

B. Information and records pertaining to the workforce, employment patterns, wage rates, poverty and low-income patterns, economically distressed communities and regions and other similar information and data to the Department of Administrative and Financial Services and the Department of Economic and Community Development for the purposes of analysis and evaluation, measuring and monitoring poverty and economic and social conditions throughout the State, and promoting economic development. [PL 2021, c. 293, Pt. A, §43 (RPR).]  
[PL 2021, c. 293, Pt. A, §43 (AMD).]

**SECTION HISTORY**

PL 1971, c. 620, §13 (AMD). PL 1987, c. 534, §§B14,B23 (AMD). PL 1997, c. 132, §1 (AMD). PL 2011, c. 655, Pt. DD, §10 (AMD). PL 2011, c. 655, Pt. DD, §24 (AFF). PL 2015, c. 250, Pt. C, §2 (RPR). PL 2019, c. 343, Pt. D, §13 (AMD). PL 2019, c. 343, Pt. IIII, §7 (AMD). PL 2021, c. 293, Pt. A, §43 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE:** 26 MRSA §43

**AGENCY:** Department of Labor

**CONTACT PERSON:** FOAA.DOL@maine.gov, Kimberly Smith

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

*Agency Response: 26 MRSA §43 states that "...names of individuals, firms or corporations supplying the information called for by this section may not be used unless by written permission, such information being confidential and not for the purpose of disclosing personal affairs."*

*This section refers specifically to excluding this information from reports of the Bureau of Labor Standards, unless permission is specifically granted. This section does not specifically exempt the information from FOA, although the information would be exempted under §3.*

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

*Agency Response: The Department supports continuation of this exception. Maintaining the confidentiality of individuals and information provided during an investigation is critical for continued participation in agency investigations and for preventing retaliation or other actions against individuals who participated.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

*Agency Response: The statute is clear and no discrepancies are noted.*

4. Does your agency recommend changes to this exception?

*Agency Response: No*

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

*Agency Response: Stakeholders are the Department, Office of the Attorney General, and the public at large.*

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

*Agency Response: None.*

**§43. Facts and statistics; seal; testimony; sources confidential**

The director may furnish a written or printed list of interrogatories for the purpose of gathering such facts and statistics as are contemplated, to any person, or the proper officer of any corporation operating within the State, and may require full and complete answers thereto under oath. The director shall have a seal, and may take and preserve testimony, issue subpoenas, administer oaths and examine witnesses under oath in all matters relating to the duties required of the bureau. Such testimony must be taken in some suitable place in the vicinity to which the testimony is applicable. Witnesses summoned and testifying before the director must be paid, from any funds at the disposal of the bureau, the same fees as witnesses before the Superior Court. In the report, except safety and health reports, names of individuals, firms or corporations supplying the information called for by this section may not be used unless by written permission, such information being confidential and not for the purpose of disclosing personal affairs. [PL 2013, c. 473, §1 (AMD).]

**SECTION HISTORY**

PL 1971, c. 620, §13 (AMD). PL 2013, c. 473, §1 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.





**STATUTE:** 26 MRSA §665, sub-§1

**AGENCY:** Department of Labor

**CONTACT PERSON:** FOAA.DOL@maine.gov, Kimberly Smith

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

*Agency Response: 26 MRSA §665 sub-§1 states that "All information received is considered confidential and may not be divulged to any other person or agency, except as may be necessary for the enforcement of this subchapter." This section refers specifically to information obtained through inspection of employer payroll records by the Bureau of Labor Standards.*

*This section does not specifically exempt the information from FOA, although the information would likely be exempted under §3.*

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

*Agency Response: The Department supports continuation of this exception. Maintaining the confidentiality of individuals and information provided during an investigation is critical for continued participation in agency investigations and for preventing retaliation or other actions against individuals who participated.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOIA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

*Agency Response: The statute is clear and no discrepancies are noted.*

4. Does your agency recommend changes to this exception?

*Agency Response: No.*

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

*Agency Response: Stakeholders are the Department, Office of the Attorney General, and the public at large.*

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

*Agency Response: None.*

**§665. Powers and duties of commissioner**

**1. Examination of records, books; copies.** Every employer subject to this subchapter shall keep a true and accurate record of the hours worked by each employee and of the wages paid, such records to be preserved by the employer for a period of at least 3 years, and shall furnish to each employee with each payment of wages a statement that clearly shows the date of the pay period, the hours, total earnings and itemized deductions. An employer making payment by direct deposit or other means of electronic transfer shall provide each employee with an accurate record of the transfer, including the date of the pay period, the hours, total earnings and itemized deductions, when the transfer is made. If the record is provided in an electronic format the employer shall provide a method by which the employee may have ready access to the information and print it without cost to the employee. The director or the director's authorized representative may, and upon written complaint shall have authority to enter the place of business or employment of any employer or employees in the State, as defined in section 663, for the purpose of examining and inspecting such records and copy any or all of such records as the director or the director's authorized representative determines necessary or appropriate. All information received is considered confidential and may not be divulged to any other person or agency, except as may be necessary for the enforcement of this subchapter.

[PL 2005, c. 89, §2 (AMD).]

**2. Rules.** The director may make and adopt from time to time, pursuant to Title 5, chapter 375, subchapter 2-A, such rules, not inconsistent with this subchapter, as the director considers appropriate or necessary for the proper administration and enforcement of this subchapter. The rules affecting any particular class of employees and employers must be made and adopted only after notice and opportunity to be heard to those employees and employers affected.

[RR 2023, c. 2, Pt. E, §24 (COR).]

**SECTION HISTORY**

PL 1965, c. 410, §6 (AMD). PL 1967, c. 466, §6 (AMD). PL 1971, c. 620, §13 (AMD). PL 1977, c. 694, §465 (AMD). PL 2005, c. 89, §2 (AMD). RR 2023, c. 2, Pt. E, §24 (COR).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



*[Review needed by RTKAC Subcommittee]*

**STATUTE:** 26 MRSA §685, sub-§3

**AGENCY:**

**CONTACT PERSON:**

**RETURN BY: September 20, 2024**

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



**§685. Action taken on substance use tests**

Action taken by an employer on the basis of a substance use test is limited as provided in this section. [PL 2017, c. 407, Pt. A, §109 (AMD).]

**1. Before receipt of test results.** An employer may suspend an employee with full pay and benefits or may transfer the employee to another position with no reduction in pay or benefits while awaiting an employee's test results. [PL 1989, c. 536, §§1, 2 (NEW); PL 1989, c. 604, §§2, 3 (AFF).]

**2. Use of confirmation test results.** This subsection governs an employer's use of confirmed positive results and an employee's or applicant's refusal to submit to a test requested or required by an employer in compliance with this subchapter.

A. Subject to any limitation of the Maine Human Rights Act or any other state law or federal law, an employer may use a confirmed positive result or refusal to submit to a test as a factor in any of the following decisions:

- (1) Refusal to hire an applicant for employment or refusal to place an applicant on a roster of eligibility;
- (2) Discharge of an employee;
- (3) Discipline of an employee; or
- (4) Change in the employee's work assignment. [PL 1995, c. 324, §7 (AMD).]

A-1. An employer who tests a person as an applicant and employs that person prior to receiving the test result may take no action on a positive result except in accordance with the employee provisions of the employer's approved policy. [PL 1995, c. 324, §8 (NEW).]

B. Before taking any action described in paragraph A in the case of an employee who receives an initial confirmed positive result, an employer shall provide the employee with an opportunity to participate for up to 6 months in a rehabilitation program designed to enable the employee to avoid future use of a substance and to participate in an employee assistance program, if the employer has such a program. The employer may take any action described in paragraph A if the employee receives a subsequent confirmed positive result from a test administered by the employer under this subchapter. [PL 2017, c. 407, Pt. A, §109 (AMD).]

C. If the employee chooses not to participate in a rehabilitation program under this subsection, the employer may take any action described in paragraph A. If the employee chooses to participate in a rehabilitation program, the following provisions apply.

(1) If the employer has an employee assistance program that offers counseling or rehabilitation services, the employee may choose to enter that program at the employer's expense. If these services are not available from an employer's employee assistance program or if the employee chooses not to participate in that program, the employee may enter a public or private rehabilitation program.

(a) Except to the extent that costs are covered by a group health insurance plan, the costs of the public or private rehabilitation program must be equally divided between the employer and employee if the employer has more than 20 full-time employees. This requirement does not apply to municipalities or other political subdivisions of the State or to any employer when the employee is tested because of the alcohol and controlled substance testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V. If necessary, the employer shall assist in financing the cost share of the employee through a payroll deduction plan.

(b) Except to the extent that costs are covered by a group health insurance plan, an employer with 20 or fewer full-time employees, a municipality or other political subdivision of the State is not required to pay for any costs of rehabilitation or treatment under any public or private rehabilitation program. An employer is not required to pay for the costs of rehabilitation if the employee was tested because of the alcohol and controlled substance testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V.

(2) An employer may not take any action described in paragraph A while an employee is participating in a rehabilitation program, except as provided in subparagraph (2-A) and except that an employer may change the employee's work assignment or suspend the employee from active duty to reduce any possible safety hazard. Except as provided in subparagraph (2-A), an employee's pay or benefits may not be reduced while an employee is participating in a rehabilitation program, provided that the employer is not required to pay the employee for periods in which the employee is unavailable for work for the purposes of rehabilitation or while the employee is medically disqualified. The employee may apply normal sick leave and vacation time, if any, for these periods.

(2-A) A rehabilitation or treatment provider shall promptly notify the employer if the employee fails to comply with the prescribed rehabilitation program before the expiration of the 6-month period provided in paragraph B. Upon receipt of this notice, the employer may take any action described in paragraph A.

(3) Except as provided in divisions (a) and (b), upon successfully completing the rehabilitation program, as determined by the rehabilitation or treatment provider after consultation with the employer, the employee is entitled to return to the employee's previous job with full pay and benefits unless conditions unrelated to the employee's previous confirmed positive result make the employee's return impossible. Reinstatement of the employee may not conflict with any provision of a collective bargaining agreement between the employer and a labor organization that is the collective bargaining representative of the unit of which the employee is or would be a part. If the rehabilitation or treatment provider determines that the employee has not successfully completed the rehabilitation program within 6 months after starting the program, the employer may take any action described in paragraph A.

(a) If the employee who has completed rehabilitation previously worked in an employment position subject to random or arbitrary testing under an employer's written policy, the employer may refuse to allow the employee to return to the previous job if the employer believes that the employee may pose an unreasonable safety hazard because of the nature of the position. The employer shall attempt to find suitable work for the employee immediately after refusing the employee's return to the previous position. A reduction may not be made in the employee's previous benefits or rate of pay while the employee is awaiting reassignment to work or working in a position other than the previous job. The employee must be reinstated to the previous position or to another position with an equivalent rate of pay and benefits and with no loss of seniority within 6 months after returning to work in any capacity with the employer unless the employee has received a subsequent confirmed positive result within that time from a test administered under this subchapter or unless conditions unrelated to the employee's previous confirmed positive test result make that reinstatement or reassignment impossible. Placement of the employee in suitable work and reinstatement may not conflict with any provision of a collective bargaining agreement between the employer and a labor organization that is the collective bargaining representative of the unit of which the employee is or would be a part.

(b) Notwithstanding division (a), if an employee who has successfully completed rehabilitation is medically disqualified, the employer is not required to reinstate the



employee or find suitable work for the employee during the period of disqualification. The employer is not required to compensate the employee during the period of disqualification. Immediately after the employee's medical disqualification ceases, the employer's obligations under division (a) attach as if the employee had successfully completed rehabilitation on that date. [PL 2017, c. 407, Pt. A, §109 (AMD).]

D. This subsection does not require an employer to take any disciplinary action against an employee who refuses to submit to a test, receives a single or repeated confirmed positive result or does not choose to participate in a rehabilitation program. This subsection is intended to set minimum opportunities for an employee with a substance use problem to address the problem through rehabilitation. An employer may offer additional opportunities, not otherwise in violation of this subchapter, for rehabilitation or continued employment without rehabilitation. [PL 2017, c. 407, Pt. A, §109 (AMD).]  
[PL 2017, c. 407, Pt. A, §109 (AMD).]

**3. Confidentiality.** This subsection governs the use of information acquired by an employer in the testing process.

A. Unless the employee or applicant consents, all information acquired by an employer in the testing process is confidential and may not be released to any person other than the employee or applicant who is tested, any necessary personnel of the employer and a provider of rehabilitation or treatment services under subsection 2, paragraph C. This paragraph does not prevent:

- (1) The release of this information when required or permitted by state or federal law, including release under section 683, subsection 8, paragraph D; or
- (2) The use of this information in any grievance procedure, administrative hearing or civil action relating to the imposition of the test or the use of test results. [PL 1989, c. 536, §§1, 2 (NEW); PL 1989, c. 604, §§2, 3 (AFF).]

B. Notwithstanding any other law, the results of any substance use test required, requested or suggested by any employer may not be used in any criminal proceeding. [PL 2017, c. 407, Pt. A, §109 (AMD).]  
[PL 2017, c. 407, Pt. A, §109 (AMD).]

#### SECTION HISTORY

PL 1989, c. 536, §§1,2 (NEW). PL 1989, c. 604, §§2,3 (AMD). PL 1989, c. 832, §§12,13 (AMD). PL 1995, c. 324, §§7,8 (AMD). PL 1995, c. 344, §1 (AMD). PL 2003, c. 547, §3 (AMD). PL 2017, c. 407, Pt. A, §109 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE:** 26 MRSA §850-D, sub-§4

**AGENCY:** Department of Labor

**CONTACT PERSON:** FOAA.DOL@maine.gov, Kimberly Smith

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

*Agency Response: This Section states: "Any medical or health information required under this section must be treated as confidential and may not be disclosed except with permission from the covered individual who provided it unless disclosure is otherwise required by law. Nothing in this section may be construed to compel a health care provider to provide any information for certification that would be in violation of Section 1177 of the federal Social Security Act, 42 United States Code, Section 1320d-6."*

*This is newly enacted legislation and has no information that would yet meet this criteria, and no requests for such information.*

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

*Agency Response: The Department supports continuation of this exception. Maintaining the confidentiality of medical records and health care information is a fundamental expectation.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

*Agency Response: The statute is clear and no discrepancies are noted.*

4. Does your agency recommend changes to this exception?

*Agency Response: No*

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

*Agency Response: Stakeholders are the Department, Office of the Attorney General, and the public at large.*

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

*Agency Response: None.*

**§850-D. Applications and claims for benefits**

**1. Procedures and forms.** The administrator shall establish reasonable procedures and forms for filing claims for family leave benefits and medical leave benefits under this subchapter and shall specify what supporting documentation is necessary to support a claim for benefits, including any documentation required from a health care provider for proof of a serious health condition and any documentation required by the administrator with regard to a claim for safe leave or qualifying exigency leave.

[PL 2023, c. 412, Pt. AAA, §7 (NEW).]

**2. Filing of application.** An individual may file an application for family leave benefits or medical leave benefits no more than 60 days before the anticipated start date of family leave and medical leave and no more than 90 days after the start date of family leave and medical leave. The administrator shall waive the 90-day filing deadline for good cause. The administrator shall institute forms and procedures that are not unduly burdensome to an individual claiming benefits.

[PL 2023, c. 412, Pt. AAA, §7 (NEW).]

**3. Notification of employer.** The administrator shall notify the relevant employer within 5 business days of a claim being filed pursuant to this subchapter.

[PL 2023, c. 412, Pt. AAA, §7 (NEW).]

**4. Confidentiality.** Any medical or health information required under this section must be treated as confidential and may not be disclosed except with permission from the covered individual who provided it unless disclosure is otherwise required by law. Nothing in this section may be construed to compel a health care provider to provide any information for certification that would be in violation of Section 1177 of the federal Social Security Act, 42 United States Code, Section 1320d-6.

[PL 2023, c. 412, Pt. AAA, §7 (NEW).]

**5. Ineligibility.** A covered individual is not eligible to receive family leave benefits or medical leave benefits if the administrator finds, through a process established by rule, that the covered individual, for the purpose of obtaining these benefits, has willfully made a false statement or misrepresentation regarding a material fact or has willfully withheld a material fact concerning the facts required to be certified pursuant to this section. The department shall establish a process by rule for the determination of eligibility under this section, including a grievance process for a covered individual determined to be ineligible.

[PL 2023, c. 412, Pt. AAA, §7 (NEW).]

**SECTION HISTORY**

PL 2023, c. 412, Pt. AAA, §7 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE:** 26 MRSA §1047

**AGENCY:** Department of Labor

**CONTACT PERSON:** FOAA.DOL@maine.gov, Kimberly Smith

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

*Agency Response: This section states: "All information transmitted to the bureau, the commission or its duly authorized representatives pursuant to this chapter is absolutely privileged and may not be made the subject matter or basis in any action of slander or libel in any court in this State. The privileged nature of any such information may not limit or affect the use of that information in any prosecution or action to enforce Title 39-A, section 324."*

*This section restricts the use of information and records provided to the Bureau of Unemployment Compensation, including wage records, employment actions and status, and benefit claim records. FOA requests for this information are rare.*

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

*Agency Response: The Department supports continuation of this exception. Maintaining the confidentiality of personnel actions, wage information of private employers and their workers, and benefit claim information, and restricting the use of such information, is a fundamental expectation.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

*Agency Response: The statute is clear and no discrepancies are noted.*

4. Does your agency recommend changes to this exception?

*Agency Response: No.*

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

*Agency Response: Stakeholders are the Department, Office of the Attorney General, and the public at large.*

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

*Agency Response: None.*



**§1047. Information privileged**

All information transmitted to the bureau, the commission or its duly authorized representatives pursuant to this chapter is absolutely privileged and may not be made the subject matter or basis in any action of slander or libel in any court in this State. The privileged nature of any such information may not limit or affect the use of that information in any prosecution or action to enforce Title 39-A, section 324. [PL 1991, c. 885, Pt. E, §36 (AMD); PL 1991, c. 885, Pt. E, §47 (AFF).]

**SECTION HISTORY**

PL 1979, c. 579, §7 (AMD). PL 1979, c. 651, §§8,47 (AMD). PL 1987, c. 77, §1 (AMD). PL 1991, c. 885, §E36 (AMD). PL 1991, c. 885, §E47 (AFF).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

**PLEASE NOTE:** The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE:** 26 MRSA §1082, sub-§7

**AGENCY:** Department of Labor

**CONTACT PERSON:** FOAA.DOL@maine.gov, Kimberly Smith

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

*Agency Response: This section states: "Information thus obtained or obtained from any individual pursuant to the administration of this chapter, except to the extent necessary for proper presentation of a claim, must be held confidential and may not be published or opened to public inspection..."*

*This section refers to information obtained by the department through inspection of payroll records and other reports required for processing unemployment benefit claims or calculation of employer contributions. FOA requests for this information are rare.*

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

*Agency Response: The Department supports continuation of this exception. Maintaining the confidentiality of personnel actions, wage information of private employers and their workers, and benefit claim information is a fundamental expectation.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

*Agency Response: The statute is clear and no discrepancies are noted.*

4. Does your agency recommend changes to this exception?

*Agency Response: No.*

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

*Agency Response: Stakeholders are the Department, Office of the Attorney General, and the public at large.*

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

*Agency Response: None.*

**§1082. Powers and duties**

**1. Powers and duties of the commissioner.** Except as otherwise provided, it is the duty of the commissioner to administer this chapter, through an organization to be known as the Bureau of Unemployment Compensation. The commissioner may employ persons, make expenditures, require reports, make investigations and take other actions the commissioner determines necessary or suitable to that end. The commissioner is responsible and possesses the necessary authority for the operation and management of the Bureau of Unemployment Compensation. The commissioner shall determine methods of operational procedures in accordance with the provisions of this chapter. The commissioner may adopt rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, to achieve this purpose. The commissioner may adopt rules with respect to a self-employment assistance program as provided in section 1197. The commissioner shall determine methods of operational procedures in accordance with the provisions of this chapter and by the Maine Administrative Procedure Act, Title 5, chapter 375. The commissioner shall make recommendations for amendments to this chapter that the commissioner determines proper. When the commissioner believes that a change in contribution or benefit rates is necessary to protect the solvency of the fund, the commissioner shall promptly inform the Governor and the Legislature and make recommendations with respect to the change in rates.

[PL 2021, c. 456, §8 (AMD).]

**2. Powers and duties.** In addition to other powers and duties provided in this chapter, the commission may require reports, make investigations and undertake other activities necessary to carry out the duties of the commission. Each member of the commission is entitled to access to any information, memoranda, reports or statistical data that is in the possession of or that has been prepared by a division of the Department of Labor and that relates to the administration of this chapter.

[PL 2021, c. 456, §9 (AMD).]

**3. Publication.** The Commissioner of Labor shall cause to be printed for distribution to the public the text of this chapter, the commission's regulations, the commissioner's annual reports to the Governor and any other material the commissioner or the commission considers relevant and suitable, and shall furnish the same to any person upon application.

The commissioner shall cause to be printed a comprehensive set of Department of Labor internal rules, policies, regulations, memoranda, instructions and other forms used in determining eligibility, payment of benefits and similar issues. The compilation must be indexed conveniently to facilitate its use by the public and easily accessible to the public.

The commissioner shall annually publish data on the content and usage of the fund for not less than the preceding 10 years, including financing, benefit costs, experience rating and contribution rates as applicable. Legislative changes enacted after December 31, 2010 that have an impact on the content or usage of the fund must be disclosed separately for not less than the 5 years after enactment of the change.

[PL 2011, c. 212, §1 (AMD).]

**4. Personnel.** Subject to other provisions of this chapter, the commissioner is authorized to appoint and prescribe the duties and powers of, and fix the compensation of, such officers, accountants, attorneys, experts and other persons as may be necessary in the performance of the commissioner's duties, subject to the Civil Service Law. The commissioner may delegate to any person so appointed such power and authority as is reasonable and proper for the effective administration of this chapter and may in the commissioner's discretion bond any person handling moneys or signing checks under this chapter. On request of the commissioner, the Attorney General shall represent the department, the commission and the State in any court action relating to this chapter or to its administration and enforcement. Special counsel may be retained by the commissioner in accordance with Title 5, section 196, and the special counsel's service and expenses must be paid from the funds provided for the

administration of this chapter. The commissioner may not employ or pay any person who is an officer or committee member of any political party organization. [RR 2023, c. 2, Pt. E, §86 (COR).]

**4-A. Division of Administrative Hearings.** There is established within the Department of Labor the Division of Administrative Hearings to hear and decide appeals from decisions of the deputy as provided by this chapter and any other appeals as the commission or commissioner may require.

A. The division shall be under the direction of the chief administrative hearing officer appointed by the commissioner and subject to the Civil Service Law. The chief administrative hearing officer must be an attorney admitted to practice law in the State. [PL 1987, c. 641, §3 (NEW).]

B. The chief administrative hearing officer shall administer the office, supervise and assign cases to the administrative hearing officers, and preside at hearings as necessary. [PL 1987, c. 641, §3 (NEW).]

C. Administrative hearing officers shall preside at appeal proceedings. These administrative hearing officers shall be under the direction of the chief administrative hearing officer and hired subject to the Civil Service Law. [PL 1987, c. 641, §3 (NEW).]

[PL 1987, c. 641, §3 (NEW).]

**5. Advisory council.**

[PL 2001, c. 352, §13 (RP).]

**6. Employment stabilization.** The Commissioner of Labor may take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

[PL 2001, c. 352, §14 (AMD).]

**7. Records and reports.** Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. These records must be open to inspection and be subject to being copied by the commissioner or the commissioner's authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, that the commissioner considers necessary for the effective administration of this chapter. Information thus obtained or obtained from any individual pursuant to the administration of this chapter, except to the extent necessary for proper presentation of a claim, must be held confidential and may not be published or opened to public inspection, other than to public employees in the performance of their public duties or to any agent of an agency that is under contract with a state or local child-support agency, or to any agent of an agency that is under contract or subcontract with the state employment and job training agency, pursuant to safeguards established by the commissioner, in any manner revealing the individual's or employing unit's identity, but the department shall, upon request, provide to any party to an adjudicatory proceeding information from the records relating to the proceeding. Final decisions of adjudicatory proceedings are available to the public after the names and addresses of claimants and employers are deleted from the decisions. Records, with any necessary authentication of those records, required in the prosecution of any criminal action brought by another state for misrepresentation to obtain benefits under the law of this State must be made available to the agency administering the employment security law of any such state for the purpose of such prosecution.

A. A person who violates this subsection commits a Class E crime. [PL 2003, c. 452, Pt. O, §4 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

B. An agent of an agency that is under contract with a state or local child-support agency, or an agent of an agency that is under contract or subcontract with the state employment and job training agency who discloses any information that is confidential pursuant to this subsection, other than disclosure authorized by this subsection, commits a Class E crime. [PL 2003, c. 452, Pt. O, §4 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[PL 2003, c. 452, Pt. O, §4 (AMD); PL 2003, c. 452, Pt. X, §2 (AFF).]

**8. Oaths and witnesses.** In the discharge of the duties imposed by this chapter, the commissioner, the commission, the chief administrative hearing officer and any duly authorized representative of them shall have power to administer oaths and affirmations, take depositions, certify official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter. Oaths and affirmations required by reason of duties performed pursuant to this chapter may be administered by any of such persons as may be designated for the purpose by the commissioner. In the discharge of the duties imposed by this chapter, the commissioner, the commission, the chief administrative hearing officer or any duly authorized representative of them, when the interests of any interested party demand, may issue commissions to take depositions to any unemployment compensation or employment security official empowered to take such depositions under this chapter or the laws of any other state, for either of the following causes:

- A. When the deponent resides out of, or is absent from, the State;
- B. When the deponent is bound to sea or is about to go out of the State; or
- C. When the deponent is so aged, infirm or sick as to be unable to attend at the place of hearing.

Such depositions shall be taken by written interrogatories to be compiled by the commission or the Division of Administrative Hearings, and the adverse party shall be afforded an opportunity to refute such testimony before a determination is made. The deponent shall be sworn and the deposition shall be signed and sworn to by the deponent before admissible as testimony at a hearing before the Division of Administrative Hearings or the commission.

Subpoenas shall be issued pursuant to Title 5, section 9060.

[PL 1987, c. 641, §4 (AMD).]

**9. Subpoenas.**

[PL 1977, c. 694, §471 (RP).]

**9-A. Refusal to appear.** A person who without just cause fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda and other records, if it is in that person's power to do so, in obedience to a subpoena of the commissioner, the commission, the Division of Administrative Hearings or the duly authorized representative of any of them commits a Class E crime. This crime is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. If a person refuses to obey a subpoena duly issued by the commissioner, the commission, the Division of Administrative Hearings or the duly authorized representative of any of them, any court of this State within the jurisdiction of which the person resides or transacts business has jurisdiction to issue to that person an order requiring the person to appear and produce evidence or testimony, and any failure to obey that order may be punished by the court as contempt of court.

[PL 2003, c. 452, Pt. O, §5 (AMD); PL 2003, c. 452, Pt. X, §2 (AFF).]

**10. Protection against self-incrimination.** No person may be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records before the commissioner, the chief administrative hearing officer or duly authorized representative of either of them, or in obedience to the subpoena of the commission, the chief administrative hearing officer or the duly

authorized representative of either of them in any cause or proceeding before the commission, the chief administrative hearing officer or duly authorized representative of either of them, on the ground that the testimony or evidence, documentary or otherwise, required of that person may tend to incriminate that person or subject that person to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which that person is compelled, after having claimed privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

[PL 1987, c. 641, §6 (AMD).]

**11. State-federal cooperation.** In the administration of this chapter, the commissioner shall cooperate to the fullest extent consistent with this chapter with the Department of Labor; shall make such reports, in such form and containing such information as the Secretary of Labor may from time to time require, and shall comply with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations of the Secretary of Labor governing the expenditure of such sums as may be allotted and paid to this State under Title III of the Social Security Act for the purpose of assisting in the administration of this chapter. Upon request therefor, the commissioner shall furnish to any agency of the United States, charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter. The commissioner may make the state's records relating to the administration of this chapter available to the Railroad Retirement Board and may furnish the Railroad Retirement Board, at the expense of such board, such copies thereof as the Railroad Retirement Board deems necessary for its purposes. The commissioner may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law or employment security law.

[PL 1977, c. 675, §10 (AMD).]

**12. Reciprocal benefit arrangements.** The commissioner shall participate in any arrangements with the appropriate agencies of other states or the Federal Government for the payment of benefits on the basis of combining an individual's wages and employment covered under this chapter and that individual's wages and employment covered under the unemployment compensation or employment security laws of other states that are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and that include provisions for applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under 2 or more state unemployment compensation laws, and avoiding the duplicate use of wages and employment by reason of such combining. The commissioner shall reimburse such state or federal agency for such benefits as may be paid by that agency upon the basis of wages received in employment subject to this chapter or shall receive from such state or federal agency such amounts as may be paid from the fund upon the basis of wages received in employment subject to the laws of such state or of the Federal Government.

The commissioner is authorized to enter into reciprocal agreements with the appropriate agencies of other states or the Federal Government adjusting the collection and payment of contributions by employers with respect to services of individuals not performed wholly within the jurisdiction of this State whereby such services may be agreed upon to be considered for all purposes, if the commissioner so desires, as wholly within, or wholly without, the jurisdiction of this State, notwithstanding any provisions of section 1043, subsection 11.

The commissioner is authorized to make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this chapter as the commissioner considers necessary or appropriate to



facilitate the administration of any unemployment compensation, employment security or public employment service law, and in like manner to accept and utilize information, services and facilities made available to this State by any agency charged with the administration of any such other unemployment compensation, employment security or public employment service law. To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment compensation or employment security laws of any foreign government may be utilized for the taking of claims and the payment of benefits under this chapter, or under a similar law of such government. The commissioner, by agreement with another state or the Federal Government, as provided under Section 303(g) of the federal Social Security Act, may recover any overpayment of benefits paid to any individual under the laws of this State or of another state or under an unemployment benefit program of the Federal Government. Any overpayments subject to this subsection may be deducted from any future benefits payable to the individual under the laws of this State or of another state or under an unemployment program of the Federal Government.

In any case in which under this subsection a claimant is liable to repay any amount to the agency of another state, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency.

[PL 2019, c. 343, Pt. RRR, §1 (AMD).]

**13. Filing payroll reports; penalty.** The commissioner may prescribe rules for the filing of payroll reports for the employing units in the State. Each employing unit shall submit a quarterly payroll report by electronic submission or on forms prescribed by the bureau. These quarterly reports are due in the office of the bureau, or of any duly constituted agent of the bureau, on or before the last day of the month following the close of the calendar quarter for which the reports relate. The failure on the part of any employing unit to file the payroll reports within this time frame renders the employing unit liable for a penalty of \$25 or 10% of the tax due, whichever is greater.

In the case of executive, administrative and professional employees, and outside sales representatives, as defined in Part 541 of the Rules and Regulations promulgated under the federal Fair Labor Standards Act of 1938, as amended as of June 30, 1971, the commissioner, upon the request of an employer of those individuals, may approve an alternative method for obtaining from that employer necessary wage information relative to those employees.

[PL 2021, c. 456, §10 (AMD).]

**13-A. Certificate of records of payroll reports as evidence.** Notwithstanding any other provision of law or rule of evidence, for purposes of any prosecution or action to enforce Title 39-A, section 324, a certificate signed by the Director of Unemployment Compensation or a representative of the commissioner duly authorized by the commissioner stating what the payroll report records show must be received in any court in this State as prima facie evidence of any fact stated in the certificate or the records attached to the certificate.

[PL 1991, c. 885, Pt. E, §37 (AMD); PL 1991, c. 885, Pt. E, §47 (AFF).]

**14. Determination of employer or employment; appeal.**

A. The Director of Unemployment Compensation or a representative of the commissioner duly authorized by the commissioner to do so shall determine whether an employing unit is an employer and whether services performed for or in connection with the business of the employing unit constitute employment and shall give written notice of the determination to the employing unit. Unless the employing unit, within 30 calendar days after notification was mailed to its last known address, files an appeal from that determination to the Division of Administrative Hearings, the determination is final. [PL 2017, c. 284, Pt. AAAAA, §1 (AMD).]

B. After a determination has been made under paragraph A, the Director of Unemployment Compensation or a representative of the commissioner may within one year reconsider the determination in the light of additional evidence and make a redetermination and shall give written notice of the redetermination to the employing unit. Unless the employing unit, within 30 calendar days after notification was mailed to its last known address, files an appeal from that redetermination to the Division of Administrative Hearings, the redetermination is final. [PL 2017, c. 284, Pt. AAAAA, §1 (AMD).]

C. [PL 2017, c. 284, Pt. AAAAA, §2 (RP).]

D. The employer or the commissioner may appeal a decision of the Division of Administrative Hearings to the commission, which may affirm, modify or reverse the decision upon review of the record. The commission may hold further hearings or may remand the case to the Division of Administrative Hearings for the taking of additional evidence. The commission shall notify the parties to the proceeding of its findings of fact and decision, and such decision is subject to appeal pursuant to Title 5, section 11001 et seq. In the absence of appeal therefrom, the determination of the commission, together with the record of the proceeding under this subsection, is admissible in any subsequent material proceeding under this chapter, and if supported by evidence, and in the absence of fraud, is conclusive, except as to errors of law, upon any employing unit that was a party to the proceeding under this subsection. [PL 2017, c. 284, Pt. AAAAA, §3 (AMD).]

E. [PL 1977, c. 694, §473 (RP).]

[PL 2017, c. 284, Pt. AAAAA, §§1-3 (AMD).]

#### SECTION HISTORY

PL 1965, c. 381, §7 (AMD). PL 1967, c. 398, §1 (AMD). PL 1967, c. 519 (AMD). PL 1971, c. 538, §§18-20 (AMD). PL 1971, c. 620, §§6-10 (AMD). PL 1975, c. 90 (AMD). PL 1975, c. 771, §286 (AMD). PL 1977, c. 460, §4 (AMD). PL 1977, c. 675, §§6-11 (AMD). PL 1977, c. 694, §§468-473 (AMD). PL 1977, c. 696, §§373,375 (AMD). PL 1979, c. 127, §§160,161 (AMD). PL 1979, c. 515, §§9A-11 (AMD). PL 1979, c. 541, §A181 (AMD). PL 1979, c. 579, §§13-17,44 (AMD). PL 1979, c. 651, §§14-18,45, 47 (AMD). PL 1981, c. 168, §§11-16 (AMD). PL 1981, c. 470, §A145 (AMD). PL 1983, c. 115, §1 (AMD). PL 1983, c. 351, §§8-14 (AMD). PL 1983, c. 489, §14 (AMD). PL 1983, c. 812, §164 (AMD). PL 1983, c. 816, §A21 (AMD). PL 1985, c. 348, §4 (AMD). PL 1985, c. 537 (AMD). PL 1985, c. 785, §B120 (AMD). PL 1987, c. 77, §2 (AMD). PL 1987, c. 338, §4 (AMD). PL 1987, c. 641, §§3-6 (AMD). PL 1989, c. 483, §A49 (AMD). PL 1989, c. 503, §B111 (AMD). PL 1989, c. 878, §A72 (AMD). PL 1991, c. 885, §E37 (AMD). PL 1991, c. 885, §E47 (AFF). PL 1993, c. 312, §1 (AMD). PL 1993, c. 710, §1 (AMD). PL 1995, c. 560, §G11 (AMD). PL 1995, c. 657, §§1,2 (AMD). PL 1995, c. 657, §10 (AFF). PL 1997, c. 687, §1 (AMD). PL 2001, c. 352, §§13,14 (AMD). PL 2003, c. 452, §§O3-5 (AMD). PL 2003, c. 452, §X2 (AFF). PL 2011, c. 212, §1 (AMD). PL 2015, c. 39, §1 (AMD). PL 2017, c. 284, Pt. AAAAA, §§1-3 (AMD). PL 2019, c. 343, Pt. RRR, §1 (AMD). PL 2021, c. 456, §§8-10 (AMD). RR 2023, c. 2, Pt. E, §86 (COR).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE: 26 MRSA §1085**

**AGENCY: Department of Labor, Bureau of Unemployment Compensation**

**CONTACT PERSON: FOAA.DOL@maine.gov, Kimberly Smith**

**RETURN BY: 9/20/2024**

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

*Agency Response: This section states: "All information obtained by the bureau pursuant to this section is confidential and not a public record as defined in Title 1, section 402, subsection 3. The information may be used only for making decisions regarding the suitability of an affected person for new or continued employment with the bureau, to provide services to the bureau under an identified contract or to access federal tax information obtained from the bureau."*

*This section relates to information, such as wage information, employment actions and status, and benefit claim information, received by the Bureau of Unemployment Compensation. Subsection 4 specifically exempts the information from FOA requests, which are rare.*

*There are other references throughout Section 1085 that reference confidentiality, such as those around federal tax information.*

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

*Agency Response: The Department supports continuation of this exception. Maintaining the confidentiality of personnel actions, wage information of private employers and their workers, and benefit claim information is a fundamental expectation.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

*Agency Response: The statute is clear and no discrepancies are noted.*

4. Does your agency recommend changes to this exception?

*Agency Response: No.*

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

*Agency Response: Stakeholders are the Department, Office of the Attorney General, and the public at large.*

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

*Agency Response: None.*

**§1085. Access to federal tax information; background investigation requirements**

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

A. "Affected person" means a person who is:

(1) An applicant for employment with the bureau who will have access to federal tax information as part of that employment;

(2) A contractor for the bureau who provides or is assigned to provide services to the bureau under an identified contract. For the purposes of this subparagraph, "identified contract" means a contract that the Director of Unemployment Compensation determines involves access, or the substantial possibility of access, to the bureau's information technology systems that contain federal tax information;

(3) An employee of the bureau who has or will be given access to federal tax information as part of that employee's employment with the bureau and has not undergone a federal background investigation within the past 10 years; or

(4) An employee or contractor of another state agency, if the bureau determines the duties of that employee or contractor involve access or the substantial possibility of access through the bureau to federal tax information obtained from the United States Internal Revenue Service or the Department of Administrative and Financial Services, Bureau of Revenue Services. [PL 2019, c. 644, §4 (NEW).]

B. "Contractor" includes a contractor's employees and subcontractors and employees of those subcontractors. [PL 2019, c. 644, §4 (NEW).]

C. "Federal tax information" means returns and return information as defined in the United States Internal Revenue Code of 1986, Section 6103(b) that are received directly from the United States Internal Revenue Service or obtained through a secondary source authorized by the Internal Revenue Service and that are subject to the confidentiality protections and safeguarding requirements of the United States Internal Revenue Code of 1986 and corresponding federal regulations and guidance. "Federal tax information" also includes information received as part of the treasury offset program under the authority of the United States Internal Revenue Code of 1986, Section 6103(l)(10) from the United States Department of the Treasury, Bureau of the Fiscal Service. "Federal tax information" does not include information in the possession of the State that is obtained by means wholly from sources independent from the Internal Revenue Service. [PL 2019, c. 644, §4 (NEW).]

[PL 2019, c. 644, §4 (NEW).]

**2. Federal background investigation requirements.** The Bureau of Unemployment Compensation shall perform background investigations for affected persons in accordance with this subsection. A federal background investigation conducted pursuant to this subsection must include fingerprinting and obtaining national criminal history record information from the Federal Bureau of Investigation and must satisfy the background investigation standards established by the United States Internal Revenue Service regarding access to federal tax information.

A. As part of the process of evaluating an affected person for employment with the bureau involving access to federal tax information, a federal background investigation must be conducted before an offer of employment is extended. [PL 2019, c. 644, §4 (NEW).]

B. A federal background investigation for an affected person assigned to provide services to the bureau under an identified contract must be conducted before that affected person begins providing services to the bureau and at least once every 10 years as long as the affected person continues providing services to the bureau. [PL 2019, c. 644, §4 (NEW).]

C. As part of the process of evaluating an affected person for continued employment with the bureau, a federal background investigation must be conducted at least once every 10 years. If an affected person has not been subject to a federal background investigation within 10 years prior to the effective date of this section, a federal background investigation must be conducted within one year of the effective date of this section. [PL 2019, c. 644, §4 (NEW).]

D. A federal background investigation for an affected person who is an employee or contractor of another state agency must be conducted before that affected person is provided access, or the substantial possibility of access, to federal tax information obtained from the bureau and at least once every 10 years as long as the affected person continues to have such access, except that, if the bureau determines that the affected person has been subject to a background investigation that satisfies the background investigation standards established by the United States Internal Revenue Service regarding access to federal tax information within the past 10 years, no further investigations are required under this paragraph for the 10-year period commencing at the time of the federal background investigation. [PL 2019, c. 644, §4 (NEW).]

[PL 2019, c. 644, §4 (NEW).]

**3. Fingerprinting.** An affected person must consent to having fingerprints taken for use in background investigations in accordance with this subsection. The State Police shall take or cause to be taken the affected person's fingerprints and shall forward the fingerprints to the Department of Public Safety, State Bureau of Identification so that the State Bureau of Identification can conduct state and national criminal history record checks for the Bureau of Unemployment Compensation. The State Police may charge the Bureau of Unemployment Compensation for the expenses incurred in processing state and national criminal history record checks. The full fee charged under this subsection must be deposited in a dedicated revenue account for the State Bureau of Identification with the purpose of paying costs associated with the maintenance and replacement of the criminal history record systems. [PL 2019, c. 644, §4 (NEW).]

**4. Confidentiality.** All information obtained by the bureau pursuant to this section is confidential and not a public record as defined in Title 1, section 402, subsection 3. The information may be used only for making decisions regarding the suitability of an affected person for new or continued employment with the bureau, to provide services to the bureau under an identified contract or to access federal tax information obtained from the bureau.

[PL 2019, c. 644, §4 (NEW).]

**5. Affected person's access to criminal history record information.** The bureau shall provide an affected person with access to information obtained pursuant to this section, if requested, by providing a paper copy of the criminal history record information directly to the affected person, but only after the bureau confirms that the affected person is the subject of the record. In addition, the bureau shall publish guidance on requesting such information from the Federal Bureau of Investigation. [PL 2019, c. 644, §4 (NEW).]

**6. Disqualifying offenses; refusal to consent.** The Director of Unemployment Compensation shall review the information obtained under this section and determine whether an affected person has a disqualifying offense that would prohibit authorizing that individual to access federal tax information. Refusal by the affected person to consent to the background investigation requirements under this section is deemed a disqualifying offense.

The following applies to an affected person who has a disqualifying offense:

A. The bureau may not employ or utilize that affected person in a position for which access to federal tax information is required; [PL 2019, c. 644, §4 (NEW).]

B. If the affected person is an employee of the bureau or is assigned to provide services to the bureau under an identified contract and the director of the bureau has authorized the affected person to access federal tax information, the bureau shall terminate that affected person's access and may



remove that affected person from any position that involves access, or the substantial possibility of access, to federal tax information. If the affected person is an employee of the bureau, the bureau shall make a reasonable effort to retain that person as an employee in another position within the bureau that does not require access to federal tax information; and [PL 2019, c. 644, §4 (NEW).]

C. If the affected person is an employee or contractor of another state agency, the bureau shall notify the other agency and the agency shall terminate the affected person's access, or substantial possibility of access, to federal tax information and may remove that affected person from any position that involves such access. If the affected person is an employee of the other agency, the agency shall make a reasonable effort to retain that person as an employee in another position that does not require access to federal tax information [PL 2019, c. 644, §4 (NEW).]

[PL 2019, c. 644, §4 (NEW).]

#### SECTION HISTORY

PL 2019, c. 644, §4 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE: 26 MRSA §1295, sub-§2**

**AGENCY: Department of Labor**

**CONTACT PERSON: FOAA.DOL@maine.gov, Kimberly Smith**

**RETURN BY: 9/20/2024**

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

*Agency Response: This subsection states: "B. The following are not public records as defined in Title 1, section 402, subsection 3 and are confidential and may not be disclosed by the public employer, except as provided in paragraph A: (1) Home addresses, home or personal telephone numbers, personal e-mail addresses and dates of birth of employees; (2) Names of employees within a bargaining unit; and (3) Communications between a bargaining agent and its members." FOA requests are rarely made for this information.*

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

*Agency Response: The Department supports continuation of this exception. Maintaining confidentiality of personal information of state employees is a fundamental expectation.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

*Agency Response: The statute is clear and no discrepancies are noted.*

4. Does your agency recommend changes to this exception?

*Agency Response: No.*

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

*Agency Response: Stakeholders are the Maine Labor Relations Board, the Judicial Branch, the Office of the Attorney General, and the public at large.*

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

*Agency Response: None.*

Ref PZ 7

**§1295. Bargaining agent access**

**1. Bargaining agent access to employees.** Public employers shall provide to a bargaining agent access to members of the bargaining unit that the bargaining agent exclusively represents. Access must include, but is not limited to, the following:

A. The right to meet with individual employees on the premises of the public employer's workplace during the work day to investigate and discuss grievances, workplace-related complaints and other workplace issues; [PL 2019, c. 389, §4 (NEW).]

B. The right to conduct workplace meetings during lunch and other breaks, and before and after the work day, on the public employer's premises to discuss workplace issues, collective bargaining negotiations, the administration of collective bargaining agreements and other matters related to the duties of a bargaining agent and internal bargaining agent matters involving the governance or the business of the bargaining agent; [PL 2019, c. 389, §4 (NEW).]

C. The right to meet with newly hired employees, without charge to the pay or leave time of the employees, for a minimum of 30 minutes or for an amount of time agreed upon by all parties, not later than 10 calendar days after receipt of the information provided pursuant to subsection 2, during new employee orientations or, if the employer does not conduct new employee orientations, at individual or group meetings; and [PL 2019, c. 389, §4 (NEW).]

D. The right to use the e-mail system of a public employer to communicate with bargaining unit members regarding official bargaining agent matters including, but not limited to, elections, meetings and social activities, as long as the use of the e-mail system does not create an unreasonable burden on the public employer's network capabilities or system administration. [PL 2019, c. 389, §4 (NEW).]

[PL 2019, c. 389, §4 (NEW).]

**2. Bargaining agent access to employee information.** Public employers shall provide to a bargaining agent access to information about members of the bargaining unit that the bargaining agent exclusively represents, as follows.

A. The public employer shall provide the following information regarding newly hired judicial employees and, upon request, regarding all other judicial employees to a bargaining agent in spreadsheet file format or another format agreed to by the bargaining agent:

- (1) Name;
- (2) Job title;
- (3) Workplace location;
- (4) Home address;
- (5) Work telephone numbers;
- (6) Home telephone and personal cellular telephone numbers, if known;
- (7) Work e-mail address;
- (8) Personal e-mail address, if known; and
- (9) Date of hire.

For information regarding newly hired judicial employees, the public employer shall provide the information required under this paragraph not later than 30 calendar days after the date a prospective judicial employee accepts an offer of employment or not later than 30 calendar days after the date of hire for all judicial employees. At the request of the bargaining agent, but not more than quarterly, the public employer shall provide the required information for all other judicial employees in the bargaining unit within 30 calendar days. [PL 2023, c. 467, §7 (AMD).]

B. The following are not public records as defined in Title 1, section 402, subsection 3 and are confidential and may not be disclosed by the public employer, except as provided in paragraph A:

- (1) Home addresses, home or personal telephone numbers, personal e-mail addresses and dates of birth of employees;
- (2) Names of employees within a bargaining unit; and
- (3) Communications between a bargaining agent and its members. [PL 2019, c. 389, §4 (NEW).]

This subsection is subject to the dispute resolution process specified in an applicable collective bargaining agreement for a public employee.  
[PL 2023, c. 467, §§7, 8 (AMD).]

**3. Bargaining agent access to government buildings and facilities.** The bargaining agent has the right to use government buildings and other facilities that are owned or leased by government entities to conduct meetings with bargaining unit members regarding bargaining negotiations, the administration of collective bargaining agreements, the investigation of grievances, other workplace-related complaints and issues and internal matters involving the governance or business of the bargaining agent, as long as that use does not interfere with governmental operations. A bargaining agent conducting a meeting in a government building or facility pursuant to this section may be charged for maintenance, security and other costs related to the use of the government building or facility that would not otherwise be incurred by the government entity.  
[PL 2019, c. 389, §4 (NEW).]

**4. Employee may opt out.** After an initial meeting pursuant to subsection 1, paragraph C, an employee may opt out of receiving any further communications from a bargaining agent or allowing a bargaining agent to have any further access to that employee's information described in subsection 2, paragraph A, except for communications related to direct representation of that employee by a bargaining agent.  
[PL 2019, c. 389, §4 (NEW).]

**5. Selling or sharing nonmember data prohibited.** A bargaining agent may not sell or share the information provided in accordance with subsection 2, paragraph A of an employee who is not a member of an employee organization except for the purpose of fulfilling the agent's collective bargaining obligations.  
[PL 2019, c. 389, §4 (NEW).]

Nothing in this section may be construed to limit the terms of a collective bargaining agreement that provide a bargaining agent with greater rights of access to employees than the rights established by this section. [PL 2019, c. 389, §4 (NEW).]

#### SECTION HISTORY

PL 2019, c. 389, §4 (NEW). PL 2023, c. 467, §§7, 8 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

**STATUTE: 27 MRSA §86-B, sub-§1**

**AGENCY: Maine State Museum**

**CONTACT PERSON: Bernard Fishman, bernard.fishman@maine.gov**

**RETURN BY: 9/20/2024**

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

There have been no occasions when this exception has had to be formally applied by the Maine State Museum.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

The Maine State Museum supports the continuation of this exception. It remains an important protection for research projects that have not been completed.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

There have been no problems in applying this exception. The language of the exception is clear.

4. Does your agency recommend changes to this exception?  
No.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

No current stakeholders come to mind in connection with this exception.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**Bernard Fishman, Museum Director, 2 Oct. 2024**



**§86-B. Confidentiality of certain research and personal information**

**1. Draft research and materials.** Museum draft research, publications and exhibit materials, including scientific, archaeological and historical findings, are confidential and not public records for the purposes of Title 1, chapter 13, subchapter 1 until complete and presented to the public. The Museum Director may authorize disclosure before publication or presentation to the public. [PL 2013, c. 205, §1 (NEW).]

**2. Personal history research and materials.** Personal information contained in any record about the individual that is obtained by the Maine State Museum in the course of a historical research project is confidential and not a public record for the purposes of Title 1, chapter 13, subchapter 1 until:

A. The individual authorizes the release of the personal information as a public record; or [PL 2013, c. 205, §1 (NEW).]

B. The death of the individual, except that the Museum Director may, at the request of the individual, designate in writing that personal information about the individual remain confidential for a specified period, not to exceed 25 years after the death of the individual, to protect the privacy of the individual or the privacy of the parent or child of the individual. [PL 2013, c. 205, §1 (NEW).]

[PL 2013, c. 205, §1 (NEW).]

For the purposes of this section, "personal information" means any information about an individual's personal history, including, but not limited to, medical, psychiatric, employment, counseling and other information of a personal or private nature. [PL 2013, c. 205, §1 (NEW).]

**SECTION HISTORY**

PL 2013, c. 205, §1 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

**PLEASE NOTE:** The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE:** 27 MRSA §86-B, sub-§2

**AGENCY:** Maine State Museum

**CONTACT PERSON:** Bernard Fishman, [bernard.fishman@maine.gov](mailto:bernard.fishman@maine.gov)

**RETURN BY:** 9/20/2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

The Maine State Museum has had no applications to seek confidential records. Such records would contain personal medical or similar information regarding named individuals, or constitute ongoing research projects not yet completed for publication or exhibition.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

The Maine State Museum supports the continuation of this exception, as constituting necessary protections for individuals cited in historic records and for the protection of ongoing proprietary research.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

No problems have occurred in the application of this exception, and the language of the exception is clear.

4. Does your agency recommend changes to this exception?

The Maine State Museum does not recommend any changes to this exception.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

The Maine State Museum is not aware of any current stakeholders for whom an evaluation of this exception would be required.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**Bernard Fishman, Museum Director, 2 Oct. 2024**

RA #130

**§86-B. Confidentiality of certain research and personal information**

**1. Draft research and materials.** Museum draft research, publications and exhibit materials, including scientific, archaeological and historical findings, are confidential and not public records for the purposes of Title 1, chapter 13, subchapter 1 until complete and presented to the public. The Museum Director may authorize disclosure before publication or presentation to the public. [PL 2013, c. 205, §1 (NEW).]

**2. Personal history research and materials.** Personal information contained in any record about the individual that is obtained by the Maine State Museum in the course of a historical research project is confidential and not a public record for the purposes of Title 1, chapter 13, subchapter 1 until:

A. The individual authorizes the release of the personal information as a public record; or [PL 2013, c. 205, §1 (NEW).]

B. The death of the individual, except that the Museum Director may, at the request of the individual, designate in writing that personal information about the individual remain confidential for a specified period, not to exceed 25 years after the death of the individual, to protect the privacy of the individual or the privacy of the parent or child of the individual. [PL 2013, c. 205, §1 (NEW).]

[PL 2013, c. 205, §1 (NEW).]

For the purposes of this section, "personal information" means any information about an individual's personal history, including, but not limited to, medical, psychiatric, employment, counseling and other information of a personal or private nature. [PL 2013, c. 205, §1 (NEW).]

**SECTION HISTORY**

PL 2013, c. 205, §1 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE:** 28-A MRSA §755

**AGENCY:** Bureau of Alcoholic Beverages and Lottery Operations

**CONTACT PERSON:** FOArequest.DAFS@Maine.gov, Anya Trundy  
(anya.trundy@maine.gov)

**RETURN BY:** 9/20/2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.





Reference #1 33

**Senft, Samuel**

---

**From:** Trundy, Anya <Anya.Trundy@maine.gov>  
**Sent:** Monday, September 30, 2024 4:09 PM  
**To:** Davison, Anne  
**Cc:** Senft, Samuel  
**Subject:** RE: Right to Know Advisory Committee Review of Public Records Exceptions

**This message originates from outside the Maine Legislature.**

Hi Anne,

Neither BHR nor BABLO got back to me with any comment on their respective section under review. I think that's primarily indicative of the fact that they don't have any feedback.

Having reviewed the statutory sections myself, I would recommend maintaining the status quo. Neither are invoked with any great frequency, but both are reasonable and appropriate for protecting the personal privacy of State Employees or the business and financial privacy of Liquor Licensees.

Can we consider this a sufficient response for your purposes?

Anya Trundy  
Deputy Commissioner  
Department of Administrative & Financial Services  
C: 207.522.4068 (call or text)

**From:** Davison, Anne <Anne.Davison@legislature.maine.gov>  
**Sent:** Monday, September 30, 2024 3:43 PM  
**To:** Trundy, Anya <Anya.Trundy@maine.gov>  
**Cc:** Senft, Samuel <samuel.senft@legislature.maine.gov>  
**Subject:** RE: Right to Know Advisory Committee Review of Public Records Exceptions

Good afternoon! Following up to see if you've had a chance to complete this questionnaire. If you have a sense of a date by which you might get this back to us, we'd appreciate having this information for planning purposes.

Thank you for your assistance!

All best,  
Anne

---

**From:** Davison, Anne  
**Sent:** Thursday, August 15, 2024 10:24 AM  
**To:** Trundy, Anya <anya.trundy@maine.gov>  
**Cc:** Senft, Samuel <Samuel.Senft@legislature.maine.gov>  
**Subject:** Right to Know Advisory Committee Review of Public Records Exceptions

Dear Ms. Trundy,

You are receiving this email because you are identified as the Freedom of Access Act Contact for your agency. I hope you can assist with this request from the Right to Know Advisory Committee.

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential.

The Advisory Committee is required by law to complete a review of existing public records exceptions according to a schedule laid out in Title 1, section 433. At this time, the Advisory Committee is beginning its review of Titles 25 through 32. The attached questionnaires include a citation at the top of the statute under review and six questions about your experience administering that provision. Your input is extremely useful in the Advisory Committee's review and we thank you for your assistance.

Please return the completed questionnaires by email to [Samuel.Senft@legislature.maine.gov](mailto:Samuel.Senft@legislature.maine.gov) and [Anne.Davison@legislature.maine.gov](mailto:Anne.Davison@legislature.maine.gov) or in hard copy to the Office of Policy and Legal Analysis at the address below by **September 20, 2024**.

If you are not the appropriate person to complete these questionnaires, would you please forward this email to the appropriate person as soon as possible and either copy me and Sam on that email or otherwise let us know that you are forwarding it? And if you are not the appropriate person and do not know who is, please let us know as soon as possible so we can redirect the questionnaire(s).

Please feel free to contact me with any questions at all.

Thank you so much!

Anne

Anne Davison  
Legislative Analyst  
Office of Policy and Legal Analysis  
Maine State Legislature  
(207) 287-1670

**§755. Records confidential**

Except for on-premises spirits sales data required to be reported by reselling agents in accordance with section 453-C, subsection 4, all business and financial records of licensees are confidential. [PL 2015, c. 430, §6 (AMD).]

**SECTION HISTORY**

PL 1987, c. 45, §A4 (NEW). PL 2015, c. 430, §6 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE:** 29-A MRSA §2117-A, sub-§4

**AGENCY:** Department of Public Safety, Department of Transportation

**CONTACT PERSON:** Paul Cavanaugh ([Paul.F.Cavanaugh@maine.gov](mailto:Paul.F.Cavanaugh@maine.gov)), Anne Pare ([Anne.M.Pare@maine.gov](mailto:Anne.M.Pare@maine.gov))

**RETURN BY:** 9/20/2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

RESPONSE: During the period that I have dealt with FOAA requests (since mid-May 2023), MaineDOT has not needed to deal with this exception.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

RESPONSE: MaineDOT supports continuing this exception for the purposes of protecting public safety and transportation infrastructure.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

RESPONSE: Please see response to number 1 above.

4. Does your agency recommend changes to this exception?

Right to Know Advisory Committee  
13 State House Station Augusta, Maine 04333  
Telephone: (207) 287-1670

RESPONSE: No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

RESPONSE: MaineDOT State Traffic Engineer, [stephen.landry@maine.gov](mailto:stephen.landry@maine.gov).

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**§2117-A. Use of automated license plate recognition systems**

**1. Definitions.** As used in this section, unless the context otherwise indicates, "automated license plate recognition system" means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration plates into computer-readable data. "Automated license plate recognition system" does not include a photo-monitoring system, as defined in Title 23, section 1980, subsection 2-A, paragraph B, subparagraph (4), when used by the Maine Turnpike Authority or a law enforcement agency for toll enforcement purposes.  
[PL 2009, c. 605, §1 (NEW).]

**2. Prohibition.** Except as otherwise provided in subsection 3, a person may not use an automated license plate recognition system.  
[PL 2009, c. 605, §1 (NEW).]

**3. Exception.** Subsection 2 does not apply to:

A. The Department of Transportation for the purposes of protecting public safety and transportation infrastructure; [PL 2009, c. 605, §1 (NEW).]

B. The Department of Public Safety, Bureau of State Police for the purposes of commercial motor vehicle screening and inspection; and [PL 2009, c. 605, §1 (NEW).]

C. Any state, county or municipal law enforcement agency when providing public safety, conducting criminal investigations and ensuring compliance with local, state and federal laws. For purposes of this paragraph, an automated license plate recognition system may use only information entered by a law enforcement officer as defined by Title 17-A, section 2, subsection 17 and based on specific and articulable facts of a concern for safety, wrongdoing or a criminal investigation or pursuant to a civil order or records from the National Crime Information Center database or an official published law enforcement bulletin. [PL 2009, c. 605, §1 (NEW).]

An authorized user under this subsection of an automated license plate recognition system may use an automated license plate recognition system only for the official and legitimate purposes of the user's employer.

[PL 2009, c. 605, §1 (NEW).]

**4. Confidentiality.** Data collected or retained through the use of an automated license plate recognition system in accordance with subsection 3 are confidential under Title 1, chapter 13 and are available for use only by a law enforcement agency in carrying out its functions or by an agency collecting information under subsection 3 for its intended purpose and any related civil or criminal proceeding.

A law enforcement agency may publish and release as public information summary reports using aggregate data that do not reveal the activities of an individual or firm and may share commercial motor vehicle screening data with the Federal Motor Carrier Safety Administration for regulatory compliance purposes.

[PL 2009, c. 605, §1 (NEW).]

**5. Data retention.** Data collected or retained through the use of an automated license plate recognition system in accordance with subsection 3 that are not considered intelligence and investigative record information as defined by Title 16, section 803, subsection 7, or data collected for the purposes of commercial motor vehicle screening, may not be stored for more than 21 days.

[PL 2013, c. 267, Pt. B, §23 (AMD).]

**6. Penalty.** Violation of this section is a Class E crime.  
[PL 2009, c. 605, §1 (NEW).]

**SECTION HISTORY**

PL 2009, c. 605, §1 (NEW). PL 2013, c. 267, Pt. B, §23 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE:** 30-A MRSA §2702, sub-§1

**AGENCY:** **Maine Municipal Association (MMA)**

**CONTACT PERSON:** **Kate Dufour ([kdufour@memun.org](mailto:kdufour@memun.org))**

**RETURN BY:** **September 20, 2024**

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



**STATUTE:** 30-A MRSA §2702, sub-§1-A

**AGENCY:** Maine Municipal Association (MMA)

**CONTACT PERSON:** Kate Dufour ([kdufour@memun.org](mailto:kdufour@memun.org))

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



**§2702. Personnel records**

**1. Confidential records.** The following records are confidential and not open to public inspection. They are not "public records" as defined in Title 1, section 402, subsection 3. These records include:

A. Except as provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the municipality for use in the examination or evaluation of applicants for positions as municipal employees.

(1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

(2) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(3) This paragraph does not preclude union representatives from access to personnel records that may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this subsection must remain confidential and are not open to public inspection; [PL 2019, c. 451, §3 (AMD).]

B. Municipal records pertaining to an identifiable employee and containing the following:

(1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the creditworthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family;

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this subparagraph, "final written decision" means:

(a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

(b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written

decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and

- (6) Personal information, including that which pertains to the employee's:
- (a) Age;
  - (b) Ancestry, ethnicity, genetic information, national origin, race or skin color;
  - (c) Marital status;
  - (d) Mental or physical disabilities;
  - (e) Personal contact information, as described in Title 1, section 402, subsection 3, paragraph O;
  - (f) Personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance;
  - (g) Religion;
  - (h) Sex, gender identity or sexual orientation as defined in Title 5, section 4553, subsection 9-C; or
  - (i) Social security number.

Such personal information may be disclosed publicly in aggregate form, unless there is a reasonable possibility that the information would be able to be used, directly or indirectly, to identify any specific employee; and [PL 2019, c. 451, §3 (AMD).]

C. Other information to which access by the general public is prohibited by law. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]  
[PL 2019, c. 451, §3 (AMD).]

**1-A. Investigations of deadly force or physical force by law enforcement officer.** The name of a law enforcement officer is not confidential under subsection 1, paragraph B, subparagraph (5) in cases involving:

- A. The use of deadly force by a law enforcement officer; or [PL 1991, c. 729, §7 (NEW).]
- B. The use of physical force by a law enforcement officer resulting in death or serious bodily injury. [PL 1991, c. 729, §7 (NEW).]

In cases specified in paragraphs A and B, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.

[PL 1991, c. 729, §7 (NEW).]

**2. Employee right to review.** On written request from an employee or former employee, the municipal official with custody of the records shall provide the employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the municipal official has a personnel file for that employee. These reviews shall take place during normal office hours at the location where the personnel files are maintained. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits which the municipal official may possess. The records described in subsection 1, paragraph B, may also be examined by the employee to whom they relate, as provided in this subsection.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

**3. Constitutional obligations of a prosecutor.** Notwithstanding this section or any other provision of law, this section does not preclude the disclosure of confidential personnel records and the information contained in those records to the Attorney General, a deputy attorney general, an assistant attorney general, a district attorney, a deputy district attorney, an assistant district attorney or the equivalent departments or offices in a federal jurisdiction that are related to the determination of and compliance with the constitutional obligations of the State or the United States to provide discovery to a defendant in a criminal matter. A person or entity participating in good faith disclosure under this subsection or participating in a related proceeding is immune from criminal and civil liability for the act of disclosure or for participating in the proceeding.

[PL 2013, c. 201, §3 (NEW).]

#### SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD). PL 1989, c. 402, §3 (AMD). PL 1991, c. 229, §3 (AMD). PL 1991, c. 729, §7 (AMD). PL 1997, c. 770, §3 (AMD). PL 2013, c. 201, §3 (AMD). PL 2019, c. 451, §3 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

**PLEASE NOTE:** The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.





**STATUTE:** 30-A MRSA §4353, sub-§4-A

**AGENCY:** Maine Municipal Association (MMA)

**CONTACT PERSON:** Kate Dufour ([kdufour@memun.org](mailto:kdufour@memun.org))

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



**§4353. Zoning adjustment**

Any municipality which adopts a zoning ordinance shall establish a board of appeals subject to this section. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

**1. Jurisdiction; procedure.** The board of appeals shall hear appeals from any action or failure to act of the official or board responsible for enforcing the zoning ordinance, unless only a direct appeal to Superior Court has been provided by municipal ordinance. The board of appeals is governed by section 2691, except that section 2691, subsection 2, does not apply to boards existing on September 23, 1971.

[PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

**2. Powers.** In deciding any appeal, the board may:

A. Interpret the provisions of an ordinance called into question; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

B. Approve the issuance of a special exception permit or conditional use permit in strict compliance with the ordinance except that, if the municipality has authorized the planning board, agency or department to issue these permits, an appeal from the granting or denial of such a permit may be taken directly to Superior Court if required by local ordinance; and [PL 2011, c. 655, Pt. JJ, §24 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF).]

C. Grant a variance in strict compliance with subsection 4. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

[PL 2011, c. 655, Pt. JJ, §24 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF).]

**3. Parties.** The board shall reasonably notify the petitioner, the planning board, agency or department and the municipal officers of any hearing. These persons must be made parties to the action. All interested persons must be given a reasonable opportunity to have their views expressed at any hearing.

[PL 2011, c. 655, Pt. JJ, §25 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF).]

**4. Variance.** Except as provided in subsections 4-A, 4-B and 4-C and section 4353-A, the board may grant a variance only when strict application of the ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

A. The land in question can not yield a reasonable return unless a variance is granted; [PL 1991, c. 47, §1 (AMD).]

B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

C. The granting of a variance will not alter the essential character of the locality; and [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

D. The hardship is not the result of action taken by the applicant or a prior owner. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

Under its home rule authority, a municipality may, in a zoning ordinance, adopt additional limitations on the granting of a variance, including, but not limited to, a provision that a variance may be granted only for a use permitted in a particular zone.

[PL 2013, c. 186, §1 (AMD).]

**4-A. Disability variance; vehicle storage.** A disability variance may be granted pursuant to this subsection.

A. The board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this paragraph solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability.

The board may impose conditions on the variance granted pursuant to this paragraph, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this paragraph, the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure. [PL 2009, c. 342, §1 (NEW).]

B. If authorized by the zoning ordinance establishing the board, the board may grant a variance to an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability for the construction of a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose. The width and length of the structure may not be larger than 2 times the width and length of the noncommercial vehicle. The owner shall submit proposed plans for the structure with the request for the variance pursuant to this paragraph to the board.

The person with the permanent disability shall prove by a preponderance of the evidence that the person's disability is permanent.

For purposes of this paragraph, "noncommercial vehicle" means a motor vehicle as defined in Title 29-A, section 101, subsection 42 with a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate issued pursuant to Title 29-A, section 521 and owned by the person with the permanent disability. [PL 2009, c. 342, §1 (NEW).]

The board may impose conditions on the variance granted pursuant to this subsection.

All medical records submitted to the board and any other documents submitted for the purpose of describing or verifying a person's disability are confidential.

For purposes of this subsection, "disability" has the same meaning as a physical or mental disability under Title 5, section 4553-A.

[PL 2015, c. 152, §1 (AMD).]

**4-B. Set-back variance for single-family dwellings.** A municipality may adopt an ordinance that permits the board to grant a set-back variance for a single-family dwelling. An ordinance adopted under this subsection may permit a variance from a set-back requirement only when strict application of the zoning ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

A. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; [PL 1991, c. 659, §3 (NEW).]

B. The granting of a variance will not alter the essential character of the locality; [PL 1991, c. 659, §3 (NEW).]

C. The hardship is not the result of action taken by the applicant or a prior owner; [PL 1991, c. 659, §3 (NEW).]

D. The granting of the variance will not substantially reduce or impair the use of abutting property; and [PL 1991, c. 659, §3 (NEW).]

E. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available. [PL 1991, c. 659, §3 (NEW).]

An ordinance adopted under this subsection is strictly limited to permitting a variance from a set-back requirement for a single-family dwelling that is the primary year-round residence of the petitioner. A

variance under this subsection may not exceed 20% of a set-back requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. An ordinance may allow for a variance under this subsection to exceed 20% of a set-back requirement, except for minimum setbacks from a wetland or water body required within shoreland zones by rules adopted pursuant to Title 38, chapter 3, subchapter I, article 2-B, if the petitioner has obtained the written consent of an affected abutting landowner.

[PL 1993, c. 627, §1 (AMD).]

**4-C. Variance from dimensional standards.** A municipality may adopt an ordinance that permits the board to grant a variance from the dimensional standards of a zoning ordinance when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:

- A. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood; [PL 1997, c. 148, §2 (NEW).]
- B. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties; [PL 1997, c. 148, §2 (NEW).]
- C. The practical difficulty is not the result of action taken by the petitioner or a prior owner; [PL 1997, c. 148, §2 (NEW).]
- D. No other feasible alternative to a variance is available to the petitioner; [PL 1997, c. 148, §2 (NEW).]
- E. The granting of a variance will not unreasonably adversely affect the natural environment; and [PL 1997, c. 148, §2 (NEW).]
- F. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435. [PL 1997, c. 148, §2 (NEW).]

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this subsection, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

Under its home rule authority, a municipality may, in an ordinance adopted pursuant to this subsection, adopt additional limitations on the granting of a variance from the dimensional standards of a zoning ordinance. A zoning ordinance also may explicitly delegate to the municipal reviewing authority the ability to approve development proposals that do not meet the dimensional standards otherwise required, in order to promote cluster development, to accommodate lots with insufficient frontage or to provide for reduced setbacks for lots or buildings made nonconforming by municipal zoning. As long as the development falls within the parameters of such an ordinance, the approval is not considered the granting of a variance. This delegation of authority does not authorize the reduction of dimensional standards required under the mandatory shoreland zoning laws, Title 38, chapter 3, subchapter 1, article 2-B.

[PL 2005, c. 244, §2 (AMD).]

**5. Variance recorded.** If the board grants a variance under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form. This certificate must be recorded in the local registry of deeds within 90 days of the date of the final written approval of the variance or the variance is void. The variance is not valid until recorded as provided in this subsection.

For the purpose of this subsection, the date of the final written approval shall be the date stated on the written approval.

[PL 1989, c. 642 (AMD).]

#### SECTION HISTORY

PL 1989, c. 104, §§A45,C10 (NEW). PL 1989, c. 642 (AMD). PL 1991, c. 47, §§1,2 (AMD). PL 1991, c. 659, §§1-3 (AMD). PL 1993, c. 627, §1 (AMD). PL 1995, c. 212, §1 (AMD). PL 1997, c. 148, §§1,2 (AMD). PL 2005, c. 244, §2 (AMD). PL 2009, c. 342, §1 (AMD). PL 2011, c. 655, Pt. JJ, §§24, 25 (AMD). PL 2011, c. 655, Pt. JJ, §41 (AFF). PL 2013, c. 186, §1 (AMD). PL 2015, c. 152, §1 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

**STATUTE:** 30-A MRSA §4353-A

**AGENCY:** Maine Municipal Association (MMA)

**CONTACT PERSON:** Kate Dufour ([kdufour@memun.org](mailto:kdufour@memun.org))

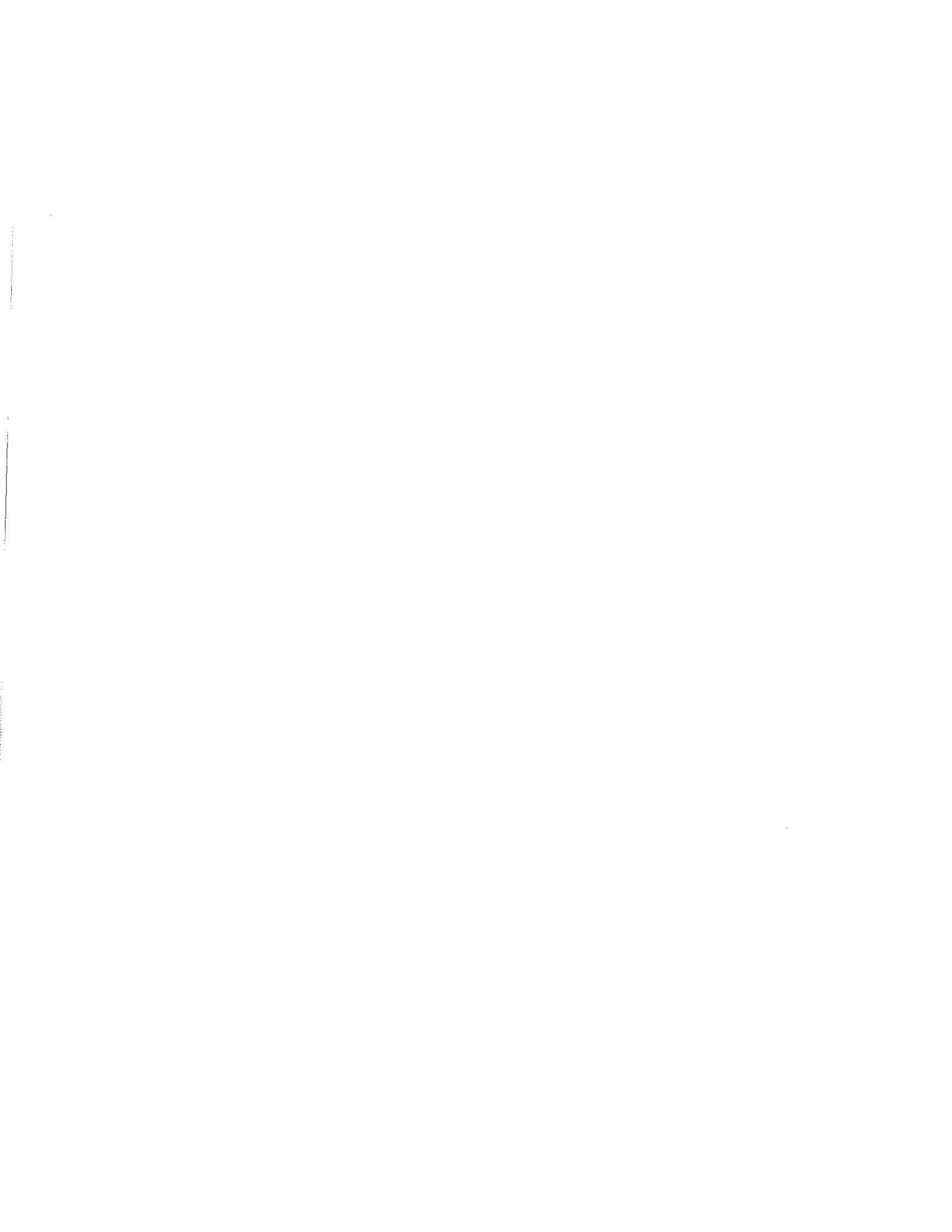
**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.





**§4353-A. Code enforcement officer; authority for disability structures permits**

Notwithstanding section 4353, a municipality by ordinance may authorize a code enforcement officer to issue a permit to an owner of a dwelling for the purpose of making a dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. If the permit requires a variance, the permit is deemed to include that variance solely for the installation of equipment or the construction of structures necessary for access to or egress from the dwelling for the person with a disability. The code enforcement officer may impose conditions on the permit, including limiting the permit to the duration of the disability or to the time that the person with a disability lives in the dwelling. [PL 2013, c. 186, §2 (NEW).]

All medical records submitted to the code enforcement officer and any other documents submitted for the purpose of describing or verifying a person's disability are confidential. [PL 2015, c. 152, §2 (NEW).]

For the purposes of this section, the term "structures necessary for access to or egress from the dwelling" includes ramps and associated railings, walls or roof systems necessary for the safety or effectiveness of the ramps. [PL 2013, c. 186, §2 (NEW).]

For the purposes of this section, "disability" has the same meaning as a physical or mental disability under Title 5, section 4553-A. [PL 2013, c. 186, §2 (NEW).]

**SECTION HISTORY**

PL 2013, c. 186, §2 (NEW). PL 2015, c. 152, §2 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE:** 30-A MRSA, §4706, sub-§1

**AGENCY:** Maine Municipal Association (MMA)

**CONTACT PERSON:** Kate Dufour ([kdufour@memun.org](mailto:kdufour@memun.org))

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



**§4706. Records confidential**

**1. Confidential information.** Records containing the following information are deemed confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Any information acquired by an authority or a member, officer, employee or agent of an authority from applicants for residential tenancy in housing owned, financed, assisted or managed by an authority or from any residential tenants of such housing or from any 3rd person pertaining to any applicant for tenancy or to any tenant of such housing; [PL 1993, c. 175, §1 (AMD).]

B. Any written or recorded financial statement, as determined by an authority, of an individual submitted to an authority or a member, officer, employee or agent of an authority, in connection with an application for, or receipt of, a grant, mortgage or mortgage insurance; [PL 2007, c. 562, §1 (AMD).]

C. Any information acquired by the Maine State Housing Authority or a state public body, private corporation, copartnership, association, fuel vendor, private contractor or individual, or an employee, officer or agent of any of those persons or entities, providing services related to weatherization, energy conservation, homeless assistance or fuel assistance programs of the Maine State Housing Authority, when that information was provided by the applicant for, or recipient of, those services or by a 3rd person; [PL 2007, c. 562, §2 (AMD).]

D. Any statements of financial condition or information pertaining to financial condition submitted to any of the persons or entities set forth in paragraph C in connection with an application for services related to weatherization, energy conservation, homeless assistance or fuel assistance programs of the Maine State Housing Authority; and [PL 2007, c. 562, §3 (AMD).]

E. The address of a shelter or other living accommodations for victims of domestic violence. [PL 2007, c. 562, §4 (NEW).]  
[PL 2007, c. 562, §§1-4 (AMD).]

**2. Wrongful disclosure prohibited.** No member, officer, employee or agent of an authority may knowingly divulge or disclose information declared confidential by this section, except that:

A. An authority may make such full and complete reports concerning administration of its programs as required by the Federal Government, any agency or department of the Federal Government, or the Legislature; [PL 1993, c. 175, §3 (AMD).]

B. An authority may publish statistics or other information of a general nature drawn from information declared confidential by this section, provided that the publication is accomplished in a manner which preserves confidentiality; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. An authority may comply with a subpoena, request for production of documents, warrant or court order that appears on its face to have been issued or made upon lawful authority; [PL 1993, c. 175, §3 (AMD).]

D. In any litigation or proceeding in which an authority is a party, the authority may introduce evidence based on any information that is deemed confidential and is within the control or custody of the authority; [PL 2019, c. 313, §1 (AMD).]

E. Any person or agency directly involved in the administration or auditing of weatherization, energy conservation or fuel assistance programs of the Maine State Housing Authority and any agency of the State with a legitimate reason to know must be given access to those records described in subsection 1, paragraphs C and D; and [PL 2019, c. 313, §2 (AMD).]

F. The Maine State Housing Authority may provide records to the Efficiency Maine Trust pursuant to Title 35-A, section 10104, subsection 4, paragraph A, subparagraph (2). [PL 2019, c. 313, §3 (NEW).]

[PL 2019, c. 313, §§1-3 (AMD).]

**3. Waiver.** This section shall not be construed to limit in any way the right of any person whose interest is protected by this section to waive, in writing or otherwise, the benefits of that protection. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

**4. Penalty.** A member, officer, employee or agent of an authority who violates subsection 2 commits a civil violation for which a forfeiture of not more than \$200 may be adjudged against the member, officer, employee or agent of an authority for each violation. For the purpose of applying penalties under this subsection, a separate violation is deemed to have occurred with respect to each separate act of disclosure.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

**5. Confidentiality of personnel records.** The following records are confidential and not open to public inspection:

A. Except as otherwise provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the authority for use in the examination or evaluation of applicants for employment by the authority.

(1) Applications, resumes and letters and notes of reference pertaining to the applicant hired, other than those letters and notes of reference expressly submitted in confidence, are public records after the applicant is hired.

(2) Telephone numbers are not public records if they are designated as unlisted or unpublished in an application, resume or letter or note of reference; [PL 2017, c. 234, §8 (NEW).]

B. Authority records pertaining to an identifiable employee and containing the following:

(1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the creditworthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of the employee's immediate family;

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action; and

(6) Personal information, including that which pertains to the employee's:

(a) Age;

(b) Ancestry, ethnicity, genetic information, national origin, race or skin color;

(c) Marital status;

(d) Mental or physical disabilities;

- (e) Personal contact information, as described in Title 1, section 402, subsection 3, paragraph O;
- (f) Personal employment choices pertaining to elected payroll deductions, deferred compensation, saving plans, pension plans, health insurance and life insurance;
- (g) Religion;
- (h) Sex, sexual orientation or gender identity; or
- (i) Social security number; and [PL 2021, c. 366, §31 (AMD).]

C. Other information to which access by the general public is prohibited by law. [PL 2017, c. 234, §8 (NEW).]  
[PL 2021, c. 366, §31 (AMD).]

**6. Employee right to review.** On written request from an employee or former employee, the authority shall provide the employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the authority has a personnel file for that employee. The review must take place during normal office hours at the location where the personnel files are maintained. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits that the authority may possess. The records described in subsection 5, paragraph B may also be examined by the employee to whom the records relate, as provided in this subsection.  
[PL 2017, c. 234, §8 (NEW).]

**7. Constitutional obligations of a prosecutor.** Notwithstanding this section or any other provision of law, subsection 5 does not preclude the disclosure of confidential personnel records and the information contained in those records to the Attorney General, a deputy attorney general, an assistant attorney general, a district attorney, a deputy district attorney, an assistant district attorney or the equivalent departments or offices in a federal jurisdiction that are related to the determination of and compliance with the constitutional obligations of the State or the United States to provide discovery to a defendant in a criminal matter. A person or entity participating in good faith disclosure under this subsection or participating in a related proceeding is immune from criminal and civil liability for the act of disclosure or for participating in the proceeding.  
[PL 2017, c. 234, §8 (NEW).]

#### SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD). PL 1993, c. 175, §§1-4 (AMD). PL 2007, c. 562, §§1-4 (AMD). PL 2017, c. 234, §8 (AMD). PL 2019, c. 313, §§1-3 (AMD). PL 2021, c. 366, §31 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.





**STATUTE:** 30-A MRSA §4706, sub-§5

**AGENCY:** Maine Municipal Association (MMA)

**CONTACT PERSON:** Kate Dufour ([kdufour@memun.org](mailto:kdufour@memun.org))

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



**§4706. Records confidential**

**1. Confidential information.** Records containing the following information are deemed confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Any information acquired by an authority or a member, officer, employee or agent of an authority from applicants for residential tenancy in housing owned, financed, assisted or managed by an authority or from any residential tenants of such housing or from any 3rd person pertaining to any applicant for tenancy or to any tenant of such housing; [PL 1993, c. 175, §1 (AMD).]

B. Any written or recorded financial statement, as determined by an authority, of an individual submitted to an authority or a member, officer, employee or agent of an authority, in connection with an application for, or receipt of, a grant, mortgage or mortgage insurance; [PL 2007, c. 562, §1 (AMD).]

C. Any information acquired by the Maine State Housing Authority or a state public body, private corporation, copartnership, association, fuel vendor, private contractor or individual, or an employee, officer or agent of any of those persons or entities, providing services related to weatherization, energy conservation, homeless assistance or fuel assistance programs of the Maine State Housing Authority, when that information was provided by the applicant for, or recipient of, those services or by a 3rd person; [PL 2007, c. 562, §2 (AMD).]

D. Any statements of financial condition or information pertaining to financial condition submitted to any of the persons or entities set forth in paragraph C in connection with an application for services related to weatherization, energy conservation, homeless assistance or fuel assistance programs of the Maine State Housing Authority; and [PL 2007, c. 562, §3 (AMD).]

E. The address of a shelter or other living accommodations for victims of domestic violence. [PL 2007, c. 562, §4 (NEW).]

[PL 2007, c. 562, §§1-4 (AMD).]

**2. Wrongful disclosure prohibited.** No member, officer, employee or agent of an authority may knowingly divulge or disclose information declared confidential by this section, except that:

A. An authority may make such full and complete reports concerning administration of its programs as required by the Federal Government, any agency or department of the Federal Government, or the Legislature; [PL 1993, c. 175, §3 (AMD).]

B. An authority may publish statistics or other information of a general nature drawn from information declared confidential by this section, provided that the publication is accomplished in a manner which preserves confidentiality; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. An authority may comply with a subpoena, request for production of documents, warrant or court order that appears on its face to have been issued or made upon lawful authority; [PL 1993, c. 175, §3 (AMD).]

D. In any litigation or proceeding in which an authority is a party, the authority may introduce evidence based on any information that is deemed confidential and is within the control or custody of the authority; [PL 2019, c. 313, §1 (AMD).]

E. Any person or agency directly involved in the administration or auditing of weatherization, energy conservation or fuel assistance programs of the Maine State Housing Authority and any agency of the State with a legitimate reason to know must be given access to those records described in subsection 1, paragraphs C and D; and [PL 2019, c. 313, §2 (AMD).]

F. The Maine State Housing Authority may provide records to the Efficiency Maine Trust pursuant to Title 35-A, section 10104, subsection 4, paragraph A, subparagraph (2). [PL 2019, c. 313, §3 (NEW).]  
[PL 2019, c. 313, §§1-3 (AMD).]

**3. Waiver.** This section shall not be construed to limit in any way the right of any person whose interest is protected by this section to waive, in writing or otherwise, the benefits of that protection. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

**4. Penalty.** A member, officer, employee or agent of an authority who violates subsection 2 commits a civil violation for which a forfeiture of not more than \$200 may be adjudged against the member, officer, employee or agent of an authority for each violation. For the purpose of applying penalties under this subsection, a separate violation is deemed to have occurred with respect to each separate act of disclosure. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

**5. Confidentiality of personnel records.** The following records are confidential and not open to public inspection:

A. Except as otherwise provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the authority for use in the examination or evaluation of applicants for employment by the authority.

(1) Applications, resumes and letters and notes of reference pertaining to the applicant hired, other than those letters and notes of reference expressly submitted in confidence, are public records after the applicant is hired.

(2) Telephone numbers are not public records if they are designated as unlisted or unpublished in an application, resume or letter or note of reference; [PL 2017, c. 234, §8 (NEW).]

B. Authority records pertaining to an identifiable employee and containing the following:

(1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the creditworthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of the employee's immediate family;

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action; and

(6) Personal information, including that which pertains to the employee's:

(a) Age;

(b) Ancestry, ethnicity, genetic information, national origin, race or skin color;

(c) Marital status;

(d) Mental or physical disabilities;

- (e) Personal contact information, as described in Title 1, section 402, subsection 3, paragraph O;
- (f) Personal employment choices pertaining to elected payroll deductions, deferred compensation, saving plans, pension plans, health insurance and life insurance;
- (g) Religion;
- (h) Sex, sexual orientation or gender identity; or
- (i) Social security number; and [PL 2021, c. 366, §31 (AMD).]

C. Other information to which access by the general public is prohibited by law. [PL 2017, c. 234, §8 (NEW).]  
[PL 2021, c. 366, §31 (AMD).]

**6. Employee right to review.** On written request from an employee or former employee, the authority shall provide the employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the authority has a personnel file for that employee. The review must take place during normal office hours at the location where the personnel files are maintained. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits that the authority may possess. The records described in subsection 5, paragraph B may also be examined by the employee to whom the records relate, as provided in this subsection.  
[PL 2017, c. 234, §8 (NEW).]

**7. Constitutional obligations of a prosecutor.** Notwithstanding this section or any other provision of law, subsection 5 does not preclude the disclosure of confidential personnel records and the information contained in those records to the Attorney General, a deputy attorney general, an assistant attorney general, a district attorney, a deputy district attorney, an assistant district attorney or the equivalent departments or offices in a federal jurisdiction that are related to the determination of and compliance with the constitutional obligations of the State or the United States to provide discovery to a defendant in a criminal matter. A person or entity participating in good faith disclosure under this subsection or participating in a related proceeding is immune from criminal and civil liability for the act of disclosure or for participating in the proceeding.  
[PL 2017, c. 234, §8 (NEW).]

#### SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD). PL 1993, c. 175, §§1-4 (AMD). PL 2007, c. 562, §§1-4 (AMD). PL 2017, c. 234, §8 (AMD). PL 2019, c. 313, §§1-3 (AMD). PL 2021, c. 366, §31 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE:** 30-A MRSA §5242, sub-§13

**AGENCY:** Maine Municipal Association (MMA)

**CONTACT PERSON:** Kate Dufour ([kdufour@memun.org](mailto:kdufour@memun.org))

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.





**§5242. State tax increment financing**

**1. Eligibility.** Any tax increment financing district designated by a municipality and approved by the commissioner under section 5226, subsection 2 is eligible to be approved as a state tax increment financing district if captured assessed value within the district is created after July 30, 1991, except that, in accordance with subsection 12, no new state tax increment financing district may be created after June 30, 1996.

[PL 2001, c. 669, §1 (NEW).]

**2. Procedure for establishing state tax increment financing district.** A municipality desiring to establish a state tax increment financing district must apply to the commissioner for approval of the proposed state tax increment financing district. The procedure for application is as follows.

A. The proposed state tax increment financing district must be approved locally by vote of the municipal officers of the municipality within which the proposed district will be located. Before approving a state tax increment financing district, the municipal officers must hold at least one public hearing. Notice of the hearing must be published at least 10 days before the hearing in a newspaper of general circulation within the county in which the municipality is located. [PL 2001, c. 669, §1 (NEW).]

B. The municipal officers shall adopt for the proposed state tax increment financing district a development program that identifies all designated businesses within the district and sets forth the amount of sales tax paid by designated businesses in connection with operations within the proposed district, the number of employees at designated businesses and the total state income taxes withheld by designated businesses for the base period. The development program may be combined with or integrated into the development program for the underlying municipal development district pursuant to subchapter I or may be separately stated, maintained and implemented. The development program may specify the allocable shares of the municipality and each designated business for liability for refund of the state tax increment revenues resulting from an audit. That allocation may be made by any means determined by the municipal officers to reasonably reflect the economic benefit derived from operation of the district. [PL 2001, c. 669, §1 (NEW).]

C. Prior to approval of the proposed state tax increment financing district, the committee shall estimate the annual amount to be deposited in the state tax increment contingent account pursuant to subsection 6 for all existing state tax increment financing districts, including the proposed district, and that estimate may be used only in determining compliance with the limitations imposed under subsection 8, paragraphs C and D. [PL 2001, c. 669, §1 (NEW).]

D. The municipality, acting through its municipal officers or their designee, shall submit an application to the commissioner on such form or forms and with such supporting data as the commissioner requires for approval of the proposed state tax increment financing district, including without limitation certifications by the designated businesses as to the average annual number of persons employed by each designated business within the boundaries of the proposed district, the average total state income taxes withheld by designated businesses during the base period and the average annual amount of sales tax remittances paid by each designated business from operations within the boundaries of the proposed district during the base period. [PL 2001, c. 669, §1 (NEW).]

[PL 2001, c. 669, §1 (NEW).]

**3. Approval.** Prior to issuing a certificate of approval for any state tax increment financing district, the commissioner must determine that:

A. The economic development described in the development program will not go forward without the approval of the state tax increment financing district. This requirement does not apply to the

addition of state tax increment financing provisions to municipal development districts that are created prior to June 30, 1992; [PL 2001, c. 669, §1 (NEW).]

B. The proposed district will make a contribution to the economic growth of the State, the control of pollution in the State or the betterment of the health, welfare or safety of the inhabitants of the State; and [PL 2001, c. 669, §1 (NEW).]

C. The economic development described in the development program will not result in a substantial detriment to existing businesses in the State. In order to make this determination, the commissioner shall consider, pursuant to Title 5, chapter 375, subchapter 2, those factors the commissioner determines necessary to measure and evaluate the effect of the proposed district on existing businesses, including:

- (1) Whether a proposed district should be approved if, as a result of the benefits to designated businesses, there will not be sufficient demand within the market area of the State to be served by the project to employ the efficient capacity of existing businesses; and
- (2) Whether any adverse economic effect of the proposed district on existing businesses is outweighed by the contribution described in paragraph B.

The municipality has the burden of demonstrating that the proposed district will not result in a substantial detriment to existing businesses in accordance with the requirements of this paragraph, including rules adopted pursuant to this paragraph, except that, when no interested parties object to the proposed district, the requirements of this paragraph are deemed satisfied. Interested parties must be given an opportunity, with or without a hearing at the discretion of the commissioner, to present their objections to the proposed district on grounds that the proposed district will result in a substantial detriment to existing businesses. If any interested party presents objections with reasonable specificity and persuasiveness, the commissioner may divulge any information concerning the economic development described in the development program that the commissioner considers necessary for a fair presentation by the objecting party and an evaluation of those objections. If the commissioner finds that the municipality has failed to meet its burden as specified in this paragraph, the application must be denied.

Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Upon approval of the state tax increment financing district, the commissioner shall issue a certificate of approval.

[RR 2001, c. 2, Pt. A, §40 (COR).]

**4. Retained state tax revenues.** The following provisions govern retained state tax revenues.

A. On or before April 15th of each year, designated businesses located within a state tax increment financing district shall report the amount of sales tax paid in connection with operations within the district, the number of employees within the district, the state income taxes withheld from employees within the district for the immediately preceding calendar year and any further information the State Tax Assessor may reasonably require.

On or before June 30th of each year, the State Tax Assessor shall determine the state tax increment of a district for the preceding calendar year. [PL 2001, c. 669, §1 (NEW).]

B. A municipality may receive up to 25% of the state tax increment revenues generated by or at designated businesses within a state tax increment financing district as determined by the State Tax Assessor subject to the further limitations in subsection 8, and that amount is referred to in this section as "retained state tax increment revenues." [PL 2001, c. 669, §1 (NEW).]

[PL 2001, c. 669, §1 (NEW).]

**5. Calculation of state tax increment.** The State Tax Assessor shall calculate a state tax increment for a particular state tax increment financing district by:

A. Determining the gross state tax increment as applicable to the particular district; [PL 2001, c. 669, §1 (NEW).]

B. Determining the state tax increment as applicable to the particular district by removing from the gross state tax increment:

(1) Revenues attributed to business activity shifted from affiliated businesses to the state tax increment financing district. This adjustment is calculated by comparing the current year's sales and income tax revenues for each designated business that is a member of an affiliated group with revenues for the group as a whole. If the growth in sales and income tax revenue for the entire group exceeds the growth of sales and income tax revenue generated by the designated business, the gross state tax increment does not have to be adjusted to remove business activity shifted from affiliated businesses. If the growth in sales and income tax revenue for the affiliated group is less than the growth in sales and income tax revenue for the designated business, the difference is presumed to have been shifted from affiliated businesses to the designated business and the gross state tax increment for the district is reduced by the difference; and

(2) Revenues attributed to normal growth. This adjustment is calculated by subtracting from the gross state tax increment a figure obtained by multiplying the previous year's total amount of sales taxes reported and income taxes withheld by designated businesses within the district by the percentage change in sales tax receipts and withholding taxes for all businesses within the State as a whole; [PL 2001, c. 669, §1 (NEW).]

C. Offsetting designated businesses with negative tax increments with those with positive increments in determining the state tax increment for the district as a whole; and [PL 2001, c. 669, §1 (NEW).]

D. Excluding all income tax revenue in calculating the state tax increment attributable to retail business operations. [PL 2001, c. 669, §1 (NEW).]

[PL 2001, c. 669, §1 (NEW).]

**6. State tax increment contingent account created.** The Commissioner of Administrative and Financial Services shall establish, maintain and administer the state tax increment contingent account. On or before June 30th of each year, the Commissioner of Administrative and Financial Services shall deposit an amount equal to the total retained state tax increment revenues for the preceding calendar year for approved state tax increment financing districts in the state tax increment contingent account. On or before July 31st of each year, the Commissioner of Administrative and Financial Services shall pay to each municipality an amount equal to the retained state tax increment revenues for the preceding calendar year from all state tax increment financing districts located within that municipality. [PL 2001, c. 669, §1 (NEW).]

**7. Application of payment to municipalities.** All retained state tax increment revenues paid to a municipality must be deposited in the appropriate development program fund established in section 5227, subsection 3 and invested, used and applied in the manner described in the development program, except that:

A. The amount of retained state tax increment revenues paid to a municipality may not exceed the amount of tax increment revenues generated by the municipality pursuant to section 5227, subsection 3 and required to be deposited in a development program fund account; and [PL 2001, c. 669, §1 (NEW).]

B. All retained state tax increment revenues not required to satisfy the estimated obligations of the development program fund account revert to the State. [PL 2001, c. 669, §1 (NEW).]

[PL 2001, c. 669, §1 (NEW).]

**8. Limitations.** The following limitations apply.

A. A state tax increment financing district may apply only to designated businesses involved in nonretail commercial activities, including, but not limited to, manufacturing, wholesaling, warehousing, distribution, office, administration and other service-related commercial activities. Notwithstanding this paragraph, a state tax increment financing district may apply to designated businesses involved in retail commercial activities pursuant to subsection 9. The state tax increment must be calculated pursuant to this section. [PL 2001, c. 669, §1 (NEW).]

B. A development program for a state tax increment financing district must identify all designated businesses within the district and specify the direct financial benefits to be provided to the designated businesses, if any. A municipality may designate a business relocating from another location in this State, when that relocation involves moving the locus of employment and sales, only if the municipal officers find that the relocation will result in an increase in the amount of sales or the number of employees of the business above the average annual sales and employment levels at the prior location during the base period. When such a relocating business is designated, the sales tax, the number of employees and the state income taxes withheld for the base period must be those reported in the development program for that business at its prior location. [PL 2001, c. 669, §1 (NEW).]

C. The retained state tax increment revenues attributable to an individual state tax increment financing district may not exceed 10% of the aggregated total allowed within the state tax increment contingent account. [PL 2001, c. 669, §1 (NEW).]

D. At no time may the aggregate annual retained state tax increment revenues for all state tax increment financing districts exceed \$20,000,000. [PL 2001, c. 669, §1 (NEW).]

E. A transfer of ownership interest in or any of the assets of an existing business may not be construed as creating newly generated state tax revenues except to the extent of actual increase in the amount of sales or the number of employees above the average annual sales and employment levels during the base period. [PL 2001, c. 669, §1 (NEW).]

F. State tax increment revenues received by a municipality pursuant to subsection 4 may be used by the municipality to offset up to 1/2 of existing tax increment financing obligations arising under section 5227. [PL 2001, c. 669, §1 (NEW).]

G. State tax increment revenues received by a municipality with respect to a particular state tax increment financing district pursuant to subsection 4 may not exceed the amount of estimated state tax increment revenues contained in the district's development program approved by the commissioner pursuant to subsection 2. [PL 2001, c. 669, §1 (NEW).]

[PL 2001, c. 669, §1 (NEW).]

**9. Districts containing retail business operations.** The commissioner shall approve a state tax increment financing district in which a retail business operation is a designated business upon making a factual determination that the following conditions are satisfied:

A. The district will result in total annual sales tax revenues equal to or greater than \$3,000,000 or the district involves, aids or otherwise relates to downtown redevelopment. For purposes of this subsection, "downtown redevelopment" means any rehabilitation or improvement of an area described in the development program that has been used primarily for retail trade and related purposes for at least 25 years, is identified in the municipality's comprehensive plan or zoning ordinance as an area designated for retail trade and related uses and is a blighted area or an area in need of rehabilitation or redevelopment; and [PL 2001, c. 669, §1 (NEW).]

B. A state tax increment is likely to result from the district and that increment will not include sales tax revenues derived from a transferring or shifting of retail sales from another geographic area within the State to the district. [PL 2001, c. 669, §1 (NEW).]

The municipality making the application bears the burden of proving to the commissioner by a preponderance of the evidence that the district satisfies the criteria under paragraphs A and B. For purposes of this subsection, "retail business operation" means a business location engaged in making retail sales of consumer goods for household use to consumers who personally visit the location to purchase the goods.  
[PL 2001, c. 669, §1 (NEW).]

**10. Duration of state designation.** State tax increment financing districts have a maximum duration of 10 years.  
[PL 2001, c. 669, §1 (NEW).]

**11. Program; administration.** The commissioner shall administer this subchapter. The commissioner shall adopt rules pursuant to the Maine Administrative Procedure Act for implementation of the program, including, but not limited to, rules for determining and certifying eligibility and, in consultation with the State Tax Assessor, the amount of the tax increment attributable to particular districts. The commissioner may also establish by rule fees for administration of the program, including fees payable to the State Tax Assessor for obligations under this Part. All fees collected pursuant to this subsection must be deposited into the General Fund. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.  
[PL 2001, c. 669, §1 (NEW).]

**12. Designation of new state tax increment financing districts prohibited.** The designation of new state tax increment financing districts is prohibited, subject to review by the joint standing committees of the Legislature having jurisdiction over economic development and taxation matters. Designation of new state tax increment financing districts may be resumed only by act of the Legislature.  
[PL 2001, c. 669, §1 (NEW).]

**13. Confidential information.** The following records are confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Any record obtained or developed by a municipality, the commissioner or the State Tax Assessor for designation or approval of a state tax increment financing district. After receipt by the municipality, the commissioner or the State Tax Assessor of the application or proposal, a record pertaining to the application or proposal is not considered confidential unless it meets the requirements of paragraphs B to F; [PL 2001, c. 669, §1 (NEW).]

B. Any record obtained or developed by a municipality, the commissioner or the State Tax Assessor when:

- (1) A person, which may include a municipality, to whom the record belongs or pertains has requested that the record be designated confidential; or
- (2) The municipality has determined that information in the record gives the owner or a user of that information an opportunity to obtain business or competitive advantage over another person who does not have access to the information or that access to the information by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains; [PL 2001, c. 669, §1 (NEW).]

C. Any record, including any financial statement or tax return, obtained or developed by the municipality, the commissioner or the State Tax Assessor, the disclosure of which would constitute

an invasion of personal privacy, as determined by the governmental entity in possession of that record or information; [PL 2001, c. 669, §1 (NEW).]

D. Any record, including any financial statement or tax return, obtained or developed by the municipality, the commissioner or the State Tax Assessor in connection with any monitoring or servicing activity by the municipality, the commissioner or the State Tax Assessor that pertains to a state tax increment financing district; [PL 2001, c. 669, §1 (NEW).]

E. Any record obtained or developed by the municipality, the commissioner or the State Tax Assessor that contains an assessment by a person who is not employed by that municipality or the State of the creditworthiness or financial condition of any person or project; and [PL 2001, c. 669, §1 (NEW).]

F. Any financial statement if a person to whom the statement belongs or pertains has requested that the record be designated confidential. [PL 2001, c. 669, §1 (NEW).]

A person may not knowingly divulge or disclose records determined confidential by this subsection. [PL 2001, c. 669, §1 (NEW).]

**14. Audit process.** Nothing in this section may be construed to limit the State Tax Assessor's authority to conduct an audit of any taxpayer included as a designated business in a development program pursuant to subsection 2, paragraph B. If distributions are made to a municipality with respect to a state tax increment financing district, the designated businesses within that district are subject to audit. When it is determined by the State Tax Assessor upon audit that a municipality has received a distribution larger than that to which it is entitled under this section, the overpayment must be applied against subsequent distributions. When there is not a subsequent distribution, the designated business or businesses to which overpayments were made are liable for the amount of the overpayments and may be assessed pursuant to Title 36.

[PL 2001, c. 669, §1 (NEW).]

#### SECTION HISTORY

RR 2001, c. 2, §A40 (COR). PL 2001, c. 669, §1 (NEW).

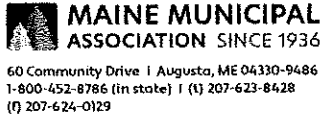
The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

Refs # 53-59



October 15, 2024

Anne Davison  
Office of Policy & Legal Analysis  
13 State House Station  
Augusta, ME 04333-0013

RE: RTKAC Municipal Public Records Exceptions Review

Dear Ms. Davison,

Please accept this letter as MMA's response to the request for feedback regarding the public records exceptions that fall within the scope of municipal authority. What follows are the comments and suggestions provided by staff in our Legal Services and Human Resources departments, which pertain only to personnel records, zoning adjustments and CEO authority over disability structure permits. MMA does not have the experience necessary to offer feedback on the exceptions extended to housing authorities or applied under the State's tax increment financing laws.

It is important to note that MMA staff do not administer or apply public records exceptions. Rather, various departments within MMA provide legal advice, develop guidance and offer training on the law's application. While we cannot assess the frequency with which exceptions are applied, we believe the provisions afforded under 30-A MRSA §2702, §4353, and §4353-A are helpful in protecting confidential information.

However, refinements to existing provisions should be considered.

**Personnel Records (30-A MRSA §2702, sub-§1)**

**Public Employee Personal Contact Information.** 1 MRSA §402(3)(O) makes the personal contact information concerning public employees (home address, telephone number, email, cell number, etc.) confidential except when that information is made public pursuant to other laws. However, a related provision in 30-A MRSA §2702 (1)(A)(1) makes applications, resumes and letters of reference public once the applicant is hired. This language, in effect, serves to render the confidential status of a municipal employee's personal contact information in 1 MRSA §402(3)(O) meaningless, since most of that personal contact information appears on employment applications, which are public records.

The conflict between 1 MRSA §402(3)(O) and 30-A MRSA §2702(1)(B)(5) could be addressed by clarifying that application records, except personal contact information, are public records, and that personal contact information should be redacted.

**Records Pertaining to an Identifiable Employee.** Clarification regarding 30-A MRSA §2702(1)(B)(2) may be warranted, as there is confusion as to whether the provision protecting

performance evaluations and personal references submitted in confidence pertains to the materials: (1) submitted during an application process; (2) those administered during employment; or (3) both.

**Complaints, Charges & Complaints of Misconduct.** The provision under 30-A MRSA §2702(1)(B)(5) raises an important question. If a disciplinary action is overturned or removed by an arbitrator, why is that disciplinary action still public even if the employee's name has been removed? Since the disciplinary action was not supported by an arbitrator it seems that it should be redacted. Failure to do so may lead to creative interpretations of a record and an erroneous conclusion regarding an employee's aptitude.

Additionally, as provided for in the supporting paragraph to 30-A MRS §2702(1)(B)(5)(b), in some cases the arbitration process can take longer than 120 days. If information regarding the disciplinary action can become public after the 120 days and before the completion of the arbitration process, there could be personal and professional issues created for the disciplined individual before a final determination by the arbitrator can be made. Providing that a "final disciplinary action" in 30-A MRS §2702(1)(B)(5)(a) cannot be deemed "final" until the timeframe for appeal of a decision has run and the decision was not appealed would help avoid confusion with respect to this section's applicability.

#### **Zoning Adjustments & CEO Authority for Disability Structure Permits (30-A MRSA § 4353, sub-§4-A & 4353-A)**

Again, MMA does not administer or apply these two public records exceptions. Our experience involves various MMA departments' advice, guidance and training for municipal officials on the application of this exception as it relates to application materials for disability variances when discussed in executive sessions by a municipal board or protected in a confidential file.

We do not have any suggestions for modifications to increase clarity – the exceptions are sufficiently clear and helpful to have in the statute since it provides clear authority to make these records related to a person's disability and application for a variance confidential. Although such medical records may be confidential under another statute, having it clearly indicated in the statutes governing disability variances helps municipal officials protect an applicant's privacy by providing clear authority to redact this information or records from a request.

#### **Other Clarifications for Consideration**

Additionally, to the extent the opportunity exists MMA offers the following clarifications for the RTKAC's consideration.

**Information contained in a communication between a constituent and an elected official (1 MRSA § 402, sub-§ 3 (C-1)).** It appears that this exception is intended to protect information that would otherwise be confidential (e.g. the credit or financial information of the constituent, or complaints related to a municipal employee), but the phrasing of the exception is overly broad and could include any number of statements related to "credit or financial information" of



municipal accounts or “complaints” about poor road conditions, which would not be confidential otherwise.

**Ambulance medical records and reports (1 MRSA § 402(H)).** Does this exception include the entire report, or just medical information? Should the entire report be deemed confidential, or should just certain information be redacted?

**Confidentiality of medical cannabis records (22 MRSA § 2524-A(14)).** This new law makes certain caregiver registration information in the custody of the state Office of Cannabis Policy confidential. Questions have come up in municipalities with their own local licensing process for medical cannabis caregiver operations as to whether that information would also be confidential if provided to the municipality directly.

Thank you for the opportunity to provide feedback on these exceptions. If you have any questions regarding our comments or need additional information, please do not hesitate to contact me at either [kdufour@memun.org](mailto:kdufour@memun.org) or 1-800-452-8786.

Sincerely,

A handwritten signature in black ink, appearing to read "Kate Dufour", with a long horizontal line extending to the right.

Kate Dufour  
MMA, Advocacy & Communications Director



**STATUTE:** 32 MRSA §2105-A, sub-§3

**AGENCY:** Maine State Board of Nursing

**CONTACT PERSON:** Kim Esquibel

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).  
Description of Records: Patient Medical Records (treatment records), Personal Health Information  
Rare that a FOAA is denied but records produced are redacted.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.  
Support the exception so long as patient name and identifying information is redacted.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? Consent agreements are public. As written, 3.B. appears to allow information or records identify or permit identification of a patient to be included in Consent Agreements.
4. Does your agency recommend changes to this exception? Yes
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Treatment records that are confidential under 10 M.R.S. § 8003-B(2-A) and/or health care information that is confidential under 22 M.R.S. § 1711-C.

**§2105-A. Disciplinary actions****1. Disciplinary proceedings and sanctions.**

[PL 1985, c. 724, §11 (RP).]

**1-A. Disciplinary proceedings and sanctions.** The board shall investigate a complaint, on its own motion or upon receipt of a written complaint filed with the board, regarding noncompliance with or violation of this chapter or of rules adopted by the board. Investigation may include a hearing before the board to determine whether grounds exist for suspension, revocation or denial of a license, or as otherwise considered necessary to the fulfillment of its responsibilities under this chapter. The board may subpoena witnesses, records and documents, including records and documents maintained by a health care facility, in an investigation or hearing it conducts.

The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but, absent unusual circumstances justifying the delay, not later than 60 days from receipt of this information. The licensee shall respond within 30 days. The board shall share the licensee's response with the complainant, unless the board determines that it would be detrimental to the health of the complainant to obtain the response. If the licensee's response to the complaint satisfies the board that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant, if any.

If, in the opinion of the board, the factual basis of the complaint is or may be true, and the complaint is of sufficient gravity to warrant further action, the board may request an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and of the issues to be discussed. The complainant may attend the conference and may be accompanied by up to 2 individuals, including legal counsel. The conference must be conducted in executive session of the board or its subcommittee, pursuant to Title 1, section 405, unless otherwise requested by the licensee. Before the board or its subcommittee decides what action to take at the conference or as a result of the conference, the board or its subcommittee shall give the complainant a reasonable opportunity to speak. Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent.

When a complaint has been filed against a licensee and the licensee moves or has moved to another state, the board may report to the appropriate licensing board in that state the complaint that has been filed, other complaints in the licensee's record on which action was taken and disciplinary actions of the board with respect to that licensee.

When an individual applies for a license under this chapter, the board may investigate the professional record of that individual, including professional records that the individual may have as a licensee in other states. The board may deny a license or authorize a restricted license based on the record of the applicant in other states.

If the board or its subcommittee finds that the factual basis of the complaint is true and is of sufficient gravity to warrant further action, the board or its subcommittee may take any of the following actions the board or its subcommittee considers appropriate:

- A. Warn, censure or reprimand; [PL 1985, c. 724, §12 (NEW).]
- B. With the consent of the licensee, enter into a consent agreement that fixes the period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. A consent agreement may be used to terminate a complaint investigation, if entered into by the board, the licensee and the Attorney General's office; [PL 1993, c. 600, Pt. A, §116 (AMD).]
- C. In consideration for acceptance of a voluntary surrender of the license, negotiate stipulations, including terms and conditions for reinstatement that ensure protection of the public health and

safety and serve to rehabilitate or educate the licensee. These stipulations may be set forth only in a consent agreement signed by the board, the licensee and the Attorney General's office; [PL 1993, c. 600, Pt. A, §116 (AMD).]

D. If the board or its subcommittee concludes that modification or nonrenewal of the license is in order, hold an adjudicatory hearing in accordance with the provisions of Title 5, chapter 375, subchapter 4; or [PL 2013, c. 23, §1 (AMD).]

E. If the board or its subcommittee concludes that suspension or revocation of the license is in order, file a complaint in the District Court in accordance with Title 4, chapter 5. [PL 2001, c. 260, Pt. D, §2 (AMD).]

[PL 2013, c. 23, §1 (AMD).]

**2. Grounds for discipline.** The board may suspend or revoke a license pursuant to Title 5, section 10004. The following are grounds for an action to refuse to issue, modify, suspend, revoke or refuse to renew the license of an individual licensed under this chapter:

A. The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued; [PL 1983, c. 378, §21 (NEW).]

B. Misuse of alcohol, drugs or other substances that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients; [PL 2013, c. 105, §5 (AMD).]

C. A professional diagnosis of a mental or physical condition that has resulted or is foreseeably likely to result in the licensee performing the licensee's duties in a manner that endangers the health or safety of the licensee's patients; [PL 1993, c. 600, Pt. A, §116 (AMD).]

D. Aiding or abetting the practice of nursing by an individual not licensed under this chapter and who claims to be legally licensed; [PL 1993, c. 600, Pt. A, §116 (AMD).]

E. Incompetence in the practice for which the licensee is licensed. A licensee is considered incompetent in the practice if the licensee has:

(1) Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public; or

(2) Engaged in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed; [PL 1993, c. 600, Pt. A, §116 (AMD).]

F. Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that has been established in the practice for which the licensee is licensed; [PL 1993, c. 600, Pt. A, §116 (AMD).]

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or that relates directly to the practice for which the licensee is licensed or conviction of a crime for which incarceration for one year or more may be imposed; [PL 1993, c. 600, Pt. A, §116 (AMD).]

H. A violation of this chapter or a rule adopted by the board; [PL 2015, c. 488, §10 (AMD).]

I. Engaging in false, misleading or deceptive advertising; [PL 2019, c. 165, §5 (AMD).]

J. Failure to comply with the requirements of Title 22, section 7253; or [PL 2019, c. 165, §6 (AMD).]

K. A violation of section 2112. [PL 2019, c. 165, §7 (NEW).]  
[PL 2019, c. 165, §§5-7 (AMD).]

**3. Confidentiality of information.** Reports, information or records provided to the board by a health care facility pursuant to this chapter are confidential insofar as the reports, information or records identify or permit identification of a patient, except that the board may disclose confidential information:

- A. In an adjudicatory hearing or informal conference before the board or in a subsequent formal proceeding to which the information is relevant; and [PL 1993, c. 600, Pt. A, §116 (AMD).]
- B. In a consent agreement or other written settlement when the information constitutes or pertains to the basis of board action. [PL 1993, c. 600, Pt. A, §116 (AMD).]

A copy of a report, information or record received by the board under this subsection must be provided to the licensee.

[PL 1993, c. 600, Pt. A, §116 (AMD).]

**4. Authority to request mental and physical examinations.** For the purposes of this section, by application for and acceptance of a license to practice, a nurse is considered to have given consent to a mental or physical examination when directed by the board. The board may direct a nurse to submit to an examination whenever the board determines the nurse may be suffering from a mental illness that may be interfering with the competent practice of nursing or from the use of intoxicants or drugs to an extent that they are preventing the nurse from practicing nursing competently and with safety to patients. A nurse examined pursuant to an order of the board may not prevent the testimony of the examining individual or prevent the acceptance into evidence of the report of an examining individual in a proceeding under subsection 1-A. Failure to comply with an order of the board to submit to a mental or physical examination results in the immediate suspension of the license of the nurse by order of the District Court until the nurse submits to the examination.

[PL 2009, c. 47, §2 (NEW).]

**5. Nurse health program.** The board may establish protocols for the operation of a professional review committee as defined in Title 24, section 2502, subsection 4-A. The protocols must include the committee's reporting information the board considers appropriate regarding reports received, contracts or investigations made and the disposition of each report, as long as the committee is not required to disclose any personally identifiable information. The protocols may not prohibit an impaired nurse from seeking alternative forms of treatment.

The board may contract with other agencies, individuals, firms or associations for the conduct and operation of a nurse health program operated by a professional review committee as that term is defined in Title 24, section 2502, subsection 4-A.

[PL 2009, c. 47, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 378, §21 (NEW). PL 1983, c. 769, §§1,2 (AMD). PL 1985, c. 724, §§11,12 (AMD). PL 1993, c. 600, §A116 (AMD). PL 1999, c. 547, §B62 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2001, c. 260, §D2 (AMD). PL 2009, c. 47, §§2, 3 (AMD). PL 2013, c. 23, §1 (AMD). PL 2013, c. 105, §5 (AMD). PL 2015, c. 488, §§10-12 (AMD). PL 2019, c. 165, §§5-7 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE: 32 MRSA §2109**

**AGENCY: Maine State Board of Nursing**

**CONTACT PERSON: Kim Esquibel**

**RETURN BY: September 20, 2024**

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

Description of records: License Applications, Closed Complaint files  
Request for applications and records are produced with personal residence address, telephone number, and email address redacted.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Supports

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? Yes

4. Does your agency recommend changes to this exception? No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



**§2109. Confidentiality of personal information of applicant or licensee**

For applications for licensure and for renewal of licensure submitted on or after July 1, 2004, an applicant or licensee shall provide the board with a current professional address and telephone number, which is the public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number, and e-mail address if provided by the applicant, are confidential information and may not be disclosed except as permitted by this section or as required by law unless the personal residence address, telephone number and e-mail address have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted or required by law. [PL 2003, c. 64, §1 (NEW).]

**SECTION HISTORY**

PL 2003, c. 64, §1 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE:** 32 MRSA §2109-A, sub-§2

**AGENCY:** Maine State Board of Nursing

**CONTACT PERSON:** Kim Esquibel

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).  
Description of records: Any record on file with the Board.  
Denial is not frequent under 2109-A(9).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Supports
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? Yes
4. Does your agency recommend changes to this exception? No
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



**§2109-A. Inspection or copying of record; procedure**

**1. Request for record; redaction.** When the board receives a request to inspect or copy all or part of the record of an applicant or licensee, the board shall redact information that is not public before making the record available for inspection or copying.

[PL 2019, c. 499, §1 (NEW).]

**2. Notice and opportunity to review.** When the board acknowledges a request to inspect or copy an applicant's or a licensee's record as required by Title 1, section 408-A, subsection 3, the board shall send a notice to the applicant or licensee at the applicant's or licensee's last address on file with the board explaining that the request has been made and that the applicant or licensee may review the redacted record before it is made available for inspection or copying. The acknowledgment to the requester must include a description of the review process provided to the applicant or licensee pursuant to this section, including the fact that all or part of the record may be withheld if the board finds that disclosure of all or part of the redacted record creates a potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party. The applicant or licensee has 10 business days from the date the board sends the notice to request the opportunity to review the redacted record. If the applicant or licensee so requests, the board shall send a copy of the redacted record to the applicant or licensee for review. The board shall make the redacted record available to the requester for inspection or copying 10 business days after sending the redacted record to the applicant or licensee for review unless the board receives a petition from the applicant or licensee under subsection 4.

[PL 2019, c. 499, §1 (NEW).]

**3. Reasonable costs.** Reasonable costs related to the review of a record by the applicant or licensee are considered part of the board's costs to make the redacted record available for inspection or copying under subsection 2 and may be charged to the requester.

[PL 2019, c. 499, §1 (NEW).]

**4. Action based on personal safety.** An applicant or licensee may petition the board to withhold the release of all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must petition the board to withhold all or part of the record within 10 business days after the board sends the applicant or licensee the redacted record. The petition must include an explanation of the potential safety risks and a list of items requested to be withheld. Within 60 days of receiving the petition, the board shall notify the applicant or licensee of its decision on the petition. If the applicant or licensee disagrees with the board's decision, the applicant or licensee may file a petition in Superior Court to enjoin the release of the record under subsection 5.

[PL 2019, c. 499, §1 (NEW).]

**5. Injunction based on personal safety.** An applicant or licensee may bring an action in Superior Court to enjoin the board from releasing all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must file the action within 10 business days after the board notifies the applicant or licensee under subsection 4 that the board will release all or part of the redacted record to the requester. The applicant or licensee shall immediately provide written notice to the board that the action has been filed, and the board may not make the record available for inspection or copying until the action is resolved.

[PL 2019, c. 499, §1 (NEW).]

**6. Hearing.** The hearing on an action filed under subsection 5 may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[PL 2019, c. 499, §1 (NEW).]

**7. Application.** This section does not apply to requests for records from other governmental licensing or disciplinary authorities or from any health care providers located within or outside this

State that are concerned with granting, limiting or denying an applicant's or licensee's employment or privileges.

[PL 2019, c. 499, §1 (NEW).]

#### SECTION HISTORY

PL 2019, c. 499, §1 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE: 32 MRSA §2111, sub-§1, paragraph F**

**AGENCY: Maine State Board of Nursing**

**CONTACT PERSON: Kim Esquibel**

**RETURN BY: September 20, 2024**

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

Description of records: CHRI

The board requests a background check for each person who submits an application for initial licensure or licensure by endorsement, including an application for multistate licensure under subchapter 2-A. (approximately 5000/year).

CBC information obtained by the Board on an applicant is confidential under State and federal law. The results of CBC checks are confidential and are never disseminated to the Interstate Commission of Nurse Licensure Compact Administrators or to any other person or entity.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Supports

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Yes. Is the language of the exception sufficiently clear in describing the records that are covered? Yes

4. Does your agency recommend changes to this exception? No

**Reference #70**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**§2111. Criminal history record information; fees**

**1. Background check.** The board shall request a background check for each person who submits an application for initial licensure or licensure by endorsement under this chapter, including an application for multistate licensure under subchapter 2-A. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation. The following provisions apply.

A. The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8. [PL 2017, c. 258, Pt. B, §5 (NEW).]

B. The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information. [PL 2017, c. 258, Pt. B, §5 (NEW).]

C. An applicant shall submit to having fingerprints taken. The State Police, upon payment of a fee established by the board by rule by the applicant, shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety. [PL 2017, c. 258, Pt. B, §5 (NEW).]

D. The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709. [PL 2017, c. 258, Pt. B, §5 (NEW).]

E. State and federal criminal history record information may be used by the board for the purpose of screening each applicant. A board action against an applicant under this subsection is subject to the provisions of Title 5, chapter 341. [PL 2017, c. 258, Pt. B, §5 (NEW).]

F. Information obtained pursuant to this subsection is confidential. The results of background checks received by the board are for official use only and may not be disseminated to the Interstate Commission of Nurse Licensure Compact Administrators established in section 2177 or to any other person or entity. [PL 2017, c. 258, Pt. B, §5 (NEW).]

G. An applicant whose license has expired and who has not applied for renewal may request in writing that the State Bureau of Identification remove the applicant's fingerprints from the bureau's fingerprint file. In response to a written request, the bureau shall remove the applicant's fingerprints from the fingerprint file and provide written confirmation of that removal. [PL 2017, c. 258, Pt. B, §5 (NEW).]

[PL 2017, c. 258, Pt. B, §5 (NEW).]

**2. Rules.** The board, following consultation with the State Bureau of Identification, shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2017, c. 258, Pt. B, §5 (NEW).]

**SECTION HISTORY**

PL 2017, c. 258, Pt. B, §5 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

**PLEASE NOTE:** The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

**STATUTE:** 32 MRSA §7365, sub-§3

**AGENCY:** Department of Public Safety

**CONTACT PERSON:** Paul F Cavanaugh

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

*This statutory exception is the blanket confidentiality of records relating to preemployment screening processes. In the memory of those in our polygraph unit, no FOAA request has ever been made.*

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

*We support continuing this exception. Some of the questions and conclusions from a polygraph are very personal and intimate and to have to release them to the public would have a chilling effect on the law enforcement preemployment practices.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

4. Does your agency recommend changes to this exception?

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**§7365. Confidentiality of polygraph examination results and related records**

**1. Disclosure prohibited.** A polygraph examiner may not disclose information acquired from a polygraph examination, or records resulting from a polygraph examination, to another person other than:

- A. The subject of the examination or the subject's attorney; [PL 2015, c. 316, §2 (AMD).]
- B. Any other person specifically designated in writing by the subject of the examination; [PL 2013, c. 316, §3 (NEW); PL 2013, c. 316, §5 (AFF).]
- C. A member or agent of the department that licenses polygraph examiners; [PL 2015, c. 316, §2 (AMD).]
- C-1. A member or agent of a criminal justice agency that employs or contracts with the polygraph examiner. [PL 2015, c. 316, §2 (NEW).]
- C-2. A member or agent of a criminal justice agency, if the polygraph examiner conducts a polygraph examination in the course of a criminal investigation; [PL 2015, c. 316, §2 (NEW).]
- D. Another licensed polygraph examiner in private, professional consultation; [PL 2015, c. 316, §2 (AMD).]
- D-1. A person employed by or working as an intern with the polygraph examiner; [PL 2015, c. 316, §2 (NEW).]
- D-2. The Maine Criminal Justice Academy and its board of trustees, if the subject of the polygraph examination is an applicant for admission to the academy or for law enforcement certification that is being considered by the academy or board; [PL 2015, c. 316, §2 (NEW).]
- E. The Department of Health and Human Services pursuant to section 7361, subsection 1, paragraph F; or [PL 2015, c. 316, §2 (AMD).]
- F. As otherwise required or authorized by law. [PL 2015, c. 316, §2 (NEW).]

[PL 2015, c. 316, §2 (AMD).]

**2. Further disclosure prohibited.** A polygraph examiner or other person to whom information acquired from a polygraph examination is disclosed under subsection 1 may not further disclose the information or records, except as otherwise required or authorized by law.

[PL 2015, c. 316, §3 (AMD).]

**3. Examination records.** Notwithstanding any other provision of law, the pre-test, in-test and post-test records associated with the administration of a polygraph examination that is administered for preemployment screening purposes or in association with a law enforcement investigation are confidential for the purposes of Title 1, chapter 13 and are not subject to compulsory legal process or otherwise discoverable or admissible in evidence in any civil action unless the confidentiality is expressly waived, in writing, by the subject of the examination. For purposes of this subsection, "records" includes, but is not limited to, video and audio recordings, graphs and examination results. [PL 2013, c. 316, §3 (NEW); PL 2013, c. 316, §5 (AFF).]

**4. Records in custody of commissioner.** Records in the custody of the commissioner pursuant to this chapter are confidential if those records contain:

- A. Personal medical information of an applicant or licensee under this chapter; or [PL 2013, c. 316, §3 (NEW); PL 2013, c. 316, §5 (AFF).]
- B. Personally identifying information of a minor to whom a polygraph examination has been administered. [PL 2013, c. 316, §3 (NEW); PL 2013, c. 316, §5 (AFF).]

Nothing in this chapter prohibits the use of statements or disclosures voluntarily made by the subject of a polygraph examination from being used in the course of a criminal investigation or prosecution, to the fullest extent permitted by law.

[PL 2015, c. 316, §3 (AMD).]

#### SECTION HISTORY

PL 2013, c. 316, §3 (NEW). PL 2013, c. 316, §5 (AFF). PL 2015, c. 316, §§2, 3 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**STATUTE:** 32 MRSA §7365, sub-§4, paragraphs A and B

**AGENCY:** Department of Public Safety

**CONTACT PERSON:** Paul F Cavanaugh

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

*This statutory reference is to the exception to this exception allowing the release of polygraph records to the person who took the polygraph and anyone that person designates to receive a copy. The results of the polygraph are shared with the subject and the agency doing the preemployment background check. This is not really a FOAA request but more in line with the intent of taking the polygraph – it isn't public.*

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

*We support continuing this exception as it serves the purpose of the polygraph.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

4. Does your agency recommend changes to this exception?

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**§7365. Confidentiality of polygraph examination results and related records**

**1. Disclosure prohibited.** A polygraph examiner may not disclose information acquired from a polygraph examination, or records resulting from a polygraph examination, to another person other than:

- A. The subject of the examination or the subject's attorney; [PL 2015, c. 316, §2 (AMD).]
  - B. Any other person specifically designated in writing by the subject of the examination; [PL 2013, c. 316, §3 (NEW); PL 2013, c. 316, §5 (AFF).]
  - C. A member or agent of the department that licenses polygraph examiners; [PL 2015, c. 316, §2 (AMD).]
  - C-1. A member or agent of a criminal justice agency that employs or contracts with the polygraph examiner. [PL 2015, c. 316, §2 (NEW).]
  - C-2. A member or agent of a criminal justice agency, if the polygraph examiner conducts a polygraph examination in the course of a criminal investigation; [PL 2015, c. 316, §2 (NEW).]
  - D. Another licensed polygraph examiner in private, professional consultation; [PL 2015, c. 316, §2 (AMD).]
  - D-1. A person employed by or working as an intern with the polygraph examiner; [PL 2015, c. 316, §2 (NEW).]
  - D-2. The Maine Criminal Justice Academy and its board of trustees, if the subject of the polygraph examination is an applicant for admission to the academy or for law enforcement certification that is being considered by the academy or board; [PL 2015, c. 316, §2 (NEW).]
  - E. The Department of Health and Human Services pursuant to section 7361, subsection 1, paragraph F; or [PL 2015, c. 316, §2 (AMD).]
  - F. As otherwise required or authorized by law. [PL 2015, c. 316, §2 (NEW).]
- [PL 2015, c. 316, §2 (AMD).]

**2. Further disclosure prohibited.** A polygraph examiner or other person to whom information acquired from a polygraph examination is disclosed under subsection 1 may not further disclose the information or records, except as otherwise required or authorized by law.  
[PL 2015, c. 316, §3 (AMD).]

**3. Examination records.** Notwithstanding any other provision of law, the pre-test, in-test and post-test records associated with the administration of a polygraph examination that is administered for preemployment screening purposes or in association with a law enforcement investigation are confidential for the purposes of Title 1, chapter 13 and are not subject to compulsory legal process or otherwise discoverable or admissible in evidence in any civil action unless the confidentiality is expressly waived, in writing, by the subject of the examination. For purposes of this subsection, "records" includes, but is not limited to, video and audio recordings, graphs and examination results.  
[PL 2013, c. 316, §3 (NEW); PL 2013, c. 316, §5 (AFF).]

**4. Records in custody of commissioner.** Records in the custody of the commissioner pursuant to this chapter are confidential if those records contain:

- A. Personal medical information of an applicant or licensee under this chapter; or [PL 2013, c. 316, §3 (NEW); PL 2013, c. 316, §5 (AFF).]
- B. Personally identifying information of a minor to whom a polygraph examination has been administered. [PL 2013, c. 316, §3 (NEW); PL 2013, c. 316, §5 (AFF).]

Nothing in this chapter prohibits the use of statements or disclosures voluntarily made by the subject of a polygraph examination from being used in the course of a criminal investigation or prosecution, to the fullest extent permitted by law.

[PL 2015, c. 316, §3 (AMD).]

#### SECTION HISTORY

PL 2013, c. 316, §3 (NEW). PL 2013, c. 316, §5 (AFF). PL 2015, c. 316, §§2, 3 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

**STATUTE:** 32 MRSA §8124

**AGENCY:** Department of Public Safety

**CONTACT PERSON:** Paul F Cavanaugh

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

*This statute protects the home address and phone number of a professional investigator or assistant. We have not had a request for this information.*

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

*We support continuing this exception. No professional should have their home phone and address published without their consent. Applying for a license is not a waiver of a person's personal life.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

4. Does your agency recommend changes to this exception?  
We do not recommend any changes.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**§8124. Confidential information**

The home address and home telephone number of a professional investigator or investigative assistant obtained by the State under this chapter are confidential and may not be disclosed by the board except by written consent of the subject of the information, by court order, for criminal justice purposes or for permitting purposes by law enforcement agencies or permitting authorities. [PL 2015, c. 295, §1 (NEW).]

**SECTION HISTORY**

PL 2015, c. 295, §1 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.





**STATUTE: 32 MRSA §9418**

**AGENCY: Department of Public Safety**

**CONTACT PERSON: Paul F Cavanaugh**

**RETURN BY: September 20, 2024**

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

*This statute protects material collected from an applicant for a contract security company. There are no recent requests for documents of this type.*

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

*We support continuing this exception. When people send personal information to a State agency to apply for a State mandated license, they should expect that information to remain confidential.*

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

4. Does your agency recommend changes to this exception?

*We do not recommend any changes.*

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**§9418. Confidentiality of application and information collected by the commissioner**

Notwithstanding Title 1, chapter 13, subchapter 1, all applications for a license to be a contract security company and any documents made a part of the application, refusals and any information of record collected by the commissioner during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 9405 and 9411-A, and all information of record collected by the commissioner during the process of ascertaining whether a natural person meets the requirements of section 9410-A, are confidential and may not be made available for public inspection or copying. The applicant or natural person may waive this confidentiality by written notice to the commissioner. All proceedings relating to the issuance of a license to be a contract security company are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant. [PL 2011, c. 662, §20 (AMD).]

The commissioner or his designee shall make a permanent record of each license to be a contract security company in a suitable book or file kept for that purpose. The record shall include a copy of the license and shall be available for public inspection. Upon a specific request, the commissioner or his designee shall provide a list of names and current addresses of security guards employed by licensed contract security companies. [PL 1987, c. 170, §19 (NEW).]

**SECTION HISTORY**

PL 1987, c. 170, §19 (NEW). PL 2011, c. 662, §20 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

Ref. #	Title	Description	Responding Agency/ Dept	Agency Proposed Action	Analyst Notes	Subcommittee Action
1	<a href="#">25 MRSA §1577, sub-§1</a>	Title 25, section 1577, subsection 1, relating to the state DNA data base and the state DNA data bank				
2	<a href="#">25 MRSA §2006, sub-§1</a>	Title 25, section 2006, subsection 1, relating to concealed handguns permit applications.	Department of Public Safety	The agency does not recommend any changes	Format: uses phrase “are confidential and not public records for the purposes of Title 1, chapter 13, subchapter 1.” Redundant.	
3	<a href="#">25 MRSA §2006, sub-§2</a>	Title 25, section 2006, subsection 2, relating to concealed handguns permits Title 25, section 2006, subsection 1, relating to concealed handguns permit applications	Department of Public Safety	The agency does not recommend any changes	Format: uses phrase “is not confidential and is a public record.” Redundant.	
4	<a href="#">25 MRSA §2806, sub-§8</a>	Title 25, section 2806, subsection 8, relating to proceedings of the board of trustees of the Maine Criminal Justice Academy concerning complaints of misconduct of law enforcement officers  REPEALED	REPEALED – N/A	REPEALED – N/A	REPEALED – N/A	REPEALED – N/A

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

5	<a href="#">25 MRSA §2806-A, sub-§10</a>	Title 25, section 2806-A, subsection 10, relating to complaints, charges or accusation of misconduct at the Maine Criminal Justice Academy.				
6	<a href="#">25 MRSA §2929, sub-§§1-4</a>	Title 25, section 2929, subsections 1, 2, 3 and 4, relating to emergency services communications	Public Utilities Commission, E-911 Bureau	The agency does not recommend any changes	None	
7	<a href="#">25 MRSA §2929, sub-§2</a>	Title 25, section 2929, subsection 2, relating to public safety answering point records	Public Utilities Commission, E-911 Bureau	The agency does not recommend any changes	None	
8	<a href="#">25 MRSA §2957</a>	Title 25, section 2957, relating to Maine Drug Enforcement Agency investigative records	Department of Public Safety, Maine Drug Enforcement Agency	The agency does not recommend any changes	None	
9	<a href="#">25 MRSA §4202, sub-§1</a>	Title 25, section 4202, subsection 1, relating to proceedings, communications and records of critical incident stress management team	Department of Public Safety	The agency does not recommend any changes	None	
10	<a href="#">26 MRSA §3</a>	Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor	Department of Labor	The agency does not recommend any changes	None	
11	<a href="#">26 MRSA §43</a>	Title 26, section 43, relating to the names of persons, firms and corporations providing information to the	Department of Labor	The agency does not recommend any changes	Format: the wording is a bit dense; could benefit from clarity	

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

		Department of Labor, Bureau of Labor Standards				
12	<a href="#">26 MRSA §665, sub-§1</a>	Title 26, section 665, subsection 1, relating to records submitted to the Director of Labor Standards within the Department of Labor by an employer concerning wages	Department of Labor	The agency does not recommend any changes	None	
13	<a href="#">26 MRSA §685, sub-§3</a>	Title 26, section 685, subsection 3, relating to substance abuse testing by an employer				
14	<a href="#">26 MRSA §850-D, sub-§4</a>	Title 26, section 850-D, subsection 4, relating to medical or health information submitted to administrator of paid family and medical leave program	Department of Labor	The agency does not recommend any changes	None	
15	<a href="#">26 MRSA §934</a>	Title 26, section 934, relating to a report of the State Board of Arbitration and Conciliation in labor dispute	State Board of Arbitration and Conciliation, Maine Labor Relations Board	The agency does not recommend any changes	None	10.24.24 – Voted 4-0 no changes
16	<a href="#">26 MRSA §939</a>	Title 26, section 939, relating to information disclosed by a party to the State Board of Arbitration and Conciliation	State Board of Arbitration and Conciliation, Maine Labor Relations Board	The agency does not recommend any changes	None	10.24.24 – Voted 4-0 no changes
17	<a href="#">26 MRSA §965, sub-§2</a>	Title 26, section 965, subsection 2, relating to information disclosed by either party to a dispute to the	Maine Labor Relations Board	The agency does not recommend any changes	Format: Language states that information is “privileged.” May wish to use “confidential.”	10.24.24 – Voted 4-0 no changes

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

		Maine Labor Relations Board in context of mediation				
18	<a href="#">26 MRSA §975, sub-§2</a>	Title 26, section 975, subsection 2, paragraph B, relating to information about municipal employees and communications with bargaining agent	Maine Labor Relations Board	The agency takes no position with respect to this public records exception	None	10.24.24 – Voted 4-0 no changes
19	<a href="#">26 MRSA §979-D, sub-§2</a>	Title 26, section 979-D, subsection 2, relating to information disclosed by either party to a dispute to the Maine Labor Relations Board in context of mediation	Maine Labor Relations Board	The agency does not recommend any changes	Format: Language states that information is “privileged.” May wish to use “confidential.”	10.24.24 – Voted 4-0 no changes
20	<a href="#">26 MRSA §979-T, sub-§2</a>	Title 26, section 979-T, subsection 2, paragraph B, relating to information about state employees and communications with bargaining agent	Maine Labor Relations Board	The agency takes no position with respect to this public records exception	None	10.24.24 – Voted 4-0 no changes
21	<a href="#">26 MRSA §1026, sub-§2</a>	Title 26, section 979-D, subsection 2, relating to information disclosed by either party to a dispute to a mediator in context of mediation	Maine Labor Relations Board	The agency does not recommend any changes	Format: Language states that information is “privileged.” May wish to use “confidential.”	10.24.24 – Voted 4-0 no changes
22	<a href="#">26 MRSA §1037, sub-§2</a>	Title 26, section 1037, subsection 2, paragraph B, relating to information about university, academy and community college employees and communications with bargaining agent	Maine Community College System	MCCS does not have any recommended changes to this exception	None	10.24.24 – Voted 4-0 no changes



**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

23	<a href="#">26 MRSA §1047</a>	Title 26, section 1047, relating to information transmitted to the Bureau of Unemployment Compensation	Department of Labor	The agency does not recommend any changes	Format: Language states that information is “absolutely privileged.” However, this appears to be intentional, based on context.	
24	<a href="#">26 MRSA §1082, sub-§7</a>	Title 26, section 1082, subsection 7, relating to employers' unemployment compensation records concerning individual information	Department of Labor	The agency does not recommend any changes	Format: language used is “must be held confidential and may not be published or opened to public inspection.” “Are confidential” may be preferable.	
25	<a href="#">26 MRSA §1085, sub-§4</a>	Title 26, section 1085, subsection 4, relating to fingerprint-based criminal history record check of applicants, employees and contractors with the Bureau of Labor Standards	Department of Labor	The agency does not recommend any changes	None	
26	<a href="#">26 MRSA §1285, sub-§2</a>	Title 26, section 1285, subsection 2, relating to information disclosed by either party to a dispute in context of mediation	Maine Labor Relations Board	The agency does not recommend any changes	Format: Language states that information is “privileged.” May wish to use “confidential.”	10.24.24 – Voted 4-0 no changes
27	<a href="#">26 MRSA §1295, sub-§2</a>	Title 26, section 1295, subsection 2, paragraph B, relating to information about Judicial Branch employees and communications with bargaining agent	Department of Labor	The agency does not recommend any changes	None	

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

28	<a href="#">27 MRSA §10, sub-§6</a>	Title 27, section 10, subsection 6, relating to personally identifiable information relating to parents and children participating in the Imagination Library of Maine Program				
29	<a href="#">27 MRSA §86-B, sub-§1</a>	Title 27, section 86-B, subsection 1, relating to museum draft research, publications and exhibit materials, including scientific, archaeological and historic findings	Maine State Museum	The agency does not recommend any changes	Format: Does not conform to drafting manual; uses “confidential and not public records”	
30	<a href="#">27 MRSA §86-B, sub-§2</a>	Title 27, section 86-B, subsection 2, relating to personal information contained in any record about the individual that is obtained by the Maine State Museum in the course of a historical research project	Maine State Museum	The agency does not recommend any changes	Format: Does not conform to drafting manual; uses “confidential and not public records”	
31	<a href="#">27 MRSA §121</a>	Title 27, section 121, relating to library records concerning identity of patrons and use of books and materials	Maine Community College System	MCCS does not have any recommended changes to this exception	Format: Subsection 3 may not conform to drafting manual	10.24.24 – Voted 4-0 no changes
32	<a href="#">27 MRSA §377</a>	Title 27, section 377, relating to the location of a site for archeological research	Maine State Museum; Maine Historic Preservation Commission	The Maine State Museum does not recommend any changes	None	10.24.24 – Voted 4-0 no changes
33	<a href="#">28-A MRSA §755</a>	Title 28-A, section 755, relating to liquor licensees' business and financial records	Department of Administrative and	The agency does not recommend any changes	None	

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

			Financial Affairs, BABLO			
34	<a href="#">28-B MRSA §114</a>	Title 28-B, section 114, relating to personal contact information of applicants for adult use cannabis establishment license and employees of those establishments				
35	<a href="#">28-B MRSA §204, sub-§7</a>	Title 28-B, section 204, subsection 7, relating to criminal history record check information for cannabis license applicants				
36	<a href="#">28-B MRSA §511, sub-§4</a>	Title 28-B, section 511, subsection 4, relating to record keeping, inspection of records, and audits of cannabis establishment licensee documents				
37	<a href="#">29-A MRSA §152, sub-§3</a>	Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles				
38	<a href="#">29-A MRSA §251, sub-§4</a>	Title 29-A, section 251, subsection 4, relating to an email address submitted as part of the application process for a license or registration under Title 29-A				
39	<a href="#">29-A MRSA §253</a>	Title 29-A, section 253, relating to motor vehicle records concerning certain nongovernmental vehicles				

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

40	<a href="#">29-A MRSA §255, sub-§1</a>	Title 29-A, section 255, subsection 1, relating to motor vehicle records when a protection order is in effect				
41	<a href="#">29-A MRSA §257</a>	Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system  REPEALED				
42	<a href="#">29-A MRSA §517, sub-§4</a>	Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles				
43	<a href="#">29-A MRSA §1258, sub-§7</a>	Title 29-A, section 1258, subsection 7, relating to the competency of a person to operate a motor vehicle				
44	<a href="#">29-A MRSA §1301, sub- §6-A</a>	Title 29-A, section 1301, subsection 6-A, relating to the social security number of an applicant for a driver license or nondriver identification card				
45	<a href="#">29-A MRSA §1401, sub-§6</a>	Title 29-A, section 1401, subsection 6, relating to driver's license digital images				
46	<a href="#">29-A MRSA §1410, sub-§5</a>	Title 29-A, section 1410, subsection 5, relating to nondriver identification card digital images				
47	<a href="#">29-A MRSA §2117, sub-§1</a>	Title 29-A, section 2117, subsection 1, relating to				

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

		recorded images or audio produced by traffic surveillance cameras on a school bus				
48	<a href="#">29-A MRSA §2117-A, sub-§4</a>	Title 29-A, section 2117-A, subsection 4, relating to data collected or retained through the use of an automatic license plate recognition system	Department of Public Safety / Dept of Transportation	The agency does not recommend any changes	None	
49	<a href="#">29-A MRSA §2251, sub-§7-A</a>	Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in State Police accident report database				
50	<a href="#">29-A MRSA §2601, sub-§3-A</a>	Title 29-A, section 2601, subsection 3-A, relating to personally identifiable information in the Department of Public Safety's electronic citation and warning database				
51	<a href="#">30-A MRSA §503, sub-§1</a>	Title 30-A, section 503, subsection 1, relating to county personnel records				
52	<a href="#">30-A MRSA §503, sub-§1-A</a>	Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force				
53	<a href="#">30-A MRSA §2702, sub-§1</a>	Title 30-A, section 2702, subsection 1, relating to municipal personnel records	Administered by municipalities. Maine Municipal Assn. provided input.	MMA suggested clarifying 30-A MRSA §2702, sub-§1(B)(2), stating that there is confusion as to whether	Format: Nonconforming; uses term "are not public records"	

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

				<p>the provision protecting performance evaluations and personal references submitted in confidence pertains to materials submitted during the application process, those administered during employment, or both.</p> <p>As regards 30-A MRSA §2702, sub-§1(B)(5), MMA suggested that disciplinary action that is overturned or removed by an arbitrator should be redacted.</p> <p>As regards 30-A MRSA §2702, sub-§1(B)(5)(b), in some cases arbitration exceeds 120 days. If information regarding the disciplinary action can become public after 120 days but before arbitration complete, there could be problems created for the disciplined entity. MMA suggested providing that a disciplinary action cannot be deemed final until appeal timeframe has run</p>		
--	--	--	--	---	--	--

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

				and decision was not appealed.		
54	<a href="#">30-A MRSA §2702, sub-§1-A</a>	Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force	Administered by municipalities. Maine Municipal Assn. provided input.	MMA noted that the exception Id 30-A MRSA §2702, sub-§1(A)(1) effectively renders 1 MRSA §402, sub-§3(O) meaningless and suggested clarification that application records, except personal contact information, are public records and that personal contact information should be redacted	No changes suggested	
55	<a href="#">30-A MRSA §4353, sub-§4-A</a>	Title 30-A, section 4353, subsection 4-A, relating to records submitted to a municipal code enforcement officer relating to disability of an applicant for a variance	Administered by municipalities. Maine Municipal Assn. provided input.	MMA does not recommend any changes	No changes suggested	
56	<a href="#">30-A MRSA §4353-A</a>	Title 30-A, section 4353-A, relating to records submitted to a municipal board of appeals relating to disability of an applicant for a variance	Administered by municipalities. Maine Municipal Assn. provided input.	MMA does not recommend any changes	No changes suggested	
57	<a href="#">30-A MRSA §4706, sub-§1</a>	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities	Administered by municipalities. Maine Municipal Assn. provided input.	MMA did not provide comments	No changes suggested	
58	<a href="#">30-A MRSA §4706, sub-§5</a>	Title 30-A, section 4706, subsection 1, relating to municipal personnel records	Administered by municipalities. Maine Municipal	MMA did not provide comments	No changes suggested	

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

			Assn. provided input.			
59	<a href="#">30-A MRSA §5242, sub-§13</a>	Title 30-A, section 5242, subsection 13, relating to tax increment financing districts	Administered by municipalities. Maine Municipal Assn. provided input.	MMA did not provide comments	No changes suggested	
60	<a href="#">32 MRSA §85, sub-§3</a>	Title 32, section 85, subsection 3, relating to criminal history record information for an applicant seeking initial licensure by the Emergency Medical Services Board				
61	<a href="#">32 MRSA §91-B, sub-§1</a>	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee				
62	<a href="#">32 MRSA §91-B, sub-§1, ¶A</a>	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board				
63	<a href="#">32 MRSA §91-B, sub-§1, ¶B</a>	Title 32, section 91-B, subsection 1, paragraph B, relating to confidential information as part of application for credentialing				



**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

		by Emergency Medical Services Board				
64	<a href="#">32 MRSA §91-B, sub-§1, ¶D</a>	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board				
65	<a href="#">32 MRSA §91-B, sub-§1, ¶E-F</a>	Title 32, section 91-B, subsection 1, paragraphs E and F, relating to health care information or records provided to the Emergency Medical Services Board				
66	<a href="#">32 MRSA §1092-A, sub-§§1-2</a>	Title 32, section 1092-A, subsections 1 and 2, relating to privileged communications of dentists and dental hygienists' patients  REPEALED				
67	<a href="#">32 MRSA §2105-A, sub-§3</a>	Title 32, section 2105-A, subsection 3, relating to information provided by a health care facility to the State Board of Nursing that identifies a patient	Maine Board of Nursing	The Board suggests that subsection 3, paragraph B be amended to clarify that information or records in a Consent Agreement that identify or permit identification of a patient are confidential.	None	
68	<a href="#">32 MRSA §2109</a>	Title 32, section 2109, relating to personal contact and health information of nurse applicants and licensees	Maine Board of Nursing	The Board does not recommend any changes	None	

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

69	<a href="#">32 MRSA §2109-A, sub-§2</a>	Title 32, section 2109-A relating to the board's ability to redact applicant or licensee records for potential risks to personal safety	Maine Board of Nursing	The Board does not recommend any changes	Format: This is not framed as a public records exception, but the redaction does effectively result in a portion of an otherwise public record being withheld. Also note that subsection 1 does not conform to drafting manual – uses “not public” v. confidential.	
70	<a href="#">32 MRSA §2111, sub-§1, ¶F</a>	Title 32, section 2111 relating to background check results received by the State Board of Nursing	Maine Board of Nursing	The Board does not recommend any changes	None	
71	<a href="#">32 MRSA §2571-A, sub-§1, ¶F</a>	Title 32, section 2571-A relating to background check results received by the Board of Osteopathic Licensure for licensing through the Interstate Medical Licensure Compact				
72	<a href="#">32 MRSA §2599</a>	Title 32, section 2599, relating to medical staff reviews and hospital reviews - osteopathic physicians				
73	<a href="#">32 MRSA §2600-A</a>	Title 32, section 2600-A, relating to personal contact and health information of osteopathic physician applicants and licensees				

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

74	<a href="#">32 MRSA §2600-E</a>	Title 32, section 2600-E, relating to the board's ability to redact applicant or licensee records for potential risks to personal safety				
75	<a href="#">32 MRSA §3121, sub-§1, ¶F</a>	Title 32, section 3121, subsection 1, paragraph F, relating to fingerprint-based criminal history record check information for applicants for multistate licenses under Physical Therapy Licensure Compact	Dept of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Examiners in Physical Therapy	OPOR does not recommend changes	None	10.24.24 – Voted 4-0 no changes
76	<a href="#">32 MRSA §3275-A, sub-§1, ¶F</a>	Title 32, section 3275-A relating to background check results received by the Board Licensure in Medicine for licensing through the Interstate Medical Licensure Compact	Board of Licensure in Medicine	No changes recommended	None	10.24.24 – Voted 4-0 no changes
77	<a href="#">32 MRSA §3296</a>	Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees	Board of Licensure in Medicine	No changes recommended	None	10.24.24 – Voted 4-0 no changes
78	<a href="#">32 MRSA §3300-A</a>	Title 32, section 3300-A, relating to Board of Licensure in Medicine personal contact and health information about applicants and licensees	Board of Licensure in Medicine	BOLM recommends that personal email addresses be specifically identified in this exception	None	10.24.24 – Voted 4-0 to adopt BOLM recommendation
79	<a href="#">32 MRSA §3300-H, sub-§2</a>	Title 32, section 3300-H, subsection 2, relating to the board's ability to redact	Board of Licensure in Medicine	BOLM recommends removal of this exception	Format: This is not framed as a public records exception, but	9.30.24 - TABLED to review legislative history

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

		applicant or licensee records for potential risks to personal safety			the redaction does effectively result in a portion of an otherwise public record being withheld. Also note that subsection 1 does not conform to drafting manual – uses “not public” v. confidential.	
80	32 MRSA §6080	Title 32, section 6080, relating to information held by Bureau of Consumer Credit Protection about applicant or licensee related to investigation under Maine Money Transmission Modernization Act  NEW				
81	<a href="#">32 MRSA §6115, sub-§1</a>	Title 32, section 6115, subsection 1, relating to financial information provided to the Superintendent of the Bureau of Consumer Credit Protection, Department of Professional and Financial Regulation concerning money transmitters				
82	<a href="#">32 MRSA §6207-B</a>	Title 32, section 6207-B, relating to the nonbusiness address of a person licensed or certified under the Alcohol	Dept of Professional and Financial Regulation, Office of Professional and	In addition to removing the word “nonbusiness” from the exception, OPOR recommends that the exception contained	New Format: does not conform to drafting manual – uses “ is not a public record”	9.30.24 - TABLED to review draft language. Remove “nonbusiness and mirror social work statute.

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

		and Drug Counselors chapter of law.	Occupational Regulation, State Board of Alcohol and Drug Counselors	in 32 M.R.S. § 6207-B to be amended to be identical to the one in 32 M.R.S. § 7032 (see response)		
83	<a href="#">32 MRSA §7032</a>	Title 32, section 7032, relating to the address and telephone number of social worker licensee or applicant for licensure	Dept of Professional and Financial Regulation, Office of Professional and Occupational Regulation, State Board of Social Work Licensure	OPOR does not recommend changes at this time	None	10.24.24 – Voted 4-0 no changes
84	<a href="#">32 MRSA §7365, sub-§3</a>	Title 32, section 7365, subsection 3, relating to polygraph examination for pre-employment screening or law enforcement investigation	Department of Public Safety	The agency does not recommend any changes	None	
85	<a href="#">32 MRSA §7365, sub-§4, ¶A</a>	Title 32, section 7365, subsection 4, paragraph A, relating to information concerning polygraph applicant or licensee and paragraph B, relating to information of a minor to whom a polygraph has been administered	Department of Public Safety	The agency does not recommend any changes	None	
86	<a href="#">32 MRSA §7365, sub-§4, ¶B</a>	Title 32, section 7365, subsection 4, paragraph B, relating to information of a minor to whom a polygraph has been administered	Department of Public Safety	The agency does not recommend any changes	None	

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

87	<a href="#">32 MRSA §8124</a>	Title 32, section 8124, relating to the home address and home telephone number of a professional investigator or investigative assistant	Department of Public Safety	The agency does not recommend any changes	None	
88	<a href="#">32 MRSA §9418</a>	Title 32, section 9418, relating to private security guards	Department of Public Safety	The agency does not recommend any changes	Format: Does not conform to drafting manual- uses “are confidential and may not be made available for public inspection or copying”	
89	<a href="#">32 MRSA §11305, sub-§3</a>	Title 32, section 11305, subsection 3, relating to administration of the Maine Commodity Code by the Securities Administrator	Dept of Professional and Financial Regulation, Office of Securities	The Office does not recommend any changes to this exception	Format: Nonconforming - stating records are public and then providing exceptions	9.30.24 - TABLED to review draft language
90	<a href="#">32 MRSA §13006</a>	Title 32, section 13006, relating to real estate grievance and professional standards committee hearings	Dept of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Real Estate Commission	No changes recommended	None	10.24.24 – Voted 4-0 no changes
91	<a href="#">32 MRSA §13725, sub-§8</a>	Title 32, section 13725, subsection 8, relating to records identifying an individual seeking access to Insulin Safety Net program held by the Pharmacy Board	Dept of Professional and Financial Regulation, , Office of Professional and Occupational Regulation, Maine Board of Pharmacy	No changes; At the time of this response, the Insulin Safety Net Program has not yet been implemented by the Board of Pharmacy within the Office of Professional and	None	10.24.24 – Voted 4-0 no changes

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

				Occupational Regulation.		
92	<a href="#">32 MRSA §14021, sub-§7</a>	Title 32, section 14021, subsection 7, relating to criminal history records provide to the Board of Real Estate Appraisers to determine eligibility of applicant for licensure	Dept of Professional and Financial Regulation, , Office of Professional and Occupational Regulation, Maine Board of Real Estate Appraisers	OPOR does not recommend any changes. Of note is that any changes to the law would require approval from the U.S. Department of Justice, Criminal Justice Information Law Unit.	None	10.24.24 – Voted 4-0 no changes
93	<a href="#">32 MRSA §16524</a>	Title 32, section 16524, relating to personal information of an applicant for Securities Restitution Assistance Fund	Dept of Professional and Financial Regulation, Office of Securities	The Office does not recommend any changes to this exception	Format: Nonconforming - Instead of using “confidential,” uses “not public records.” Related to Ref #94	9.30.24 - TABLED to review draft language
94	<a href="#">32 MRSA §16607, sub-§2</a>	Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act	Dept of Professional and Financial Regulation, Office of Securities	The Office does not recommend any changes to this exception	Format: Nonconforming - Instead of using “confidential,” uses “not public records.” Related to Ref #93	9.30.24 - TABLED to review draft language
95	<a href="#">32 MRSA §16808</a>	Title 32, section 16808 relating to records provided by a broker-dealer or investment adviser to the Department of Health and Human Services and law enforcement agencies regarding financial exploitation of an eligible adult.				

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

96	<a href="#">32 MRSA §18509, sub-§6</a>	Title 32, section 18509, subsection 6 relating to information distributed by a board that licenses, regulates or educates physicians in the state.	Board of Licensure in Medicine	BOLM does not recommend any changes.	Format: Does not conform to drafting standards: “confidential within the meaning of Title 1, section 402, subsection 3, paragraph A”	9.30.24 – Voted 4-0 to strike language after “confidential”
----	--	--	--------------------------------	--------------------------------------	---	---