

**RIGHT TO KNOW ADVISORY COMMITTEE  
LEGISLATIVE SUBCOMMITTEE  
AND  
PUBLIC POLICY SUBCOMMITTEE**

DRAFT AGENDA

October 3, 2013

10:00 a.m.

Room 126, State House, Augusta

**Convene**

1. Welcome and Introductions  
Judy Meyer and Chris Parr, Subcommittee Chairs
2. Public records versus public information
  - See 5 MRSA §200-I, sub-§2, ¶F (LD 1511, PL 2013, c. 229) – tracking “requests for *information*”
3. Compliance with new law (LD 1216, PL 2013, c. 350)
  - Deadlines to respond, failure to comply
  - Court case response deadlines
4. Should government records containing personal information about private citizens be generally protected from public disclosure (or protect just the personal information in public records)?
  - What is “personal information”?
  - Federal Privacy Act
  - Registers of Deeds
  - Public employees’ date of birth information (personnel records)
  - Email addresses (LD 104, PL 2013, c. 339 and LD 619, PL 2013, c. 283)
5. “Abuse” of the Freedom of Access Act (FOAA);
  - Definition of “abuse”?
  - Should restrictions be placed on requesters?
    - Number
    - Scope or frequency
    - Who
    - Manner of request
  - Other remedies?
  - Should FOAA requests for commercial purposes be subject to the fee restrictions of 1 MRSA § 408-A, sub-§8
  - What is a “commercial purpose”?
6. Standard fees and fee schedules adopted by agencies?
7. Update on State e-mail management protocol
8. Other?
9. Schedule additional meetings

**Adjourn**

**RIGHT TO KNOW ADVISORY COMMITTEE  
LEGISLATIVE SUBCOMMITTEE  
AND  
PUBLIC POLICY SUBCOMMITTEE**

DRAFT AGENDA  
November 12, 2013  
10:00 a.m.  
Room 438, State House, Augusta

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**Convene**

1. Welcome and Introductions  
Judy Meyer and Chris Parr, Subcommittees Chairs
2. *Discussion of LR 2490, which proposes to make confidential certain aquaculture and seafood processing information (Sponsor and constituent invited, not confirmed)*
3. Remote participation by members in public proceedings, LD 258
  - Other states' approaches
4. Proposed adjustments to new law (LD 1216, PL 2013, c. 350)
  - Deadlines to respond, failure to comply
  - Court case response deadlines
5. Solutions for curbing "abuse" of the Freedom of Access Act (FOAA);
  - Letter from Maine Water Utilities Association
  - Draft proposal
6. Draft legislation: redacting Social Security numbers from filings in the Registries of Deeds
7. Update on State e-mail management protocol
8. Can FOA requests be made anonymously? Does it matter if the request is in writing?
9. Should FOAA requests for commercial purposes be subject to the fee restrictions of 1 MRSA §408-A, sub-§8? What is a commercial purpose?
10. Review of standard fees and fee schedules adopted by agencies
11. Review of allocation of responsibilities between the Advisory Committee and the Ombudsman
12. State-level "privacy acts" - Should government records containing personal information about private citizens be generally protected from public disclosure (or protect just the personal information in public records)? How do other states address?
13. Additional issues, questions?
14. Schedule additional meetings

**Adjourn**





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October 25, 2013

Right to Know Advisory Committee  
c/o 13 State House Station  
Augusta, Maine 04333-0013

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Re: Freedom of Access Act, Meetings of Public Bodies (LD 420), Other Public Information Issues

Dear Committee Members;

We are aware that Right to Know Advisory subcommittees have been meeting on specific issues over the past several weeks; I actually attended one and one of our members attended another. For our members - and even for me - this is a very busy time of the year. It is not always possible to attend all of the subcommittee meetings; hence I am taking this opportunity to provide input on some of the specific issues that are being discussed.

Serial Filers:

During this past session, our association offered testimony on LD 1216 An Act to Amend the Freedom of Access Act. Among our FOAA concerns, and one that was not addressed by the Maine Legislature, is the fact that there have been, and still are, situations whereby a very, very limited number of serial FOAA request filers are using the FOAA law to systematically disrupt the operation of public agencies.

There is no need to go into detail, as we are all aware that this is happening.

Our members are supportive of providing appropriate information to the public when requested, as transparency in government is a cornerstone of our society. More than that, our members are truly in the public service sector. Exemplary customer service is a goal that our members strive for. The provision of information in a timely fashion is a standard of customer service we want to be known for.

It must be acknowledged that the true cost of providing this requested information is not recovered in the fees that are allowed to be charged under FOAA. For the occasional request, this is not a big concern. However, when several requests a month come in from the same individual or associated group, the remainder of the customers end up paying for the majority of the time and other resources necessary to respond to the request.

The fees charged by the agencies should reflect the true cost of the response. Those fees should be based on the hourly wage rate of the staff person(s) responding to the request and an appropriate overhead multiplier should be applied to that wage rate. When these public agencies secure the services of professionals it is not unusual for them to pay a multiplier of 2.0 or higher and that is what we would propose.

Meetings of Public Bodies

Some of our member's district trustees have served for decades. They possess a depth of institutional knowledge and insight that makes them valued assets to the operation of the district. Some of these boards have only three trustees. Some of these district trustees participate in board meetings remotely, either via conference call, Skype or some other means of remote participation.

It is our understanding that there is no statutory prohibition against this practice.



One of the provisions of LD 258 An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies is that only those officials who are physically present at the meeting location can be counted as part of the quorum.

That is problematic, particularly for those districts that have only three board members. It seems to us that there is little or no benefit to be derived by being so prescriptive and that there is much to be gained by allowing remote attendance at these meetings. We remind you that it was not that long ago that there was much contingency planning associated with a potential pandemic threat. That, in and of itself, is enough reason to accommodate remote attendance.

LD 258 proposed that the board would be required to establish a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other similar means of communication.

If that policy requirement is adopted, let the board address the remote attendance particulars in their policy. It is not always easy, particularly in a small community, to find qualified board members who can commit the time necessary to effectively contribute. What we don't need is another reason not to run for these offices.

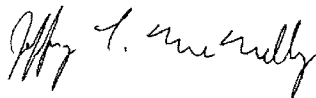
#### The Provision of Customer Information

Under the rules of the Public Utilities Commission a utility generally shall not disclose, sell or transfer individual customer information. One of the exceptions is that the utility shall disclose that information "as otherwise authorized by law".

It is our understanding that FOAA requests would be one of those exceptions. We suggest that there may be instances where it is not appropriate to disclose customer information. The FOAA requirements, which are quite broad, may result in undesirable unintended consequences.

We appreciate the opportunity to provide comments. We will try to have representation at some of the future subcommittee meetings.

Sincerely,



Jeffrey L. McNelly  
Executive Director

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**Legislative Subcommittee and Public Policy Subcommittee**

Summary: Participation in Public Proceedings

**1. Permitted use.** Most states allow public bodies, at least at the state level, to meet through the use of telecommunications or other technology to connect one or more members of the public body to the rest the members, although some states limit the purposes. (Ohio expressly prohibits; Louisiana statute is silent but Attorney General says can't; Maine does not specifically address and no caselaw or published AG opinions).

Four main approaches:

- A. A few states' open meetings laws are silent on the issue, but Attorney General Opinions or court decisions allow.
- B. Several states include policy-type statements that a public body can't use teleconferencing to circumvent the open meetings law, but no other guidance.
- C. Several states define "meeting" to include the use of telephone or video conferencing, but don't contain statutory guidance other than that all the other requirements of the open meetings law apply.
- D. Several states specifically authorize and include requirements, such as notice, roll call votes, location of quorum, access by the public to sites, annual meeting requirements, reasons for not meeting face-to-face.

**2. Types of entities.** States do not generally draw distinctions in the type of public body that can use telecommunications technology – if subject to the open meeting laws, then it can. A couple of states allow only state-level and not local-level entities to teleconference.

**3. Quorum.** Many states require a quorum to be physically present at the location stated in the notice, but some states specifically authorize members who are participating remotely to be counted toward a quorum. These states require at least one member to be present in the location in the notice, although one state allows the meeting to occur without a member present as long as the public can see and hear what is going on from that location (Oregon).

**4. Voting.** Uniformly, the states that address the issue of voting require votes to be taken and recorded by roll call.

**5. Materials.** Most statutes do not address what materials must be made available to members not physically present. One state (Tennessee) requires that any member not physically present at a meeting must be provided, before the meeting, with any documents that will be discussed at the meeting, with substantially the same content as those documents actually presented at the meeting location.

**6. Notice.** Most statutes require the notice of the meeting to include details of the videoconferencing.

**7. Type of technology.** Most statutes don't limit to a specific type of communications technology, but give examples.

**Legislative Subcommittee and Public Policy Subcommittee**

Summary: Participation in Public Proceedings

**8. Public access.** All statutes require public access to the location of the meeting and the ability to at least hear, if not see and hear, all the members. Some statutes require that the remote locations from which the absent members are participating be open to the public as well.

So far, the RTKAC discussion has not included a requirement that the public have access to the remote site, probably because what has been contemplated is an individual member or two not being able to make it to the meeting, yet can participate from afar. (Think Selectman with the broken leg.) A couple of states have slightly different provisions for a meeting being conducted via communications technology and a meeting in which a member participates remotely because attendance is impossible. (Virginia)

**9. Physical attendance required, annual meeting.** A few states limit how many times an individual member may participate by videoconference, at least without a doctor's statement. A few states require that at least one meeting of the public body occur during which all members participating are physically present.

**10. Reason not physically present.** Several states limit the reasons why a member of the public body is not physically present: health or medical condition, absence from the jurisdiction, disability that prohibits attendance, when attendance is not reasonable practical, when attendance is otherwise difficult or impossible, on active duty in the armed services, emergency or personal matter and public body approves, member's personal residence in more than 60 miles from the meeting location, member unable to travel.

**11. Compensation and reimbursement.** One state statute provides that a member of a state board or commission who attends a meeting through telephone or other electronic means is not entitled to compensation or reimbursement for expenses for attending the meeting. (Oregon)

**12. Meeting record.** Most states expressly require the meeting minutes to include the information about who is participating from other locations. Many require a statement of the reason why the persons who are not physically present cannot attend at the meeting location.

**Legislative Subcommittee and Public Policy Subcommittee**  
 Summary: Participation in Public Proceedings

Topic	LD 258	Comments
	<b>§403-A. Public proceedings through other means of communication</b>	
Application <ul style="list-style-type: none"> <li>• All public proceedings</li> <li>• Includes executive sessions</li> </ul>	This section governs public proceedings, including executive sessions, during which public or governmental business is <del>discussed or</del> transacted through telephonic, video, electronic or other means of communication.	Does transaction of governmental business include “discussion”?
Requirements to conduct a public proceeding	<p><b>1. Requirements.</b> A body subject to this subchapter may conduct a public proceeding during which a <del>member one or more members</del> of the body <del>participates</del> <u>participate</u> in the discussion or transaction of public or governmental business through telephonic, video, electronic or other means of communication only if the following requirements are met.</p>	Make clear that more than one member can participate via telecommunications?  Do you want to allow the meeting to be conducted by electronic communication with public access to remote sites?
Policy required.  Can include criteria that must be met for a member to participate remotely.	A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other means of communication in accordance with this section. The policy may <del>establish circumstances under</del> <u>criteria</u> which <u>must be met before</u> a member may participate when not physically present.	Could include participation but not voting
Usual meeting notice required	B. Notice of the public proceeding has been given in accordance with section 406.	Should the notice include the fact that a member is participating electronically?

**Legislative Subcommittee and Public Policy Subcommittee**  
 Summary: Participation in Public Proceedings

<b>Topic</b>	<b>LD 258</b>	<b>Comments</b>
Quorum must be physically present (unless a real emergency)	C. Except as provided in subsection 3, a quorum of the body is assembled physically at the location identified in the notice required by section 406.	
All members hear all members	D. Each member of the body participating in the public proceeding is able to hear all the other members and speak to all the other members during the public proceeding, and members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations.	See and hear?
Identify who is in the remote location(s)	E. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication identifies the persons present in the location from which the member is participating.	
Roll call vote.	F. All votes taken during the public proceeding are taken by roll call vote.	

**Legislative Subcommittee and Public Policy Subcommittee**  
 Summary: Participation in Public Proceedings

Topic	LD 258	Comments
Documents provided in time, substantially same content	<p>G. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate the action of a body in a public proceeding.</p>	
Voting – quasi-judicial	<p><b>2. Voting, quasi-judicial or judicial proceeding.</b> A member of a body who is not physically present and who is participating in the public proceeding through telephonic, video, electronic or other means of communication may not vote on any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.</p>	<p>Most other states do not make this distinction, although some states waive the application of the open meetings act to quasi-judicial proceedings altogether.</p> <p>This provision was included in LD 258 to make sure that a member of a public body who is voting has the benefit (constitutionally required?) of seeing witnesses in person. Note that the FOAA does not prohibit proceedings, including adjudicatory proceedings, in which the <u>witnesses</u> are not physically present and participate remotely.</p>

**Legislative Subcommittee and Public Policy Subcommittee**  
 Summary: Participation in Public Proceedings

Topic	LD 258	Comments
Emergency exception to quorum	<p><b>3. Exception to quorum requirement.</b> A body may convene a public proceeding by telephonic, video, electronic or other means of communication without a quorum under subsection 1, paragraph C if:</p>	<p>Several other states are not as strict – requiring the public body to find on its own that an emergency exists or that the meeting is a necessity.</p>
	<p>A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;</p>	
	<p>B. The public proceeding is necessary to take action to address the emergency; and</p>	
	<p>C. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.</p>	
One meeting without technology	<p><b>4. Annual meeting.</b> If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other means of communication from a different location.</p>	

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Revision

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

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

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

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

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

**3. Acknowledgment; clarification; time estimate; cost estimate.** The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within a reasonable period of time, 5 working days of receiving the request. ~~and The agency or official~~ may request clarification concerning which public record or public records are being requested. The ~~Within a reasonable time of receiving the request,~~ the agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request, as well as a cost estimate as provided in subsection 9. The agency or official shall make a good faith effort to fully respond to the request within the estimated time. For purposes of this section, the date a request is received is the date a sufficient description of the public record is received by the agency or official at the office responsible for maintaining the public record. (This comes from Alaska 2AAC 96.315(b))

**4. Refusals; denials.** If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide written notice of the denial, stating the reason for the denial, within 5 working days of the receipt of the request for inspection or copying. ***If a body or agency or official expects that the request will be denied in full or in part following a review, the body or agency or official may provide written notice of that expectation within 5 working days of the receipt of the request for inspection or copying.*** ~~Failure to comply with provide the notice required by this subsection within 10 working days of the receipt of the request is considered~~ ***failure a denial*** to allow inspection or copying and is subject to appeal as provided in section 409.

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



an office exists.

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

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

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

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

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

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

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

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

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

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

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

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

- A. The estimated total cost exceeds \$100; or
- B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.

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

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

### **§409. Appeals**

~~**1. Records.** Any person aggrieved by a refusal or denial to inspect or copy a record under section 408-A may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.~~

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

**2. Actions.** If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

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

Draft of proposed changes to §408-A and §409. *Revised 11/12/2013 9:43 AM*

**4. Attorney's fees.** In an appeal under subsection 1 or 2, the court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.

This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.

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**Right to Know Advisory Committee  
Bulk Records (Public Policy) Subcommittee and Legislative Subcommittee**

Draft Legislation  
Government Relief from Abusive FOAA Requests

**Version A:**

1 MRSA § 410-A is enacted to read:

**§410-A. Abuses**

Any body or agency or official who has custody or control of any public record may petition any Superior Court within the State for a determination whether, after a trial de novo, a request by a person to inspect or copy the public record may be denied with just and proper cause. A court shall enter an order appropriately limiting or denying the request.

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

**Version B:**

1 MRSA §409, sub-§ 1 is amended to read:

**§409. Appeals**

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

For the purposes of this section, in determining whether a refusal, denial or failure under this section is for “just and proper cause” a court shall include consideration of the identity of the aggrieved person and the historical frequency, scope and manner of the aggrieved person’s requests for inspection or copying of records under section 408-A, and whether the probative value of the information to the public outweighs any substantial burden on the government body, agency or official.

6

Legislative and Public Policy Subcommittees

Draft: Redaction of social security numbers by Registers of Deeds

Sec. 1. 33 MRSA § 651-B is amended to read:

**33 §651-B. Privacy protection**

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

A. "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the data elements described in this paragraph:

- (1) Social security number;
- (2) Driver's license number or state identification card number;
- (3) Account number, credit card number or debit card number if circumstances exist such that the number could be used without additional identifying information, access codes or passwords;
- (4) Account passwords or personal identification numbers or other access codes; or
- (5) Any of the data elements contained in subparagraphs (1) to (4) when not in connection with the individual's first name, or first initial, and last name if the information included would be sufficient to permit a person to fraudulently assume or attempt to assume the identity of the person whose information was included.

**2. Personal information on registry's website.** If a document that includes an individual's personal information is recorded with a register of deeds and is available on the registry's publicly accessible website, the individual may request that the register of deeds redact that personal information from the record available on the website. The register shall establish a procedure by which individuals make such requests at no fee to the requesting individual. The register shall comply with an individual's request to redact personal information.

**3. Redaction of social security numbers.** At the register of deed's discretion and without a request from an individual that the individual's personal information be redacted pursuant to subsection 2, a register of deeds may redact an individual's social security number from a document filed with the register of deeds for recording.

**Summary**

This amendment authorizes a register of deeds to redact social security numbers from recorded documents.



STATE OF MAINE

POLICY ON PRESERVATION OF STATE GOVERNMENT RECORDS

Effective: October 11, 2013

**TO: All State Employees**

**Applicability:** This policy applies to all employees of Maine state government, including all Executive Branch agencies, employees of the Judicial Branch, Legislative Branch, the Constitutional Offices, and semi-independent agencies.

**Statutory Authority:** Maine State Revised Statutes, Title 5, Chapter 6, Section 95, §7 ([www.mainelegislature.org/legis/statutes/5/title5sec95.html](http://www.mainelegislature.org/legis/statutes/5/title5sec95.html)).

**Policy:** Records management statutes, rules and policies provide the public with the evidentiary assurance and proper documentation that state and local government operations are operating in accordance with their public mandate and that their work is carried out with transparency. Public records are the property of the public and must be made available to citizens unless specifically proscribed in law. Agencies may destroy records only in accordance with statutorily-approved retention schedules. If agencies wish to destroy records earlier than those retention times, they must get approval from the State Archivist.

**Purpose:** This policy establishes uniform records management practices throughout Maine state government. State government employees create and receive documents and e-mails as part of their official duties, therefore, most documents and e-mails are official state records. State Archives records retention schedules dictate how long to retain any document or email created or received in connection with official government business; or evidence of the agency's functions, policies, and procedures; or because of its informational or historical value. These records schedules apply to both paper and electronic records. General Records Schedules apply to records common to most agencies. Most agencies also have agency-specific records schedules to supplement the General Records Schedules for paper and electronic records.

**For questions about records retention schedules specific to your agency, contact your agency records officer. See list at: <http://www.maine.gov/sos/arc/records/state/statero.html>.**

**Guidelines for Correspondence and E-mail:** E-mail is considered general correspondence. In the General Records Schedules, most general correspondence, and therefore most e-mail, has a retention period of 3 years. The only exceptions are:

- Commissioner or Agency head correspondence and e-mail is considered of historical value and to be kept permanently.
- Correspondence and e-mail related to the official state budget is to be kept for 4 years (two biennia) and then destroyed.

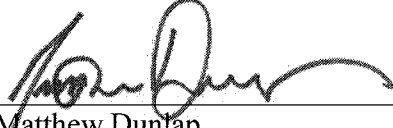
- Correspondence and e-mail related to equipment and property is to be kept for 5 years, and then destroyed.
- Junk mail such as advertisements and any personal e-mails an employee may have in their state e-mail accounts do not need to be preserved, since these are not official state government records.

In summary, most state agency correspondence and e-mail has a retention schedule of 3 to 5 years (unless for a commissioner or agency head, which is archival / permanent). In most cases, agency users should be managing their e-mail to retain for 3 to 5 years.

**Guidelines for Other Record Types:** Non-correspondence records have various retention periods, some even permanent. For example, contracts must be kept 7 years, official budget records 10 years, personnel records 60 years, and some record types that have historical value must be kept permanently (transferred to the State Archives). For details on each record type, see links to the records schedules below.

**Actions by Employees:** Every State employee shall comply with this policy by taking the following actions:

1. Properly manage all of their State government records, including correspondence, e-mail and electronic documents.
  - a. Employees are to save (archive) their correspondence, email and other documents so that it is preserved for the amount of time required by the records schedules. It is the responsibility of Agency managers and supervisors to secure and archive records of former employees. For steps on how to archive e-mail, see the instructions on the State internal website at: <http://inet.state.me.us/foaa/archiving.aspx>.
  - b. Executive Branch: If assistance is needed, employees can call the OIT Help Desk at 624-7700.
  - c. Judicial Branch, Legislative Branch, Constitutional Offices and semi-independent agencies: If assistance is needed, employees should call their individual HelpDesk.
2. Review the following Schedules and Guides:
  - General Records Schedules: [www.maine.gov/sos/arc/records/state/gensched2.html](http://www.maine.gov/sos/arc/records/state/gensched2.html).
  - State Agency Schedules (pertaining to their agency): <http://www.maine.gov/sos/arc/records/state/stsched.html>.
  - Email Retention Guide: <http://www.maine.gov/sos/arc/records/state/emailguide.pdf>.
  - Basics of Records Management Guide: <http://www.maine.gov/sos/arc/records/state/trainaug13.pdf>.
3. Annually sign the web-based acknowledgement form (within 60 days of receiving notice): <http://www.maine.gov/sos/arc/records/state/policyform.html>.



Matthew Dunlap  
Secretary of State

**Fees and fee schedules for responding to document requests**

Email responses from query to State FOA Contacts

AGENCY	CHARGE FOR COPIES?	PER PAGE	TIME	COMMENTS
Bureau of Capitol Police, Department of Public Safety	Yes	See DPS schedule	\$15 per hour after first hour	
Bureau of Consolidated Emergency Communications, Department of Public Safety	Yes	See DPS schedule	No	
Bureau of Highway Safety, Department of Public Safety	No	No	No	
Emergency Medical Services, Department of Public Safety	Yes	See DPS schedule	No	
Gambling Control Board, Department of Public Safety	No	See DPS schedule	No	
Maine Criminal Justice Academy, Department of Public Safety	Yes	See DPS schedule	No	
Maine Drug Enforcement Agency, Department of Public Safety	No	No	No	
Maine State Police, Department of Public Safety	Yes	See DPS schedule	Yes	



AGENCY	CHARGE FOR COPIES?	PER PAGE	TIME	COMMENTS
State Fire Marshal's Office, Department of Public Safety	Yes	See DPS schedule	Yes	
Maine Human Rights Commission	Yes	\$0.12 per page	\$15 per hour after first hour	Written policy
Department of Transportation	Yes	(not specified)	\$15 per hour after first hour	
State Treasurer		No fee schedule		Consider charging only if time to produce documents excessive; look to AG's Office for guidance
Workers' Compensation Board	Yes	\$0.10 per page	\$15 per hour after first hour	Research charge generally applied only if request is large and, as a result, time-consuming for staff
Maine Turnpike Authority	Generally no	\$0.25	As allowed by statute	Most requests not that big
Public Advocate	No	No	No	
Public Utilities Commission	Yes	\$0.25 if PUC makes copies \$0.10 if requester makes copies at PUC	\$15 per hour after first hour	Written policy
State Auditor	Generally no			Don't receive many requests; most responses can be emailed
Maine State Board of Nursing	Yes	\$0.25	\$15 per hour after first hour	Charge for time only if requires substantial time

AGENCY	CHARGE FOR COPIES?	PER PAGE	TIME	COMMENTS
Finance Authority of Maine	Yes	\$0.05	\$15 per hour after first hour	Also charge actual postage fees
Department of Corrections	Yes – if not electronic record	\$0.25		
Department of Environmental Protection	Yes	\$0.25 Larger format = \$0.50 Color copies = \$0.60	\$15 per hour after first hour	Actual shipping costs
Maine Ethics Commission	If a lot of documents	\$0.20 if Commission makes copies \$0.10 if requester does copying	\$15 per hour after first hour	Rarely charge for time – only when a huge effort on part of staff Most request are small Very few records not in electronic format
Maine Emergency Management, Department of Defense, Veterans and Emergency Management	No	No	No	
Office of Profession and Financial Regulation, Department of Professional and Financial Regulations	After first 7 pages	\$0.25	\$10 per hour after first hour	Requests rarely result in requestors being invoiced
Office of Securities, Department of Professional and Financial Regulations	Yes	\$0.20	Not typically	

AGENCY	CHARGE FOR COPIES?	PER PAGE	TIME	COMMENTS
Bureau of Insurance, Department of Professional and Financial Regulation	Yes – if not transmitted electronically	\$0.50	No	
Bureau of Financial Institutions, Department of Professional and Financial Regulations	Yes	\$0.25	No	
Bureau of Consumer Credit Protection, Department of Professional and Financial Regulation	No	-	No specific set price	Provides firm estimate on cost in advance based on time and materials it will require, then agree with the requesting party ahead of time on the charge
Maine Historic Preservation Commission	No	No	No	
Department of Education	Yes	\$0.10	\$15 per hour after first hour	

See attached schedules and policies:

- Department of Public Safety, Maine State Police
- Maine Human Rights Commission
- Public Utilities Commission

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# State of Maine

## DEPARTMENT OF PUBLIC SAFETY MAINE STATE POLICE

### UNIFORM FREEDOM OF ACCESS ACT FEE SCHEDULE

ITEM	FEE
Paper documents (for example, paper copies of incident reports, notes, memoranda, e-mails, etc.)	<p>Incremental fee of five dollars (\$5.00) per every twenty-five (25) pages:</p> <ul style="list-style-type: none"> <li>▪ 1 to 25 pages: \$5.00</li> <li>▪ 26 to 50 pages: \$10.00</li> <li>▪ 51 to 75 pages: \$15.00... etc.</li> </ul>
Photographs <ul style="list-style-type: none"> <li>▪ 4" x 6" prints</li> <li>▪ Digital photos on CD ROM</li> </ul>	<ul style="list-style-type: none"> <li>▪ \$2.00 each</li> <li>▪ \$5.00 each</li> </ul> <p>No fee is to be charged if digital photos are being provided to a defense attorney or prosecuting authority for purposes of discovery in the context of a pending criminal case.</p>
Forensic maps <ul style="list-style-type: none"> <li>▪ 8½" x 11" black and white / color map</li> <li>▪ Color/e-mailed</li> <li>▪ 33" x 44" plotter size map</li> </ul>	<ul style="list-style-type: none"> <li>▪ \$10.00 each / \$10.00 each</li> <li>▪ \$15.00 each</li> <li>▪ \$35.00 each</li> </ul>
CDs DVDs	<ul style="list-style-type: none"> <li>▪ \$5.00 each</li> <li>▪ \$5.00 each</li> </ul>
Staff time dedicated to searching for, retrieving, and compiling any type of requested records	<p>"The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$15 per hour after the first [free] hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information." (1 MRSA § 408-A(8)(B))</p>

#### NOTES

- The fees provided in this schedule supersede any and all fees provided in current Maine State Police policies.
- Fees for types of records that are not considered in this schedule are to be reasonable and determined on a case-by-case basis.
- The Maine State Police may make reasonable deviations from this fee schedule at any time.
- Payment of fees may be made with a check or money order made payable to, "Treasurer, State of Maine."

▪ Updated 9/8/2011

**MAINE HUMAN RIGHTS COMMISSION POLICY  
PUBLIC RECORDS AVAILABLE FOR PUBLIC INSPECTION AND COPYING**

1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record<sup>1</sup> during the regular business hours of the agency within a reasonable period of time after making a request to inspect or copy the public record. The Commission may request clarification concerning which public record or public records are being requested and shall acknowledge receipt of the request within a reasonable period of time.

Any information relating to a complaint prior to the conclusion of the investigation, settlement or conciliation information, and information identifying persons who are not parties to a complaint are confidential and will not be disclosed. *See* 5 M.R.S.A. § 4612(1)(A, B), (3), (5).

2. Inspection, translation and copying scheduled. Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the Commission or official having custody of the public record sought.
3. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows.
  - A. The Commission charges .12<sup>2</sup> per page to cover the cost of copying.
  - B. The Commission charges a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.
  - C. The Commission charges for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format.
  - D. The Commission does not charge for on-site inspection of the file by parties to a complaint.
  - E. The Commission charges for actual mailing costs incurred with a request.
4. Estimate. Commission provides the requester with an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than \$30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 5 applies.
5. Payment in advance. The Commission may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:
  - A. The estimated total cost exceeds \$100; or
  - B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.
6. Waivers. The Commission may waive part or all of the total fee if:
  - A. The requester is indigent; or
  - B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

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<sup>1</sup> Public records. 1 M.R.S.A. § 402(3).

<sup>2</sup> Fees. 5 M.R.S.A. §2051

## PUC Policy on Costs Associated with FOAA Requests

In addition to the requirements in 1 M.R.S.A. § 408-A, the Commission's policy concerning FOAA requests is as follow:

1. Documents may be viewed at the Commission for free.
2. If paper copies are requested, the charge is .25¢ per page if the Commission makes the copies or .10¢ per page if the requester makes his/her own copies at the Commission. Requests consisting of less than ten pages will be at no charge.
3. The first hour for Commission staff searching, retrieving and compiling a response is free. Time over one hour shall be charged at \$15.00 per hour.
4. If electronic copies are requested, the searching, retrieving and compiling charges described in #3 shall apply.
5. When documents are available through the Commission's electronic filing system, the requester will first be directed to the electronic case files where the documents exist to determine if this satisfies the request.
6. If an individual claims he/she is indigent and cannot afford any charges, the Commission shall apply the rules applied by the courts in determining indigency as set forth in the Maine Rules of Civil Procedures, Rule 91. This requires the requester to file an affidavit stating:
  - a. the person's monthly income and necessary monthly expenses;
  - b. that the person possesses no other source to pay the charges;
  - c. if the person is receiving poverty-based public assistance income identifying the government program and nature and duration of the assistance and;
  - d. that the request is made in good faith.

There will be an assumption that the requester is without sufficient funds if the person's income is derived from poverty-based public assistance programs. The information in the affidavit shall be treated as confidential. Based on the information filed, the Commission's Administrative Director will determine whether the charges should be waived and notify the requester.

*MacImage of Maine LLC, et al. v Androscoggin County, et al.*

*MacImage of Maine LLC, et al. v Androscoggin County, et al.*, 2012 ME 44, 40 A.3d 975. The Supreme Judicial Court held that county registries of deeds must establish reasonable fees for responding to bulk requests for real estate records that are available to the public by law. The Law Court found that the fees charged by the counties for the transfer of bulk records were reasonable and the counties were not required to provide bulk transfers of the records at the price requested by a private entity. In making its ruling, the Law Court relied heavily on recently enacted legislation (Public Law 2011, chapter 378) that established fees and applied retroactively.

In 2010, this case was initiated in Superior Court by MacImage of Maine, LLC and its general manager, John Simpson, who brought suit against six counties seeking access to the computer database of records maintained by each county's registry of deeds. MacImage's plan to build a single website on which the land records of all counties are available for review and copying was dependent on MacImage's ability to obtain the records of the registries of deeds both initially and on a regular basis for updates. MacImage requested the electronic bulk transfer of the records from each county, which the counties were not willing or able to do at the price MacImage was willing to pay.

The Superior Court determined that the Legislature's 2010 amendment to Title 33, sections 651 and 751 made clear that the Title 33 statute, and not the fees provisions of the Freedom of Access Act, applies to the establishment of copying fees for the records of the registry of deeds in each county. The Court found that section 751 did not, however, authorize the counties to charge fees based on the overall cost of maintaining their data in electronic form. The Court then reviewed each county's fees for the bulk transfer of records to MacImage, and found that each county's fees were not reasonable and constituted constructive denial of MacImage's public records requests. The Court ordered each county to provide a download of the requested records using county-specific cost formulas.

After the counties had commenced their appeals, the Legislature enacted Public Law 2011, chapter 378, which repealed section 751, subsection 14, replaced that subsection with new statutory language, and provided a retroactive explanation of what qualified as a reasonable fee between September 1, 2009, and June 16, 2011, the effective date of the Act.

In vacating the Superior Court's ruling, the Law Court held that the real estate records held by the county registries of deeds, along with the indexes to those records, are available to the public pursuant to Title 33, section 651 and not through the more general provisions under the Freedom of Access Act (Title 1, section 402, subsection 3 and section 408 [now section 408-A]). It also noted that the Legislature through Public Law 2011, chapter 378, established reasonable fees for responding to record requests for records and indexes, including the transfer of electronic data. The Law Court held that the legislation is applicable to the disputed fees and that those fees fall within the parameters for "reasonable fees" established by that legislation.

**Evolution of Advisory Committee and Ombudsman responsibilities**

(11)

RESPONSIBILITY	2005 LD 301	2005 COM AMD	CURRENT LANGUAGE
<b>Statutes/Legislation</b>			
1. adviser to Legislature when legislation concerning public access is considered	AC	AC	<b>1 MRSA §411, sub-§6</b> H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered;
2. submit legislation	AC	AC	(No authority)
3. examine inconsistencies in statutory language			<b>1 MRSA §411, sub-§6</b> F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released;
4. review existing public records exceptions	AC	AC	<b>1 MRSA §411, sub-§6</b> E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation;
5. make statutory recommendations	AC PAO	AC	<b>1 MRSA §411, sub-§6</b> G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations;  <b>5 MRSA §200-I, sub-§</b> E. Make recommendations concerning ways to improve public access to public records and proceedings; and



**Evolution of Advisory Committee and Ombudsman responsibilities**

<b>RESPONSIBILITY</b>	<b>2005 LD 301</b>	<b>2005 COM AMD</b>	<b>CURRENT LANGUAGE</b>
<b>Complaints</b>			
6. compliance issues			<p><b>1 MRSA §411, sub-§6</b>                      A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws;</p>
7. review info from PAO about lack of access and frivolous requests	AC		
8. respond to and work to resolve complaints	PAO		<p><b>5 MRSA §200-I, sub-§2</b>                      C. Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws;</p>
9. advisory opinions			<p><b>5 MRSA §200-I, sub-§2</b>                      D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved;</p>
<b>Guidance/Education</b>			
10. recommendations to state and local government – law and practices (same as #5 above)			<p><b>1 MRSA §411, sub-§6</b>                      G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing</p>

**Evolution of Advisory Committee and Ombudsman responsibilities**

RESPONSIBILITY	2005 LD 301	2005 COM AMD	CURRENT LANGUAGE
			committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations;
11. prepare interpretative and educational materials and programs	PAO	AC	<b>5 MRSA §200-I, sub-§2</b> A. Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right To Know Advisory Committee established in Title 1, section 411;
12. make available to elected or appointed public officials educational materials	PAO		
13. resource to support training and education - core resources, best practices			<b>1 MRSA §411, sub-§6</b> D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section 412, subsection 3 and for making that information publicly available;
<b>Guidance/Information</b>			
14. requests for interpretation and clarification			<b>1 MRSA §411, sub-§6</b> A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws;
15. central source and coordinator			<b>1 MRSA §411, sub-§6</b>

**Evolution of Advisory Committee and Ombudsman responsibilities**

<b>RESPONSIBILITY</b>	<b>2005 LD 301</b>	<b>2005 COM AMD</b>	<b>CURRENT LANGUAGE</b>
of information			B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for agencies and public officials. The advisory committee shall also provide general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries;
16. respond to inquiries from public and officials	PAO	AC	<b>5 MRSA §200-I, sub-§2</b> B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws;
17. furnish upon request guidelines and other appropriate information	PAO		
<b>Website</b>			
18. central publicly accessible website: statutes, guidance on using the law, contact information, complaints, statutory exceptions			<b>1 MRSA §411, sub-§6</b> C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as whom to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws;

**Evolution of Advisory Committee and Ombudsman responsibilities**

RESPONSIBILITY	2005 LD 301	2005 COM AMD	CURRENT LANGUAGE
<b>Monitor, data gathering, tracking</b>			
19. review public access to public proceedings and public records	AC	AC	
20. conduct public hearings, conferences, workshops other meetings to obtain information, discuss, publicize needs of and consider solutions	AC	AC	<b>1 MRSA §411, sub-§6</b> I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records;
21. review collection, maintenance and use of records by agencies			<b>1 MRSA §411, sub-§6</b> J. Shall review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public; and
22. coordinate with state agency PAOs to compile data about requests, time, costs			<b>5 MRSA §200-I, sub-§2</b> F. Coordinate with the state agency public access officers the compilation of data through the development of a uniform log to facilitate record keeping and annual reporting of the number of requests for information, the average response time and the costs of processing requests.
23. report			<b>5 MRSA §200-I</b> <b>5. Report.</b> The ombudsman shall submit a report not later than March 15th of each year to the Legislature and the Right To Know Advisory Committee established in Title 1, section 411 concerning the activities of the ombudsman for the previous year. The report must include: A. The total number of inquiries and complaints received; B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials; C. The number of complaints

**Evolution of Advisory Committee and Ombudsman responsibilities**

<b>RESPONSIBILITY</b>	<b>2005 LD 301</b>	<b>2005 COM AMD</b>	<b>CURRENT LANGUAGE</b>
			<p>received concerning respectively public records and public meetings;</p> <p>D. The number of complaints received concerning respectively:</p> <ul style="list-style-type: none"> <li>(1) State agencies;</li> <li>(2) County agencies;</li> <li>(3) Regional agencies;</li> <li>(4) Municipal agencies;</li> <li>(5) School administrative units;</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>(6) Other public entities; [</li> </ul> <p>E. The number of inquiries and complaints that were resolved;</p> <p>F. The total number of written advisory opinions issued and pending; and</p> <p>G. Recommendations concerning ways to improve public access to public records and proceedings.</p>
Catchall	AC	AC	<p><b>1 MRSA §411, sub-§6</b></p> <p>K. May undertake other activities consistent with its listed responsibilities.</p>

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**To: Legislative Subcommittee & Public Policy Subcommittee**  
**From: Stephen Wagner**  
**Date: November 12, 2013**  
**Re: Sampling of State Privacy Statutes Modeled After the 1974 Federal Privacy Act**

## **I. Objective and Introduction**

This Memo responds to a request raised in the last joint meeting of the Legislative and Public Policy Subcommittees for information on any states that have privacy statutes modeled after the federal Privacy Act of 1974. The discussion centered on what duty a state government should owe when it collects a citizen's private information. Currently in Maine, "every time a new aspect of public records is deemed confidential, it requires additional review and redaction of documents by public agencies, which increases the costs to that agency to comply with FOIA requests."<sup>1</sup> Staff further explained "there are several places in Maine statutes where private information is collected that the agency is not precluded from disclosing." This memo attempts to summarize some of the different states models that are to varying degrees based on the single-statute approach taken in the federal Privacy Act.

In order to narrow the scope of the state privacy laws analyzed, Part II of this memo quickly summarizes the federal Privacy Act's purposes, the substantive and procedural rights created by the act, and selected relevant provisions; the state's analyzed reflect a similar structure. Part III briefly explores the privacy statutes of several states that are to some degree modeled on the federal Privacy Act. If the Committees desire any further information on a specific state's approach, I am happy to provide further detail from my research. Finally, the objective of this memo is not to reach any conclusion; however, if the Committees wishes to pursue further research, I recommend exploring commentary on proposed approaches for modern privacy regulation that seek to improve on the federal Privacy Act and numerous state approaches.<sup>2</sup>

## **II. The Federal Privacy Act of 1974**

In the aftermath of the Watergate scandal, in 1974 the US Congress enacted the Privacy Act.<sup>3</sup> This was largely in response to concerns about the emergence of computerized databases, which contain individual's personal and private information.<sup>4</sup> Aside from limited exceptions,<sup>5</sup> the Act applies only to federal agencies within the executive department, including the White House.<sup>6</sup>

The act focuses on four basic policy objectives: 1) to restrict disclosure of personally identifiable records maintained by agencies; 2) to grant individuals increased rights of access to agency records maintained on themselves; 3) to grant individuals the right to seek amendment of inaccurate agency records; 4) to establish a code of "fair information practices" which requires agencies to comply with statutory norms for collection, maintenance, and dissemination of records.<sup>7</sup>

In this pursuit, the act creates four substantive and procedural rights: 1) it requires government agencies to show an individual any records kept on him or her; 2) it requires agencies to follow certain principles, called "fair information practices," when gathering

and handling personal data; 3) it places restrictions on how agencies can share an individual's data with other people and agencies; and 4) it lets individuals sue the government for violating its provisions.<sup>8</sup> Despite granting concrete substantive and procedural rights, the 1974 federal Privacy Act is often viewed as a flawed and limited protection of privacy rights.<sup>9</sup>

For the purposes of this memo, the provisions that restrict disclosure of personally identifiable records maintained by agencies, and the relevant definitions, are partially excerpted below. I used these provisions as my baseline when researching other states to determine whether their privacy laws contained a statute that was perhaps modeled on the federal Privacy Act. Such provisions excerpted from 5 U.S.C. §§ 522, 522a include:

#### **5 U.S.C. 522**

**(f)(1) “agency”** . . . includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

#### **5 U.S.C. 522a**

**(a)(1) “record”** means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

**(b) Conditions of disclosure.** No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless . . .

[These 12 exemptions include disclosure: to officers in performance of their duties, as required under FOIA, for “routine use,” for the census, for certain statistical research, to the National Archives for evaluation, to another agency for an authorized activity by written permission, to an individual under a showing of “compelling circumstances affecting health or safety,” either House of Congress within its jurisdiction, to the Comptroller general in its performance of its duties, by order of a court of competent jurisdiction, or to an authorized consumer reporting agency.]

### **III. Sampling of States With a Single Privacy Act That Regulates Disclosure and Handling of Government-Collected Private Personal Information**

Following the enactment of the federal Privacy Act, one observer found that approximately nine states followed suit with their own privacy acts.<sup>10</sup> While some of these acts today remain largely similar to the federal act, others differ in various ways. Included below are six states: California, New York, Hawai`I, Utah, Idaho, and Minnesota. These states demonstrate approximately four different approaches to creating a state counterpart to the federal privacy act.<sup>11</sup> The approaches and the corresponding states are: 1) California and New York are examples of states that employ an approach very similar to the federal privacy act; 2) Hawaii and Idaho are examples of states employ an ad hoc balancing approach to each piece or category of public data; 3) Idaho is an example of a state that specifically lists the information that is subject to disclosure; and finally, 4) Minnesota bases its level and procedure for disclosure by categorizing each type of information. This sampling is not meant to be exhaustive of all approaches that states do employ for protecting private information collected by the government or exhaustive of those states that employ a single privacy act for this purpose. Rather, the intent is to give brief examples of the range of approaches that Maine could potentially employ, should it chose to proceed in grating a single privacy act statute. Each section contains a brief summary and excerpts of the relevant statutory language that supports the summary.

### **California (Similar to the Federal Privacy Act)**

California is often viewed as the “vanguard of the privacy field” because of its extensive (over 30) privacy laws, as well as an expansive definition of privacy in their state constitution.<sup>12</sup> California’s Information Privacy Act of 1977 is closely modeled on the federal Privacy Act of 1974.<sup>13</sup> The California act broadly prohibits disclosure of personal information by state agencies, subject to specified exemptions. Nearly immediately the act was criticized for striking the balance too far on the side of privacy, and has subsequently been amended.<sup>14</sup>

#### **Excerpted From CAL. CIV. CODE §§ 1798-1798.78:**

##### **§ 1798.3**

(a) **“personal information”** means any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual.

(b) **“agency”** means every state office, officer, department, division, bureau, board, commission, or other state agency, except that the term agency shall not include:

- (1) The California Legislature.
- (2) Any agency established under Article VI of the California Constitution.



- (3) The State Compensation Insurance Fund, except . . . personal information about the employees . . .
- (4) A local agency . . .

**§ 1798.24**

“No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed, as follows:”

[lists 22 exemptions that provide disclosure to: the individual to whom the information pertains; by prior written consent; to the guardian, conservator, representative; if relevant and necessary in the ordinary course of duties of employee of agency; as necessary for transferee to perform constitutional duties; governmental entity as required by law; pursuant to Public Records Act; certain statistical research; “compelling circumstances affecting health or safety”; to state archives for evaluation; per compulsory legal process so long as agency reasonably attempted to give notice to the individual; by search warrant; pursuant to Vehicle Code; for verifying and paying government health care serve claims; law enforcement investigations unless prohibited; agency investigation; to an adopted person; to a child or grandchild of an adopted person; certain research; certain insurance purposes; certain provision under the Financial Code.]

**New York  
(Similar to the Federal Privacy Act)**

Similar to California, New York’s Personal Privacy Protection Law of 1984 was modeled after the federal Privacy Act of 1974.<sup>15</sup> Similarly, this law also generally prohibits disclosure, subject to specified exemptions. Unlike California, however, the Personal Privacy Protection Act also specifically states those records that will, even under the exemptions, not be subject to disclosure.

**Excerpted From N.Y. PUB. OFF. 6-A §§ 91-99:**

**§ 92. Definitions**

(1) Agency. The term "agency" means any state board, bureau, committee, commission, council, department, public authority, public benefit corporation, division, office or any other governmental entity performing a governmental or proprietary function for the state of New York, except the judiciary or the state legislature or any unit of local government and shall not include offices of district attorneys.

(9) Record. The term "record" means any item, collection or grouping of personal information about a data subject which is maintained and is retrievable by use of the name or other identifier of the data subject irrespective of the physical form or technology used to maintain such personal information. The term "record" shall not include personal information which is not used to make any determination about the data subject if it is:

- (a) a telephone book or directory which is used exclusively for telephone and directory information;
- ~~(b) any card catalog, book or other resource material in any library;~~
- (c) any compilation of information containing names and addresses only which is used exclusively for the purpose of mailing agency information;
- (d) personal information required by law to be maintained, and required by law to be used, only for statistical research or reporting purposes;
- (e) information requested by the agency which is necessary for the agency to answer unsolicited requests by the data subject for information; or
- (f) correspondence files.

**§ 96. Disclosure of records.**

(1) No agency may disclose any record or personal information unless such disclosure is:

[lists 14 exemptions for disclosure: by written consent of the data subject; officer in performance of duties; state public access law; for use by agency; specifically authorized by federal or state statute or regulation; census; certain statistical research; state archives for evaluation; legal compulsion; for criminal law enforcement; search warrants; certain agency purposes]

(2) Nothing in this section shall require disclosure of:

- (a) personal information which is otherwise prohibited by law from being disclosed;
- (b) patient records concerning mental disability or medical records where such disclosure is not otherwise required by law;
- (c) personal information pertaining to the incarceration of an inmate at a state correctional facility which is evaluative in nature or which, if disclosed, could endanger the life or safety of any person, unless such disclosure is otherwise permitted by law;
- (d) attorney's work product or material prepared for litigation before judicial, quasi-judicial or administrative tribunals, as described in subdivisions (c) and (d) of section three thousand one hundred one of the civil practice law and rules, except pursuant to statute, subpoena issued in the course of a criminal action or proceeding, court ordered or grand jury subpoena, search warrant or other court ordered disclosure.

**Hawaii**  
**(Ad Hoc Balancing Approach)**

Hawaii does not have a privacy statute the closely models the federal Privacy Act of 1974. Instead, Hawaii’s Office of Information Practices (located with the Attorney General’s Office), which “promotes open and transparent government in Hawaii,” administers two open government laws: 1) the Uniform Information Practices Act, which requires open access to government records, and 2) the Sunshine Law, which requires open public meetings.<sup>16</sup> The Office’s website states “both laws are intended to open up governmental processes to public scrutiny and participation by requiring government business to be conducted as transparently as possible, while balancing personal privacy rights guaranteed under the Hawaii State Constitution.”<sup>17</sup> So rather than a privacy statute that prohibits disclosure subject to specific exemptions, Hawaii’s state agencies apply an ad hoc balancing approach.

**Excerpted from HAW. REV. STAT. §§ 92F-1-42**

**§ 92F-3**

**“Agency”** means any unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the nonadministrative functions of the courts of this State.

**“Personal record”** means any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual's education, financial, medical, or employment history, or items that contain or make reference to the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

**§ 92F-14**

(a) Disclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interest of the individual.

(b) [Provision lists specific examples seemingly meant to illustrate when an individual would have a “significant privacy interest” that would outweigh the public interest in disclosure using the balancing approach above]

**Utah**  
**(Ad Hoc Balancing Approach)**

Utah is included because it is one of the most recent states to pass something that could be characterized as a general privacy act, and so may arguably reflect the trend of thinking in this area.<sup>18</sup> The Government Records Access and Management Act provides for disclosure under a balancing test similar to Hawaii, with some categorization similar to Minnesota.<sup>19</sup> However, the act does not provide any “guidance with respect to the identification of the relevant interests [or] how they are to be weighed.”<sup>20</sup>

**Utah Code Ann. § 63G-2-201(5)**

“A governmental entity may disclose a record that is private under Subsection 63G-2-302(2) or protected under [the three classifications of private information in this act] to persons [that individual or her representative] if the head of a governmental entity, or a designee, determines that . . . there is no interest in restricting access to the record [or] the interests favoring access are greater than or equal to the interest favoring restriction of access.”

**Idaho**  
**(Specific Items Subject to Disclosure)**

Idaho does not have a statute that closely models the federal Privacy Act. Rather, Idaho specifically exempts “records of a personal nature” defined only by an extensive, but likely not exhaustive, list of records exempt for disclosure. Further, unlike the federal Privacy Act or California, Idaho’s exemptions from public disclosure apply to the state and local level.

**Excerpted From Idaho Code Ann. §§ 936-941**

**§ 9-337**

(11) “Public agency” means any state or local agency as defined in this section.

(8) “Local agency” means a county, city, school district, municipal corporation, district, public health district, political subdivision, or any agency thereof, or any committee of a local agency, or any combination thereof.

(15) “State agency” means every state officer, department, division, bureau, commission and board or any committee of a state agency

including those in the legislative or judicial branch, except the state militia and the Idaho state historical society library and archives.

(13) “Public record” includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics.

§§ 9-340C-341 [list of exemptions and exceptions]

### **Minnesota (Disclosure Subject to Cataogrization)**

Enacted in 1979, Minnesota's Data Practices Act was one of the first privacy acts of its kind in the United States; today, it continues to be viewed as a unique approach administering the privacy of personal information collected by the government.<sup>21</sup> Unlike statues on the federal level, containing the adjacent but distinct Privacy Act and Freedom of Information Act, the Minnesota Data Practices Act “fuses notions of freedom of information and fair information practices into a single statute.”<sup>22</sup> Generally speaking, the act categorizes private information collected by government entities into six different categories.<sup>23</sup> Unlike Hawaii, for example, which balances the interests every time, the Minnesota Act presumes that data is publically available, unless it is explicitly categorized otherwise.<sup>24</sup> The level of disclosure and procedure for disclosing the information depends the category of private information. When over classification occurs, or an agency cannot categorize information, the Act provides for a series of administrative procedures to that balance the public and private interests. This has resulted in a complex statute, updates nearly every year, potentially creating a high administrative burden.<sup>25</sup>

**Minn. Stat. §§ 13.01-13.4**

#### **§ 13.02**

**(5) “Data on individuals”** means all government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual.

**(7a) “Government entity”** means a state agency, statewide system, or political subdivision.

**(11) “Political subdivision”** means any county, statutory or home rule charter city, school district, special district, any town exercising powers under chapter 368 and located in the metropolitan area, as defined

in section 473.121, subdivision 2, and any board, commission, district or authority created pursuant to law, local ordinance or charter provision. It includes any nonprofit corporation which is a community action agency organized pursuant to the Economic Opportunity Act of 1964 (Public Law 88-452) as amended, to qualify for public funds, or any nonprofit social service agency which performs services under contract to a government entity, to the extent that the nonprofit social service agency or nonprofit corporation collects, stores, disseminates, and uses data on individuals because of a contractual relationship with a government entity.

### § 13.03

(1) All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification pursuant to section 13.06, or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential. The responsible authority in every government entity shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use. Photographic, photostatic, microphotographic, or microfilmed records shall be considered as accessible for convenient use regardless of the size of such records.

<sup>1</sup> Meeting Summary, Joint Legislative Subcommittee & Public Policy Subcommittee, Maine Right to Know Advisory Committee, 3 (Oct. 3, 2013).

<sup>2</sup> See e.g. Scot Ganow & Sam S Han, *Model Omnibus Privacy Statute*, 35 U. Dayton L. Rev. 345 (2010) (explores the feasibility of an omnibus privacy statute and suggests a model form); See also note 9 *infra*.

<sup>3</sup> Privacy Act of 1974, 5 U.S.C. § 552a (West 2007) (enacted 1974).

<sup>4</sup> Electronic Information Privacy Center, *The Privacy Act of 1974*, <http://epic.org/privacy/1974act/> (last visited Nov. 5, 2013).

<sup>5</sup> Privacy Act of 1974, Pub. L. 93-579 § 7(a)(2)(B) (1974) (included in the original Privacy Act, but codified in 5 U.S.C.A 522a only as a note, the Privacy Act's provision on the disclosure of a social security account number applied to all levels of government).

<sup>6</sup> 5 U.S.C. § 522a(a)(1); DEP'T OF JUSTICE, *Overview of the Privacy Act of 1974*, 4 (2009)

<sup>7</sup> *Id.*

<sup>8</sup> Electronic Information Privacy Center, *supra* note 4.

<sup>9</sup> See generally Haeji Hong, *Dismantling the Private Enforcement of the Privacy Act of 1974: Doe v Chao*, 38 AKRON L. REV. 71 (2005) (arguing the Privacy Act is ineffective because agencies can get around it by collecting privacy data by employing private party contractors); Todd Robert Coles, Comment, *Does the Privacy Act of 1974 Protect Your Right to Privacy? An Examination of the Routine Use Exemption*, 40 Am. U. L. Rev. 957 (1991) (discussing the abuse and lack of oversight over the "routine use" exemption to the disclosure protections of the Privacy Act); Lior Jacob Strahilevitz, *Prosser's Privacy at 50: A Symposium on Privacy in the 21st Century*, 93 Cal. L. Rev. 2007 (2010)

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(discussing how the Privacy Act should be reconciled with numerous other federal privacy acts enacted subsequently to fix the “increasingly fragmented and decreasingly coherent” privacy law in the United States).

<sup>10</sup> Memorandum from the Tex. Office of the Att’y Gen., to the House Committee on State Affairs Subcommittee on Privacy Issues (July 20, 2000) (Subject: Privacy Acts of the Stats and the Federal Government; identified California, Hawaii, Idaho, Kentucky, Massachusetts, Minnesota, New York, Ohio, and Virginia); my own research confirmed the findings of these states, but also found an additional 3 state with a single-statute approach.

<sup>11</sup> I subjectively determined these approached based on the statutory scheme, with reference to the excerpted portions of the federal Privacy Act *supra*.

<sup>12</sup> CLIFFORD S. DAVIDSON, NAVID SOLEYMANI, SCOTT P. COOPER & TANYA L. FORSHEIT, PROSKAUR ON PRIVACY: A GUIDE TO PRIVACY AND DATA SECURITY LAW IN THE INFORMATION AGE 5-6 (2006)

<sup>13</sup> Graeme Hancock, *California’s Privacy Act: Controlling Government’s Use of Information?*, 32 STAN. L. REV. 1001, 1004 (1980)

<sup>14</sup> *Id.* at 1019.

<sup>15</sup> Spargo v. New York State Com’n on Gov’t Integrity, 140 A.D.2d 26, 531 N.Y.S.2d 417 (3d Dep’t 1988).

<sup>16</sup> STATE OF HAWAII OFFICE OF INFORMATION PRACTICES, <http://oip.hawaii.gov/> (last visited Oct. 21, 2012).

<sup>17</sup> *Id.*

<sup>18</sup> Governmental Internet Information Privacy Act, H.B. 25, 2005 Gen. Sess. (Ut 2004) (enacted to modify the Information Technology Act, expanding former disclosure laws to include all three branches of government).

<sup>19</sup> ROBERT ELLIS SMITH, COMPILATION OF STATE AND FEDERAL PRIVACY LAWS 1750 (Privacy Journal, Kindle Edition, 2013) (pagination reflects Kindle version only)

<sup>20</sup> Dale F. Rubin, *State Government Records and Individual Privacy: Theoretical and Comparative Approaches*, 26 URB. LAW. 589, 593 (1994)

<sup>21</sup> Donald A. Gemberling, *Data Practices at the Cusp of the Millennium*, 22 WM. MITCHELL L. REV. 767, 770 (remarking that the act has been viewed as a “seemingly impenetrable idiom”).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Margaret Westin, *The Minnesota Government Data Practices Act: A Practitioner’s Guide and Observations on Access to Government Information*, 22 WM. MITCHELL L. REV. 839, 850 (1996).

<sup>25</sup> *Id.*

12

**The New York Times**

October 30, 2013

# No U.S. Action, So States Move on Privacy Law

By SOMINI SENGUPTA

State legislatures around the country, facing growing public concern about the collection and trade of personal data, have rushed to propose a series of privacy laws, from limiting how schools can collect student data to deciding whether the police need a warrant to track cellphone locations.

Over two dozen privacy laws have passed this year in more than 10 states, in places as different as Oklahoma and California. Many lawmakers say that news reports of widespread surveillance by the National Security Agency have led to more support for the bills among constituents. And in some cases, the state lawmakers say, they have felt compelled to act because of the stalemate in Washington on legislation to strengthen privacy laws.

“Congress is obviously not interested in updating those things or protecting privacy,” said Jonathan Stickland, a Republican state representative in Texas. “If they’re not going to do it, states have to do it.”

For Internet companies, the patchwork of rules across the country means keeping a close eye on evolving laws to avoid overstepping. Many companies have an internal team to deal with state legislation. And the flurry of legislation has led some companies, particularly technology companies, to exert their lobbying muscles — with some success — when proposed measures stand to harm their bottom lines.

“It can be counterproductive to have multiple states addressing the same issue, especially with online privacy, which can be national or an international issue,” said Michael D. Hintze, chief privacy counsel at Microsoft, who added that at times it can create “burdensome compliance.” For companies, it helps that state measures are limited in their scope by a federal law that prevents states from interfering with interstate commerce.

This year, Texas passed a bill introduced by Mr. Stickland that requires warrants for email searches, while Oklahoma enacted a law meant to protect the privacy of student data. At least three states proposed measures to regulate who inherits digital data, including Facebook passwords, when a user dies.



Some of the bills extend to surveillance beyond the web. Eight states, for example, have passed laws this year limiting the use of drones, according to the American Civil Liberties Union, which has advocated such privacy laws. In Florida, a lawmaker has drafted a bill that would prohibit schools from collecting biometric data to verify who gets free lunches and who gets off at which bus stop. Vermont has limited the use of data collected by license plate readers, which are used mostly by police to record images of license plates.

California, long a pioneer on digital privacy laws, has passed three online privacy bills this year. One gives children the right to erase social media posts, another makes it a misdemeanor to publish identifiable nude pictures online without the subject's permission, and a third requires companies to tell consumers whether they abide by "do not track" signals on web browsers.

But stiff lobbying efforts were able to stop a so-called right to know bill proposed in California this year that stood to hurt the online industry. The bill would have required any business that "retains a customer's personal information" to share a copy of that information at the customer's request, as well as disclose which third parties have received the information. The practice of sharing customer data is central to digital advertising and to the large Internet companies that rely on advertising revenue.

"'Right to know' is an example of something that's not workable," said Jim Halpert, a lawyer with the national firm DLA Piper, who leads an industry coalition that includes Amazon, Facebook and Verizon. "It covers such a broad range of disclosures. We advocated against it."

More than a year ago, the White House proposed a consumer privacy bill of rights, but Congress has not yet taken on the legislation. And a proposed update to the 27-year-old Electronic Communications Privacy Act has stalled. The proposal would require law enforcement agencies to obtain a warrant, based on probable cause, before they could read through emails.

Several legislators said they felt compelled to act because Congress had not. "They don't act in the best interest unless it's in their best interest," said Daniel Zolnikov, a first-time legislator in Montana. Mr. Zolnikov, a Republican, suggested that the lack of action was because of lobbying efforts from "special interests" on Capitol Hill.

So Mr. Zolnikov took up the privacy issue in his state house: Montana became the first state in the nation this year to pass a law that requires police to obtain a search warrant before it can track a suspect's whereabouts through cellphone records.

According to a survey conducted in July by the Pew Internet Center, most Americans said they believed that existing laws were inadequate to protect their privacy online, and a clear majority reported making great efforts to mask their identities online. Some of those surveyed said they cleared browsing histories, deleted social media posts or used virtual networks to conceal their Internet Protocol addresses — and a few even said they used encryption tools.

Many states have already responded to those opinions. In the last couple of years, about 10 states have passed laws restricting employers from demanding access to their employees' social media accounts.

California set the stage on digital privacy 10 years ago with a law that required organizations, whether public or private, to inform consumers if their personal data had been breached or stolen. Several states followed, and today, nearly every state has a data breach notification law.

This year, California amended that landmark law, adding an Internet user's login name and password to the menu of personal information that is covered. The California attorney general's office also has a full-time unit to enforce digital privacy laws.

But even in California, the steps taken on privacy legislation are not sweeping overhauls like those supported by the White House. And some bills in the state never become law at all. Last year, the Legislature passed a bill compelling police to seek a warrant before searching cellphone records to track a suspect's location. Gov. Jerry Brown vetoed it, saying it did not strike "the right balance" between the needs of citizens and the police.

John Pezold, a Republican representative in Georgia, said that issues like creating jobs were more pressing than privacy for many of his constituents. But he said the issue of digital privacy was beginning to bubble up, especially because of the recent reports on eavesdropping by the federal government.

"They're becoming increasingly wary that their lives are going to be no longer their own," said Mr. Pezold, who plans to introduce a broad consumer privacy bill in the next legislative session. "We have got to protect that."



4  
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**§ 408-A. Public records available for inspection and copying**

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

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

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

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

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

**3. Acknowledgment; clarification; time estimate; cost estimate.** The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within ~~a reasonable period of time~~, 5 working days of receiving the request. ~~and~~ The agency or official may request clarification concerning which public record or public records are being requested. The ~~Within a reasonable time of receiving the request, the~~ agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request, as well as a cost estimate as provided in subsection 9. The agency or official shall make a good faith effort to fully respond to the request within the estimated time. For purposes of this section, the date a request is received is the date a sufficient description of the public record is received by the agency or official at the office responsible for maintaining the public record. (This comes from Alaska 2AAC 96.315(b))

**4. Refusals; denials.** If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide written notice of the denial, stating the reason for the denial, within 5 working days of the receipt of the request for inspection or copying. If a body or agency or official expects that the request will be denied in full or in part following a review, the body or agency or official shall provide written notice of that expectation, stating the reason for the denial, within 5 working days of the receipt of the request for inspection or copying. Failure to ~~comply with~~ provide the notice required by this subsection within 10 working days of the receipt of the request is considered failure a denial to allow inspection or copying and is subject to appeal as provided in section 409.

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

an office exists.

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

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

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

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

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

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

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

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

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

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

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

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

- A. The estimated total cost exceeds \$100; or
- B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.

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

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

### **§409. Appeals**

~~**1. Records.** Any person aggrieved by a refusal or denial to inspect or copy a record under section 408-A may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.~~

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

**2. Actions.** If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

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

Draft of proposed changes to §408-A and §409. **Revised 11/12/13**

**4. Attorney's fees.** In an appeal under subsection 1 or 2, the court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.

This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.

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# RIGHT TO KNOW ADVISORY COMMITTEE LEGISLATIVE SUBCOMMITTEE

DRAFT AGENDA  
September 9, 2013  
10:00 a.m.  
Room 438, State House, Augusta

## Convene

1. Welcome and Introductions  
Judy Meyer, Chair
2. Review Subcommittee tasks
  1. Issues raised in LD 258, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies;
  2. Issues raised by enacted amendments to FOAA & Ombudsman laws:
    - LD 104, An Act to Amend the Laws Governing Public Records (PL 2013, c. 339);
    - LD 1216, An Act to Amend the Freedom of Access Act (PL 2013, c. 350); and
    - LD 1511, An Act Regarding Coordinated Access to Public Records of State Agencies (PL 2013, c. 229);
  3. Encryption of emergency communications – see letter from Maine Criminal Justice Academy;
  4. AFA Committee Meetings---party caucuses during budget discussions?
  5. Whether government records containing “personal information” that is protected under 10 MRSA Chapter 210-B, Notice of Risk to Personal Data, also ought to be protected from public disclosure;
  6. Whether the Maine Revised Statutes also ought to be reviewed at regular intervals to determine whether currently publicly accessible records ought to instead be protected from public disclosure due to personal privacy-related concerns;
  7. In light of the United States Supreme Court’s recent decision in *McBurney v. Young*, 569 U.S. \_\_\_\_ (2013), whether the FOAA ought to be clarified to state that it is available for use by Maine citizens/residents as a means to access Maine, county and municipal government records and proceedings;
  8. As a matter of clarification of policy, whether the exceptions listed in the definition of “public records” are intended to be permissive or mandatory;
  9. Whether the law needs to be made clearer that public employees’ date of birth information is not subject to public disclosure;
  10. Whether a formal, standardized policy ought to be developed governing the storage, retention, and disposition of government emails;
  11. Whether government records containing personal information about private citizens ought to be generally protected from public disclosure; (overlapping issue with Bulk Records Subcommittee);
  12. Issues raised by LD 549 as amended, An Act To Provide for Special Restrictions on Dissemination and Use of Criminal History Record Information for Class E Crimes Committed by an Adult under 21 Years of Age (carried over); and
  13. *Post all FOAA requests made to State agencies to a searchable online database (inform private citizens who are subject of FOAA requests, misuse of FOAA, lack of transparency about who is making requests)*
3. Other?

Next scheduled Legislative Subcommittee meeting: Thursday, October 3, 2013, 10:00 a.m.

## Adjourn



**RIGHT TO KNOW ADVISORY COMMITTEE  
LEGISLATIVE SUBCOMMITTEE**

DRAFT AGENDA  
October 3, 2013  
9:00 a.m.  
Room 126, State House, Augusta

**Convene**

1. Welcome and Introductions  
Judy Meyer, Chair
2. Issues raised in LD 258, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies;
3. Encryption of emergency communications
  - Summaries of 2012 Encryption Subcommittee meetings
  - Proposed legislation, allocated and unallocated
4. Other?
5. Schedule additional meetings

Note: The Legislative Subcommittee meets jointly with the Public Policy Committee on October 3, 2013 at 10:00 a.m.

**Adjourn**





# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 258

H.P. 195

House of Representatives, February 5, 2013

### **An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies**

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

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

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND

Clerk

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

2 PART A

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

4 §403-A. Public proceedings through other means of communication

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

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

12 A. The body has adopted a policy that authorizes a member of the body who is not  
13 physically present to participate in a public proceeding through telephonic, video,  
14 electronic or other similar means of communication in accordance with this section.  
15 The policy may establish circumstances under which a member may participate when  
16 not physically present;

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

18 C. Except as provided in subsection 3, a quorum of the body is assembled physically  
19 at the location identified in the notice required by section 406;

20 D. Each member of the body participating in the public proceeding is able to hear all  
21 the other members and speak to all the other members during the public proceeding,  
22 and members of the public attending the public proceeding in the location identified  
23 in the notice required by section 406 are able to hear all members participating from  
24 other locations;

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

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

29 G. Each member who is not physically present and who is participating through  
30 telephonic, video, electronic or other similar means of communication has received  
31 prior to the public proceeding any documents or other materials that will be discussed  
32 at the public proceeding, with substantially the same content as those documents  
33 actually presented. Documents or other materials made available at the public  
34 proceeding may be transmitted to the member not physically present during the  
35 public proceeding if the transmission technology is available. Failure to comply with  
36 this paragraph does not invalidate the action of a body in a public proceeding.

37 **2. Voting; judicial or quasi-judicial proceeding.** A member of a body who is not  
38 physically present and who is participating in a judicial or quasi-judicial public  
39 proceeding through telephonic, video, electronic or other similar means of

1 communication may not vote on any issue concerning testimony or other evidence  
2 provided during the judicial or quasi-judicial public proceeding.

3 **3. Exception to quorum requirement.** A body may convene a public proceeding  
4 by telephonic, video, electronic or other similar means of communication without a  
5 quorum under subsection 1, paragraph C if:

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

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

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

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

16 **PART B**

17 **Sec. B-1. 10 MRSA §384, sub-§5** is enacted to read:

18 **5. Meetings.** The board shall have a physical location for each meeting.  
19 Notwithstanding Title 1, section 403-A, board members may participate in meetings by  
20 teleconference. Board members participating in the meeting by teleconference are not  
21 entitled to vote and are not considered present for the purposes of determining a quorum,  
22 except in cases in which the chair of the board determines that the counting of members  
23 participating by teleconference and the allowance of votes by those members is necessary  
24 to avoid undue hardship to an applicant for an investment.

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

27 D. A majority of the members appointed and currently serving constitutes a quorum  
28 for all purposes and no decision of the board may be made without a quorum present.  
29 A majority vote of those present and voting is required for board action, except that  
30 for purposes of either granting a waiver of any of its rules or deciding to pursue the  
31 suspension or revocation of a license, the board may take action only if the proposed  
32 waiver, suspension or revocation receives a favorable vote from at least 2/3 of the  
33 members present and voting and from no less than a majority of the appointed and  
34 currently serving members. ~~The Notwithstanding Title 1, section 403-A, the board~~  
35 ~~may use video conferencing and other technologies to conduct its business but is not~~  
36 ~~exempt from Title 1, chapter 13, subchapter 1.~~ Members of the board, its  
37 subcommittees or its staff may participate in a meeting of the board, subcommittees  
38 or staff via video conferencing, conference telephone or similar communications  
39 equipment by means of which all persons participating in the meeting can hear each  
40 other, and participation in a meeting pursuant to this subsection constitutes presence  
41 in person at such meeting.



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

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

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

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





**Public Proceedings: remote participation by members**

Email responses from query to State FOA Contacts

AGENCY	REMOTE PARTICIPATION
State Treasurer	Do not have regularly scheduled meetings where off-site members participate
Maine Turnpike Authority	No remote participation; would be nice for a member with a conflict to call in
State Auditor	No public body
Office of Professional and Occupational Regulation, Department of Professional and Financial Regulation	OPOR and affiliated licensing boards do not permit board members to participate in board meetings via phone or other electronic connections. (Witnesses are permitted to testify at adjudicatory hearings via telephone.)
Maine State Board of Nursing	Board conducts public meetings, but participate in person only.
Department of Corrections	No public meetings in the way other departments do, so probably does not apply
Department of Environmental Protection	Do not hold public meetings remotely, although do provide access to the public to listen to rulemakings over the website. Although they cannot participate remotely, they can listen.
Department of Marine Resources	<p>In rare circumstances some of the boards and advisory councils do allow members to conference call into a meeting, normally only when a quorum may not be met and depends on topics to be discussed (meetings include discussing changes in regulation, consideration and approval for special licenses, legislative updates, etc.):</p> <ol style="list-style-type: none"> <li>1. DMR Advisory Council</li> <li>2. Lobster Advisory Council</li> <li>3. Lobster Zone Councils</li> <li>4. Sea Urchin Zone Council</li> <li>5. Scallop Advisory Council</li> <li>6. Commercial Fishing Safety Council</li> <li>7. Shellfish Advisory Council</li> </ol>
Maine Human Rights Commission	May conduct an emergency telephonic Commission meeting if notify local representatives of the media and make a reasonable effort to notify the parties affected by the meeting. See 2009 memo.

①

**Public Proceedings: remote participation by members**

AGENCY	REMOTE PARTICIPATION
Public Utilities Commission	<p>Three commissioners who typically hold public deliberations once a week. Occasionally, one or two may be out of town and telephone into deliberations which would be broadcast throughout the Commission's hearing room for those in the room and can be heard over the internet at the PUC's website. The sound recording is also archived on the PUC website.</p> <p>No quorum or attendance requirements apply to hearings; all hearings are transcribed so absent commissioner can read the transcript.</p>
Maine Emergency Management Agency, Department of Defense, Veterans and Emergency Management	<ul style="list-style-type: none"> <li>• State Emergency Response Commission: meets quarterly, occasionally has members participate remotely via teleconference and/or webinar-style internet connection</li> <li>• River Flow Advisory Commission: meets at least annually, occasionally also has similar remote participation</li> </ul>
Maine Historic Preservation Commission	<p>Quarterly meetings – made one exception in last ten years: member participated by speaker phone (could not drive from York to Augusta for health reasons)</p>
Maine Drug Enforcement Agency, Department of Public Safety	<p>MDEA Advisory Board meetings using teleconferencing if one or more members participate from a location other than the actual location of the proceedings.</p>
University of Maine System	<p>UMS Board of Trustees Bylaws: A Trustee who cannot be in physical attendance may participate and vote by telephone, or other similar interactive technology where the Chair has determined on the record that the physical presence of the non-attending Trustee is prevented by an exceptional occasion which makes it inadvisable or impossible to attend the meeting. The presence of the non-attending Trustee in this manner shall be counted towards a quorum.</p> <p>Committees and subcommittees may meet by interactive technology.</p>
Workers' Compensation Board	<p>Specifically authorized in <b>39-A §151, sub-§5</b></p> <p><i>The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology.</i></p>

**Public Proceedings: remote participation by members**

AGENCY	REMOTE PARTICIPATION
<p>Finance Authority of Maine (FAME)</p>	<p>Authorized; used only in rare and unique cases  <b>10 §971. Actions of the members</b>  <i>Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. No vacancy in the membership of the authority may impair the right of the quorum to exercise all powers and perform all duties of the members.</i>  <i>Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with the following.</i>  <b>1. Placement of call.</b> <i>A conference call to the members must be placed by ordinary commercial means at an appointed time.</i>  <b>2. Record of call.</b> <i>The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.</i>  <b>3. Notice of emergency meeting.</b> <i>Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.</i></p>
<p>Commission on Governmental Ethics and Election Practices</p>	<p>Authorized to hold telephonic meetings under certain circumstances:  <b>21-A §1002, sub-§2</b>  <b>2. Telephone meetings.</b> <i>The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:</i>  <i>A. During the 28 days prior to an election when the commission is required to meet within 2 business days of the filing of any complaint with the commission; or</i>  <i>B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.</i></p>

**Public Proceedings: remote participation by members**

AGENCY	REMOTE PARTICIPATION
Maine Emergency Medical Services Board, Department of Public Safety	Specifically authorized 32 §88, sub-§1, ¶D <i>The board may use video conferencing and other technologies to conduct its business but is not exempt from Title 1, chapter 13, subchapter 1. Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.</i>

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(10/2/2013 5:35:00 PM)

# Memo

Date: March 5, 2009  
To: Patricia E. Ryan, Executive Director  
From: John P. Gause, Commission Counsel  
Re: Emergency Commission Meetings

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You asked for my opinion on whether we may conduct an emergency Commission meeting by telephone, and, if so, what we are required to provide in terms of notice. This was necessitated by the storm cancellation of Monday's meeting and the fact that there were a few cases listed on Monday's Agenda that have statutes of limitations that will expire before the next scheduled Commission meeting. I have concluded that we may conduct an emergency telephonic Commission meeting provided that we notify local representatives of the media and make a reasonable effort to notify the parties affected by the meeting.

A. Telephonic Meeting

The Maine Human Rights Act ("MHRA") and the Maine Freedom of Access Law do not specifically address whether a meeting may be conducted by telephone. The MHRA provides that "[T]he Commission shall have the power . . . To meet and function at any place within the State." 5 M.R.S.A. § 4566(2). The Freedom of Access Law provides, in relevant part, that "all public proceedings shall be open to the public, any person shall be permitted to attend any public proceeding and any record or minutes of such proceedings that is required by law shall be made promptly and shall be open to public inspection." 1 M.R.S.A. § 403.

Although I could not find any Maine decisions on point, the majority view in other jurisdictions is to allow public meetings to be conducted by telephone. *See, e.g., Babac v. Pennsylvania Milk Marketing Bd.*, 613 A.2d 551, 553 (Pa. 1992); *Freedom Oil Co. v. Illinois Pollution Control Bd.*, 655 N.E.2d 1184, 1190 (Ill.App. 4 Dist. 1995) (collecting cases); 2 Am Jur 2d Administrative Law § 86 ("A quorum may be found even where some members participate through a telephone conference call on a speaker telephone."). *But see Roanoke City School Bd. v. Times-World Corp.*, 307 S.E.2d 256, 259 (Va. 1983) (opposite conclusion).

Given the majority view and the fact that the MHRA and the Freedom of Access Law do not prevent it, I think that the Commission may conduct a meeting by telephone. In light of the language in the Freedom of Access Law requiring that public proceedings be open to the public, however, such a meeting should be scheduled to take place in a public location (such as the Commission's offices), and the Commissioners who participate by phone should be on a speaker phone. In this way, any members of the public who are present will be able to hear the entire discussion.

B. Required Notice

With respect to notice, the Freedom of Access Law provides that, for meetings generally, “notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned.” 1 M.R.S.A. § 406. *See also Crispin v. Town of Scarborough*, 1999 ME 112, ¶¶ 25-27, 736 A.2d 241, 249 (one-day notice and posting in a newspaper was sufficient for a meeting in which the parties had been participating regularly in the proceedings). For an “emergency meeting,” however, the Freedom of Access Law only requires that the local media be notified. *See* 1 M.R.S.A. § 406 (“In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.”). I did not find any Maine cases defining an “emergency meeting.”

Our Procedural Rule § 2.08 also addresses Commission decisions under “Emergency Procedure” as follows:

If the preliminary investigation of the complaint persuades the Commission's Executive Director or other designated employee that a situation comparable to those described in 5 M.R.S.A. 4612(4)(B) exists, the Executive Director or other designated employee shall so notify the Commission. As soon as practical after notification, the Commissioners will consider the matter by means of a special meeting or other appropriate method. The Executive Director or other designated employee will take all reasonable steps to notify the parties of the special meeting or other appropriate method and of their right to participate.

One question is whether a case involving the potential lapse of a statute of limitations in a pending case is even grounds to invoke this emergency procedure. To be such a case, it must involve a “situation comparable to those described in 5 M.R.S.A. 4612(4)(B).” *Id.* Although § 4612(4)(B) does not specifically include it, I think an impending lapse of the two-year court statute of limitations is “comparable” to those that are listed. *Compare* 5 M.R.S.A. 4612(4)(B)(4) (including cases in which discrimination victim is in danger of suffering severe financial loss or severe hardship as a result of unlawful discrimination).

In sum, when we are conducting an emergency meeting, such as the one in the present case involving the impending lapse of a statute of limitations, the Maine Human Rights Act and the Freedom of Access Law only require us to provide the following notice of the meeting:

- (1) Local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding. 1 M.R.S.A. § 406.

- (2) The Executive Director or other designated employee will take all reasonable steps to notify the parties of the special meeting or other appropriate method and of their right to participate. MHRC Procedural Rule § 2.08.



Maine's  
Public  
Universities

UNIVERSITY OF MAINE SYSTEM

**Testimony of the University of Maine System**  
**LD 258, An Act to Implement the Recommendations of the Right To Know**  
**Advisory Committee Concerning Meetings of Public Bodies**  
**May 14, 2013**

Senator Valentino. Representative Priest. Members of the Joint Standing Committee on Judiciary. I am Ryan Low, Executive Director of Governmental and External Affairs for the University of Maine System. I am here today to testify neither for nor against LD 258, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Meetings of Public Bodies.

The University of Maine System fully supports the public's right to fully participate in Board of Trustee's meetings, whether full board meetings or committee meetings. We greatly appreciate the guidance that LD 258 would provide to meetings conducted through telephonic, video, electronic or other similar means of communication.

Our 16 Board members come from all corners of the state. While a physical presence at our Board meetings is and has been the norm, requiring a quorum of the body to be physically at the location of all standing committee meetings, as proposed in Part A, 1C of the bill, would be extremely challenging. It would be nearly impossible to carry out the current level of Board engagement with a physical presence requirement due to the number of committee meetings and the time and travel commitments necessary.

The Bylaws of the University of Maine System require that the Board must meet a minimum of once a quarter. Currently the Board is meeting 6 times annually. In addition, we have 8 standing committees that meet regularly.

As envisioned in the legislation, the University of Maine System has adopted policies around quorums and physical presence at meetings. Under our current bylaws around full Board meetings state:



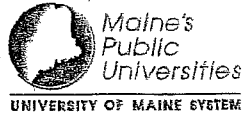
“A Trustee who cannot be in physical attendance may participate and vote by telephone, or other similar interactive technology where the Chair has determined on the record that the physical presence of the non-attending Trustee is prevented by an exceptional occasion which makes it inadvisable or impossible to attend the meeting. The presence of the non-attending Trustee in this manner shall be counted towards a quorum.”

Our bylaws provide that committees and subcommittees may meet by interactive technology.

We believe that the language adopted by our Trustees strikes the right balance between the public's right to have full access to all UMS board, committee and subcommittee meetings and the unique challenges of scheduling regular meetings with Trustees scattered in all corners of Maine.

As the Committee moves into work session on LD 258, we ask that you consider amending or removing the physical presence requirement in Part A, 1C. If amended, we would respectfully suggest including "exceptional circumstances" language around full board meetings and full participation by the various technologies available for committee and subcommittee meetings.

I want to thank the Committee for the opportunity to testify this afternoon and I would be happy to answer any questions that you might have.



Board of Trustees

**Audit & Finance/Facilities Joint Session**

October 30, 2012 from 9:00 am to 12:00 noon

System Office, Bangor - Rudman Board Room

USM, 327 Wishcamper Center, Portland

UMA - Room 208, Student Center

UMF - 343 Education Center

UMPI - Executive Conference Room, Preble Hall

**Attendance List**

**Audit Committee  
Members:**

Kurt Adams, Chair  
Samuel Collins  
Norman Fournier  
Mark Gardner

Marjorie Medd

Victoria Murphy

**Staff:**

Kelley Wiltbank  
Rebecca Wyke  
Tracy Elliott  
Darla Reynolds  
Chip Gavin  
Miriam White

**Guests:**

Renee Bishop, BerryDunn  
Amanda Butterfield, BerryDunn  
Janet Waldron, UM  
Dick Campbell, USM  
Bill Bertram, USM

**Not Participating:**

Michelle Hood  
Ray Albert, Fac. Rep/UMFK  
Chancellor Page

**Finance Committee  
Members:**

Samuel Collins  
Norman Fournier, Chair

Gregory Johnson  
Tyler Hadyniak  
Marjorie Medd  
Paul Mitchell  
Victoria Murphy  
Karl Turner

**Faculty & Student Representatives:**

Bob Rice, Fac. Rep/UM  
Melinda Torrens, Grad. St. Rep/USM

**POLYCOM LOCATIONS**

**UMS -Rudman  
Board Room**

Trustee Fournier  
Trustee Medd  
Trustee Mitchell  
Robert Rice  
Kelley Wiltbank  
Rebecca Wyke  
Tracy Elliott  
Darla Reynolds  
Miriam White  
Renee Bishop  
Amanda Butterfield  
Janet Waldron

**USM, 327 Wishcamper Center,  
Portland**

Trustee Adams  
Trustee Gardner  
Trustee Johnson  
Trustee Murphy  
Trustee Turner  
Melinda Torrens  
Chip Gavin  
Dick Campbell  
Bill Bertram

**UMA - Room 208, Student  
Center**

**UMF - 343 Education Center  
Trustee Hadyniak**

**UMPI - Exec. Conf. Room,  
Preble Hall**

Trustee Collins



STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

THOMAS L. WELCH  
CHAIRMAN

DAVID P. LITTELL  
MARK A. VANNOY  
COMMISSIONERS

HARRY LANPHEAR  
ADMINISTRATIVE DIRECTOR

May 14, 2013

Honorable Linda M. Valentino, Senate Chair  
Honorable Charles R. Priest, House Chair  
Committee on Judiciary  
100 State House Station  
Augusta, Maine 04333

**Re: LD 258, An Act to Implement the Recommendations of the Right to Know  
Advisory Committee Concerning Meetings of Public Bodies**

Dear Senator Valentino and Representative Priest:

The Public Utilities Commission (Commission) testifies neither for nor against LD 258, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Meetings of Public Bodies.

LD 258, as drafted, would limit the Commission's ability to conduct its public deliberations concerning adjudicatory and quasi-adjudicatory matters with two of three Commission members participating by telephone except in a specifically defined emergency situations. The three Commissioners currently deliberate cases once a week, typically on Tuesday at 10:00 a.m. The Commission deliberates and votes on cases at each deliberative session. Cases are the subject of sometimes voluminous prefiled testimony and earlier hearing in front of the Commissioners and staff. Each Commissioner reviews the record in each case prior to deciding it. Notice of these sessions is posted on the Commission's website and all parties and interested persons to cases to be deliberated are notified of the deliberation on the previous Wednesday. The Commission broadcasts its deliberations over the internet and they are also recorded and archived on our website so anyone interested can listen to the deliberations after they occur.

Title 35-A M.R.S. § 108-A establishes that a quorum of two of three Commissioners is necessary for the Commission to act. Occasionally a Commissioner needs to call into deliberations, typically due to weather or attendance at a regional utility meeting. On rare occasions, two Commissioners may need to call into deliberations. The Commission's telebridge is connected to the sound system in the Commission's hearing room, so anyone participating by phone can be heard in the room and clearly recorded. Besides Commission deliberations, it also could be necessary for two Commissioners to call into a hearing or other meeting which meets the FOAA law's definition of public proceeding.

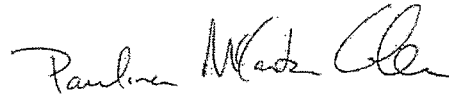
The Commission respectfully requests that the bill be amended to allow for language similar to that contained in Section B-3 of the bill that would allow the Commission to use videoconferencing or teleconferencing in the conduct of its proceedings and allow a quorum to be established if one or more Commissioners are participating by video or teleconference. Suggested language is as follows:

35-A M.R.S.A. § 108-A. Commission action; quorum; notice

A majority of the duly appointed commissioners constitutes a quorum and the act or decision of a majority of commissioners present, if at least a quorum is present, is the act or decision of the commission in any formal proceeding before the commission. Notwithstanding Title 1, section 403-A(1)(C) and (2), commissioners may participate in proceedings through telephone, video, electronic or other similar means of communication.

The Commission looks forward to working with the Committee on LD 258.

Sincerely,



Paulina McCarter Collins, Esq.  
Legislative Liaison

cc: Judiciary Committee Members  
Margaret Reinsch, and Susan Johannesman, Legislative Analysts

Maine Legislature

Judicial Committee

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

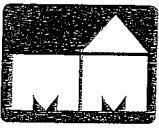
My name is Percy L. Brown, Jr., I live in Deer Isle, Maine. I have been a Hancock County Commissioner for eleven years and I am a current member of the Right to Know Committee. I have served on many State and local Boards over the past 25 years. I am requesting this committee amend LD 258 and not allow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

Thank You,

Percy L. Brown, Jr.

Hancock County Commissioner

Ellsworth, ME



# Maine Municipal Association

60 COMMUNITY DRIVE  
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(207) 623-8428  
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Testimony of the Maine Municipal Association

In Support of LD 258

*An Act To Implement the Recommendations of the Right To Know Advisory Committee  
Concerning Meetings of Public Bodies*

May 14, 2013

Senator Valentino, Representative Priest, members of the Judiciary Committee, my name is Garrett Corbin and I am testifying in support of LD 258 on behalf of the Maine Municipal Association.

MMA's 70-member Legislative Policy Committee voted to support LD 258 at its March 7<sup>th</sup> meeting.

It is clear that the Right To Know Advisory Committee expended considerable effort in developing the process created in LD 258 to expressly allow for elected officials to participate in public meetings when physically unable to attend. MMA appreciates the thoughtfulness of these recommendations from the Right To Know Advisory Committee and agrees with the results.

**Legislative Subcommittee**

**Draft: Policy standards concerning encryption of radio transmissions**

**Sec. 1. 25 MRSA §2803-B, sub-§1, ¶N** is enacted to read:

**§2803-B. Requirements of law enforcement agencies**

**1. Law enforcement policies.** All law enforcement agencies shall adopt written policies regarding procedures to deal with the following:

A. Use of physical force, including the use of electronic weapons and less-than-lethal munitions;

B. Barricaded persons and hostage situations;

D. (CONFLICT: Text as amended by PL 2011, c. 640, Pt. D, §1) Domestic violence, which must include, at a minimum, the following:

(1) A process to ensure that a victim receives notification of the defendant's release from jail;

(2) A process for the collection of information regarding the defendant that includes the defendant's previous history, the parties' relationship, whether the commission of an alleged crime included the use of strangulation as defined in Title 17-A, section 208, subsection 1, paragraph C, the name of the victim and a process to relay this information to a bail commissioner before a bail determination is made;

(3) A process for the safe retrieval of personal property belonging to the victim or the defendant that includes identification of a possible neutral location for retrieval, the presence of at least one law enforcement officer during the retrieval and giving the victim the option of at least 24 hours notice to each party prior to the retrieval; and

(4) Standard procedures to ensure that protection from abuse orders issued under Title 19-A, section 4006 or 4007 are served on the defendant as quickly as possible;

D. (CONFLICT: Text as amended by PL 2011, c. 680, §4) Domestic violence, which must include, at a minimum, the following:

(1) A process to ensure that a victim receives notification of the defendant's release from jail;

(2) A process for the collection of information regarding the defendant that includes the defendant's previous history, the parties' relationship, the name of the victim and a process to relay this information to a bail commissioner before a bail determination is made;

(3) A process for the safe retrieval of personal property belonging to the victim or the defendant that includes identification of a possible neutral location for retrieval, the presence of at least one law enforcement officer during the retrieval and giving the victim the option of at least 24 hours' notice to each party prior to the retrieval;

(4) Standard procedures to ensure that protection from abuse orders issued under Title 19-A, section 4006 or 4007 are served on the defendant as quickly as possible; and

(5) A process for the administration of a validated, evidence-based domestic violence risk assessment recommended by the Maine Commission on Domestic and Sexual Abuse,

**Legislative Subcommittee**

**Draft: Policy standards concerning encryption of radio transmissions**

established in Title 5, section 12004-I, subsection 74-C, and approved by the Department of Public Safety and the conveyance of the results of that assessment to the bail commissioner, if appropriate, and the district attorney for the county in which the domestic violence occurred.

- E. Hate or bias crimes;
- F. Police pursuits;
- G. Citizen complaints of police misconduct;
- H. Criminal conduct engaged in by law enforcement officers;
- I. Death investigations, including at a minimum the protocol of the Department of the Attorney General regarding such investigations;
- J. Public notification regarding persons in the community required to register under Title 34-A, chapters 15 and 17;
- K. Digital, electronic, audio, video or other recording of law enforcement interviews of suspects in serious crimes and the preservation of investigative notes and records in such cases;
- L. Mental illness and the process for involuntary commitment; and
- M. Freedom of access requests. The chief administrative officer of a municipal, county or state law enforcement agency shall certify to the board annually that the agency has adopted a written policy regarding procedures to deal with a freedom of access request and that the chief administrative officer has designated a person who is trained to respond to a request received by the agency pursuant to Title 1, chapter 13; and

**N. Encryption of radio transmissions.**

The chief administrative officer of each agency shall certify to the board that attempts were made to obtain public comment during the formulation of policies.

**2. Minimum policy standards.** The board shall establish minimum standards for each law enforcement policy pursuant to subsection 1 with the exception of the freedom of access policy under subsection 1, paragraph M. Minimum standards of new mandatory policies enacted by law must be adopted by the board no later than December 31st of the year in which the law takes effect.

**3. Agency compliance.** The chief administrative officer of each law enforcement agency shall certify to the board no later than January 1st of each year that the agency has adopted written policies consistent with the minimum standards established or amended by the board and that all officers have received orientation and training with respect to new mandatory policies or new mandatory policy changes pursuant to subsection 2. New mandatory policies enacted by law must be implemented by all law enforcement agencies no later than the July 1st after the board has adopted the minimum standards.

**4. Penalty.**

**5. Annual standards review.** The board shall review annually the minimum standards for each policy to determine whether changes in any of the standards are necessary to incorporate improved



**Legislative Subcommittee**

Draft: Policy standards concerning encryption of radio transmissions

procedures identified by critiquing known actual events or by reviewing new enforcement practices demonstrated to reduce crime, increase officer safety or increase public safety.

**Sec. 2. Encryption of radio transmissions.** In establishing the minimum policy standards governing the encryption of radio transmissions described in the Maine Revised Statutes, Title 25, section 2803-B, subsection 1, paragraph N, the Board of Trustees of the Maine Criminal Justice Academy shall ensure that the public continues to have the same access to radio transmissions of law enforcement and other first responders as available under the encryption practices of law enforcement and other first responders that were in effect January 1, 2013.

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(9/26/2013 12:05:00 PM)



Right to Know Advisory Committee  
Encryption Subcommittee  
July 16, 2012  
Meeting Summary

Convened 9:16 a.m., Room 438, State House, Augusta

Present:

Rep. Joan Nass  
Linda Pistner  
AJ Higgins  
Joe Brown  
Mike Cianchette  
Mal Leary  
Judy Meyer

Absent:

Perry Antone

Staff:

Curtis Bentley  
Peggy Reinsch

Introductions

Linda Pistner called the meeting to order at 9:16 a.m. and asked all the members to introduce themselves.

Suzanne Goucher, Maine Freedom of Information Coalition and Maine Association of Broadcasters

Ms. Goucher reiterated the concerns outlined in the Maine Freedom of Information Coalition's letter of April 27, 2012 to the Maine Right to Know Advisory Committee regarding the possible increase in the encryption of radio transmissions by public safety agencies after switching from the current analogue radio system to a digital radio system. Ms. Goucher said agencies are moving to a digital radio system to improve interagency operability but is concerned the switch will impede the media's ability to obtain public safety information that is readily accessible through the current analogue system. The media uses analogue scanners as its primary tool to monitor public safety matters. Ms. Goucher said there isn't any concern about digitally encrypting those communications that are currently encrypted (hostage negotiations, tactical, SWAT Team transmissions, etc.) but any expansion would cause headaches and foster paranoia and fear in the public. She also stated that it should be fairly easy for law enforcement and interested parties to prepare a mutually agreed upon list of communications that should remain encrypted.

Department of Public Safety, Lt. Col. Raymond Bessette

Lt. Col. Bessette said the state is using an antiquated 1974 radio system that is no longer supported and is difficult to maintain. He stated that the department will not encrypt any transmissions under the digital system that had not always been encrypted under the old system. Lt. Col. Bessette likened the move to digital to switching from AM to FM and stated that the switch itself will not encrypt the information but people will need to purchase a digital scanner to listen in. He said that Region-Net will simultaneously rebroadcast transmissions in analogue so public safety partners not switching to digital can hear transmissions and scanners will be able to pick up those transmissions.

Lt. Col. Bessette said the department does not have any protocols or rules on encryption and each agency has the ability to decide what transmissions should be encrypted. He said no one is asking for additional encryption because each entity wants the ability to know what the others are doing. He did not think the Maine Criminal Justice Academy did any training on encryption, only the operation of the radio system.

Lt. Col. Bassette expressed his opinion that this is really a public policy question of whether the public has a right to access these transmissions.

Office of Information and Technology-Wayne Gallant.

Mr. Gallant said there is a common misunderstanding that digital implies encryption which it does not; encryption would be done on top of going to digital. His office is working on MSCOMNET to consolidate radio communications for all state agencies under one system instead of several different ones. Mr. Gallant said MSCOMNET should be operating in the fall of 2013.

The FCC mandated that states narrowband communications by January 2013.

General Discussion.

Broadcasters' concerns about encryption are not at the state level but at the local level. The media wants to preserve what is available now and is concerned the switch over may result in more transmissions being encrypted. They are not too concerned about police going off-radio after initial call by using cell phones, texts and laptops because the media will have been alerted to the situation by the initial radio broadcast.

While encryption isn't a problem in Maine, the policy discussion needs to happen before it becomes a problem.

Encryption doesn't necessarily protect the transmissions because there is always someone who will be able to put in the effort to access encrypted messages but the general public will be the ones without access.

Next meeting.

The next meeting is scheduled for Wednesday, August 8, 2012 at 9:00 a.m. in room 438, State House, Augusta.

The subcommittee asked staff to search for any federal rules or laws dealing with encryption and to talk with AG criminal attorneys about Maine's law regarding encryption.

The subcommittee also asked the Department of Public Safety to provide a list of subject matter and situations that should be confidential.

The meeting was adjourned at 10:10 a.m.

Respectfully submitted,  
Curtis Bentley and Peggy Reinsch

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Right to Know Advisory Committee  
Encryption Subcommittee  
August 15, 2012  
Meeting Summary

Convened 9:20 a.m., Room 438, State House, Augusta

Present:

Rep. Joan Nass (arrived 9:20 a.m.)  
Linda Pistner  
Perry Antone  
AJ Higgins (arrived 9:30 a.m.)  
Joe Brown  
Mike Cianchette  
Mal Leary  
Judy Meyer

Staff:

Curtis Bentley

Introductions

Linda Pistner called the meeting to order at 9:20 a.m. and asked all the members to introduce themselves.

Review of federal and state laws pertaining to encryption, Curtis Bentley, staff.

At the request of the subcommittee, Curtis Bentley provided information about the applicability of federal and state laws to the encryption (scrambling) of certain police and first responder radio transmissions. The subcommittee discussed the potential applicability of Maine's Freedom of Access Act (1 MRSA, chapter 13) and Maine's law regarding the inception of wire and oral communications (15 MRSA, chapter 102). The subcommittee asked Assistant Attorney General Laura Yustak Smith about the applicability of the state prohibition against the interception of oral communications to en route radio transmissions. Ms. Smith said that encrypted radio transmissions might be considered "oral communications" as defined in the statute because the act of encrypting radio transmissions could indicate an expectation that the communications are not open to the public. Title 15 MRSA § 709, sub-§ 5 defines "oral communications" to mean "any oral communications uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation."

In sum, Mr. Bentley did not find a federal or state statute or regulation that authorizes, prohibits or provides guidance on the encryption of police or first responder radio transmissions. It appears that it is within the discretion of an agency or entity making such radio transmissions whether or not to scramble a particular radio transmission.

Department of Public Safety, Maine State Police, Major Grotton, Lt. Pomelow, Col. Williams.

Major Grotton said the goal of the department is to keep general radio transmissions open and transparent to the public and that there are no plans to encrypt anything beyond what has always been encrypted. Moving to a digital system will require people who want to listen in on those calls to use a compatible scanner but nothing new will be encrypted. Major Grotton said that encrypted radio transmissions are not recorded so there wouldn't be a record for purposes of FOA. He was not aware of any agency that plans to increase its use of encryption.

Major Christopher Grotton was unaware of any investigations under the interception of wire and oral communication laws and felt that the kind of technology available today was not contemplated when those laws were enacted.

In response to a question from the subcommittee, Major Grotton estimated that approximately 1-2% of all radio transmissions (approximately 55 tactical operations annually) are encrypted. He noted that it is critical they remain encrypted and the department would be very concerned about anyone breaking into those transmissions.

Major Grotton said it is the on-scene commander who makes the decision to switch to an encrypted frequency. He thought the public would be aware of an encrypted transmission because the initial call would be audible and then there wouldn't be any other radio traffic regarding that matter. If encryption becomes too prevalent it should be reviewed as a policy issue.

Lt. Don Pomelow informed the subcommittee that the state will need a number of FCC licenses for its digital bandwidth; each municipality and county must obtain its own license. FCC licenses do not dictate the use of encryption.

Col. Williams stated that currently there isn't an issue with encryption and there are no plans to increase its use because the police derive benefits from having transmissions open to the public. He provided examples of receiving information from the public in response to radio calls and the public avoiding accident scenes. He said that there are ways for police to communicate now without the use of the radio but they want and need the public to hear what is going on.

Col. Williams cautioned the subcommittee against recommending a change in the law that would encourage officers to use private means of communication. He stated that the department only uses encryption for public safety and the safety of the department's officers and that they will continue to find ways to protect officer and public safety even if the use of encryption is regulated in the future.

Subcommittee general discussion



Mal Leary stated that there are real concerns about encryption and there needs to be accountability as encryption has been used at the federal level and by other states to avoid the detection of illegal behavior such as racial profiling and some agencies have started encrypting all calls.

A.J. Higgins suggested that there needs to be a balance between the needs of the police/ first responders and public access. This is a valid issue to explore even if it isn't a huge issue right now. He felt this is a community relations issue.

Perry Antone said that there has been considerable confusion caused by the switch from analogue to digital and that going digital does not mean increased encryption. He also said there isn't anything in law that prevents the use of encryption but agencies have used it very little because it is important for them to freely share information between agencies. Radio dispatches are the most efficient way to get information to and from agencies and encryption limits that efficiency. Mr. Antone expressed concern that the subcommittee is working off assumptions that something will happen when there is no evidence that going from analogue to digital will encourage more encryption. He stated that the law doesn't need to be changed because there isn't a problem to fix and any changes could have far reaching unforeseen affects. He pointed out that if en route radio transmissions become "public records" then we will have to figure out a way to protect confidential information sent via these transmissions as is currently required for written records which isn't feasible.

Linda Pistner suggested that FOA was not intended to deal with oral communications and if there is a policy issue to resolve it may be better dealt with under some other section of law.

Judy Meyer reiterated that she just wants to maintain the current level of public access because that is working for everyone. She would like to see the current practice of encrypting put in writing either in policy or statute so everyone is aware of the protocol and also to reduce the possibility that the current practices will be changed with the arrival of new technology. Ms. Meyer agreed that there isn't a problem in Maine yet but it has become one in other states so should do something now.

Joe Brown said that we need to be careful not to impede police operations by removing the ability to encrypt certain types of calls. He suggested that the subcommittee could continue to watch the issue and if a problem arises. He said there isn't a problem that needs to be addressed today.

Mike Cianchette felt that what is happening out there now is working so it might be worthwhile to ask State Police to formally adopt a policy or guidelines for encrypting transmissions. Putting the current practice on paper might be helpful.

Subcommittee actions. The Encryption Subcommittee took the following actions.

A.J. Higgins made a motion to recommend to the full committee that no changes be made to current law. The motion was seconded by Joe Brown. The subcommittee voted 8-0 in favor of the motion.

The subcommittee unanimously agreed to recommend to the full RTK Committee that it send a letter to the Board of Trustees of the Maine Criminal Justice Academy requesting that it adopt an encryption policy for police that reflects the current practice and to have the board report back to the RTK Committee on any decisions or actions taken pursuant to this request.

Next meeting.

The subcommittee did not schedule an additional meeting.

The meeting was adjourned at 11:05 a.m.

Respectfully submitted,  
Curtis Bentley

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Perry B. Antone, Sr.  
Public Safety Director

Virginia McDonald  
Administrative Assistant



Jason J. Moffitt  
Deputy Police Chief

Christopher M. Martin  
Police Lieutenant

October 2, 2013

RTAC Legislative Subcommittee

Dear Committee Members:

I am writing this letter on behalf of the Maine law enforcement community in response to the Right to Know Advisory Committee's desire to regulate the encryption of radio transmissions. The law enforcement community has serious concerns about this matter. Our understanding is that, if regulation in the form of legislation and further mandates were to take place, it would limit the ability of law enforcement agencies to encrypt radio transmissions in the future.

On one hand, the desire to regulate encryption appears to be an attempt to solve a nonexistent problem. Since 2001 law enforcement, EMS and fire services have been steadily working toward radio interoperability. A movement among any of these entities toward encrypting their radio traffic would hinder this effort. Furthermore, the expense of encryption coupled with limited public safety budgets also leads us to believe that we will not see public safety agencies moving en masse toward encryption. The transition to narrow band / digital frequencies is a separate issue from encryption and should not be confused with it.

On the other hand, we see no reason to further prohibit public safety agencies from obtaining this technology if they have the ability to do so. Much of the information already transmitted across police frequencies is NOT public information according to Maine Statutes. Names of victims, identifying information and addresses occasionally MUST be transmitted over the air due to the emergency nature of emerging situations. I, and other members of the law enforcement community I have spoken with, am aware of no law prohibiting these transmissions. It is true that this information can and is, at times, briefly transmitted over the air for the public to hear, however this does not make the information "public" as far as right to know laws are concerned. It is currently well established that not all information contained on recordings of law enforcement radio traffic is accessible to the public. As an example, criminal justice information with non-conviction data would not be considered "public access." There are also specific laws (i.e HIPPA) that can apply to EMS and fire department traffic as well.

We believe that existing public access legislation adequately balances the needs of law enforcement to keep certain information private with the right to know of the public. Current practices and commonly available technology that most police departments already employ (i.e. cell phones and mobile data terminals) already keep much information from being broadcast over the radio. Limiting the ability of law enforcement agencies to encrypt radio traffic could push them to rely on cell phones and mobile data terminals more frequently. This could have the effect on increasing response times, since encrypted radio traffic could, in some cases, be the most rapid manner in which to dispatch officers to time sensitive incidents in which confidential information must be broadcast.

I appreciate your consideration in this matter. I look forward to speaking with individual members and urge you to contact me if you would like to discuss the matter further.

Sincerely,

Perry B. Antone, Sr.  
Director of Public Safety  
Brewer Police Department

Law Enforcement Representative  
Right to Know Advisory Committee

**RIGHT TO KNOW ADVISORY COMMITTEE**  
**Bulk Records Subcommittee**

AGENDA  
September 10, 2013  
10:00 a.m.  
Room 438, State House, Augusta

**Convene**

1. Subcommittee name change
2. Topics of discussion

Technical Public Policy Issues:

- a. Whether the payment in advance threshold of 1 MRSA § 408-A(10) ought to be lowered, at least in some cases;
- b. As a matter of transparency, whether persons making FOA requests should be able to do so anonymously;
- c. Whether the FOAA ought to be able to be used as an additional tool of discovery when a formal adjudicatory proceedings is already pending;
- d. Whether the FOAA ought to focus solely on the public accessibility of records, and not on the public accessibility of information;

Practical Public Policy Issues:

- e. "Abuse" of the Freedom of Access Act (FOAA);
- f. Whether restrictions should be placed on requesters;
- g. The unintended, adverse impacts of the FOAA (for example, on the preservation of historical information and on the efficiency of communications in government);
- h. Whether FOAA requests made for commercial purposes ought to be subject to the fee restrictions of 1 MRSA § 408-A(8).

Privacy of Citizens' Personal Information Included in Public Records  
(overlapping issue with the Legislative Subcommittee):

- i. Whether government records containing personal information about private citizens ought to be generally protected from public disclosure
3. Next steps
  2. Scheduling future subcommittee meetings
  3. Other

**Adjourn**

**RIGHT TO KNOW ADVISORY COMMITTEE  
PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE**

DRAFT AGENDA  
September 11, 2013  
2:00 p.m.  
Room 438, State House, Augusta

**Convene**

1. Welcome and Introductions  
Suzanne Goucher, Chair
  
2. Review of Existing Exceptions Remaining from 126<sup>th</sup> Legislature
  - A. Title 22, section 8754, reporting of sentinel events *{chart: 3}*
  
  - B. Exceptions Included in LD 420, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions:
    - Title 22, sections 1696-D and 1696-F, related to the Community Right-to-Know Act *{chart: 1, 2}*
    - Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor *{chart: 4}*
    - Title 26, section 934, relating to report of the State Board of Arbitration and Conciliation in labor dispute *{chart: 5}*
    - Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles *{chart: 7}*
    - Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system *{chart: 8}*
    - Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles *{chart: 9}*
    - Title 38, section 585-B, subsection 6, paragraph C, relating to mercury reduction plans for air emission source emitting mercury *{chart: 28}*
    - Title 38, section 585-C, subsection 2, relating to the hazardous air pollutant emissions inventory *{chart: 29}*
  
  - C. Exceptions Tabled by Subcommittee in 2012 in Titles 26 through 39-A *{chart: 6, 10 through 27, 30 through 39}*
  
3. Other?

**Adjourn**



**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
Statutes remaining after 2012 review**

Revised 8/2/2013 9:31 AM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
1	22	1696-D	Title 22, section 1696-D, relating to the identity of chemical substances in use or present at a specific location if the substance is a trade secret	<ul style="list-style-type: none"> <li>DHHS</li> </ul>	<ul style="list-style-type: none"> <li>No record of any experience</li> <li>No changes</li> </ul>	11/4/10: tabled 9/12/11: REPEAL 5-1 (LP) 9/29/11: wait for additional information 11/17/11: No change with letter to ENR and HHS -- review letter 12/8/11: Approved letter	12/8/11: No change with letter to ENR and HHS  2012: Proposed amendment (LD 420)
2	22	1696-F	Title 22, section 1696-F, relating to the identity of a specific toxic or hazardous substance if the substance is a trade secret	<ul style="list-style-type: none"> <li>DHHS</li> </ul>	<ul style="list-style-type: none"> <li>No record of any experience</li> <li>No changes</li> </ul>	11/4/10: tabled 9/12/11: REPEAL 5-1 (LP) 9/29/11: wait for additional information 11/17/11: No change with letter to ENR and HHS -- review letter 12/8/11: Approved letter	12/8/11: No change with letter to ENR and HHS  2012: Proposed amendment (LD 420)



**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A**

**Statutes remaining after 2012 review**

Revised 8/2/2013 9:31 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
3	22	8754		Title 22, section 8754, relating to medical sentinel events and reporting	<ul style="list-style-type: none"> <li>• DHHS</li> <li>• Maine Hospital Assn</li> <li>• Maine Medical Assn</li> <li>• Maine Medical Mutual Ins. Co.</li> <li>• Maine Osteopathic Assn</li> </ul>	<ul style="list-style-type: none"> <li>• No requests known</li> <li>• DHHS: Amend: “incidents reports and similar documents”; no change to scope of confidentiality</li> <li>• Stakeholders: No change to confidentiality</li> </ul>	<p>12/8/11: No change; review again in 2102</p> <p>8/2/12: Amend to repeal; to be drafted</p> <p>9/17: Tabled---ask DHHS and others for input</p> <p>10/5: Tabled</p> <p>11/15: Tabled</p> <p>1/11/13: Tabled---more research and discussion</p>	<p>12/8/11: No change; review again in 2012</p> <p>2012: Tabled for review in 2013</p>
4	26	3		Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor	<ul style="list-style-type: none"> <li>• DECD</li> <li>• SPO/OPM</li> <li>• DOL</li> </ul>	<ul style="list-style-type: none"> <li>• DECD</li> <li>• SPO/OPM?</li> <li>• DOL: no more than one or 2/year; NO CHANGE</li> </ul>	<p>9/13: Tabled--discuss potential amendments with DOL</p> <p>11/8: Amend; accepted draft</p>	<p>Propose repeal and replace (LD 420)</p>
5	26	934		Title 26, section 934, relating to report of the State Board of Arbitration and Conciliation in labor dispute	<ul style="list-style-type: none"> <li>• State Board of Arbitration and Conciliation</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	<p>9/13: Tabled---ask Board for input</p> <p>11/8: Amend</p>	<p>Propose amendment (LD 420)</p>

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
Statutes remaining after 2012 review**

Revised 8/2/2013 9:31 AM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
6	28-A	755	Title 28-A, section 755, relating to liquor licensees' business and financial records	<ul style="list-style-type: none"> <li>DAFS: BABLO</li> </ul>	<ul style="list-style-type: none"> <li>Not being collected now</li> <li>Unresolved by Legislature in 125th</li> <li>Support change but recommend NO CHANGE for now</li> </ul>	9/13: Tabled until 2013; Dept. legislation expected in 126 <sup>th</sup> Legislature, First Session	Tabled
7	29-A	152	Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles	<ul style="list-style-type: none"> <li>SOS</li> </ul>	<ul style="list-style-type: none"> <li>Estimate: 12-20 times per year</li> <li>NO CHANGE – comply with Federal Driver Privacy Protection Act</li> </ul>	8/8: Amend	Propose amendment (LD 420)
8	29-A	257	Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system	<ul style="list-style-type: none"> <li>SOS</li> </ul>	<ul style="list-style-type: none"> <li>No request</li> <li>NO CHANGE</li> </ul>	8/8: Tabled—flag inconsistency with other provisions; ask OIT for input 9/13: Tabled 11/8: Repeal	Propose repeal (LD 420)
9	29-A	517	Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles	<ul style="list-style-type: none"> <li>SOS</li> </ul>	<ul style="list-style-type: none"> <li>Estimate: 1-2 every couple of years</li> <li>NO CHANGE</li> </ul>	8/8: Amend—strike 2 <sup>nd</sup> ¶ because same language in #12	Propose amendment (LD 420)
10	30-A	503	Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force	<ul style="list-style-type: none"> <li>Counties – Joe Brown and Tim Leet?</li> </ul>	<ul style="list-style-type: none"> <li>Kennebec County:</li> <li>No requests</li> <li>NO CHANGES</li> </ul>	11/8: Tabled; ask AG for input	Tabled
11	30-A	2702	Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force	<ul style="list-style-type: none"> <li>Municipalities</li> </ul>	<ul style="list-style-type: none"> <li>See # 20</li> </ul>	11/8: Tabled; ask AG for input	Tabled

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
Statutes remaining after 2012 review**

Revised 8/2/2013 9:31 AM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
12	32	2599	Title 32, section 2599, relating to medical staff reviews and hospital reviews -- osteopathic physicians	• Osteopathic Licensing Board	•	11/8: Tabled; ask for input from Board and providers 11/15: Tabled	Tabled
13	32	3296	Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees	• Medical Licensing Board	• Accusations of unprofessional conduct or incompetence if found to be without merit are damaging • Investigative records include individual patient info • NO CHANGE	11/8: Tabled; ask for input from Board and providers 11/15: Tabled	Tabled
14	32	13006	Title 32, section 13006, relating to real estate grievance and professional standards committees hearings	• Real Estate Commission	• No experience; applies to records of hearings held by professional trade associations • NO POSITION: Why part of Real Estate Brokerage Act?	11/8: Tabled; ask Maine Association for input; is this necessary?	Tabled

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
Statutes remaining after 2012 review**

Revised 8/2/2013 9:31 AM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS	
15	32	16607	2	Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act	<ul style="list-style-type: none"> <li>• DPR: Securities Regulation</li> </ul>	<ul style="list-style-type: none"> <li>• Seven requests: 5 requests partially denied to protect investigative records; 2 denied because only investigative records requested</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask Office of Securities for input	Tabled
16	34-A	5210	4	Title 34-A, section 5210, subsection 4, relating to the State Parole Board report to the Governor	<ul style="list-style-type: none"> <li>• Dept. of Corrections</li> </ul>	<ul style="list-style-type: none"> <li>• Requested 2-3 times per year</li> <li>• AMEND: clarify that applies regardless of entity advising Governor</li> </ul>	8/8: Tabled—ask Governor's Office for input 9/13: Tabled 11/8: Tabled	Tabled
17	35-A	1311-B	1, 2, 4	Title 35-A, section 1311-B, subsections 1, 2 and 4, relating to public utility technical operations information	<ul style="list-style-type: none"> <li>• PUC</li> </ul>	<ul style="list-style-type: none"> <li>• Occasional requests</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask PUC for input	Tabled
18	35-A	1316-A		Title 35-A, section 1316-A, relating to Public Utilities Commission communications concerning utility violations	<ul style="list-style-type: none"> <li>• PUC</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask PUC for input	Tabled
19	35-A	8703	5	Title 35-A, section 8703, subsection 5, relating to telecommunications relay service communications	<ul style="list-style-type: none"> <li>• PUC</li> </ul>	<ul style="list-style-type: none"> <li>• Does not come through PUC</li> <li>• Could be worded more clearly</li> </ul>	11/8: Tabled; ask PUC for input	Tabled
20	35-A	9207	1	Title 35-A, section 9207, subsection 1, relating to information about communications service providers	<ul style="list-style-type: none"> <li>• PUC</li> <li>• ConnectME Authority</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask PUC for input	Tabled

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A**

**Statutes remaining after 2012 review**

Revised 8/2/2013 9:31 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
21	36	575-A	2	Title 36, section 575-A, subsection 2, relating to forest management and harvest plan provided to Bureau of Forestry and information collected for compliance assessment for Tree Growth Tax Law	<ul style="list-style-type: none"> <li>Dept. of Conservation</li> <li>Maine Revenue Services</li> </ul>	<p>DOC:</p> <ul style="list-style-type: none"> <li>New, closely parallels §579</li> <li>Never received a request under §579</li> <li>NO CHANGES</li> </ul>	(added by PL 2011, c. 619) 11/8: Tabled; ask for input from Bureau of Forestry and MRS	Tabled
22	36	579		Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans	<ul style="list-style-type: none"> <li>Municipal assessors</li> <li>Maine Revenue Services</li> </ul>	<p>MRS:</p> <ul style="list-style-type: none"> <li>No position</li> </ul> <p>MUNICIPALITIES</p> <ul style="list-style-type: none"> <li>14 municipalities responded</li> <li>Few requests</li> <li>7 recommend NO CHANGE</li> <li>2 recommend AMEND to allow Board of Assessors access</li> <li>5 recommend that AMEND to make plans public</li> </ul>	11/8: Tabled; ask for input from Bureau of Forestry and MRS and municipal assessors	Tabled

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
Statutes remaining after 2012 review**

Revised 8/2/2013 9:31 AM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS	
23	36	1106-A	3	Title 36, section 1106-A, subsection 3, paragraph D, relating to forest management and harvest plan made available for Farm and Open Space Tax Law	<ul style="list-style-type: none"> <li>• <i>Municipal assessors</i></li> <li>• Dept. of Conservation</li> <li>• Maine Revenue Services</li> </ul>	<p><b>MUNICIPALITIES</b></p> <ul style="list-style-type: none"> <li>• 12 municipalities responded</li> <li>• No requests (new law)</li> <li>• 6 recommend <b>NO CHANGE</b></li> <li>• 2 recommend <b>AMEND</b> to allow Board of Assessors access</li> <li>• 4 recommend <b>AMEND</b> to allow public access</li> </ul> <p><b>DOC:</b></p> <ul style="list-style-type: none"> <li>• New, closely parallels §579</li> <li>• Never received a request under §579</li> <li>• No provision to review plans under this section</li> <li>• <b>NO POSITION</b></li> </ul> <p><b>MRS:</b></p> <ul style="list-style-type: none"> <li>• <b>NO POSITION</b></li> </ul>	<p>(added by PL 2011, c. 618, §7)</p> <p>11/8: Tabled; ask for input from DOC, MRS and municipal assessors</p>	<p>Tabled</p>
24	37-B	708	3	Title 37-B, section 708, subsection 3, relating to documents collected or produced by the Homeland Security Advisory Council	<ul style="list-style-type: none"> <li>• DVEM: MEMA</li> </ul>	<p>11/8: Tabled; ask for more information</p>	<p>Tabled</p>	

**Public Records Exceptions Subcommittee**  
**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A**  
**Statutes remaining after 2012 review**  
 Revised 8/2/2013 9:31 AM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS	
25	37-B	797	7	Title 37-B, section 797, subsection 7, relating to Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency reports of hazardous substance transportation routes	<ul style="list-style-type: none"> <li>• DVEM: MEMA</li> </ul>	<ul style="list-style-type: none"> <li>• 1 – 2 request per year for general info</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask for more information	Tabled
26	38	414	6	Title 38, section 414, subsection 6, relating to records and reports obtained by the Board of Environmental Protection in water pollution control license application procedures	<ul style="list-style-type: none"> <li>• DEP</li> <li>• BEP</li> </ul>	<ul style="list-style-type: none"> <li>• DEP: 1-2 requests per year</li> <li>• NO CHANGE</li> <li>• BEP: No need to access info in proceedings</li> <li>• NO POSITION; Clarify by including cross-reference to definition of trade secret?</li> </ul>	11/8: Tabled; ask DEP and BEP for more information	Tabled
27	38	470-D		Title 38, section 470-D, relating to individual water withdrawal reports	<ul style="list-style-type: none"> <li>• DEP</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• Information reported in aggregate</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask DEP for more information	Tabled
28	38	585-B	6	Title 38, section 585-B, subsection 6, relating to mercury reduction plans for air emission source emitting mercury	<ul style="list-style-type: none"> <li>• DEP</li> </ul>	<ul style="list-style-type: none"> <li>• No requests by facilities to keep information confidential</li> <li>• REPEAL</li> </ul>	11/8: Amend	Propose amendment (LD 420)

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
Statutes remaining after 2012 review**

Revised 8/2/2013 9:31 AM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
29	38	585-C	Title 38, section 585-C, subsection 2, relating to the hazardous air pollutant emissions inventory	<ul style="list-style-type: none"> <li>DEP</li> </ul>	<ul style="list-style-type: none"> <li>No requests by facilities to keep information confidential for at least 10 years</li> <li>REPEAL</li> </ul>	11/8: Amend	Propose repeal (LD 420)
30	38	1310-B	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	<ul style="list-style-type: none"> <li>DEP</li> </ul>	<ul style="list-style-type: none"> <li>Few requests for each type of info;</li> <li>Concerns that electronic filing often means DEP has multiple copies of confidential information; lack of locked storage space for confidential records</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask DEP for more information	Tabled
31	38	1610	Title 38, section 1610, subsection 6-A, paragraph F, relating to annual sales data on the number and type of computer monitors and televisions sold by the manufacturer in this State over the previous 5 years	<ul style="list-style-type: none"> <li>DEP</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>Manufacturers do mark portions of annual filing as confidential and info is segregated from public files</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask DEP for more information	Tabled



**Public Records Exceptions Subcommittee**  
**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A**  
**Statutes remaining after 2012 review**  
 Revised 8/2/2013 9:31 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
32	38	1661-A	4	Title 38, section 1661-A, subsection 4, relating to information submitted to the Department of Environmental Protection concerning mercury-added products	• DEP	<ul style="list-style-type: none"> <li>• 2 requests made for confidential info</li> <li>• DEP followed process in § 1310-B, sub-§ 2 and requested info was able to be provided or summarized info provided</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask DEP for more information	Tabled
33	38	2307-A	1, 5	Title 38, section 2307-A, subsections 1 and 5, relating to information submitted to the Department of Environmental Protection concerning toxics use and hazardous waste reduction (REPEALED 7/1/12)	• DEP	<ul style="list-style-type: none"> <li>• Only 1 request</li> <li>• Replaced by new statute; rules pending to implement confidentiality provision (38 MRSA § 2324, sub-§3)</li> <li>• CONTINUE; NO CHANGE</li> </ul>	11/8: Tabled; ask DEP for more information	Tabled
34	39-A	153	5	Title 39-A, section 153, subsection 5, relating to the Workers' Compensation Board abuse investigation unit	<ul style="list-style-type: none"> <li>• Workers' Compensation Board</li> </ul>	<ul style="list-style-type: none"> <li>• Average of 6 times per year</li> <li>• NO CHANGE</li> </ul>	11/8: Amend; but HOLD for review in 2013	Tabled
35	39-A	153	9	Title 39-A, section 153, subsection 9, relating to the Workers' Compensation Board audit working papers	<ul style="list-style-type: none"> <li>• Workers' Compensation Board</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask WCB for more information	Tabled

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
Statutes remaining after 2012 review**

Revised 8/2/2013 9:31 AM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
36	39-A	355-B	11 Title 39-A, section 355-B, subsection 11, relating to records and proceedings of the Workers' Compensation Supplemental Benefits Oversight Committee concerning individual claims	<ul style="list-style-type: none"> <li>Workers' Compensation Board</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask WCB for more information	Tabled
37	39-A	403	3 Title 39-A, section 403, subsection 3, relating to workers' compensation self-insurers proof of solvency and financial ability to pay	<ul style="list-style-type: none"> <li>BOI</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask BOI for more information	Tabled
38	39-A	403	15 Title 39-A, section 403, subsection 15, relating to records of workers' compensation self-insurers	<ul style="list-style-type: none"> <li>BOI</li> </ul>	<ul style="list-style-type: none"> <li>Requests are rare</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask BOI for more information	Tabled
39	39-A	409	Title 39-A, section 409, relating to workers' compensation information filed by insurers concerning the assessment for expenses of administering self-insurers' workers' compensation program	<ul style="list-style-type: none"> <li>BOI</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>AMEND; clarify that already included within § 403, sub-§ 15 exception</li> </ul>	11/8: Tabled; ask BOI for more information	Tabled

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

LD	COMMITTEE	SUBJECT	MEMO DATE	REVIEW DATE	REPORT DATE	RESULT	STATUTE	RESULT
160	EDU	Archaeological sites	3/13/13	3/27/13	3/28/13	Recommended change	27 §377	PL 2013, c. 89
345	JUD	Concealed handgun permits	-	4/3/13	-	Majority: no change	25 §2006	PL 2013, c. 54
532	EDU	Public library patrons records	3/25/13	4/4/13	4/4/13	No changes	27 §121	PL 2013, c. 82
549	JUD	Limitation on release of first offense Class E theft criminal record	-	4/25/13	-	No changes	15 c. 310 (§2257)	Carryover (AFA Table)
619	JUD	Release of email addresses by Bureau of Motor Vehicles	-	5/29/13	-	No changes	29-A §251, sub-§4	PL 2013, c. 283
648	IFS	External review proceedings records	5/8/13	5/15/13	5/16/13	No changes	24-A §4312, sub-§7-A	PL 2013, c. 274
973	JUD	Veterans property tax applications	-	5/13/13	-	No changes	36 §653, sub-§1, ¶G	PL 2013, c. 222
982	JUD	Gambling offset for child support – shared information	-	5/1/13	-	No changes	8 §300-B, sub-§10	PL 2013, c. 255
1016	IFW	Hide dealer licensees records of buyers and sellers	5/16/13	5/23/13	5/23/13	Recommended change	12 §12954, sub-§4-A, ¶A	PL 2013, c. 333

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

LD	COMMITTEE	SUBJECT	MEMO DATE	REVIEW DATE	REPORT DATE	RESULT	STATUTE	RESULT
1019	EDU	<ul style="list-style-type: none"> <li>Draft research and materials of Maine State Museum</li> <li>Personal history research and materials</li> </ul>	5/3/13	5/9/13	5/14/13	No changes	<ul style="list-style-type: none"> <li>27 §86-B, sub-§1</li> <li>27 §86-B, sub-§2</li> </ul>	PL 2013, c. 205
1308	ENR	Product stewardship program for architectural paint	5/15/13 6/5/13	5/23/13 6/10/13	Interim: 5/31/13  Final: 6/10/13	Interim: questions  Final: No changes	38 §2144, sub-§5, ¶F	PL 2013, c. 395
1334	HHS	Records of Child Advocacy Centers	5/13/13	5/23/13 6/4/13	6/5/13	No changes	22 §4019, sub-§9	PL 2013, c. 364
1335	ENR	Product Stewardship programs - model	5/15/13 6/5/13	5/23/13 6/10/13	Interim: 5/31/13  Final: 6/10/13	Interim: questions  Final: No changes	38 §1776, sub-§10	PL 2013, c. 315
1373	LCRED	Polygraph examiners records	6/7/13	6/11/13	6/12/13	Recommended changes	32 §7365	PL 2013, c. 316
1437	LCRED	Reporting about physicians to the licensing board	5/22/13	5/23/13	Tabled – no report	Public records exception not included		PL 2013, c. 355
1515	CJPS	Records concerning involuntary medication of person in custody of Dept of Corrections	5/30/13	6/4/13	6/5/13	No changes	34-A §3049, sub-§3, ¶G  34-A §3049, sub-§4	Carry over (AFA Table)

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

Final

LD	COMMITTEE	SUBJECT	MEMO DATE	REVIEW DATE	REPORT DATE	RESULT	STATUTE	RESULT
1519	IFS	Four provisions: <ul style="list-style-type: none"> <li>• Records confidential from national organizations</li> <li>• Holding company information</li> <li>• Insurer's own risk and solvency assessment</li> <li>• Protected valuation information re insurance co. reservers</li> </ul>	5/21/13	5/23/13	5/28/13	No changes	<ul style="list-style-type: none"> <li>• 24-A §216, sub-§5</li> <li>• 24-A §222, sub-§13-A, ¶E</li> <li>• 24-A §423-F</li> <li>• 24-A §962</li> </ul>	PL c. 238

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**RIGHT TO KNOW ADVISORY COMMITTEE  
PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE**

DRAFT AGENDA  
September 25, 2013  
1:00 p.m.  
Room 438, State House, Augusta

**Convene**

1. Welcome and Introductions  
Suzanne Goucher, Chair
2. Exceptions Tabled at September 11<sup>th</sup> Meeting
  - Title 22, section 8754, related to reporting of sentinel events *{chart: 3}*
  - Title 22, sections 1696-D and 1696-F, related to the Community Right-to-Know Act *{chart 1, 2}*
  - Title 28, section 755, related to liquor licensees' business and financial records *{chart: 6}*
  - Title 34-A, section 5210, subsection 4, related to the State Parole Board report to the Governor *{chart 16}*
3. Review of Existing Exceptions in Titles 26 to 39-A *{chart 19 to 27, 30 to 39}*
4. Future Process for Review
  - Re-establish same process and timetable for review?
  - How to address "new" exceptions enacted since initial RTK AC review?
5. Other?

**Adjourn**





**Public Records Exceptions Subcommittee**  
**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A**  
**Statutes remaining after 2012 review**  
 Revised 9/11/2013 4:04 PM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	2012 SUBCOMMITTEE ACTIONS	2013 SUBCOMMITTEE RECOMMENDATIONS
1	22	1696-D		Title 22, section 1696-D, relating to the identity of chemical substances in use or present at a specific location if the substance is a trade secret	• DHHS	<ul style="list-style-type: none"> <li>No record of any experience</li> <li>No changes</li> </ul>	11/8: AMEND; see LD 420	9/11: Tabled; ask DHHS for input
2	22	1696-F		Title 22, section 1696-F, relating to the identity of a specific toxic or hazardous substance if the substance is a trade secret	• DHHS	<ul style="list-style-type: none"> <li>No record of any experience</li> <li>No changes</li> </ul>	11/8: AMEND; see LD 420	9/11: Tabled; ask DHHS for input
3	22	8754		Title 22, section 8754, relating to medical sentinel events and reporting	<ul style="list-style-type: none"> <li>DHHS</li> <li>Maine Hospital Assn</li> <li>Maine Medical Assn</li> <li>Maine Medical Mutual Ins. Co.</li> <li>Maine Osteopathic Assn</li> </ul>	<ul style="list-style-type: none"> <li>No requests known</li> <li>DHHS: Amend: "incidents reports and similar documents"; no change to scope of confidentiality</li> <li>Stakeholders: No change to confidentiality</li> </ul>	8/2: Amend to repeal; to be drafted 9/17: Tabled---ask DHHS and others for input 10/5: Tabled 11/15: Tabled 1/11/13: Tabled---more research and discussion	9/11: Tabled; more research and discussion
4	26	3		Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor	<ul style="list-style-type: none"> <li>DECD</li> <li>SPO/OPM</li> <li>DOL</li> </ul>	<ul style="list-style-type: none"> <li>DECD</li> <li>SPO/OPM?</li> <li>DOL: no more than one or 2/year; NO CHANGE</li> </ul>	9/13: Tabled-- discuss potential amendments with DOL 11/8: AMEND; see LD 420	9/11: Amend as proposed in LD 420

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
Statutes remaining after 2012 review**

Revised 9/11/2013 4:04 PM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	2012 SUBCOMMITTEE ACTIONS	2013 SUBCOMMITTEE RECOMMENDATIONS
5	26	934	Title 26, section 934, relating to report of the State Board of Arbitration and Conciliation in labor dispute	State Board of Arbitration and Conciliation	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>	9/13: Tabled—ask Board for input 11/8: Amend	9/11: Amend as proposed in LD 420
6	28-A	755	Title 28-A, section 755, relating to liquor licensees' business and financial records	DAFS: BABLO	<ul style="list-style-type: none"> <li>Not being collected now</li> <li>Unresolved by Legislature in 125th</li> <li>Support change but recommend NO CHANGE for now</li> </ul>	9/13: Tabled until 2013; Dept. legislation expected in 126 <sup>th</sup> Legislature, First Session	9/11: Tabled; ask BABLO to update questionnaire
7	29-A	152	Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles	SOS	<ul style="list-style-type: none"> <li>Estimate: 12-20 times per year)</li> <li>NO CHANGE – comply with Federal Driver Privacy Protection Act</li> </ul>	8/8: Amend	9/11: Amend as proposed in LD 420
8	29-A	257	Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system	SOS	<ul style="list-style-type: none"> <li>No request</li> <li>NO CHANGE</li> </ul>	8/8: Tabled—flag inconsistency with other provisions; ask OIT for input 9/13: Tabled 11/8: Repeal	9/11: Repeal as proposed in LD 420
9	29-A	517	Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles	SOS	<ul style="list-style-type: none"> <li>Estimate: 1-2 every couple of years</li> <li>NO CHANGE</li> </ul>	8/8: Amend—strike 2 <sup>nd</sup> ¶ because same language in #12	9/11: Amend as proposed in LD 420
10	30-A	503	Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force	Counties – Joe Brown and Tim Leet?	<ul style="list-style-type: none"> <li>Kennebec County:</li> <li>No requests</li> <li>NO CHANGES</li> </ul>	11/8: Tabled; ask AG for input	9/11: No change

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
Statutes remaining after 2012 review**

Revised 9/11/2013 4:04 PM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	2012 SUBCOMMITTEE ACTIONS	2013 SUBCOMMITTEE RECOMMENDATIONS	
11	30-A	2702	1-A	Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force	• <i>Municipalities</i>	See # 20	2012 SUBCOMMITTEE ACTIONS 11/8: Tabled; ask AG for input	2013 SUBCOMMITTEE RECOMMENDATIONS 9/11: No change
12	32	2599	Title 32, section 2599, relating to medical staff reviews and hospital reviews – osteopathic physicians	• Osteopathic Licensing Board	• Accusations of unprofessional conduct or incompetence if found to be without merit are damaging	11/8: Tabled; ask for input from Board and providers 11/15: Tabled	9/11: No change	
13	32	3296	Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees	• Medical Licensing Board	• Investigative records include individual patient info • NO CHANGE	11/8: Tabled; ask for input from Board and providers 11/15: Tabled	9/11: No change	
14	32	13006	Title 32, section 13006, relating to real estate grievance and professional standards committees hearings	• Real Estate Commission	• No experience; applies to records of hearings held by professional trade associations • NO POSITION: Why part of Real Estate Brokerage Act?	11/8: Tabled; ask Maine Association for input; is this necessary?	9/11: No change	

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
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Revised 9/11/2013 4:04 PM

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15	32	16607	2	Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act	<ul style="list-style-type: none"> <li>DPFR: Securities Regulation</li> </ul>	<ul style="list-style-type: none"> <li>Seven requests: 5 requests partially denied to protect investigative records; 2 denied because only investigative records requested</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask Office of Securities for input	9/11: No change
16	34-A	5210	4	Title 34-A, section 5210, subsection 4, relating to the State Parole Board report to the Governor	<ul style="list-style-type: none"> <li>Dept. of Corrections</li> </ul>	<ul style="list-style-type: none"> <li>Requested 2-3 times per year</li> <li>AMEND: clarify that applies regardless of entity advising Governor</li> <li>Occasional requests</li> <li>NO CHANGE</li> </ul>	8/8: Tabled—ask Governor's Office for input 9/13: Tabled 11/8: Tabled	9/11: Tabled; DOC info on parolees
17	35-A	1311-B	1, 2, 4	Title 35-A, section 1311-B, subsections 1, 2 and 4, relating to public utility technical operations information	<ul style="list-style-type: none"> <li>PUC</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask PUC for input	9/11: No change
18	35-A	1316-A		Title 35-A, section 1316-A, relating to Public Utilities Commission communications concerning utility violations	<ul style="list-style-type: none"> <li>PUC</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask PUC for input	9/11: No change
19	35-A	8703	5	Title 35-A, section 8703, subsection 5, relating to telecommunications relay service communications	<ul style="list-style-type: none"> <li>PUC</li> </ul>	<ul style="list-style-type: none"> <li>Does not come through PUC</li> <li>Could be worded more clearly</li> <li>No requests</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask PUC for input	
20	35-A	9207	1	Title 35-A, section 9207, subsection 1, relating to information about communications service providers	<ul style="list-style-type: none"> <li>PUC</li> <li>Connecticut Authority</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask PUC for input	

**Public Records Exceptions Subcommittee**

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Revised 9/11/2013 4:04 PM

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21	36	575-A	2	Title 36, section 575-A, subsection 2, relating to forest management and harvest plan provided to Bureau of Forestry and information collected for compliance assessment for Tree Growth Tax Law	<ul style="list-style-type: none"> <li>Dept. of Conservation</li> <li>Maine Revenue Services</li> </ul>	DOC: <ul style="list-style-type: none"> <li>New, closely parallels §579</li> <li>Never received a request under §579</li> <li>NO CHANGES</li> </ul>	(added by PL 2011, c. 619) 11/8: Tabled; ask for input from Bureau of Forestry and MRS	
22	36	579		Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans	<ul style="list-style-type: none"> <li>Municipal assessors</li> <li>Maine Revenue Services</li> </ul>	MRS: <ul style="list-style-type: none"> <li>No position</li> <li>MUNICIPALITIES</li> <li>14 municipalities responded</li> <li>Few requests</li> <li>7 recommend NO CHANGE</li> <li>2 recommend AMEND to allow Board of Assessors access</li> <li>5 recommend that AMEND to make plans public</li> </ul>	11/8: Tabled; ask for input from Bureau of Forestry and MRS and municipal assessors	

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
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Revised 9/11/2013 4:04 PM

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23	36	1106-A	3	Title 36, section 1106-A, subsection 3, paragraph D, relating to forest management and harvest plan made available for Farm and Open Space Tax Law	<ul style="list-style-type: none"> <li>• <i>Municipal</i> assessors</li> <li>• Dept. of Conservation</li> <li>• Maine Revenue Services</li> </ul>	<p>MUNICIPALITIES</p> <ul style="list-style-type: none"> <li>• 12 municipalities responded</li> <li>• No requests (new law)</li> <li>• 6 recommend NO CHANGE</li> <li>• 2 recommend AMEND to allow Board of Assessors access</li> <li>• 4 recommend AMEND to allow public access</li> </ul> <p>DOC:</p> <ul style="list-style-type: none"> <li>• New, closely parallels §579</li> <li>• Never received a request under §579</li> <li>• No provision to review plans under this section</li> <li>• NO POSITION</li> </ul> <p>MRS:</p> <ul style="list-style-type: none"> <li>• NO POSITION</li> </ul>	<p>(added by PL 2011, c. 618, §7)</p> <p>11/8: Tabled; ask for input from DOC, MRS and municipal assessors</p>	
24	37-B	708	3	Title 37-B, section 708, subsection 3, relating to documents collected or produced by the Homeland Security Advisory Council	<ul style="list-style-type: none"> <li>• DVEM: MEMA</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	<p>11/8: Tabled; ask for more information</p>	

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
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25	37-B	797	7	Title 37-B, section 797, subsection 7, relating to Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency reports of hazardous substance transportation routes	• DVEM: MEMA	• 1 – 2 request per year for general info • NO CHANGE	2012 SUBCOMMITTEE ACTIONS 11/8: Tabled; ask for more information	2013 SUBCOMMITTEE RECOMMENDATIONS
26	38	414	6	Title 38, section 414, subsection 6, relating to records and reports obtained by the Board of Environmental Protection in water pollution control license application procedures	• DEP • BEP	• DEP: 1-2 requests per year • NO CHANGE • BEP: No need to access info in proceedings • NO POSITION; Clarify by including cross-reference to definition of trade secret?	11/8: Tabled; ask DEP and BEP for more information	
27	38	470-D		Title 38, section 470-D, relating to individual water withdrawal reports	• DEP	• No requests • Information reported in aggregate • NO CHANGE	11/8: Tabled; ask DEP for more information	
28	38	585-B	6	Title 38, section 585-B, subsection 6, relating to mercury reduction plans for air emission source emitting mercury	• DEP	• No requests by facilities to keep information confidential • REPEAL	11/8: Amend; see LD 420	9/11: Amend as proposed in LD 420

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A**

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Revised 9/11/2013 4:04 PM

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29	38	585-C	2	Title 38, section 585-C, subsection 2, relating to the hazardous air pollutant emissions inventory	• DEP	<ul style="list-style-type: none"> <li>No requests by facilities to keep information confidential for at least 10 years</li> <li>REPEAL</li> </ul>	11/8: Amend	9/11: Amend as proposed in LD 420
30	38	1310-B	2	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	• DEP	<ul style="list-style-type: none"> <li>Few requests for each type of info;</li> <li>Concerns that electronic filing often means DEP has multiple copies of confidential information; lack of locked storage space for confidential records</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask DEP for more information	
31	38	1610	6-A	Title 38, section 1610, subsection 6-A, paragraph F, relating to annual sales data on the number and type of computer monitors and televisions sold by the manufacturer in this State over the previous 5 years	• DEP	<ul style="list-style-type: none"> <li>No requests</li> <li>Manufacturers do mark portions of annual filing as confidential and info is segregated from public files</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask DEP for more information	



**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A**  
**Statutes remaining after 2012 review**

Revised 9/11/2013 4:04 PM

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32	38	1661-A	4	Title 38, section 1661-A, subsection 4, relating to information submitted to the Department of Environmental Protection concerning mercury-added products	• DEP	<ul style="list-style-type: none"> <li>• 2 requests made for confidential info</li> <li>• DEP followed process in § 1310-B, sub-§ 2 and requested info was able to be provided or summarized info provided</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask DEP for more information	
33	38	2307-A	1, 5	Title 38, section 2307-A, subsections 1 and 5, relating to information submitted to the Department of Environmental Protection concerning toxics use and hazardous waste reduction (REPEALED 7/1/12)	• DEP	<ul style="list-style-type: none"> <li>• Only 1 request</li> <li>• Replaced by new statute; rules pending to implement confidentiality provision (38 MRSA § 2324, sub-§3)</li> <li>• CONTINUE; NO CHANGE</li> </ul>	11/8: Tabled; ask DEP for more information	
34	39-A	153	5	Title 39-A, section 153, subsection 5, relating to the Workers' Compensation Board abuse investigation unit	• Workers' Compensation Board	<ul style="list-style-type: none"> <li>• Average of 6 times per year</li> <li>• NO CHANGE</li> </ul>	11/8: Amend; but HOLD for review in 2013	
35	39-A	153	9	Title 39-A, section 153, subsection 9, relating to the Workers' Compensation Board audit working papers	• Workers' Compensation Board	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask WCB for more information	
36	39-A	355-B	11	Title 39-A, section 355-B, subsection 11, relating to records and proceedings of the Workers' Compensation Supplemental Benefits Oversight Committee concerning individual claims	• Workers' Compensation Board	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask WCB for more information	

**Public Records Exceptions Subcommittee**

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37	39-A	403	3	Title 39-A, section 403, subsection 3, relating to workers' compensation self-insurers proof of solvency and financial ability to pay	• BOI	• No requests • NO CHANGE	11/8: Tabled; ask BOI for more information	
38	39-A	403	15	Title 39-A, section 403, subsection 15, relating to records of workers' compensation self-insurers	• BOI	• Requests are rare • NO CHANGE	11/8: Tabled; ask BOI for more information	
39	39-A	409		Title 39-A, section 409, relating to workers' compensation information filed by insurers concerning the assessment for expenses of administering self-insurers' workers' compensation program	• BOI	• No requests • AMEND; clarify that already included within § 403, sub-§ 15 exception	11/8: Tabled; ask BOI for more information	

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**To: Public Record Exception Subcommittee**

**From: Stephen Wagner**

**Date: September 25, 2013**

**Re: Sample confidentiality language of state sentinel/adverse event reporting statutes**

**SUMMARY:**

This memo contains a selection of excerpted statutory provisions regarding the confidentiality of sentinel or adverse event reporting nationwide. The excerpted statutes are divided into 3 broad categories: 1) statutes that provide for the confidentiality of sentinel or adverse event reports; 2) statutes that provide for broad public availability of sentinel or adverse event reports; 3) and statutes that provide for some variation between making the information confidential and making it publicly available. While there is ambiguity in a number of statutes, which may reasonably lead to differing interpretations, the chart at the end of this memo attempts to visually represent the rough distribution of confidentiality provisions of the states with adverse event reporting, as well as states with some sort of medical event reporting regime. Given that broader inclusion, there are a total of 31 states included.

Overall, of the 31 states with some sort of reporting requirement that includes adverse or sentinel events, 17 provide for full confidentiality, 2 provide for full disclosure except for the identity of the patients, 7 provide for some variation between the two preceding categories, and the remaining 5 are not categorized because they are unclear or do not contain confidentiality provisions within the reporting statute itself.

While all the statutes take different approaches to the language and organization of the statute(s), generally there are 13 types of provisions that may be found in any state sentinel, adverse event, or other medical event reporting regime. They include: 1) a fully inclusive confidentiality provision; 2) a transfer is not a waiver of confidentiality provision; 3) department responsibility to reasonably ensure confidentiality provision; 4) penalty provisions; 5) no legal compulsion provisions; 6) admissibility of reports as evidence provisions; 7) mode/extent of report dissemination provisions; 8) specific provision on the applicability of state Freedom of Access or Right to Know laws; 9) patient identity provisions; 10) hospital facility identity provision; 11) staff identity provisions; 12) research exceptions and subsequent treatment provisions; 13) other provisions.

If the committee so desires, additional research may include comparing the purposes found in the statutes and legislative history with the confidentiality provisions. This could highlight if these statutes are meant, at least primarily, for improving hospital safety in a

non-punitive manner, or providing for hospital accountability to the general public. Also, further research may explore subsequent case law and commentary on the reporting schemes, the most recent proposed amendments to the laws, and any meaningful correlation between level of confidentiality and “success” (rates of reporting, rates of adverse events) of the reporting regime.

## EXCERPTED STATUTES

### 1) Provides for the confidentiality of sentinel or adverse event reports made by health care facilities;

#### ILLINOIS: 410 ILCS § 522/10-25 (2005)

Confidentiality. Other than the annual report required under paragraph (4) of Section 10-35 of this Law, adverse health care event reports, findings of root cause analyses, and corrective action plans filed by a health care facility under this Law and records created or obtained by the Department in reviewing or investigating these reports, findings, and plans shall not be available to the public and shall not be discoverable or admissible in any civil, criminal, or administrative proceeding against a health care facility or health care professional. No report or Department disclosure under this Law may contain information identifying a patient, employee, or licensed professional. Notwithstanding any other provision of law, under no circumstances shall the Department disclose information obtained from a health care facility that is confidential under Part 21 of Article VIII of the Code of Civil Procedure. Nothing in this Law shall preclude or alter the reporting responsibilities of hospitals or ambulatory surgical treatment centers under existing federal or State law.

#### MAINE: 22 M.R.S. § 8754(3) (2001).

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

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

- (1) Subject to public access under Title 1, chapter 13, except for data developed from the reports that do not identify or permit identification of the health care facility;
- (2) Subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity; or
- (3) Admissible as evidence in any civil, criminal, judicial or administrative proceeding. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

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

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

D. This section may not be construed to limit other privileges that are available under federal law or other laws of this State that provide for greater peer review or confidentiality

protections than the peer review and confidentiality protections provided for in this subsection. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

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

- (1) Any final administrative action;
- (2) Information independently received pursuant to a 3rd-party complaint investigation conducted pursuant to department rules; or
- (3) Information designated as confidential under rules and laws of this State. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

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

#### **MASSACHUSETTS: M.G.L.A. 12C § 15 (2012)**

§ 15. Betsy Lehman center for patient safety and medical error reduction; board; education and research program

(e) The Lehman center shall (1) identify and disseminate information about evidence-based best practices to reduce medical errors and enhance patient safety; (2) develop a process for determining which evidence-based best practices should be considered for adoption; (3) serve as a central clearinghouse for the collection and analysis of existing information on the causes of medical errors and strategies for prevention; and (4) increase awareness of error prevention strategies through public and professional education. The information collected by the Lehman center or reported to the Lehman center shall not be a public record as defined in section 7 of chapter 4, shall be confidential and shall not be subject to subpoena or discovery or introduced into evidence in any judicial or administrative proceeding, except as otherwise specifically provided by law.

(f) The Lehman center shall report annually to the general court regarding the progress made in improving patient safety and medical error reduction. The Lehman center shall seek federal and foundation support to supplement state resources to carry out the Lehman center's patient safety and medical error reduction goals.

#### **NEW HAMPSHIRE: N.H. Rev. Stat. § 151-G:5 (repealed effective July 1, 2015).**

All information of any type submitted to or collected by the commission, including, but not limited to, written, oral, and electronic information; records and proceedings of the commission, including, but not limited to, oral testimony and discussions, notes, minutes, summaries, analyses, and reports; and information disseminated by the commission or its members to acute care hospitals and ambulatory surgical centers, shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena, or admission into evidence in any judicial, administrative, or other type of proceeding. The provision of information to the commission and the dissemination of information by the commission shall not be deemed to void, waive, or impair in any manner the confidentiality protection of this section or which the information may have under any other law or regulation. However, information, documents, or records otherwise available from original sources shall not be construed as immune from discovery or use in any civil or administrative action merely because they were presented to the commission. Furthermore, any person who supplies information to or testifies before the commission shall not be immune from discovery in such civil or administrative action because the information or testimony was presented to the commission, but such witness shall not be

asked about and shall not provide information about his or her testimony before this commission or opinions formed by him or her as a result of commission participation.

**PENNSYLVANIA:** 40 P.S. 1303.304

(h) Right-to-know requests.--Any documents, materials or information made confidential by subsection (a) shall not be subject to requests under the act of June 21, 1957 (P.L. 390, No. 212), referred to as the Right-to-Know Law.

**2) Provides for the public availability of sentinel and adverse event reports made by health care facilities, excluding only patient identity.**

**FLORIDA:** Fla, Const, art. X, § 25.

**Patients' right to know about adverse medical incidents.—**

(a) In addition to any other similar rights provided herein or by general law, patients have a right to have access to any records made or received in the course of business by a health care facility or provider relating to any adverse medical incident.

(b) In providing such access, the identity of patients involved in the incidents shall not be disclosed, and any privacy restrictions imposed by federal law shall be maintained.

In *West Florida Regional Medical Center, Inc v. See*, 79 So.3d 1 (Fla. 2012) found impermissible statutory language restricting this constitutional amendment. Therefore, as the law currently stands, Florida only restricts information containing patient identification information. Thus, Florida is the least restrictive state in regards to confidential information contained in reports of sentinel or adverse events in the country.

**SOUTH CAROLINA SC ST § 44-7-2450**

(A) It is the intent of the General Assembly that a patient's right of privilege or confidentiality must not be violated in any manner. Patient social security numbers and any other information that could be used to identify an individual patient must not be released notwithstanding any other provision of law to the contrary.

(B) Nothing in this section affects the duty of a facility or activity licensed by the Department of Health and Environmental Control to report accidents or incidents pursuant to the department's regulations. However, anything reported pursuant to the department's regulations must not be considered to waive any privilege or confidentiality provided in subsection (A).

**3) Provides for some variation between making the information confidential and publicly available.**

**A. Language that provides for public access broadly, except for narrow limitations on patient and health worker confidentiality**

**CALIFORNIA:** CAL. HEALTH & SAFETY § 1279.3 (WEST 2007)

(a) “[T]he department shall provide information...[of] substantiated adverse events... on the department's Internet Web site and in written form in a manner that is readily accessible to consumers in all parts of California, and that protects patient confidentiality.”

*But see*

(b) . . . Entities deemed appropriate by the department shall enter into a memorandum of understanding with the department that requires the inclusion of all data and all hospital information provided by the department. These entities may include universities, consumer organizations, or health care quality organizations.

(C) . . . The names of the health care professionals and health care workers shall not be included in the information released . . . to the public.

**CONNECTICUT:** CONN. GEN. STATUES. ANN. § 19a-127n (2010) (emphasis added)

(d) . . . Such reports shall be prepared in a format that uses relevant *contextual information*. For purposes of this subsection “contextual information” includes, but is not limited to, (A) the relationship between the number of adverse events and a hospital's total number of patient days or an outpatient surgical facility's total number of surgical encounters expressed as a fraction in which the numerator is the aggregate number of adverse events reported by each hospital or outpatient surgical facility by category as specified in this subsection and the denominator is the total of the hospital's patient days or the outpatient surgical facility's total number of surgical encounters, and (B) information concerning the patient population served by the hospital or outpatient surgical facility, including such hospital's or outpatient surgical facility's payor or case mix. In addition, a hospital or outpatient surgical facility may provide informational comments relating to any adverse event reported to the commissioner pursuant to this section. On and after July 1, 2011, any report submitted by the commissioner pursuant to this subsection shall include any informational comments received concerning an adverse event that is included in the report.

**MINNESOTA** M.S.A. § 145.64

(B) “. . . [ A review organization] may release non-patient-identified aggregate trend data on medical error and iatrogenic injury. . . .”

The report shall be filed in a format specified by the commissioner and shall identify the facility but shall not include any identifying information for any of the health care professionals, facility employees, or patients involved. The commissioner may consult with experts and organizations familiar with patient safety when developing the format for reporting and in further defining events in order to be consistent with industry standards.

**Nevada:** N.R.S. 439.840 (West 2011)

(b) Ensure that such reports, and any additional documents created from such reports, are protected adequately from fire, theft, loss, destruction and other hazards and from unauthorized access;

(c) Annually prepare a report of sentinel events reported pursuant to NRS 439.835 by a medical facility, including, without limitation, the type of event, the number of events, the rate of occurrence of events, and the medical facility which reported the event, and provide the report for inclusion on the Internet website maintained pursuant to NRS 439A.270; and

(d) Annually prepare a summary of the reports received pursuant to NRS 439.835 and provide a summary for inclusion on the Internet website maintained pursuant to NRS 439A.270. The Health Division shall maintain the confidentiality of the patient, the provider of health care or other member of the staff of the medical facility identified in the reports submitted pursuant to NRS 439.835 when preparing the annual summary pursuant to this paragraph.

2. Except as otherwise provided in this section and NRS 239.0115, reports received pursuant to NRS 439.835 and subsection 1 of NRS 439.843 and any additional information requested by the Health Division pursuant to NRS 439.841 are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.

3. The report prepared pursuant to paragraph (c) of subsection 1 must provide to the public information concerning each medical facility which provided medical services and care in the immediately preceding calendar year and must:

(a) Be presented in a manner that allows a person to view and compare the information for the medical facilities;

(b) Be readily accessible and understandable by a member of the general public;

(c) Use standard statistical methodology, including without limitation, risk-adjusted methodology when applicable, and include the description of the methodology and data limitations contained in the report;

(d) Not identify a patient, provider of health care or other member of the staff of the medical facility; and

(e) Not be reported for a medical facility if reporting the data would risk identifying a patient.

**WASHINGTON: RCWA 43.70.056**

(c) . . . [Reviewing body shall] publish a report on the department's web site that compares the health care-associated infection rates at individual hospitals in the state using the data reported in the previous calendar year pursuant to subsection



(2) of this section. . . . The report is subject to the following:

- (i) The report must disclose data in a format that does not release health information about any individual patient; and
- (ii) The report must not include data if the department determines that a data set is too small or possesses other characteristics that make it otherwise unrepresentative of a hospital's particular ability to achieve a specific outcome;

**B. Language that provides for narrow exceptions in certain public interest circumstances to reports, findings, etc. that are otherwise confidential.**

**D.C.:** D.C. CODE § 7-161 (2009)

(e)

(1) Except as otherwise provided by this section, the files, records, findings, opinions, recommendations, evaluations, and reports of the system administrator, information provided to or obtained by the system administrator, the identity of persons providing information to the system administrator, and reports or information provided pursuant to this section shall be confidential, shall not be subject to disclosure pursuant to any other provision of law, and shall not be discoverable or admissible into evidence in any civil, criminal, or legislative proceeding. The information shall not be disclosed by any person under any circumstances. This subsection shall not preclude use of reports or information provided under this section by a board regulating a health profession or the Mayor in proceedings by the board or the Mayor.

(2) No person who provided information to the system administrator shall be compelled to testify in any civil, criminal, or legislative proceeding with respect to any confidential matter contained in the information provided to the system administrator.

(3) Notwithstanding subsections (a) or (b) of this section, a court may order a system administrator to provide information in a criminal proceeding in which an individual is accused of a felony if the court determines that disclosure is essential to protect the public interest and that the information being sought can be obtained from no other source. In determining whether disclosure is essential to protect the public interest, the court shall consider the seriousness of the offense with which the individual is charged, the need for disclosure of the party seeking it, and the probative value of the information. If the court orders disclosure, the identity of any patient shall not be disclosed without the consent of the patient or his or her legal representative.

**C. Language that specifically specifies that only certain hospital provider information is not subject to disclosure**

**WASHINGTON: RCWA 42.56.360**

- (1) The following health care information is exempt from disclosure under this chapter:
- (a) Information obtained by the pharmacy quality assurance commission as provided in RCW 69.45.090;
  - (b) Information obtained by the pharmacy quality assurance commission or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;
  - (c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections under RCW 43.70.056, a notification of an incident under RCW 70.56.040(5), and reports regarding adverse events under RCW 70.56.020(2)(b), regardless of which agency is in possession of the information and documents;
  - (d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;
    - (ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;
    - (iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;
  - (e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;
  - (f) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1);
  - (g) Information obtained by the department of health under chapter 70.225 RCW;
  - (h) Information collected by the department of health under chapter 70.245 RCW except as provided in RCW 70.245.150;
  - (i) Cardiac and stroke system performance data submitted to national, state, or local data collection systems under RCW 70.168.150(2)(b); and
  - (j) All documents, including completed forms, received pursuant to a wellness program under RCW 41.04.362, but not statistical reports that do not identify an individual.

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.

(3)(a) Documents related to infant mortality reviews conducted pursuant to RCW 70.05.170 are exempt from disclosure as provided for in RCW 70.05.170(3).

(b)(i) If an agency provides copies of public records to another agency that are exempt from public disclosure under this subsection (3), those records

remain exempt to the same extent the records were exempt in the possession of the originating entity.

(ii) For notice purposes only, agencies providing exempt records under this subsection (3) to other agencies may mark any exempt records as "exempt" so that the receiving agency is aware of the exemption, however whether or not a record is marked exempt does not affect whether the record is actually exempt from disclosure.

STATE*	CONFIDENTIAL	PUBLIC	VARIABLE	UNKNOWN/ UNCLEAR
(M)= mandatory reporting (V)=voluntary reporting (?)Unclear/other	Language providing for the confidentiality of sentinel reports made by health care facilities	Language providing for the public availability of sentinel report data, except for patient identity.	Language providing for some variation between making the information confidential and publically available	
California (M)			X	
Colorado (?)				X
Connecticut (M)			X	
District of Colombia* (M)			X	
Florida (M)		X		
Georgia (?)				X
Illinois (M)	X			
Indiana (V)				X
Kansas (M)				X
Louisiana (?)			X	
Maine (M)	X			
Maryland (M)	X			
Massachusetts (M)	X			
Michigan (?)	X			
Minnesota (M)			X	
Nevada (M)			X	
New Hampshire (M)	X			
New Jersey (?)	X			
New York (M)	X			
Ohio (M)	X			
Oregon (V)	X			
Pennsylvania (M)	X			
Rhode Island (M)	X			
South Carolina (M)		X		
South Dakota (M)				X
Tennessee (M)	X			
Texas (M)	X			
Utah (M)	X			
Vermont (M)	X			
Washington (M)			X	
Wyoming (W)	X			

**Program**

*For rules records pre-EMR system  
Submitted previously by Maine Hospital  
ASSN.*

Quality Measure	CMS: IIPS for FY 2013	CMS: IIPS for FY 2014	CMS: IIPS for FY 2015	CMS: IIPS for FY 2016	CMS: Ombudsman CY 2013-2015	CMS: VBP FY 2013	CMS: VBP FY 2014	CMS: VBP FY 2015	CMS: HAC	CMS: HEDICAC meaningful use clinical quality measures	CMS: Readmission Reduction Program	CMS: Inpatient Psychiatric FY 2014	CMS: AMINO CR 2014	Number of Patients
Utilization of inpatient care (total inpatient, medicine, surgery and maternity) (Rand)														
Leapfrog Survey														
Medication Spotlight Survey														
<b>Acute Myocardial Infarction (AMI)</b>														
Appropriateness of Care Measure (ACM) Composite														
AMI-1: Aspirin at arrival	X	Suspend 12/31/11	X	X										X
AMI-2: Aspirin prescribed at discharge (NOF #142)	X	X		X						X				X
AMI-3: Angiotensin Converting Enzyme Inhibitor (ACE-I) or Angiotensin II Receptor Blocker (ARB) for left ventricular systolic dysfunction	X	Suspend 12/31/11												X
AMI-4: Adult smoking cessation advice/counseling	X	Retire 12/31/11												X
AMI-5: Beta blocker prescribed at discharge	X	Suspend 12/31/11												X
AMI-7a: Fibrinolytic (thrombolytic) agent received within 30 minutes of arrival (NOF #164)	X	X		X		X	X	X		X				X
AMI-8a: Tining of receipt of primary PCI (NOF #163)	X	X		X		X	X	X		X				X
AMI-10: Statin prescribed at discharge (NOF #639)	X	X		X										X
<b>Heart Failure (HF)</b>														
Appropriateness of Care Measure (ACM) Composite														
HF-1: Discharge instructions	X	X		X		X	X	X						X
HF-2: Evaluation of left ventricular systolic function	X	X		X										X
HF-3: Angiotensin Converting Enzyme Inhibitor (ACE-I) or Angiotensin II Receptor Blocker (ARB) for left ventricular systolic dysfunction	X	X		X										X
HF-4: Adult smoking cessation advice/counseling	X	Retire 12/31/11												X
<b>Stroke Measure Set</b>														
STK-1: VTE prophylaxis (NOF #434)			X	X										
STK-2: Antithrombotic therapy for ischemic stroke at discharge (NOF #435)			X	X										
STK-3: Anticoagulation therapy for afib/flutter (NOF #436)			X	X										
STK-4: Thrombolytic therapy for acute ischemic stroke (NOF #437)			X	X										
STK-5: Antithrombotic therapy by the end of hospital day 2 (NOF #438)			X	X										
STK-6: Discharged on statin (NOF #439)			X	X										
STK-8: Stroke education (NOF #440)			X	X										
STK-10: Assessed for rehabilitation services (NOF #441)			X	X										
<b>VTE Measure Set</b>														
VTE-1: VTE prophylaxis (NOF #371)			X	X										
VTE-2: ICU VTE prophylaxis (NOF #372)			X	X										
VTE-3: VTE patients with anticoagulation overlap therapy (NOF #373)			X	X										
VTE-4: Patients receiving unfractionated Heparin with doses/rates monitored by protocol (NOF #374)			X	X										
VTE-5: VTE discharge instructions (NOF #375)			X	X										
VTE-6: Incidence of potentially preventable VTE (NOF #376)			X	X										
<b>Pneumonia (PN)</b>														



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9/25/13

**Program**

Quality Measure	CMS: IPPS for FY 2013	CMS: IPPS for FY 2014	CMS: IPPS for FY 2015	CMS: IPPS for FY 2016	CMS: Outpatient CY 2011-2015	CMS: VBP FY 2013	CMS: VBP FY 2014	CMS: VBP FY 2015	CMS: IAC	CMS: HIT/ECM meaningful use clinical quality measures?	CMS: ACO	CMS: Readmission Reduction Program	CMS: Hospital Inpatient Physicians FY 2014	CMS: Medical Record	Member MQW/ MIPRO MIMIC Ch. 27B	Member MIMIC
Appropriateness of Care Measure (ACM) Composite																
PN-2: Pneumococcal vaccination status	X	Retire 1/23/11														X
PN-3a: Blood culture performed before first antibiotic received in hospital	X	X	X	X												
PN-4: Adult smoking cessation advice/counseling	X	Retire 1/23/11														
PN-5a: Timing of receipt of initial antibiotic following hospital arrival	X	Retire 1/23/11														
PN-6: Appropriate initial antibiotic selection (NOF #47)	X	X	X	X												
PN-7: Influenza vaccination status	X	Retire 1/23/11														
<b>Surgical Care, including the Surgical Care Improvement Project (SCIP)</b>																
Appropriateness of Care Measure (ACM) Composite																
SCIP INF-1: Propylactic antibiotic received within 1 hour prior to surgical incision (NOF #527)	X	X	X	X												
SCIP INF-2: Propylactic antibiotic selection for surgical patients (NOF #528)	X	X	X	X												
SCIP INF-3: Propylactic antibiotics discontinued within 24 hours after surgery end time (48 hours for cardiac surgery)	X	X	X	X												
SCIP INF-4: Cardiac surgery patients with controlled 6AMV postoperative serum glucose	X	X	X	X												
SCIP INF-6: Surgery patients with appropriate hair removal	X	Suspend 1/23/11														
SCIP INF-9: Postoperative urinary catheter removal on post-operative day 1 or 2 with day of surgery being day zero (NOF #453)	X	X	X	X												
SCIP INF-10: Surgery patients with perioperative temperature management	X	X	X	X												
SCIP Cardiovascular-2: Surgery patients on a beta blocker prior to arrival who received a beta blocker during the perioperative period	X	X	X	X												
SCIP VTE-1: Surgery patients with venous thromboembolism (VTE) prophylaxis ordered	X	X														
SCIP VTE-2: Surgery patients who received appropriate VTE prophylaxis within 24 hours prepost surgery	X	X	X	X												
Safe Surgery Checklist use for inpatient surgery																
Risk-standardized complication rate after elective primary total hip or total knee arthroplasty (NOF # 1550)																
<b>Mortality Measures (Medicare Patients)</b>																
AMI 30-day mortality rate	X	X	X	X												
Heart failure 30-day mortality rate	X	X	X	X												
Pneumonia 30-day mortality rate	X	X	X	X												
<b>Patients' Experience of Care</b>																
HCAHPS (Beginning FY 2015, CMS adds: were you admitted to the hospital through the ED & how would you rate your overall mental/emotional health)	X	X	X	X												
CTM-3: Care transition measure (NOF #226)																
Transition record with specified elements received by discharged inpatients (NOF #647; AMA-PCPI)																
<b>Readmission Measure (Medicare Patients)</b>																
AMI 30-Day Risk Standardized Readmission	X	X	X	X												
Heart failure 30-Day Risk Standardized Readmission	X	X	X	X												

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**Program**

	Quality Measure										AHRQ Indicators and Composite Measures									
	CMS: IRRS for FY 2013	CMS: IRRS for FY 2014	CMS: IRRS for FY 2015	CMS: IRRS for FY 2016	CMS: Comparison FY 2011-2015	CMS: YBP FY 2013	CMS: YBP FY 2014	CMS: YBP FY 2015	CMS: HAC	CMS: HIT/ECM meaningful use clinical quality measure?	CMS: Resubmission ACO Program	CMS: Inpatient Psychiatric FY 2014	CMS: Resubmission ACO	Medicare HEDIS CHS 2013	Name: NHAAC					
Pneumonia 30-Day Risk Standardized Readmission	X	X	X	X																
Risk-standardized all-cause 30 day readmission (NOF #0329)			X	X											X <sup>1</sup>					
30 day readmission for total hip and knee arthroplasty (NOF #1551)			X	X																
<b>Health care-Associated Infections Measures</b>																				
POI 1: AGSC admissions (diabetes, short term) (NOF #272)														X						
POI 2: AGSC admissions (perforated appendix) (NOF #273)																				
POI 3: AGSC admissions (diabetes long term complications) (NOF #274)																				
POI 5: AGSC admissions (COPD) (NOF #275)														X						
POI 7: AGSC admissions (hypertension) (NOF #276)														X						
POI 8: AGSC admissions (heart failure) (NOF #277)														X						
POI 10: AGSC admissions (dehydration) (NOF #280)																				
POI 11: AGSC admissions (bacterial pneumonia) (NOF #279)																				
POI 12: AGSC admissions (urinary infections) (NOF #281)																				
POI 13: AGSC admissions (angina without procedure) (NOF #282)																				
POI 14: AGSC admissions (diabetes, uncontrolled) (NOF #638)																				
POI 15: AGSC admissions (adult asthma) (NOF #283)														X						
POI 16: AGSC admissions (lower extremity amputation diabetes) (NOF #285)	X	X	X	X																
PSI 4: Death among surgical inpatients with serious, treatable complications	X	X		X																
PSI 6: Iatrogenic pneumothorax, adult	X	X																		
PSI 11: Post operative respiratory failure	X	X																		
PSI 12: Post operative PE or DVT	X	X																		
PSI 14: Post operative wound dehiscence	X	X																		
PSI 15: Accidental puncture or laceration	X	X																		
PSI 90: Complication/patient safety for selected indicators (composite)	X	X		X				X												
QI 11: Abdominal aortic aneurysm mortality rate	X	X																		
QI 19: Hip fracture mortality rate	X	X																		
QI 91: Mortality for selected medical conditions (composite)	X	X																		
<b>Structural Measures</b>																				
Participation in a systematic database for cardiac surgery	X	X	X	X																
Participation in a systematic clinical database registry for stroke care	X	X	X	X																
Participation in a systematic clinical database registry for nursing sensitive care	X	X	X	X																
Participation in a systematic clinical database registry for general surgery	X	X	X	X																
<b>Health care-Associated Infections Measures</b>																				
Central line associated bloodstream infection (critical care units)	X	X	X	X				X						X						
SSI (NHSN) (NOF #299) (Cardiac, hip/ knee arthroplasty, colon, hysterectomy & vascular) (IPPS FY 2014; colon & abdominal hyster only)		X	X	X																
Central line insertion practices percentage (NOF #298)																				
Percent compliance with the mechanical ventilation bundle of care																				
Catheter-associated urinary tract infection (CAUTI) (critical care units)		X	X	X																
MRSA bacteremia (NHSN)			X	X																
Nosocomial MRSA infection rate (CMS is NHSN MRSA bacteremia measure)														X						

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**Program**

Quality Measure	CMS: HPS for FY 2013	CMS: HPS for FY 2014	CMS: HPS for FY 2015	CMS: HPS for FY 2016	CMS: Outpatient CY 2011-2015	CMS: VBP FY 2013	CMS: VBP FY 2014	CMS: VBP FY 2015	CMS: HAC	CMS: HIT/EM meaningful use clinical quality measures?	CMS: Redundation Program	CMS: Inpatient Psychiatric FY 2014	CMS: Medicaid	Maine: MHOY CH 270	Maine: MHOY MHOY	
Clostridium difficile (C. Diff) SIR (NHSN)			X	X												
Health care personnel influenza vaccination (NHSN)			X	X												
<b>Nursing Sensitive Care Measures</b>																
Percentage of inpatients with hospital-acquired pressure ulcer ≥ Stage 1																
Number of inpatient falls per inpatient days																
Number of inpatient falls with injury per inpatient days																
Percentage of inpatients who have a vest or limb restraint																
Percentage of RN care hours to total nursing care hours																
Percentage of LVN/LPN care hours to total nursing care hours																
Percentage of UAP care hours to total nursing care hours																
Percentage of contract hours (RN, LPN/LVN, UAP) per patient day																
Number of RN care hours per patient day																
Number of total nursing care hours (RN, LPN/LVN, UAP) per patient day																
Number of voluntary uncontrolled separations for RNs and APNs																
Number of voluntary uncontrolled separations for LPN/LVN and nurse aides																
AHRO Hospital Survey on Patient Safety Culture for nursing staff annually																
<b>Hospital Acquired Condition Measures</b>																
Foreign object retained after surgery			X	X					X							
Air embolism			X	X					X							
Blood incompatibility			X	X					X							
Pressure ulcer Stages III & IV			X	X					X							
Falls and trauma (includes: fracture, dislocation, intracranial injury, crushing injury, burn, electric shock)			X	X					X							
Vascular catheter-associated infection			X	X					X							
Catheter-associated urinary tract infection (CAUTI)			X	X					X							
Manifestations of poor glycemic control			X	X					X							
Surgical site infection after certain cardiac, orthopedic and bariatric surgeries									X							
DVT/PE after hip or total knee replacement									X							
Surgical site infection after cardiac implantable electronic device (FY 2013)									X							
Iatrogenic pneumothorax with venous catheterization (FY 2013)									X							
<b>Emergency Department Throughput</b>																
ED-1: Median time from emergency department arrival to departure from the emergency room for patients admitted to the hospital (NOE #495)		X	X	X						X						
ED-2: Median time from admit decision to time of departure from the ED for ED patients admitted to the inpatient status (NOE #497)		X	X	X						X						
ED-3: Median time from ED arrival to ED departure for discharged ED patients (NOE #496)										X						
<b>Global Immunization Measures</b>																
Global flu immunization		X	X	X												
Global pneumonia immunization		X	X	X												
<b>Cost Efficiency</b>																
Medicare spending per beneficiary		X	X	X					X							
HealthPartners Total Cost of Care and Total Resource Use Measure Set																X



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**Program**

Quality Measure	CNS										HHS/NIH/NIHAC			
	CNS: IIPS for FY 2013	CNS: IIPS for FY 2014	CNS: IIPS for FY 2015	CNS: IIPS for FY 2016	CNS: Outpatient CY 2011-2015	CNS: VBP FY 2013	CNS: VBP FY 2014	CNS: VBP FY 2015	CNS: HACC	CNS: HIT/ECM meaningful use clinical quality measure*		CNS: Reimbursement Reduction Program	CNS: Hospital Psychiatric FY 2014	CNS: Medicaid Medicaid
<b>Perinatal Care</b>														
PC-01: Elective delivery before 39 weeks gestation (NOF #469)			X	X						X				X
Appropriate use of prenatal steroids (NOF #476)													X	
Prenatal and postpartum care rate (NOF # 1391; NCOA)													X	
Cesarean section delivery (Joint Commission)														
Exclusive breast milk feeding (Joint Commission; NOF #480)										X				
Healthy term newborn (NOF #716)										X				
EHD1-1a: hearing screening prior to hospital discharge (NOF #1354)										X				
<b>Hospital-based Inpatient Psychiatric Services (Joint Commission/CMS)</b>														
HBIPS-1: Admission screening completed for violence risk, substance use, psychological trauma history and patient strength														
HBIPS-2: Hours of physical restraint use (NOF #640)												X		
HBIPS-3: Hours of seclusion use (NOF #641)												X		
HBIPS-4: Patients discharged on multiple antipsychotic medications (NOF #552)												X		
HBIPS-5: Patients discharged on multiple antipsychotic medications with appropriate justification (NOF #560)												X		
HBIPS-6: Post-discharge continuing care plan created (NOF #557)												X		
HBIPS-7: Post-discharge continuing care plan transmitted to the next level of care provider upon discharge (NOF #558)												X		
<b>Children's Asthma Care (Joint Commission/CMS)</b>														
CAC-1: Use of Relievers for Inpatient Asthma														
CAC-2: Use of Systemic Corticosteroids for Inpatient Asthma														
CAC-3: Home Management Plan of Care Given to Patient/Caregiver (NOF #552)										X				
<b>Tobacco Use (Joint Commission)</b>														
TOB-1: Tobacco use screening														
TOB-2: Tobacco use treatment offered during hospital stay														
TOB-2a: Tobacco use treatment														
TOB-3: Tobacco use treatment offered at discharge														
TOB-3a: Tobacco use treatment offered at discharge														
TOB-4: Tobacco use: assessing status after discharge														
<b>Substance Abuse (Joint Commission)</b>														
SUB-1: Alcohol use screening														
SUB-2: Alcohol use brief intervention offered/provided														
SUB-2a: Alcohol use brief intervention														
SUB-3: Alcohol and other drug abuse disorder treatment provided or offered at discharge														
SUB-3a: Alcohol and other drug use disorder treatment at discharge														
SUB-4: Alcohol and drug use: assessing status after discharge														
<b>2011 Hospital National Patient Safety Goals (Joint Commission)</b>														
NPSG.01.01.01: Use at least two ways to identify patients														
NPSG.01.03.01: Make sure that the correct patient gets the correct blood when they get a blood transfusion														
NPSG.02.03.01: Get important test results to the right staff person on time														
NPSG.03.04.01: Before a procedure, label all medicines/solutions/containers														

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**Program**

Quality Measure	CMS: IIPS for FY 2013	CMS: IIPS for FY 2014	CMS: IIPS for FY 2015	CMS: IIPS for FY 2016	CMS: Outpatient CY 2011-2015	CMS: VBP FY 2013	CMS: VBP FY 2014	CMS: VBP FY 2015	CMS: MAC	CMS: HIT/ECI meaningful use clinical quality measures*	CMS: Readmission Reduction Program	CMS: Hospital Inpatient Psychology FY 2014	CMS: Medicaid	Reim: MCO/MRO	Reim: MHC
NPSG.03.05.01: Take extra care with patients on anticoagulant therapy															
NPSG.07.01.01: Use the hand hygiene guidelines from the CDC or the WHO and set/revise goals for improving hand cleaning															
NPSG.07.03.01: Use evidence-based guidelines to prevent hospital-acquired MDRO infections															
NPSG.07.04.01: Use evidence-based guidelines to prevent CLABSI															
NPSG.07.05.01: Use evidence-based guidelines for preventing surgical site infections															
NPSG.08.01.01: Accurately and completely reconcile medications across the continuum of care (standard is not in effect at this time)															
NPSG.08.02.01: Give a list of the patient's medicines to their next caregiver/regular doctor before discharge (standard is not in effect at this time)															
NPSG.08.03.01: Provide a list and explanation of the patient's medicines to the patient/family before discharge (standard is not in effect now)															
NPSG.08.04.01: For patients who get medicine in small amounts or for a short time, perform modified medication reconciliation (standard is not in effect now)															
NPSG.15.01.01: Identify patients at risk for suicide															
UP.01.01.01: Conduct a pre-procedure verification process															
UP.01.02.01: Mark the correct surgical site on the patient's body															
UP.01.03.01: Perform a time-out before the procedure															
(2012) NPSG.07.07.01: Implement evidence-based practices to prevent indwelling catheter-associated urinary tract infections (CAUTI)															
<b>Hospital Outpatient Measures (Joint Commission/CMS)</b>															
OP-1: Median time to fibrinolysis					X										
OP-2: Fibrinolytic therapy received within 30 minutes of ED arrival					X										
OP-3: Median time to transfer to another facility for acute coronary intervention					X										
OP-4: Aspirin at arrival					X										
OP-5: Median time to ECG					X										
OP-6: Prophylactic antibiotic initiated within one hour prior to surgical incision					X										
OP-7: Prophylactic antibiotic selection for surgical patients					X										
OP-8: MRI lumbar spine for low back pain					X										
OP-9: Mammography follow-up rates					X										
OP-10: Abdomen CT use of contrast material					X										
OP-11: Thorax CT use of contrast material					X										
OP-12: Ability for providers with HIT to receive lab data electronically directly into their qualified/certified EHR system as discrete searchable data (CY 2012)					X										
OP-13: Cardiac imaging for preoperative risk assessment for non-cardiac low-risk surgery (CY 2012)					X										
OP-14: Simultaneous use of brain CT and sinus CT (CY 2012)					X										
OP-15: Use of brain CT in the ED for atraumatic headache															
OP-16: ED-Tropin results for AMVI or chest pain patients received within 60 minutes of arrival (CY 2013)															
OP-17: Tracking clinical results between visits (CY 2013)															
OP-18: Median time from ED arrival to ED departure for discharged patients (CY 2013)					X										

Maine Hospital Association  
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Program

Quality Measure	CMS: IRRS for FY 2013	CMS: IRRS for FY 2014	CMS: IRRS for FY 2015	CMS: IRRS for FY 2016	CMS: Outpatient CY 2014-2015	CMS: YBP FY 2013	CMS: YBP FY 2014	CMS: YBP FY 2015	CMS: HAC	CMS: HIT/ECM (measured as clinical quality measures)	CMS: ACO	CMS: Readmission Reduction Program	CMS: Inpatient Psychiatric FY 2014	CMS: Medicaid	Feder: (NOF/ NQF/ PQRS)	Name: NLMC
OP-19: Transition record with specified elements received by discharged patients (CY 2013)					Suspended March 2012											
OP-20: Poor to diagnostic evaluation by qualified medical professional (CY 2013)					X											
OP-21: ED--median time to pain management for long bone fracture (CY 2013)					X											
OP-22: ED--patient left before being seen (CY 2013)					X											
OP-23: ED--head CT scan results for acute ischemic stroke (or hemorrhagic stroke who received head CT scan) within 45 minutes of arrival (CY 2013)					X											
OP-24: ED--Cardiac rehabilitation referral from an outpatient setting (CY 2014)					Deferred											
OP-25: Safe Surgery Checklist use (CY 2014)					X											
OP-26: Outpatient surgery volume (cardiovascular, eye, GI, GU, musculoskeletal, skin, nervous system, respiratory) (CY 2014)					X											
Outpatient Measures																
CAHHS: Timely care (NOF #5)																
CAHHS: Doctor communication (NOF #5)																
CAHHS: Access to specialist (NOF #5)																
CAHHS: Rating of doctor (NOF #5)																
CAHHS: Health promotion and education (NOF #5)																
CAHHS: Shared decision making (NOF #5)																
CAHHS 30 question core survey of adult health plan members (NOF #6)																
NCQA 20 question supplement to CAHPS survey (NOF #7)																
NCQA 20 question core survey of adult health plan members (NOF #6)																
Utilization of ambulatory care--outpatient visits and ED (NCQA)																
Medication reconciliation after inpatient discharge (NOF #97)																
Annual monitoring for patients on persistent medications (NOF #21)																
Proportion of days covered: 5 rates by therapeutic categories (NOF #541)																
Percent of PCPs qualifying for an EHR incentive payment program																
Influenza immunization annually for adult patients (NOF #41; PQRS #110)																
Influenza immunization annually for adult patients (NOF #39; NCOA)																
Pneumococcal vaccine (NOF #43)																
Mammography screening (NOF #31; PQRS #112)																
Cervical cancer screening (NOF #32; NCOA)																
Colorectal screening (NOF #34; PQRS #113)																
Adult weight screening and follow-up (NOF #421; PQRS #128)																
Adult BMI assessment (HEDIS, NCOA)																
Blood pressure measurement within 2 years for adults 18+ (CMS)																
Chlamydia screening in women age 21-24 (HEDIS, NCOA)																
Tobacco use assessment/intervention (NOF #28)																
Medical assistance with tobacco cessation (NOF #27; NCOA)																
Depression screening and follow-up (NOF #418; PQRS #134)																
Antidepressant medication management (NOF #105)																
Bipolar I Disorder 2: Annual assessment of BMI, glycemic control and lipids (Rand)																
Bipolar I Disorder C: Proportion of patients treated with mood stabilizer medications (Rand)																

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Program

Quality Measure	CMS: IFRS for FY 2013	CMS: IFRS for FY 2014	CMS: IFRS for FY 2015	CMS: IFRS for FY 2016	CMS: Opioid Use CY 2011-2015	CMS: VBP FY 2013	CMS: VBP FY 2014	CMS: VBP FY 2015	CMS: MAC	CMS: HIT/ECM score for clinical quality measures*	CMS: ACO	CMS: Readmission Reduction Program	CMS: Improved Psychiatric Services FY 2014	CMS: Medicaid	Measures: MCOV, MIMO, MIMC	Measures: MIMC, MIMNC
Schizophrenia 2: Annual assessment of BMI, glycemic control and lipids (Rand)														X		
Schizophrenia C: Proportion of selected patients with antipsychotic polypharmacy utilization (Rand)																
Follow-up after hospitalization for mental illness (NOF #576)														X		
Mental health service utilization (NCOA)																
Alcohol misuse screening/intervention (VHA)																
Initiation and engagement of alcohol and other drug dependence treatment (NOF #4; NCOA)														X		
Diabetes: A1c control <8 (NOF #729) all or nothing scoring																
Diabetes: A1c control >9 (NOF #59)																
Diabetes: A1c testing (NOF #57)																
Diabetes: LDL <100 (NOF #729) all or nothing scoring																
Diabetes: Tobacco non-use (NOF #729) all or nothing scoring																
Diabetes: Lipid profile (NOF #63; NCOA)																
Diabetes: Aspirin use (NOF #729) all or nothing scoring														X		
Diabetes: Blood pressure control (NOF #729) (OP-27) all or nothing scoring																
Heart failure: Beta blockers therapy for LVSD (NOF #83; PQRS #8)																
CAD: Drug therapy to lower LDL (NOF #74; PQRS #197) all or nothing scoring																
CAD: ACE or ARB therapy for diabetic patients (NOF #66; PQRS #118) all or nothing scoring																
CAD: ACE or ARB therapy for diabetic patients (NOF #66; PQRS #118) all or nothing scoring																
IVD: Complete lipid profile and LDL under 100 (NOF #75; NCOA)																
IVD: Use of aspirin or another antithrombotic (NOF #68)																
Persistent beta blocker therapy for AMI patients (NOF #71; NCOA)																
Blood pressure control (NOF #18; NCOA)																
Asthma: Use of appropriate medications (NOF #36)																
HIV/AIDS: Annual medical visit (NOF #403)																
Falls: Screening for fall risk (NOF #101)																
Timely transmission of transition record from facility to next provider (NOF #648; AMA-PCPI)																
Low back pain: Use of imaging studies (NOF #52; NCOA)																
X <sup>1</sup> : Proposed to be added (cells filled with yellow highlight also mark proposals)																
X <sup>2</sup> : 8 HC/HPS domains (quiet/cleanliness combined); recommendation																
X <sup>3</sup> : MOF/MHDO is accepting the applicable CMS metrics for AMI, HF, PN and SCIP and will amend its rule to align with CMS.																
X <sup>4</sup> : After FY 2015 payment calculation, data period will be flu season, 10/1-3/31																

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**Program**

Quality Measure	CMS IPPS for FY 2013	CMS IPPS for FY 2014	CMS IPPS for FY 2015	CMS IPPS for FY 2016	CMS Outpatient CY 2011-2015	CMS VBP FY 2013	CMS VBP FY 2014	CMS VBP FY 2015	CMS MAC	CMS ATTACH meaningful use clinical quality measures*	CMS Resubmission Reduction Program	CMS Hospital Inpatient/Outpatient Medicaid FY 2014	Maize: MAHQI/MAHO CH 379*	Maize: MAHEC
<b>GLOSSARY:</b>														
ACO: Accountable Care Organization														
ACSC: ambulatory care sensitive conditions														
AHRQ: Agency for Healthcare Research and Quality (U.S. Department of Health and Human Services)														
CAD: coronary artery disease														
CDC: Centers for Disease Control and Prevention														
CLABSI: central line-associated blood stream infection														
CMS: Centers for Medicare & Medicaid Services														
COPD: chronic obstructive pulmonary disease														
HAC: hospital-acquired condition														
IVD: ischemic vascular disease														
MA: Medicare Advantage														
MDRD: multiple-resistant organisms														
MHMC: Maine Health Management Coalition														
MQF/MHDO: Maine Quality Forum/Maine Data Organization (MHDO web site allows users to calculate AHRQ quality measures)														
NCQA: National Committee for Quality Assurance														
NQP: National Quality Forum														
QRS: CMS Physician Quality Reporting System														
UAP: unlicensed assistive personnel														
VBP: Value-Based Purchasing														
WHO: World Health Organization														
<b>August 6, 2012</b>														

\* Stage 1 CMS "meaningful use" 14 requirements: CPOE, implement drug interaction/allergy checks, maintain problem list, maintain allergy list, record certain demographic info, chart certain vital signs, record smoking history, report 13 quality measures, implement one clinical decision support rule, provide patients with an e-copy of certain health information & discharge instructions on request, exchange key clinical information among providers, & adequately protect electronic health information. Stage 1 also requires meeting 5 of these 10 objectives: implement drug formulary checks, record advance directives, incorporate lab results into EHR, generate patient lists by condition, use EHR technology to identify patient-specific education resources, medication reconciliation, provide summary care record for each transition of care, submit electronic data to immunization registries, submit reportable electronic data to state public health agency, & submit syndromic surveillance data to public health agencies. (Stage 1 focus is on data capture; Stage 2 focus on information exchange; Stage 3 focus on achieving improved outcomes.) Stage 2 final rule published August 2012; must meet 16 core objectives plus 3 from the 6 menu objectives and report on 16/29 clinical quality measures from at least 3 of the 6 National Quality Strategy policy domains. The 29 measures finalized for FY 2014 are noted above.

Hospitals accredited by the Joint Commission are required to collect data for a minimum of four core measure sets or a combination of applicable core measure sets and non-core measures. The core measure sets are the ones listed above for Acute Myocardial Infarction (AMI), Children's Asthma Care (CAC), Heart Failure (HF), Surgical Care Improvement Project (SCIP), Pneumonia (PN), Hospital Outpatient Measures (HOP), Perinatal Care (PC), Venous Thromboembolism (VTE), Hospital-based Inpatient Psychiatric Services (IHIPS), Stroke (STR), Tobacco Use (TOB), and Substance Abuse (SUB). Accredited hospitals are also surveyed for their compliance with the National Patient Safety Goals, which are updated annually. (Free-standing hospitals must participate in HEDIS)

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1 and 2

STATUTE: \_\_\_\_\_ Title 22 §1696-D and §1696-F \_\_\_\_\_

AGENCY: DHHS

CONTACT PERSON: Nancy Beardsley, Director, Division of Environmental Health, Maine CDC

CONTACT PERSON'S EMAIL ADDRESS: nancy.beardsley@maine.gov

### 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).

I have not located any evidence indicating that the Agency has any specific experience in administering or applying these public records exceptions. I have not located any evidence that this exception has ever been administered or applied, and therefore cannot describe the records that were subject to the exception.

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

It appears that since no one at the Agency can recall the exceptions being administered or applied, we see no harm in supporting the continuation of the exceptions. Our reasoning is that the exceptions do not seem to have caused any harm. It seems unreasonable to oppose their continuation without knowing the reasons why they were placed there and the hardships that their removal may create.

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?

I have not located any evidence that shows that the exceptions have been administered or applied by this Agency. Yes, it is clear that the records described are intended to be confidential under the FOA statutes. Yes, the language of the exception appears to be sufficiently clear in describing the records that are covered.

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.

I suggest performing a review of the legislative record that pertains to the creation of this 1985 law.

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

I have no further information to provide. I'm sorry that I couldn't be more helpful.



6

**McCarthyReid, Colleen**

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**From:** Smith, Jennifer M <Jennifer.M.Smith@maine.gov>  
**Sent:** Wednesday, September 18, 2013 8:42 AM  
**To:** McCarthyReid, Colleen; Poulin, Tim  
**Cc:** Reinsch, Margaret; Fox, Danielle  
**Subject:** RE: Right to Know Advisory Committee's Review of Confidentiality Exception in Title 28-A, Section 755

Good morning Colleen. There is no change from what we submitted the last time on this exception. Please let me know if you need anything else!

**Jennifer M. Smith**  
**Director of Legislative Affairs & Communications**  
Department of Administrative and Financial Services  
(207) 624-7397

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**From:** McCarthyReid, Colleen [<mailto:Colleen.McCarthyReid@legislature.maine.gov>]  
**Sent:** Friday, September 13, 2013 8:26 AM  
**To:** Smith, Jennifer M; Poulin, Tim  
**Cc:** Reinsch, Margaret; Fox, Danielle  
**Subject:** Right to Know Advisory Committee's Review of Confidentiality Exception in Title 28-A, Section 755

Hi Jennifer and Tim,

The Right to Know Advisory Committee's Public Exception Subcommittee is reviewing the confidentiality exception contained in Title 28-A, section 755. You may recall this provision was up for review last Fall, but the Subcommittee tabled its consideration due to expected liquor legislation in the First Regular Session. As the legislation enacted this past session did not specifically address section 755, the Subcommittee has put the provision back on its agenda.

Last year, you completed a survey for the Subcommittee to use in its review of the exception. We've attached it for your reference. In the survey, BABLO recommended that the RTKAC consider possible statutory changes to address ambiguity in the language of section 755. Would you be willing to update the survey and provide BABLO's current position on section 755 as well as any recommendations for changes in statutory language?

The next Subcommittee meeting is scheduled for September 25, 2013 at 10 am. We would appreciate your response before the meeting so we can share with the Subcommittee members. Please let us know if you have any questions or need additional information.

Thanks, Colleen and Peggy

Colleen McCarthy Reid, Esq.  
Margaret J. Reinsch, Esq.  
Office of Policy and Legal Analysis  
13 State House Station  
Augusta, Maine 04333-0013  
(207) 287-1670  
[Colleen.mccarthyreid@legislature.maine.gov](mailto:Colleen.mccarthyreid@legislature.maine.gov)



16

**McCarthyReid, Colleen**

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**From:** Breton, Jody L. <Jody.L.Breton@maine.gov>  
**Sent:** Friday, September 13, 2013 1:56 PM  
**To:** McCarthyReid, Colleen  
**Cc:** Reinsch, Margaret; Fish, Scott  
**Subject:** RE: Question from Right to Know Advisory Committee

Hi Colleen,

We have 5 still incarcerated. We will try to get you the number who are in the community.

Jody

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**From:** McCarthyReid, Colleen [<mailto:Colleen.McCarthyReid@legislature.maine.gov>]  
**Sent:** Friday, September 13, 2013 10:46 AM  
**To:** Breton, Jody L.  
**Cc:** Reinsch, Margaret  
**Subject:** Question from Right to Know Advisory Committee

Hi Jody,

The Right to Know Advisory Committee's Public Records Exception Subcommittee is reviewing the exception in Title 34-A, section 5210, subsection 4 related to the State Parole Board report to the Governor. A question came up during the Subcommittee meeting on September 12. As the FOAA contact for DOC, we hope you are the right person to help us get the answer. How many people (incarcerated or in the community) are currently subject to the old parole system?

The next meeting is September 25<sup>th</sup>. If possible, could you get back to us before then?  
Thank you.

Colleen and Peggy

Colleen McCarthy Reid, Esq.  
Margaret J. Reinsch, Esq.  
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Office of Policy and Legal Analysis  
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[Margaret.reinsch@legislature.maine.gov](mailto:Margaret.reinsch@legislature.maine.gov)



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

LD	COMMITTEE	SUBJECT	MEMO DATE	REVIEW DATE	REPORT DATE	RESULT	STATUTE	RESULT
160	EDU	Archaeological sites	3/13/13	3/27/13	3/28/13	Recommended change	27 §377	PL 2013, c. 89
345	JUD	Concealed handgun permits	-	4/3/13	-	Majority: no change	25 §2006	PL 2013, c. 54
532	EDU	Public library patrons records	3/25/13	4/4/13	4/4/13	No changes	27 §121	PL 2013, c. 82
549	JUD	Limitation on release of first offense Class E theft criminal record	-	4/25/13	-	No changes	15 c. 310 (§2257)	Carryover (AFA Table)
619	JUD	Release of email addresses by Bureau of Motor Vehicles	-	5/29/13	-	No changes	29-A §251, sub-§4	PL 2013, c. 283
648	IFS	External review proceedings records	5/8/13	5/15/13	5/16/13	No changes	24-A §4312, sub-§7-A	PL 2013, c. 274
973	JUD	Veterans property tax applications	-	5/13/13	-	No changes	36 §653, sub-§1, ¶G	PL 2013, c. 222
982	JUD	Gambling offset for child support – shared information	-	5/1/13	-	No changes	8 §300-B, sub-§10	PL 2013, c. 255
1016	IFW	Hide dealer licenses records of buyers and sellers	5/16/13	5/23/13	5/23/13	Recommended change	12 §12954, sub-§4-A, ¶A	PL 2013, c. 333

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

LD	COMMITTEE	SUBJECT	MEMO DATE	REVIEW DATE	REPORT DATE	RESULT	STATUTE	RESULT
1019	EDU	<ul style="list-style-type: none"> <li>Draft research and materials of Maine State Museum</li> <li>Personal history research and materials</li> </ul>	5/3/13	5/9/13	5/14/13	No changes	<ul style="list-style-type: none"> <li>27 §86-B, sub-§1</li> <li>27 §86-B, sub-§2</li> </ul>	PL 2013, c. 205
1308	ENR	Product stewardship program for architectural paint	5/15/13 6/5/13	5/23/13 6/10/13	Interim: 5/31/13 Final: 6/10/13	Interim: questions Final: No changes	38 §2144, sub-§5, ¶F	PL 2013, c. 395
1334	HHS	Records of Child Advocacy Centers	5/13/13	5/23/13 6/4/13	6/5/13	No changes	22 §4019, sub-§9	PL 2013, c. 364
1335	ENR	Product Stewardship programs - model	5/15/13 6/5/13	5/23/13 6/10/13	Interim: 5/31/13 Final: 6/10/13	Interim: questions Final: No changes	38 §1776, sub-§10	PL 2013, c. 315
1373	LCRED	Polygraph examiners records	6/7/13	6/11/13	6/12/13	Recommended changes	32 §7365	PL 2013, c. 316
1437	LCRED	Reporting about physicians to the licensing board	5/22/13	5/23/13	Tabled – no report	Public records exception not included		PL 2013, c. 355
1515	CJPS	Records concerning involuntary medication of person in custody of Dept of Corrections	5/30/13	6/4/13	6/5/13	No changes	34-A §3049, sub-§3, ¶G 34-A §3049, sub-§4	Carry over (AFA Table)

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

LD	COMMITTEE	SUBJECT	MEMO DATE	REVIEW DATE	REPORT DATE	RESULT	STATUTE	RESULT
1519	IFS	<p>Four provisions:</p> <ul style="list-style-type: none"> <li>• Records confidential from national organizations</li> <li>• Holding company information</li> <li>• Insurer's own risk and solvency assessment</li> <li>• Protected valuation information re insurance co. reservers</li> </ul>	5/21/13	5/23/13	5/28/13	No changes	<ul style="list-style-type: none"> <li>• 24-A §216, sub-§5</li> <li>• 24-A §222, sub-§13-A, ¶E</li> <li>• 24-A §423-F</li> <li>• 24-A §962</li> </ul>	PL c. 238

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**RIGHT TO KNOW ADVISORY COMMITTEE  
PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE**

DRAFT AGENDA  
November 4, 2013  
1:00 p.m.  
Room 438, State House, Augusta

**Convene**

1. Welcome and Introductions  
Suzanne Goucher, Chair
2. Exceptions Tabled/Voted at September 25th Meeting Needing Further Review:
  - Title 22, section 8754, related to reporting of sentinel events *{chart: 3}*
  - Title 22, sections 1696-D and 1696-F, related to the Community Right-to-Know Act *{chart 1, 2}*
  - Title 28, section 755, related to liquor licensees' business and financial records *{chart: 6}*
  - Title 35-A, section 8703, subsection 5, related to telecommunications relay service communications *{chart 19}*
  - Title 37-B, section 708, subsection 3, related to documents collected or produced by the Homeland Security Advisory Council *{chart 24}*
  - Title 38, section 414, subsection 6, related to records and reports obtained by the Board of Environmental Protection *{chart 26}*
  - Title 38, section 470-D, related to individual water withdrawal reports *{chart 27}*
3. Review of Existing Exceptions in Titles 26 to 39-A *{chart 30 to 39}*
4. Future Process for Review
  - Re-establish same process and timetable for review?
  - How to address "new" exceptions enacted since initial RTK AC review?
5. Other?

**Adjourn**





**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
Statutes remaining after 2012 review**

Revised 10/1/2013 10:42 AM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	2012 SUBCOMMITTEE ACTIONS	2013 SUBCOMMITTEE RECOMMENDATIONS
1	22	1696-D	Title 22, section 1696-D, relating to the identity of chemical substances in use or present at a specific location if the substance is a trade secret	<ul style="list-style-type: none"> <li>DHHS</li> </ul>	<ul style="list-style-type: none"> <li>No record of any experience</li> <li>No changes</li> </ul>	11/8: AMEND; see LD 420	9/11: Tabled; ask DHHS for input  9/25: Amend as proposed in LD 420; send letter to policy committees
2	22	1696-F	Title 22, section 1696-F, relating to the identity of a specific toxic or hazardous substance if the substance is a trade secret	<ul style="list-style-type: none"> <li>DHHS</li> </ul>	<ul style="list-style-type: none"> <li>No record of any experience</li> <li>No changes</li> </ul>	11/8: AMEND; see LD 420	9/11: Tabled; ask DHHS for input  9/25: Amend as proposed in LD 420; send letter to policy committees
3	22	8754	Title 22, section 8754, relating to medical sentinel events and reporting	<ul style="list-style-type: none"> <li>DHHS</li> <li>Maine Hospital Assn</li> <li>Maine Medical Assn</li> <li>Maine Medical Mutual Ins. Co.</li> <li>Maine Osteopathic Assn</li> </ul>	<ul style="list-style-type: none"> <li>No requests known</li> <li>DHHS: Amend: "incidents reports and similar documents"; no change to scope of confidentiality</li> <li>Stakeholders: No change to confidentiality</li> </ul>	8/2: Amend to repeal; to be drafted 9/17: Tabled--ask DHHS and others for input 10/5: Tabled 11/15: Tabled 1/11/13: Tabled---more research and discussion	9/11: Tabled; more research and discussion  9/25: Tabled
4	26	3	Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor	<ul style="list-style-type: none"> <li>DECD</li> <li>SPO/OPM</li> <li>DOL</li> </ul>	<ul style="list-style-type: none"> <li>DECD</li> <li>SPO/OPM?</li> <li>DOL: no more than one or 2/year; NO CHANGE</li> </ul>	9/13: Tabled--discuss potential amendments with DOL 11/8: AMEND; see LD 420	9/11: Amend as proposed in LD 420

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A**  
**Statutes remaining after 2012 review**

Revised 10/1/2013 10:42 AM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	2012 SUBCOMMITTEE ACTIONS	2013 SUBCOMMITTEE RECOMMENDATIONS
5	26	934	Title 26, section 934, relating to report of the State Board of Arbitration and Conciliation in labor dispute	<ul style="list-style-type: none"> <li>State Board of Arbitration and Conciliation</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>	9/13: Tabled—ask Board for input 11/8: Amend	9/11: Amend as proposed in LD 420
6	28-A	755	Title 28-A, section 755, relating to liquor licensees' business and financial records	<ul style="list-style-type: none"> <li>DAFS: BABLO</li> </ul>	<ul style="list-style-type: none"> <li>Not being collected now</li> <li>Unresolved by Legislature in 125th</li> <li>Support change but recommend NO CHANGE for now</li> </ul>	9/13: Tabled until 2013; Dept. legislation expected in 126 <sup>th</sup> Legislature, First Session	9/11: Tabled; ask BABLO to update questionnaire 9/25: Tabled
7	29-A	152	Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles	<ul style="list-style-type: none"> <li>SOS</li> </ul>	<ul style="list-style-type: none"> <li>Estimate: 12-20 times per year)</li> <li>NO CHANGE – comply with Federal Driver Privacy Protection Act</li> </ul>	8/8: Amend	9/11: Amend as proposed in LD 420
8	29-A	257	Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system	<ul style="list-style-type: none"> <li>SOS</li> </ul>	<ul style="list-style-type: none"> <li>No request</li> <li>NO CHANGE</li> </ul>	8/8: Tabled—flag inconsistency with other provisions; ask OIT for input 9/13: Tabled 11/8: Repeal	9/11: Repeal as proposed in LD 420
9	29-A	517	Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles	<ul style="list-style-type: none"> <li>SOS</li> </ul>	<ul style="list-style-type: none"> <li>Estimate: 1-2 every couple of years</li> <li>NO CHANGE</li> </ul>	8/8: Amend—strike 2 <sup>nd</sup> ¶ because same language in #12	9/11: Amend as proposed in LD 420
10	30-A	503	Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force	<ul style="list-style-type: none"> <li>Counties – Joe Brown and Tim Leet?</li> </ul>	<ul style="list-style-type: none"> <li>Kennebec County:</li> <li>No requests</li> <li>NO CHANGES</li> </ul>	11/8: Tabled; ask AG for input	9/11: No change

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
Statutes remaining after 2012 review**

Revised 10/1/2013 10:42 AM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	2012 SUBCOMMITTEE ACTIONS	2013 SUBCOMMITTEE RECOMMENDATIONS
11	30-A	2702	Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force	<ul style="list-style-type: none"> <li>• <i>Municipalities</i></li> </ul>	See # 20	11/8: Tabled; ask AG for input	9/11: No change
12	32	2599	Title 32, section 2599, relating to medical staff reviews and hospital reviews – osteopathic physicians	<ul style="list-style-type: none"> <li>• Osteopathic Licensing Board</li> </ul>	•	11/8: Tabled; ask for input from Board and providers 11/15: Tabled	9/11: No change
13	32	3296	Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees	<ul style="list-style-type: none"> <li>• Medical Licensing Board</li> </ul>	<ul style="list-style-type: none"> <li>• Accusations of unprofessional conduct or incompetence if found to be without merit are damaging</li> <li>• Investigative records include individual patient info</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask for input from Board and providers 11/15: Tabled	9/11: No change
14	32	13006	Title 32, section 13006, relating to real estate grievance and professional standards committees hearings	<ul style="list-style-type: none"> <li>• Real Estate Commission</li> </ul>	<ul style="list-style-type: none"> <li>• No experience; applies to records of hearings held by professional trade associations</li> <li>• NO POSITION: Why part of Real Estate Brokerage Act?</li> </ul>	11/8: Tabled; ask Maine Association for input; is this necessary?	9/11: No change

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
Statutes remaining after 2012 review**

Revised 10/1/2013 10:42 AM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	2012 SUBCOMMITTEE ACTIONS	2013 SUBCOMMITTEE RECOMMENDATIONS
15	32	16607	Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act	<ul style="list-style-type: none"> <li>DPFR: Securities Regulation</li> </ul>	<ul style="list-style-type: none"> <li>Seven requests: 5 requests partially denied to protect investigative records; 2 denied because only investigative records requested</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask Office of Securities for input	9/11: No change
16	34-A	5210	Title 34-A, section 5210, subsection 4, relating to the State Parole Board report to the Governor	<ul style="list-style-type: none"> <li>Dept. of Corrections</li> </ul>	<ul style="list-style-type: none"> <li>Requested 2-3 times per year</li> <li>AMEND: clarify that applies regardless of entity advising Governor</li> </ul>	8/8: Tabled—ask Governor's Office for input 9/13: Tabled 11/8: Tabled	9/11: Tabled; DOC info on parolees 9/25: No change
17	35-A	1311-B	Title 35-A, section 1311-B, subsections 1, 2 and 4, relating to public utility technical operations information	<ul style="list-style-type: none"> <li>PUC</li> </ul>	<ul style="list-style-type: none"> <li>Occasional requests</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask PUC for input	9/11: No change
18	35-A	1316-A	Title 35-A, section 1316-A, relating to Public Utilities Commission communications concerning utility violations	<ul style="list-style-type: none"> <li>PUC</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask PUC for input	9/11: No change
19	35-A	8703	Title 35-A, section 8703, subsection 5, relating to telecommunications relay service communications	<ul style="list-style-type: none"> <li>PUC</li> </ul>	<ul style="list-style-type: none"> <li>Does not come through PUC</li> <li>Could be worded more clearly</li> </ul>	11/8: Tabled; ask PUC for input	9/25: Amend; to be drafted with PUC input
20	35-A	9207	Title 35-A, section 9207, subsection 1, relating to information about communications service providers	<ul style="list-style-type: none"> <li>PUC</li> <li>ConnectME Authority</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask PUC for input	9/25: No change

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
Statutes remaining after 2012 review

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21	36	575-A	Title 36, section 575-A, subsection 2, relating to forest management and harvest plan provided to Bureau of Forestry and information collected for compliance assessment for Tree Growth Tax Law	<ul style="list-style-type: none"> <li>Dept. of Conservation</li> <li>Maine Revenue Services</li> </ul>	<p>DOC:</p> <ul style="list-style-type: none"> <li>New, closely parallels §579</li> <li>Never received a request under §579</li> <li>NO CHANGES</li> </ul>	<p>(added by PL 2011, c. 619)</p> <p>11/8: Tabled; ask for input from Bureau of Forestry and MRS</p>	9/25: No change
22	36	579	Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans	<ul style="list-style-type: none"> <li>Municipal assessors</li> <li>Maine Revenue Services</li> </ul>	<p>MRS:</p> <ul style="list-style-type: none"> <li>No position</li> </ul> <p>MUNICIPALITIES</p> <ul style="list-style-type: none"> <li>14 municipalities responded</li> <li>Few requests</li> <li>7 recommend NO CHANGE</li> <li>2 recommend AMEND to allow Board of Assessors access</li> <li>5 recommend that AMEND to make plans public</li> </ul>	<p>11/8: Tabled; ask for input from Bureau of Forestry and MRS and municipal assessors</p>	9/25: No change

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A**  
**Statutes remaining after 2012 review**

Revised 10/1/2013 10:42 AM

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23	1106-A	3	Title 36, section 1106-A, subsection 3, paragraph D, relating to forest management and harvest plan made available for Farm and Open Space Tax Law	<ul style="list-style-type: none"> <li>• <i>Municipal assessors</i></li> <li>• Dept. of Conservation</li> <li>• Maine Revenue Services</li> </ul>	<p><b>MUNICIPALITIES</b></p> <ul style="list-style-type: none"> <li>• 12 municipalities responded</li> <li>• No requests (new law)</li> <li>• 6 recommend <b>NO CHANGE</b></li> <li>• 2 recommend <b>AMEND</b> to allow Board of Assessors access</li> <li>• 4 recommend <b>AMEND</b> to allow public access</li> </ul> <p><b>DOC:</b></p> <ul style="list-style-type: none"> <li>• New, closely parallels §579</li> <li>• Never received a request under §579</li> <li>• No provision to review plans under this section</li> <li>• <b>NO POSITION</b></li> </ul> <p><b>MRS:</b></p> <ul style="list-style-type: none"> <li>• <b>NO POSITION</b></li> <li>• No requests</li> <li>• <b>NO CHANGE</b></li> </ul>	<p>(added by PL 2011, c. 618, §7)</p> <p>11/8: Tabled; ask for input from DOC, MRS and municipal assessors</p>	<p>9/25: Tabled to 2014</p>
24	37-B	3	Title 37-B, section 708, subsection 3, relating to documents collected or produced by the Homeland Security Advisory Council	<ul style="list-style-type: none"> <li>• <b>DVEM: MEMA</b></li> </ul>	<p><b>NO POSITION</b></p> <ul style="list-style-type: none"> <li>• No requests</li> <li>• <b>NO CHANGE</b></li> </ul>	<p>11/8: Tabled; ask for more information</p>	<p>9/25: Tabled</p>

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
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25	37-B	797	Title 37-B, section 797, subsection 7, relating to Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency reports of hazardous substance transportation routes	<ul style="list-style-type: none"> <li>• DVEM: MEMA</li> </ul>	<ul style="list-style-type: none"> <li>• 1 – 2 request per year for general info</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask for more information	9/25: No change
26	38	414	Title 38, section 414, subsection 6, relating to records and reports obtained by the Board of Environmental Protection in water pollution control license application procedures	<ul style="list-style-type: none"> <li>• DEP</li> <li>• BEP</li> </ul>	<ul style="list-style-type: none"> <li>• DEP: 1-2 requests per year</li> <li>• NO CHANGE</li> <li>• BEP: No need to access info in proceedings</li> <li>• NO POSITION; Clarify by including cross-reference to definition of trade secret?</li> </ul>	11/8: Tabled; ask DEP and BEP for more information	9/25: Tabled
27	38	470-D	Title 38, section 470-D, relating to individual water withdrawal reports	<ul style="list-style-type: none"> <li>• DEP</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• Information reported in aggregate</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask DEP for more information	9/25: Tabled
28	38	585-B	Title 38, section 585-B, subsection 6, relating to mercury reduction plans for air emission source emitting mercury	<ul style="list-style-type: none"> <li>• DEP</li> </ul>	<ul style="list-style-type: none"> <li>• No requests by facilities to keep information confidential</li> <li>• REPEAL</li> </ul>	11/8: Amend; see LD 420	9/11: Amend as proposed in LD 420



**Public Records Exceptions Subcommittee**

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29	38	585-C	Title 38, section 585-C, subsection 2, relating to the hazardous air pollutant emissions inventory	<ul style="list-style-type: none"> <li>DEP</li> </ul>	<ul style="list-style-type: none"> <li>No requests by facilities to keep information confidential for at least 10 years</li> <li>REPEAL</li> </ul>	11/8: Amend	9/11: Amend as proposed in LD 420
30	38	1310-B	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	<ul style="list-style-type: none"> <li>DEP</li> </ul>	<ul style="list-style-type: none"> <li>Few requests for each type of info;</li> <li>Concerns that electronic filing often means DEP has multiple copies of confidential information; lack of locked storage space for confidential records</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask DEP for more information	
31	38	1610	Title 38, section 1610, subsection 6-A, paragraph F, relating to annual sales data on the number and type of computer monitors and televisions sold by the manufacturer in this State over the previous 5 years	<ul style="list-style-type: none"> <li>DEP</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>Manufacturers do mark portions of annual filing as confidential and info is segregated from public files</li> <li>NO CHANGE</li> </ul>	11/8: Tabled; ask DEP for more information	

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Title 22 and Titles 26 – 39-A  
Statutes remaining after 2012 review**

Revised 10/1/2013 10:42 AM

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32	1661-A	4	Title 38, section 1661-A, subsection 4, relating to information submitted to the Department of Environmental Protection concerning mercury-added products	• DEP	<ul style="list-style-type: none"> <li>• 2 requests made for confidential info</li> <li>• DEP followed process in § 1310-B, sub-§ 2 and requested info was able to be provided or summarized info provided</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask DEP for more information	
33	2307-A	1, 5	Title 38, section 2307-A, subsections 1 and 5, relating to information submitted to the Department of Environmental Protection concerning toxics use and hazardous waste reduction (REPEALED 7/1/12)	• DEP	<ul style="list-style-type: none"> <li>• Only 1 request</li> <li>• Replaced by new statute; rules pending to implement confidentiality provision (38 MRSA § 2324, sub-§3)</li> <li>• CONTINUE; NO CHANGE</li> </ul>	11/8: Tabled; ask DEP for more information	
34	39-A	5	Title 39-A, section 153, subsection 5, relating to the Workers' Compensation Board abuse investigation unit	• Workers' Compensation Board	<ul style="list-style-type: none"> <li>• Average of 6 times per year</li> <li>• NO CHANGE</li> </ul>	11/8: Amend; but HOLD for review in 2013	
35	39-A	9	Title 39-A, section 153, subsection 9, relating to the Workers' Compensation Board audit working papers	• Workers' Compensation Board	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask WCB for more information	
36	39-A	11	Title 39-A, section 355-B, subsection 11, relating to records and proceedings of the Workers' Compensation Supplemental Benefits Oversight Committee concerning individual claims	• Workers' Compensation Board	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask WCB for more information	

**Public Records Exceptions Subcommittee**

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37	39-A	403	Title 39-A, section 403, subsection 3, relating to workers' compensation self-insurers proof of solvency and financial ability to pay	• BOI	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask BOI for more information	
38	39-A	403	Title 39-A, section 403, subsection 15, relating to records of workers' compensation self-insurers	• BOI	<ul style="list-style-type: none"> <li>• Requests are rare</li> <li>• NO CHANGE</li> </ul>	11/8: Tabled; ask BOI for more information	
39	39-A	409	Title 39-A, section 409, relating to workers' compensation information filed by insurers concerning the assessment for expenses of administering self-insurers' workers' compensation program	• BOI	<ul style="list-style-type: none"> <li>• No requests</li> <li>• AMEND; clarify that already included within § 403, sub-§ 15 exception</li> </ul>	11/8: Tabled; ask BOI for more information	

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**To: Public Records Exceptions Subcommittee**

**From: Stephen Wagner**

**Date: November 4, 2013**

**Re: Experiences of California, Minnesota and Florida With Sentinel Event Reporting That Publically Discloses the Reporting Institutions' Identity**

**Summary:**

This memorandum explores the experiences of three states: California, Florida, and Minnesota. The previous memorandum regarding sentinel events identified these three states as states with sentinel or adverse event reporting laws that do not provide for the confidentiality of the names of the hospital. Specifically, this memorandum explores the statutory language, the legislative history, the agreements of proponents and opponents, the implementation of the law, and the impact of the confidentiality provision based on news, third-party commentary, and statements of certain stakeholders.

Overall, based on the experiences of these three states, it is hard to draw any conclusive results. California's adverse event reporting law, modeled after the Minnesota law, has received a considerable amount of criticism because of underreporting of adverse events. Meanwhile, Minnesota's adverse event reporting law has been received more positively. However, in both cases, neither the criticisms nor the benefits can be directly attributed to the confidentiality provisions, or even the adverse event reporting law. Florida is not included because of an error in the previous memorandum. So although the trend may indeed lean towards less expansive confidentiality provisions, whether because it is too difficult to measure the impact, or because it is simply too soon to tell, I do not believe one can come to strong conclusion either way about the impact of disclosing the identity of the medical facility in adverse event reporting regimes.

**I. California**

**Relevant Statutory Language [emphasis added]:**

§ 1279.3. Information regarding reports of substantiated adverse events and outcome of inspections and investigations

(a) **By January 1, 2015**, the department shall provide **information regarding reports of substantiated adverse events** pursuant to Section 1279.1 and the outcomes of inspections and investigations conducted pursuant to Section 1279.1, on the **department's Internet Web site** and in written form in **a manner that is readily accessible to consumers** in all parts of California, and that **protects patient confidentiality**.

(b) By January 1, 2009, and until January 1, 2015, the department shall make information regarding reports of substantiated adverse events pursuant to Section 1279.1, and outcomes of inspections and investigations conducted pursuant to Section 1279.1, readily accessible to consumers throughout California. The department shall also compile and make available, to entities deemed appropriate by the department, data regarding these reports of substantiated adverse events pursuant to Section 1279.1 and outcomes of inspections and investigations conducted pursuant to Section 1279.1, in order that these entities may post this data on their Internet Web sites. Entities deemed appropriate by the department shall enter into a memorandum of understanding with the department that **requires the inclusion of all data and all hospital information** provided by the

department. These entities may include universities, consumer organizations, or health care quality organizations.

(c) The information required pursuant to this section shall include, but not be limited to, information regarding each substantiated adverse event, as defined in Section 1279.1, reported to the department, and may include compliance information history. **The names of the health care professionals and health care workers shall not be included** in the information released by the department to the public.

## Current Status

Currently, the California Department of Public Health's Consumer Information System makes readily accessible adverse event information that is searchable by facility.<sup>1</sup> Based on my personal use of the website, this data is easily available.

## Legislative History

On September 29, the Governor of California signed into law S.B. 1301, California's adverse event reporting law. Like nearly all of the adverse or sentinel even laws across the county, this law was in response to a 1999 report by the Institute of Medicine that heightened to need to address these events.<sup>2</sup> The debate was relatively limited, and S.B. 1303 passed by a wide margin.

Of the 13 agencies that recorded support or opposition to S.B. 1301, 12 groups supported the bill and worked with the drafters to find an agreeable compromise. These groups include: Congress of California Seniors, AdvaMed, American Federation of State, County and Municipal Employees, California Chiropractic Association, California Hospital Association, Consumer Attorneys of California, Gray Panthers, Kaiser Permanente, Medical Board of California, Protection and Advocacy, and the Service Employees International Union. Their reasons for supporting the bill may be generally summarized as providing desired oversight over the quality of care given by hospitals and their staff.<sup>3</sup>

Conversely, the sole opponent on record is the California Medical Association (CMA). The CMA stated, in part, that they opposed the bill because they believed the reporting should be anonymous because without these basic elements the medical reporting would be "ineffective and unlikely to actually improve patient safety . . . [and] could also lead to increased litigation and the fear of being sued might actually suppress discussion about medial errors among providers."<sup>4</sup>

## Analysis of the Impact

Overall, it is difficult measure the specific impact that publically disclosing the names of the hospitals, has had on the reporting of adverse events in California. One reason this is difficult is because there is no baseline to compare the data to because California did not have a mandatory adverse event reporting system prior to 2006 that was based on the same definitions and scope. Secondly, this data only became available in 2009, and some regulations are still being promulgated. Nonetheless, there is some analysis and data to suggest that bill is not working as intended, providing some basis for the fears cited by the CMA. However, I have not found anyone or anything claiming this is a direct result of the confidentiality provisions.

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<sup>1</sup> Available at <https://hfcis.cdph.ca.gov/>. Last Accessed October 27, 2013.

<sup>2</sup> Memorandum from Reed Smith Heath Care Group, Reed Smith, to Health Care Clients of ReedSmith (Oct. 31, 2006) at 2; Institute of Medicine, *To Err is Human: Building a Safer Health System* (1999).

<sup>3</sup> CA B. An., S.B. 1301 Sen., 8/28/2006

<sup>4</sup> Id.

The fears raised by the CMA were also cited in the 1999 Institute of Medicine report. In an effort to address these concerns of underreporting, § 1280.4 imposes a \$100 per day fee for an event that goes unreported. However, a third-party analysis, based on interviews with staff, found that this is rarely, if ever, is enforced. Further, a November 21, 2010 article in the Los Angeles Times questioned if a relatively low frequency of reported adverse events actually meant a lack of incidents.<sup>5</sup> The article found that nearly 20% of the 416 hospitals covered under the law did not report any adverse events. The California public health officials and advocacy organizations expressed concern that hospitals may not be reporting adverse events that are in fact occurring. Senator Elaine Alquist, the author and sponsor of the bill, stated “What are the chances that nearly a quarter of California’s hospitals didn’t have a single medication, surgical or safety error since the reporting requirement became law?” However, the article did not argue that this was because of the fact that hospitals were publically disclosed. Further, the article did explain that the hospitals might be liable for significant fines following an investigation of events that were reported, arguably implying some causation. This suggests the causation between the confidentiality and the potentially poor reporting is possible, but not conclusive.

## II. Florida

### **Relevant Statute (emphasis added):**

Fla. Stat. § 395.0197

(8) The agency **shall publish** on the agency’s **website**, no less than quarterly, a summary **and trend analysis of adverse incident reports** received pursuant to this section, which **shall not include** information that would identify the patient, **the reporting facility**, or the health care practitioners involved. The agency shall publish on the agency’s website an annual summary and trend analysis of all adverse incident reports and malpractice claims information provided by facilities in their annual reports, which shall not include information that would identify the patient, the reporting facility, or the practitioners involved. The purpose of the publication of the summary and trend analysis is to promote the rapid dissemination of information relating to adverse incidents and malpractice claims to assist in avoidance of similar incidents and reduce morbidity and mortality.

### **Florida not included in analysis**

Upon a closer examination of the statute, legislative history, and case law, I believe I incorrectly characterized Florida’s confidentiality provisions in the previous memorandum. The current law of Florida is that the name of the reporting facility is not to publically reported on the website.

## III. Minnesota

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<sup>5</sup> Molly Hennessy-Fiske, ‘Error Free’ Hospitals Scrutinized: State Official Question Whether a Lack of Reports Required by a 2007 Law Means a Lack of Incidents, L.A. TIMES, Nove. 27, 2010. Available at <http://articles.latimes.com/2010/nov/27/local/la-me-hospital-errors-20101128>.

## Relevant Statutory Language (emphasis added):

M.S.A. § 145.64

(c) . . . prepare a **report** of sentinel events reported pursuant to NRS 439.835 by a medical facility, **including, without limitation**, the type of event, the number of events, the rate of occurrence of events, and **the medical facility which reported the event**, and provide the report for inclusion on **the Internet website** maintained pursuant to NRS 439A.270;

## Current Status

The adverse even data is readily available on the Minnesota Department of Health website and is, in my opinion, easier to navigate and find than the California webpage. The site lists data by year, and then by institution. It also has the following disclaimer that appears before one may access the data: "It's important to remember that these events are very rare. Use this information to help identify questions or concerns and talk to your health care provider. Ask doctors and nurses about the steps they are taking to ensure the safety of your care."<sup>6</sup>

## Legislative History

Minnesota's Adverse Health Care Events Reporting Act of 2003 was introduced to the Minnesota Senate on March 23, 2003. Approved by the relevant committees, the bill passed the Senate 56-6 and unanimously in the house; it became effective on August 1, 2003.<sup>7</sup>

## Analysis of the Impact

The Minnesota Bill is commonly cited as a model by states when those states are crafting their adverse event reporting laws. From its inception, the Minnesota law disclosed the name of the reporting facility.<sup>8</sup> At least within Minnesota, the law's effect has been perceived in a mostly positive light.

For example, the Minnesota Department of Health conducted a report on the first five years and found the law has been "a catalyst for many changes."<sup>9</sup> First, the report concluded that the adverse event law has been a driver for change in leadership and physician behavior. It claims more high-level officials and physicians are concerned about, and involved in, patient safety and quality of care than they were before the law was enacted.<sup>10</sup> Second, the law's main goal of information sharing between institutions, the article concludes, has been one of the "key successes."<sup>11</sup> Third, based on surveys of reporting institutions, the report found there was better implementation of best practices.<sup>12</sup> Specifically, "the results showed a very dramatic movement on all measures since 2003, to the point where adoption of the full set of best practices has become the norm across the vast majority of facilities rather than the exception."<sup>13</sup> Ultimately, 72% of the respondents of the Department's survey reported that the health system is "more" or "significantly

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<sup>6</sup> Available at <http://www.health.state.mn.us/patientsafety/adverseselect.cfm> (last accessed Oct. 27, 2013).

<sup>7</sup> SF 1019, Revisor N. 03-2350 (Minn. 2003)

<sup>8</sup> Reed Smith, *supra* note 2, at 2.

<sup>9</sup> Minn. Dept. of Health, *Adverse Health Care Event Reporting System: What Have We Learned?* (2009).

<sup>10</sup> *Id.* at 10.

<sup>11</sup> *Id.* at 13.

<sup>12</sup> *Id.* at 12.

<sup>13</sup> *Id.*

more safe.”<sup>14</sup> However, “respondents stated again that it can be difficult to know when an event has been prevented, and that we had no baseline prior to the law with which to compare current performance; they also noted that the adverse events law alone is not responsible for all safety improvements that have happened.” Many other organizations reported similar findings about the law, but based their findings on this single report.<sup>15</sup>

Critics of the law, such as the Minnesota based Citizen’s Council For Health Freedom, do not believe that these findings are a positive result. The criticism is not based on public disclosure specifically, but merely on the administrative burden and costs to hospitals created by mandated reporting in general. The Council’s president, Twila Brase, stated in a 2008 press release that “the diversion of dollars from patient care to paperwork is its own patient safety issue . . . [h]ospitals are overburdened with costly paperwork and reporting requirements that compete with actual patient care. Rather than requiring these reports, the Minnesota Department of Health should be striving to decrease the administrative burdens they place on hospitals.”<sup>16</sup> The organization seems, however, to be in the minority in Minnesota.

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<sup>14</sup> *Id.* at 18

<sup>15</sup> See e.g. [http://www.ormanager.com/wp-content/uploads/2013/06/ORM\\_0613\\_29\\_ASC\\_Adverse.pdf](http://www.ormanager.com/wp-content/uploads/2013/06/ORM_0613_29_ASC_Adverse.pdf)

<sup>16</sup> Press Release, Citizen’s Council for Health Freedom, Minnesota’s Adverse Events Reporting System: Unnecessary Diversion of Dollars from Patient Care (Jan. 2008) (available at <http://www.cchfreedom.org/cchf.php/10#.UnLLEZR4acI>).





1 and 2

**Public Records Exceptions Subcommittee**  
Proposed letter to ENR and HHS Committees

**Exceptions 1 and 2**

Senator James A. Boyle, Senate Chair  
Representative Joan W. Welsh, House Chair  
Joint Standing Committee on Environment and Natural Resources  
100 State House Station  
Augusta, Maine 04333

Senator Margaret M. Craven, Senate Chair  
Representative Richard R. Farnsworth, House Chair  
Joint Standing Committee on Health and Human Services  
100 State House Station  
Augusta, Maine 04333

Dear Sen. Boyle, Sen. Craven, Rep. Welsh and Rep. Farnsworth:

The Public Records Exceptions Subcommittee of the Right to Know Advisory Committee is tasked with reviewing existing public records exceptions in the statutes, and in the past three years has focused on the exceptions found in Titles 22 through 39-A. The Subcommittee is expected to review and evaluate each public records exception and make a recommendation for keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation.

As part of its review, the Subcommittee considered two exceptions in Title 22 within the "Community Right-to-Know Act" to address public concerns about hazardous substances. We understand that the program within the Department of Health and Human Services has never been implemented.

Because the Subcommittee does not feel comfortable recommending the repeal of the entire program, even though it has never been put in place, we worked on draft language to revise the confidentiality provisions to bring the language into conformity with the standard confidentiality wording and to make clear what information collected by the Department under the program would be considered public. Ultimately, however, we are reluctant to make recommendations concerning a program that has never been implemented.

We understand that the Department of Environmental Protection has programs that parallel or overlap the purposes of the Community-Right-to-Know Act, and that the Maine Emergency Management Agency and county emergency management authorities also collect information and develop emergency plans concerning hazardous substances. We hope that your committees will find the time to review the existing programs and determine whether action should be taken to put the Community Right-to-Know Act into effect and amended appropriately, or deleted completely.

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch or Colleen McCarthy Reid, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.

G:\STUDIES 2013\Right to Know Advisory Committee\Existing Public Records Exceptions Review\ENR&HHSletter re CRTKA.docx (10/10/2013 4:03:00 PM)



3

**McCarthyReid, Colleen**

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**From:** McCarthyReid, Colleen  
**Sent:** Tuesday, October 15, 2013 9:28 AM  
**To:** suzanne@mab.org; Pistner, Linda; Lynch, MaryAnn  
**Cc:** Reinsch, Margaret  
**Subject:** FW: RTK AC: Public Records Exceptions Subcommittee - sentinel events information

All, The Department of Health and Human Services has just provided the following written comments to questions posed by MaryAnn about the purpose and uses of the sentinel events reports. See the responses to the questions in red (copied from the email below here). Thanks, Colleen

Peggy & Colleen, What I would find helpful is the information from you, or DHHS officials:

1. What is the purpose of the sentinel event data collection? A system of reporting to improve the quality of healthcare and increase patient safety.
2. What does the state do w/ the information? We look at systems and processes in place that are related to the event. Track and trend identified factors in our database.
3. Is it used to hold facilities and personnel accountable., i.e., licensing decisions? Facilities are accountable to report identified events. There is a firewall between our program and Licensing functions.
4. Is it educational, ie., shared with other institutions for educational purposes, or to develop best practices? Yes without identifying specific facilities or providers.
5. What is the Dept.'s position on public records for sentinel report? The department finds value in the protections afforded by statute, and that efforts to remove such protections will have a severe adverse impact on the efficacy of this program.

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**From:** Katchick, Joseph [mailto:Joseph.Katchick@maine.gov]  
**Sent:** Tuesday, October 15, 2013 8:02 AM  
**To:** Reinsch, Margaret; McCarthyReid, Colleen  
**Subject:** FW: RTK AC: Public Records Exceptions Subcommittee - sentinel events information

Colleen and Peggy,  
Per your request.  
Thanks

**Joseph Katchick, RN**  
Health Services Supervisor - Sentinel Events  
Division of Licensing and Regulatory Services

*Division of Licensing and Regulatory Services*  
*Integrity – Openness – Quality – Safety – Trust - Validation*

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**From:** McCarthyReid, Colleen [<mailto:Colleen.McCarthyReid@legislature.maine.gov>]  
**Sent:** Tuesday, September 24, 2013 1:58 PM  
**To:** Katchick, Joseph  
**Subject:** RTK AC: Public Records Exceptions Subcommittee - sentinel events information

Hi Joe, One of our Subcommittee members has just asked for more information on the sentinel events provision. Could you answer the questions raised in the email below? If you'd like, you can answer them in person at the subcommittee meeting. No need to prepare a written response. Sorry for the short notice!

Thanks, Colleen and Peggy

**From:** Mary Ann Lynch [<mailto:mary.ann.lynch@courts.maine.gov>]  
**Sent:** Tuesday, September 24, 2013 12:01 PM  
**To:** Reinsch, Margaret  
**Cc:** [suzanne@mab.org](mailto:suzanne@mab.org); Pistner, Linda; McCarthyReid, Colleen; Fouts, Henry; Kielty, Brenda; Linda Valentino ([senatorvalentino@gmail.com](mailto:senatorvalentino@gmail.com)); Monaghan-Derrig, RepKim  
**Subject:** Re: RTK AC: Public Records Exceptions Subcommittee - websites

Peggy & Colleen, What I would find helpful is the information from you, or DHHS officials:

1. What is the purpose of the sentinel event data collection? A system of reporting to improve the quality of healthcare and increase patient safety.
2. What does the state do w/ the information? We look at systems and processes in place that are related to the event. Track and trend identified factors in our database.
3. Is it used to hold facilities and personnel accountable., i.e., licensing decisions? Facilities are accountable to report identified events. There is a firewall between our program and Licensing functions.
4. Is it educational, ie., shared with other institutions for educational purposes, or to develop best practices? Yes without identifying specific facilities or providers.
5. What is the Dept.'s position on public records for sentinel report? The department finds value in the protections afforded by statute, and that efforts to remove such protections will have a severe adverse impact on the efficacy of this program.

BTW, here is a useful compendium of state reporting laws:<http://www.nashp.org/pst-state-list>

Mary Ann Lynch, Esq.  
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Maine Judicial branch  
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207-592-5940

*"Nothing is to be preferred before Justice." -Socrates*

6

**Public Records Exceptions Subcommittee**  
Proposed letter to VLA Committee

**Exception 6**

Senator John L. Tuttle, Jr., Senate Chair  
Representative Louis J. Luchini, House Chair  
Joint Standing Committee on Veterans and Legal Affairs  
100 State House Station  
Augusta, Maine 04333

Dear Sen. Tuttle and Rep. Luchini:

The Public Records Exceptions Subcommittee of the Right to Know Advisory Committee is tasked with reviewing existing public records exceptions in the statutes, and in the past two years has focused on the exceptions found in Titles 26 through 39-A. The Subcommittee is expected to review and evaluate each public records exception and make a recommendation for keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation.

As part of its review, the Subcommittee considered an exception in Title 28-A, section 755 related to the business and financial records of liquor licensees. During the 125<sup>th</sup> Legislature, we understand that the 125<sup>th</sup> Legislature transferred statutory responsibility for collecting data from on-premise liquor licenses from the Department of Public Safety to the Bureau of Alcoholic Beverages and Lottery Operations (BABLO). At the Subcommittee's request, BABLO completed a survey about section 755 and provided input about the application and potential impact of the confidentiality exception. We attach that information for your review.

While BABLO has not yet instituted a system or process to collect data for liquor licensees, they expressed interest in gathering data from on-premise licensees for marketing purposes to help the State better manage the sale and distribution of spirits throughout the State. However, BABLO also indicated that stakeholders representing licensees raised concerns that the confidentiality provision in section 755 may impact their ability to collect that data. BABLO suggested that the Subcommittee consider making statutory changes to clarify section 755 to enable the agency to collect certain information from licensees, but otherwise maintain the confidentiality of licensees' business and financial records while in the possession of the licensee.

Because the suggestion raised other policy and legal issues that go beyond the confidentiality exception, the Subcommittee is reluctant to move ahead without legislative input. We understand that your committee may be considering legislation in the Second Regular Session to further clarify BABLO's statutory responsibilities for liquor enforcement. As part of that review, we hope that your committee will consider the confidentiality exception and consult with BABLO and other interested parties to determine whether statutory changes should be recommended to Title 28-A, section 755.

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch or Colleen McCarthy Reid, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.



19

**Public Records Exceptions Subcommittee**  
Proposed Draft  
#19

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

**§8703. REQUIREMENTS**

Telecommunications relay services must conform to the following requirements.

1. **Geographic availability.** Services must be available on a statewide basis to the extent that they are technologically feasible.
2. **Temporal availability.** Services must be available 24 hours a day for every calendar day of the year.
3. **Accessibility.** Relay service operators may not refuse calls or limit the length of calls.
4. **Blockage level.** The allowable blockage level for the telecommunications relay services must be reasonable. Complaints relating to the reasonableness of the blockage level may be brought to the commission by the advisory council or by 10 or more aggrieved persons pursuant to section 1302, subsection 1.
5. **Confidentiality.** ~~Relay service communications must be~~ The providers of telecommunications relay services must keep relay service communications confidential.
6. **User fee prohibited.** A separate fee for telecommunications relay services may not be assessed to users of the services.
7. **Recovery of expenses and costs.** The costs for telecommunications relay services must be recovered through the state universal service fund pursuant to section 7104, subsection 7.
8. **Advisory council.** The providers of telecommunications relay services must take into consideration any comments from the advisory council.
9. **Restrictions.** Upon request, the providers of telecommunications relay services shall make known to users of the services any restrictions on the types of calls handled such as collect calls and automated information services.
10. **Notification of rates or charges.** Upon request, the providers of telecommunications relay services shall make known to users any rates or charges for the services.

**Summary**

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





24

**McCarthyReid, Colleen**

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**From:** Miller, Lynette C. <Lynette.C.Miller@maine.gov>  
**Sent:** Monday, October 28, 2013 2:58 PM  
**To:** McCarthyReid, Colleen  
**Cc:** McAleer, Robert  
**Subject:** RE: Right to Know Advisory Committee's Review of Statutes Governing the Homeland Security Council  
**Attachments:** MEMA Annual Report to the Legislature CY 2012.pdf

Hello, Colleen and Peggy,

Attached please find MEMA Director Rob McAleer's 2012 Report to the Criminal Justice and Public Safety Committee which he delivered early this year, as required under Title 37-B section 708, subsection 2, paragraph H.

The report has widened in scope over the last few years, adapting to Committee interest in MEMA's overall activities. Accordingly, the attached report includes an overall assessment of emergency management achievements and challenges in addition to homeland security issues.

We have never regarded these annual reports as protected from public disclosure by the confidentiality provision in subsection 3. We have never had a FOIA request for them, but would provide them if a request was made.

I hope this information is helpful; let me know if you need more or different.

Lynette

*Lynette C. Miller  
Director, Communications and Special Projects  
Maine Emergency Management Agency  
72 State House Station  
Augusta, Maine 04333-0072  
207-624-4420 / 800-452-8735*

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**From:** McCarthyReid, Colleen [<mailto:Colleen.McCarthyReid@legislature.maine.gov>]  
**Sent:** Tuesday, October 15, 2013 2:26 PM  
**To:** Miller, Lynette C.  
**Cc:** Reinsch, Margaret  
**Subject:** Right to Know Advisory Committee's Review of Statutes Governing the Homeland Security Council

Hello Ms. Miller,

The Right to Know Advisory Committee's Public Exception Subcommittee is reviewing the confidentiality exception contained in Title 37-B, section 708, subsection 3. You may recall this provision was up for review last Fall; the Subcommittee tabled it for consideration this year. Last year, you completed a survey for the Subcommittee to use in its review of the exception. We've attached it for your reference as well as the statute codifying the Homeland Security Council.

In discussion the exception, the Subcommittee members had some questions about the reporting requirement in subsection 2, paragraph H and we were wondering if you may be able to answer. They are interested in finding out 2 things primarily:

1. Are annual reports provided to the Legislature's Criminal Justice and Public Safety Committee as required by section 708, subsection 2, paragraph H and could you provide them a copy of the most recent annual report?
2. Are these annual reports public records pursuant to Maine's Freedom of Access Act and made available to the public if requested, or, are the reports protected from public disclosure by the confidentiality provision in subsection 3?

The RTKAC has tabled its consideration of the provision until its next Subcommittee meeting on November 4, 2013. Any information you can provide in response to their questions would be very much appreciated.

Please let us know if you have any questions or need additional information.

Thanks, Colleen and Peggy

Colleen McCarthy Reid, Esq.  
Margaret J. Reinsch, Esq.  
Right to Know Advisory Committee Staff  
Office of Policy and Legal Analysis  
13 State House Station  
Augusta, Maine 04333-0013  
(207) 287-1670

**Maine Emergency Management Agency  
2012 Annual Report  
to the  
Joint Standing Committee  
on  
Public Safety and Criminal Justice**



**Maine Emergency Management Agency  
45 Commerce Drive, Suite 2  
Augusta, Maine 04330  
(207) 624-4400  
[www.maine.gov/mema/](http://www.maine.gov/mema/)  
[www.maine.gov/mema/prepare](http://www.maine.gov/mema/prepare)**



# **Annual Report to the Public Safety and Criminal Justice Committee**

## **Executive Summary**

### **Introduction --**

The Maine Emergency Management Agency (MEMA) provides leadership, coordination and support in the four phases of emergency management: mitigation, preparedness, response and recovery to lessen the effects of disaster on the lives and property of the people of the State of Maine. The Agency is also responsible for the coordination of Homeland Security activities. In carrying out its responsibilities, the Agency interacts with a wide array of County, State, Federal and Private Sector partners.

In spite of having the smallest agency (29 FTEs) of any State that has combined both Emergency Management and Homeland Security functions and the third smallest non-Federal operating budget, MEMA continues to meet the requirements of Federal mandates while accomplishing the most critical elements of our general mission. Additionally, the Agency manages both the Dam Safety Program and the Technological Hazards Program which is not the case in many states across the nation. Although MEMA continues to provide the service the State expects, the pressures of working in the emergency management environment combined with austere funding and staffing levels has taken a toll. During the last six years we have had turnover in (18) positions with (4) more actively seeking opportunities for career development in other organizations. The extremely limited depth in all areas represents the single biggest challenge for the Agency.

The detailed report that follows this Executive Summary provides a snapshot of the various activities and issues MEMA has worked with during the past year. It begins with a discussion of several very significant issues and then is generally organized along the four phases of our mission with additional separate sections for Homeland Security, Finance and County activities. The remainder of this Summary highlights some of the significant achievements, events, challenges and objectives that MEMA has or soon will experience.

### **Significant Accomplishments/Events --**

Based on Federal reports and information provided by the County Directors, we have met the FCC mandate to narrowband our radio communications for first responders at both the State and local level. The success of this multi-year effort supported by the investment of several million dollars of federal and local funds will avoid the loss of assigned radio frequencies critical to first responder interoperability and eliminate the potential for large fines being levied by the FCC. As of the deadline, Maine led the Nation with a 98.7% compliance rating. We will continue to monitor in the event there are coverage gaps caused by reduced broadcast range.

Maine's response for mutual aid assistance from New York and New Jersey in the aftermath of Hurricane Sandy was significant, timely and effective and provided a great learning experience for us. Our ability to send resources to others is a critical element of the Nation's overall response strategy. We will continue to work with our partners to identify resources that may be available to meet future requirements.

The Agency has leveraged limited funding to maintain a robust yet focused training, education and exercise program throughout the State. With relatively limited human resources available in most of the State, it is critical to ensure our first responders have the skill sets necessary to perform their assigned tasks and work together in a cohesive manner. We will continue to find ways to bring the highest number of people to the highest level of readiness that we can with an emphasis on maintaining current capacity.

The Agency has worked closely with State, local, volunteer organizations and private sector partners to develop detailed Mass Feeding and post-disaster recovery plans and procedures. In the event of a catastrophic event such as Hurricane Sandy, these efforts will prove to be equally as important as our initial response efforts. Through exercises and training, we will ensure that these plans remain operational and relevant to our potential requirements.

### **Significant Challenges --**

Federal Homeland Security funding has decreased from \$5.1M in FY11 to \$2.8M in FY12. The allocation of this funding allowed for use by State agencies (20%) is not sufficient to continue funding MEMA staff at current levels. Absent an increase in General Fund support, the Agency is faced with a choice of losing approximately 25% of our staffing or being forced to use alternate Federal funding for MEMA staff that would have otherwise been available to support operations at the County and local level. We are working with the Governor's Office to ensure we can maintain our operational capability.

Personnel turn-over continues to impair effectiveness within the Agency because of the specialized skill sets required and the lack of staffing depth in any one single area. Gaining proficiency in the various aspects of MEMA operations is a time consuming process. Fiscal constraints have limited our ability to stabilize staffing through competitive compensation.

A well-prepared public is perhaps the best emergency management tool we can have. Generally speaking, the public does not have a focus on individual or family preparedness. With limited resources and in the face of competing interests, we need to find a way to work with our partners at all levels to bring about a cultural change and improve the preparedness mindset of Maine's citizens.

The Federal Government has declared two thirds of the State as salmon habitat. This has resulted in the majority of our mitigation projects being subjected to the very stringent requirement of the Endangered Species Act (ESA). Mitigation is one of the most cost effective tools we have to lessen the impacts of future disasters. The ESA has had a very negative impact on our mitigation program and may well impact future post-event repair efforts.

## **Overall Objectives for CY 13 --**

MEMA will leverage its limited resources to maintain a focus on core capabilities and sustainment of current capabilities throughout the State while also expanding where possible our outreach to our citizens to advance their preparedness to deal with emergencies.

MEMA will investigate all possible means of reducing attrition and stabilizing our workforce to ensure a high level of readiness at all times and maintain a workforce that has the skills and experience necessary to serve the State's needs.

MEMA will work with FEMA and our Congressional Delegation in an attempt to de-conflict the ESA requirements and our mitigation efforts in a manner that meets the requirements of the law yet is reasonable for our communities to achieve.



## Homeland Security Funding

The reductions in our allocation of Federal funds through the Homeland Security Grant Program (HSGP) have reached a critical point. In our last report, we discussed the possibility of a drop in funding levels from \$6.6M in FY 10 to \$3M in FY12. The final FY12 total of \$2.8M was worse than expected. The negative impacts of these reductions have become a reality and we are currently dealing with two major challenges.

The first challenge involves available funding for county and local agencies. The State is required to pass through 80% of this funding to county and local agencies with a minimum of 25% being allocated to Law Enforcement and Terrorism Prevention Programs (LETPP). Prior to making individual local allocations, there are a number of State-wide programs that provide direct support to county and local community activities, such as exercises, training, special team stipends and equipment recapitalization, etc. The total cost of these activities is approximately \$637K that comes out of the 80% share. We divide the remaining funding with 55% going to the counties and local communities and 45% going to our six metropolitan areas.

In the past, there has been an annual competitive grant process to determine the most effective way to disburse the 55% allocation to county and local funding. Because the amount of funding is so reduced, we determined that the competitive grant process is no longer viable. This year counties have received a formula based allocation based on a standard baseline amount for each county, population, number of local jurisdictions and number/type of special teams within the county. The results of that process are shown in attachment (a) to this report.

The second challenge deals with the impacts of reduced funding available for spending by State agencies. In response to previous budget actions, MEMA has shifted staff funding from General Fund allocations to a combination of General Fund and Federal funding or in some cases to 100% Federal funding. Currently, MEMA has (13) out of (30) FTE employees that are supported in whole or part by HSGP funds at a cost of approximately \$792K. That amount exceeds the \$476K that are available in FY12 HSGP to support MEMA staffing and any other State level activities.

Faced with this new fiscal reality, we are reviewing funding alternatives with the goal of retaining, at a minimum, current capabilities. MEMA is the second smallest agency of all the States that combine Homeland Security with Emergency Management, and the Agency has several additional responsibilities that other State EMA's do not have. Reductions in staffing levels will prevent us from being able to perform our basic mission. State resources are continually scarce throughout public safety functions and this strain will require internal budget/staffing adjustments in an attempt to continue maintaining our basic mission. Our hope is that we will be able to balance direct investment in local capability with retention of state-level staff and programs that provide invaluable service to local jurisdictions.

## **FCC Narrowbanding Mandate**

As previously reported, the FCC has mandated that virtually all radio equipment operating on specific VHF frequencies be “narrowbanded” by January 1, 2013. This means that the radios need to be using 12.5 Mhz of radio frequency spectrum as opposed to 25 Mhz of spectrum that was traditionally used. This mandate impacted almost all of the equipment used by our first responders and resulted in the need to re-program or in many cases acquire new radios. Using a combination of grant funds and locally generated funds over the past several years, MEMA has made compliance with this mandate one of our highest priorities. Based on the compliance reports produced by the FCC, Maine has the highest rate of compliance by any State in the Country. While the FCC reports indicate a few instances of continued wide-band use, we believe that those are by and large cases where the frequency owner is no longer operating the associated equipment. In short, we believe that Maine’s efforts to meet the mandate have been successful.

## **Disaster Response**

Maine was fortunate once again this year in that we did not experience any Major Disaster Declarations. We did, however, see some unusual weather events and an earthquake that was felt by large portions of the State. Fortunately, the earthquake was relatively minor and caused very little, if any, damage. One of the weather events was a very concentrated and powerful rain storm that impacted fairly small areas in Piscataquis and Penobscot Counties. Although the local damage was significant, particularly in Brownville and Patten, it was not significant enough for the State to qualify for Federal assistance. Two businesses in Brownville qualified for HUD funds through the Community Development Block Grant Program (CDBG). But, there was no funding stream to assist with repair of public infrastructure other than State-owned roads. As a result, the impacted communities had to expend local resources to cover expenses. Recognizing that such incidents could easily occur elsewhere, MEMA has spoken with a representative of the Maine Municipal Association about the possibility of communities acquiring insurance policies to help absorb some of the impact.

Hurricane Sandy was a large and deadly storm that had a limited impact on Maine. With the exception of power outages that were quickly restored, there were no reports of significant damage. That left the State in a position to provide assistance to others less fortunate. A Maine Forestry Incident Management Team reinforced with a communications specialist and Sheriff’s Deputy from Washington County, spent (14) days coordinating logistics operations in the Queens and Brooklyn regions of New York City. Another group of MEMA, DOT, State Police, National Guard, the Freeport Fire Chief and a retired PUC employee augmented the Emergency Operation Center (EOC) in New York City for two weeks providing much needed experience and skills to include coordination of the EOC. A third group consisting of Maine State Police and Cumberland County Deputies provided security patrols for (6) days in a heavily impacted area of New Jersey. Each of these groups brought home numerous valuable lessons learned that we will use to better respond to future events in Maine.

On a related note, the Stafford Act generally limits the Federal Government's disaster relief funding to 75% of total Public Assistance (PA) costs. With regard to fiscal obligations related to previous disasters within the State, the Governor's Supplemental Budget contains \$240K to meet the State's share of PA costs. This will leave a small shortfall of just under \$10K. While a Disaster Relief Fund exists in State Statute, there is currently no regular funding mechanism for the fund.

## **Virtual Maine**

MEMA and the Maine Office of GIS (MEGIS) formally launched the Virtual Maine (vME) system in 2012. The system was built using an ARRA grant from the US Department of Energy in partnership with the Governor's Office of Energy Independence and Security and the Maine PUC. vME ties together various data sources such as 511 transportation information, USGS stream gages, National Weather Service alerts and warnings, and utility data from Central Maine Power and Bangor Hydroelectric into a single, unified Common Operating Picture (COP) using a Google Earth platform. The vME system allows MEMA to share this data with other emergency managers at Federal, County and Local levels so that all partners are able to make informed decisions.

vME is an easy to use platform that layers various data sets onto a globe to better visualize conditions and impacts of an emergency event. For example, by combining power outage data with known locations of hospitals and potential road closures, first responders can determine alternate routes for transporting patients quickly in life safety situations. The Google Earth system is secure and easy to use. MEMA has already incorporated data from the MEGIS data catalog, Maine EMS, Department of Agriculture, Conservation and Forestry and others into the single globe. Over time, the Virtual Maine COP will continue to improve and serve more robust data as more agencies contribute their own information to the system to be shared by all users.

## **Cross-Border Activities**

### **Border Interoperability Demonstration Program (BIDP)**

Progress continues in Year 2 of 3 under this \$3.9 million grant to Washington, Aroostook, Somerset, Franklin and Oxford counties to improve interoperable communications within those counties and with neighboring Canadian provinces of New Brunswick and Quebec. MEMA has been coordinating work in the various counties and with the federal Office of Emergency Communications. Notable achievements in 2012 included a significant upgrade to Somerset County's communication system, linking the Jackman/Moose River area with the Regional Communications Center in Skowhegan. Aroostook County partnered with the State Office of Information Technology (OIT)'s MSCommNet Project to co-locate a repeater on the new Cyr Tower in Fort Kent. This arrangement not only saved significant BIDP grant dollars for other uses by not having to site and build a new tower, the deal also contributed \$200,000 toward the MSCommNet Project for Aroostook's long term lease at the tower site.

Additional tower construction and improvements are planned for 2013. Caches of mobile and portable radios were purchased for use by first responders in communities on both sides of the Maine – Canada border. A series of tabletop exercises planned for 2013 are designed to engage a larger segment of first responders in this initiative.

### **Regional Resiliency Assessment Program (RRAP)**

This is a program primarily funded by DHS designed to investigate the complex dependencies and interdependencies within the energy sector on both sides of the Maine-New Brunswick border and related dependencies within the Canadian Agriculture and Transportation Sectors. It will also look at the risks and vulnerabilities associated with those linkages. This initiative is one element of the recently announced US-Canada “Beyond the Border” initiative.

This is a multi-faceted effort that includes site visits by specially trained National Guard soldiers assisted by personnel from Argonne National Laboratories, critical infrastructure security surveys, computer based visual assessment data collection, and in-depth facilitated discussions with interdependent sectors. Among the outcomes of this initiative will be overall security posture comparisons of like facilities, and dynamic protective measures and resilience index software tools to allow facilities to make informed decisions to strengthen their security posture.

This Program is still ongoing with multiple site visits and inspections of critical infrastructure assets completed in New Brunswick during 2012, and more scheduled for 2013. Maine participated in New Brunswick’s all-sector critical infrastructure meeting and table top exercise in November 2012.

### **Interoperable Communications**

The ability of first responders to communicate during an emergency remains a critical element of our overall capabilities. Our State-wide Interoperability Coordinator (SWIC) has carried out several initiatives that will enhance communications. Those initiatives included:

- Expansion of access to common operating frequencies. Based on an existing formal agreement our first responders have the ability to establish on-scene communications using up to six state-wide common frequencies. Access to these frequencies was recently extended to the Maine CDC, Baxter State Park Rangers and the US Customs and Border Patrol.
- Developing and distributing specifications and technical requirements for encrypted radios for use by our four Type 1 Hazmat Regional Response Teams.
- Work with federal and local agencies to resolve interference issues on first responder radios in and around the Town of Lebanon.
- Providing Communications Unit Leader Training for (70) individuals with (8) people now fully certified.
- Conducting a Technical Assistance Table Top Communications Exercise with Kennebec County.

- Publication of a bi-monthly newsletter that is posted on line and distributed to over 300 specific individuals.
- Participation with the FCC Region #19 Advisory Board, FEMA Regional Emergency Communications Coordination Working Group, Plain Language Working Group and the Canadian Communications Interoperability Technology Interest Group.
- Conducted a Point of Distribution (POD) Exercise to distribute a large quantity of radios to 16 counties as part of the narrowbanding initiative. This proved to be an effective means of distributing the radios and was a good opportunity to practice the procedures that would be implemented to distribute other types of resources during an emergency.

## **Homeland Security Division Activities**

### **Threat and Hazard Identification and Risk Assessment (THIRA)**

MEMA completed the FEMA-mandated Threat and Hazard Identification and Risk Assessment (THIRA) process for 2012 using input from subject matter experts at Federal, State, County and Local agencies. THIRA is a process that leads every state to identify the most likely catastrophic scenarios that could impact the state, whether from natural, technological, or human-caused threats. Once the likely threat scenarios were identified, MEMA projected the impacts of these scenarios on each of the 37 “core capabilities” specified in the National Preparedness Framework. This resulted in list of projected “capability targets” on which MEMA then rated Maine’s overall readiness to perform in each of the 37 core capability areas. These capabilities (or gaps, where appropriate) were then reported in the State Preparedness Report (SPR) for 2012. The THIRA and SPR reports from all 50 states will be compiled by FEMA and reported in aggregate during annual program reviews by Congressional leadership.

### **Surveillance Detection Training**

During November 2012, the Agency co-hosted a three-day Surveillance Detection Course in Portland. It was attended by approximately 30 members of the private sector, universities, and LE agencies. This course teaches commercial infrastructure operators and security staff of Critical Infrastructure and Key Resource (CIKR) facilities how protective measures can detect and deter potential threats to CIKR and fundamentals for detecting surveillance activity. Participants applied newly learned skills such as vulnerability analysis, surveillance detection, analysis of avenues of approach, and observation and reporting during practical exercises.

### **Active Shooter Training**

Experience has shown that Maine has the potential to experience an active shooter incident similar to the recent tragedy at a movie theater in Aurora, Colorado, the December shooting incident at a mall in Portland, Oregon or the more recent tragic school shooting in Newtown, Connecticut. During September 2012, the Agency co-hosted a one-day Active Shooter Awareness Course in Portland. This course was designed to provide awareness to private sector owner/operators, law enforcement officials, and local government officials on how to be prepared for active shooter incidents. Nearly 100 people attended this training

event. There was a second Active Shooter session in Portland during December before a packed house. This session was followed by a one day train-the-trainer session to expand our in-State capabilities. The State Police, funded by Homeland Security Grants, conduct 7-12 sessions around the State on a yearly basis. And there have been numerous other sessions over the past several years. MEMA is also working closely with the Department of Education and the Maine Schools Emergency Resource Team to raise awareness and preparedness levels in our schools. Awareness is high, but it is an effort that must continue and be expanded.

### **Improvised Explosive Device (IED) Search Procedures:**

During July 2012, the Agency co-hosted two one-day IED Search Procedure Courses in Portland and Bangor. These courses increase preparedness of security personnel and facility managers of critical infrastructure sites. They also focused on general safety measures used for specialized search and explosives sweeps.

### **Coordination with the USCG**

The Agency worked with USCG in 2012 as a partner in USCG Sector Northern New England's Area Maritime Security Training and Exercise Program (AMSTEP) Functional Exercise which revolved around a notional terrorist attack on an oil tanker in Portland Harbor. This exercise involved all levels of government and the private sector to determine the actions required to respond to and recover from an incident of this type.

### **Maine Information and Analysis Center (MIAC)**

MEMA continues to maintain an excellent working relationship with the MIAC, Maine's designated Fusion Center, which is under the operation direction of the Department of Public Safety. In conjunction with the opening of the new fusion center space and per DHS Baseline Capabilities for Fusion Centers, MEMA's Critical Infrastructure Protection (CIP) officer is now stationed in the Center on a full time basis. The CIP officer continues to work under the direction of the Homeland Security Division Director to further the CIP mission. This mission is now enhanced through increased training and information sharing capabilities within the Center.

## **Operations and Response Division Activities**

### **Training**

One of our areas of focus this year has been on Local Elected Officials training for emergencies. The base for this training has been the ICS 402 awareness program with the recommendation to participate in an ICS/EOC interface seminar for hands on experience. These seminars are currently being conducted statewide as part of MEMA's National Incident Management System (NIMS) compliancy initiative. As we have experienced, even small rural towns can be easily overwhelmed by isolated yet significant events, requiring a unified outside response for emergency support. Knowledgeable local officials are a critical component to a coordinated response that is able to effectively assimilate outside resources in

a timely manner. To date, a total of 434 officials around the State have completed this training and this number is continuing to rise.

## **Exercises**

The Agency has continued to coordinate a robust exercise program throughout the State with (25) Table Top Exercises, (6) Functional Exercises and (7) Full Scale Exercises. We estimate that these exercises involved participation by 1500-2000 first responders and emergency management professionals. With the national focus on the emerging cyber threat, MEMA participated in a two day Cyber Security Exercise with the Office of Information Technology and the Maine Revenue Service. Additionally, Maine participated in the 2012 National Level Exercise that was based on a Cyber Security scenario. Maine was also the first State in FEMA Region 1 to exercise its recently completed Disaster Recovery Plan. This exercise involved not only state level partners, but also participants from several counties and local communities and other New England States.

## **Community Emergency Response Teams (CERT)**

Maine's local CERT teams consist of trained, specialized and pre-identified individuals and are a very effective way to engage private citizens into our response capabilities. MEMA and Androscoggin EMA planned this year's annual jamboree. (120) participants from across the State trained on CERT as well as communications, pet sheltering and search and rescue. This three day event was hosted by Hancock County and included an opportunity for participants to receive National Certification from the Humane Society of the United States.

## **Radiological Hazards**

This past year Maine participated in a federally required and graded exercise involving the Seabrook Nuclear Power Plant located in New Hampshire. Although not in Maine, the facility could potentially have impacts in Maine related to our natural resources such as agricultural and fisheries. This 2-day exercise allowed the state's Emergency Response Team (ERT) to coordinate local, county and state resources from the state EOC in response to a simulated event at the facility. All Maine agencies were given high marks and praise by the evaluators on their ability to recognize the issues and present solutions on how best to mitigate any impacts.

We also interact with two other facilities (Maine Yankee and Portsmouth Naval Shipyard) in Maine with regular meetings to ensure that adequate planning and communications are in place.

Finally, in the upcoming year we will be rewriting existing response plans to meet new Federal regulations for fixed nuclear facilities that have recently been issued.

## **Hazardous Materials:**

Acting on behalf of the State Emergency Response Commission (SERC), the Agency coordinated forty-one hazardous materials response classes at no charge to local first responders with an attendance of 761. This training included thirty-five classes at the operations and technician level for a total of 581 attendees, 4 classes with a new chemical identification program called Hazmat IQ with 120 attendees and two tank truck rollover classes with 60 attendees (coordinated with DEP and supported with equipment by industry).

The Agency also offered four classes to industry to help them better interpret their requirements, with an attendance of 91. These classes included three Emergency Planning and Community Right to Know Act (EPCRA) workshops (1/2 day) with 75 attendees, and one Areal Locations of Hazardous Atmospheres (ALOHA) workshop (all day) with 16 attendees. This last class focuses on the use of a software tool to plot hazardous materials plumes.

Building on the momentum from previous years, the staff conducted outreach activities throughout the State and worked with 98 new reporting facilities. Eight of these new facilities also contained Extremely Hazardous Substances. This outreach enabled a total of 2,387 facilities to successfully file reports and meet Federal and State requirements. Last year, our total was 2,362.

The Agency has also been working with the County Local Emergency Planning Committees (LEPCs) to update required planning. Most of the sixteen LEPCs have provided plans over the past 2 years which the Agency has reviewed or will be reviewing and providing comments on ways the plans may be improved and simplified. Two of the plans have been accepted by the SERC.

We have issued a Field Operating Guide for use by the Regional Response Teams and Decontamination Strike Teams that outlines common operating practices so the teams can function as single entities or as combined teams and understand what their role is in a response.

During the past year, the FEMA Region 1 Chemical Facilities Anti-Terrorism Standards (CFATS) team met with MEMA staff to discuss our situation with regard to facilities working with what are referred to as chemicals of interest (COI). Since the original meeting there have been regular communications with our Hazmat Officer and Division of Homeland Security to keep them updated on Maine facilities that were identified as working with COI at or above the quantity threshold amounts to fall under CFATS regulations.

## **Regional Response Teams (RRTs) and Decontamination Strike Teams (DSTs):**

During this past year all of our Regional Response Teams were inspected to ensure that the required training, physicals and equipment were in order. The RRT's were well prepared for this type of inspection and we found their records were well documented. We did lose one RRT this past year that chose to withdraw from the program because of the time required to maintain proficiency, competing requirements, and because of the lack of callouts



over the past five years. Based on our analysis of the threat, other resources capable of responding and diminished funding, we have made the decision not to replace this team.

Costs associated with maintaining these teams continue to be a concern. While our equipment recapitalization plan is continuing on course, future cuts to funding and changes to threat assessment may drive a need for additional reorganization.

## **Dam Safety**

**Hazard Classification Modeling:** The rapid assessments of all (27) “high” (HH) and (76) “significant” (SH) potential hazard dams, begun in September last year, was completed in March 2012. The short timeframe of these rapid inspections precluded a detailed downstream hazard assessment from being completed concurrently. Some hazard classifications were challenged by dam owners. Other hazard classifications appeared to be out of date. At the completion of the condition assessment, we determined a need to produce detailed, consistent and accurate “dam breach flood maps” for all State regulated SH and HH dams. The process began with the modeling of Emery Mills Dam, because its “hazard” classification was disputed by the Town of Sanford. Our software modeling system created a dam breach flood map which we used to prove the hazard of the dam. We intend to use this type of map as a prototype for further MEMA modeling.

**Rapid Dam Assessment Reports:** At the completion of the rapid assessment process, no dams were found to be in an imminent danger of breach. Three HH dams were found to be in poor condition: Mt. Zircon, Christina and Emery Mills. All three currently operate with reduced reservoirs. Water levels maintained below the spillway crest of these dams are; Mt. Zircon 15’, Emery Mills 4’ and Christina 4’. No action has yet been taken by the owners to repair these dams. (27) of the total (76) SH dams were found to be in “poor” condition after the assessment was complete. Two SH dams, Colcord Pond and Southport Water Supply were repaired this year. Ulmer Brook Dam, also a SH dam, breached some years back, but beavers continue to block up the breach. The dam owner has undertaken to keep the pond at spillway depth and continues to remove beaver construction when it exceeds this height. Of the remaining dams, all are aging, all need breach mapping and all need repairs of some sort. Focus will continue on these dams during 2013.

**Observation of defective dams:** (14) defective dams were regularly visited in 2012 to observe if any defects were worsening or developing. These dams are; Ulmer Brook, Lake St. George, Pigeon Brook, Sandy Pond, Meadow Cove, Mt. Zircon, Colcord Pond, Emery Mills, Southport Water Supply, Hunnewell Lake, Bryant Pond, Christina, Panther Pond, Stoddard’s Pond. This year four Defective Dams have been repaired; Colcord Pond, Southport Water Supply, Hunnewell Lake, Panther Pond. Stoddard’s Pond was dewatered two years ago and is now a LH dam.

**Facilitating and managing dam Emergency Action Plans (EAP’s):** Currently there are (27) HH and (76) SH dams. 100% of HH dams have EAP’s. 93% of SH dams have EAP’s. The total percentage of outstanding EAP’s is 4%. Every effort is being made to get the four outstanding EAP’s. The nine stage EAP development guide is used to help dam owners understand and develop EAP’s. During the past year, (17) EAP Table Top Exercises

were conducted by MEMA during 2012 to test EAP's. Next year the target will be to conduct TTX's for (30) dams.

**Natural event response:** Two unusual natural events occurred in ME in 2012; the earthquake in the vicinity of Waterboro and Hurricane Sandy which affected southern and western ME. After the earthquake, State-regulated HH and SH dams, within 30 miles of Waterboro, were inspected for damage cause by earth movement or overtopping by floodwaters. Two dam owners inspected their dams immediately after the earthquake and reported in to MEMA, one requesting an inspection. No damage was seen as a result of the earthquake. After Hurricane Sandy we inspected all of the HH and SH dams with which we have significant concerns. The only action required was the dewatering of the Mt. Zircon reservoir.

## **Preparedness, Recovery and Mitigation Division Activities**

### **Earthquake Program**

Maine is categorized as a "moderate risk" state for earthquakes. While we have numerous small earthquakes that are seldom felt, we also have larger ones such as the 4.0 tremor we experienced this past fall. To help the State be better prepared to deal with earthquakes, we have a number of initiatives ongoing or planned to include:

- Providing educational outreach to Maine citizens
  - Developed middle school curriculum that is aligned with the *Maine Learning Results in Science and National Standards in Science* to include range of activities.
  - Printed/reproduced curriculum for distribution to educators
  - Distributed curriculum along with Maine Earthquake Guide to educators
- Building and maintaining HAZUS-MH capacity in Maine.
  - Recruited college student interns majoring in a related field of study, to collect building data for all counties.
  - Collected, uploaded (into HAZUS-MH), and reviewed new building data.
  - Tested HAZUS program with new data and ran Earthquake risk assessments for counties where inventory has been updated.
- Develop and print Maine earthquake brochure
  - Tri-fold Brochure specific to Maine to be developed by FEMA HQ's contractor at no cost to the State. Verbal agreement is in place and timeline established.
  - Completion date no later than 1 September, 2013, but probably sooner.

### **Public Outreach**

**Student Tools for Emergency Preparedness (STEP):** Presented this grass roots preparedness program to 1708 students in (68) school systems including (32) first time participants.

**Earthquake Preparedness:** An informational package focused on grades 6-8 and the teachers working with those students was provided to 783 Middle schools. Additionally, we gave live presentations to (17) schools with (236) students.

**Outreach Presentations:** Provided preparedness exhibitions for the Maine Primary Care Association, Maine Principals' Association, Aging Well Exposition and the Maine School Management Association.

**Seniors Outreach:** This is a program that addresses both preparedness for emergency evacuation and sheltering in place for seniors and Assisted Living Facilities. A total of 28 presentations were provided to 372 participants.

**School Crisis Team and Emergency Preparedness for Schools:** This outreach program is targeted at faculty, staff and support staff. Eight presentations were provided to 247 participants.

## **Mass Care**

**Regional Shelters:** MEMA continues to advocate for a regional approach to our sheltering needs, and is currently implementing a plan to survey each of the (55) designated regional shelters in the State. On-the-ground surveys have been completed for approximately 50% of those shelters. This survey will assess each regional shelter's ADA compliance, back-up power capacity, and other functional needs and will be used as a planning document in the decision making process for optimal sheltering operations.

**Mass Care Coverage in the State EOC:** Our Red Cross Liaison has continued the training of two Red Cross volunteers to ensure 24/7 coverage in the State EOC when mass care operations are underway. This team of partners participated in two mass care exercises, the 3-tier Seabrook Power Plant exercise series and a New Brunswick Canada, Point Lepreau Nuclear Power Plant EMA exercise.

**National Mass Care Strategic Planning:** The Red Cross Liaison also participated in a 2-day workshop review of the new National Mass Care Strategy developed by the National Mass Care Council. The council's mission is to "provide a framework to enhance coordination, pool expertise and strengthen response capacity in the provision of mass care services throughout the nation".

## **Mitigation**

**Hazard Mitigation Plans:** The State's Hazard Mitigation Plan is valid until October 2013. The Agency received Pre-Disaster Mitigation Grant funding in August 2012 to support the revision of our plan during 2012. Completion of this effort is important for several reasons, including retaining eligibility for critical Federal assistance such as post-disaster Public Assistance in the event of a Major Disaster Declaration, Fire Management Assistance Grants, Mitigation Grants, Repetitive Flood Claims and Mitigation Assistance. Because we believe the current federal requirement for an updated Mitigation Plan every 3 three years is onerous, we have engaged Representative Michaud's office and the National Emergency Management Association to pursue a statutory change to a 5-year cycle. As of this writing, all (16) County Hazard Mitigation Plans have been updated. (13) of the (16) have been re-approved by FEMA and the remaining three are completing their

adoption process. Updating county plans which is required every five years is a difficult process because of the limited resources available to the counties to do this complex work.

**Mitigation Projects:** The by-pass project in Chesterville was completed in September 2012. This project was necessary because of a river-road landslide on the George Thomas Road. The actual cost of the project will be determined upon receiving final bills from the town. Projects were also completed in Baldwin, Gray, Minot and Wells averaging about \$100K per project. We are also working towards approval for projects in Abbott, Mount Chase, and Palermo also averaging about \$100K per project. Although we have had some positive developments, it remains a challenge for communities to go through the complex process of developing the FEMA applications and meeting the 25% match requirement. Additionally, meeting the stringent requirements of the Endangered Species Act is proving to be very difficult.

**Expanded Salmon habitat under the Endangered Species Act (ESA):** FEMA Region I hosted, and US Fish and Wildlife Service conducted a 2-day Section 7 ESA Consultation Seminar in September in Augusta to educate participants on the details of the Act as it applies to hazard mitigation and public assistance projects. Participants included representatives from Federal and State agencies, contractors/consultants, all FEMA Grant Programs, and congressional offices. Habitat for endangered salmon has recently been expanded and now covers almost 2/3rds of the State, which will complicate and lengthen mitigation and recovery projects in those areas. Two hazard mitigation projects that are currently underway are subject to the ESA, both of which have been subjected to additional in-depth analysis, which has considerably lengthened project timelines and frustrated town officials.

## **Recovery**

**New Maine Interagency Recovery Plan:** Using the recently published National Recovery Framework as a model, Maine was the first in New England, and possibly the first in the Country to develop a State-level interagency recovery plan focused on six recovery support functions: planning and capacity building, housing, infrastructure, economic, health & social services, and cultural & natural resources. Portions of the plan were tested during a table top exercise in the Spring, which involved representatives from several State agencies, FEMA Region I, several Maine-based Federal Partners, and local officials from the Lewiston/Auburn area, whose jurisdiction was targeted in the exercise scenario.

**Maine Donations Coordination Team (DCT):** MEMA, in partnership with the Maine Commission for Community Service, co-chairs Maine's Donations Coordination Team (DCT) whose mission it is to manage unsolicited in-kind donations, undesignated cash, and unaffiliated volunteers in times of major disasters or catastrophes. This year, the DCT's efforts focused on donations management in those States impacted by Hurricane Sandy. It researched and directed well intended Mainers who wanted to donate time and/or in-kind goods to the appropriate organizations to help ensure that Mainers contributed to the solution and not to the problem.

**Maine Voluntary Organizations Active in Disaster (Maine VOAD):** The Maine VOAD continues to add capacity to the emergency management community by dispatching volunteer teams and individuals throughout the State during declared and undeclared disasters at the prompting of County and State EMAs. They also deploy out-of-State to help their counterparts in impacted States. For example, in the aftermath of Hurricane Sandy, chain saw crews and mud-out crews from the Southern Baptist Convention (SBC) deployed to reported sites of damage to assist homeowners in clearing debris inside and outside of homes and apartment buildings. The Maine VOAD also took an active role in organizing coordination meetings with VOAD leaders from other New England States to organize and synchronize a New England-wide VOAD response in the impacted States.

**Disaster Assistance Team (DAT):** The DAT, a coalition of representatives from State agencies to assist with Disaster recovery, assembled for its first ever Table Top Exercise to test the State's new Interagency Recovery Plan. Representatives from DECD, DHHS, DOL, MSHA, MCCA (DOE), the Bureau of Insurance, along with several local and Federal partners were on hand to work through a disaster scenario that took place in Androscoggin County. Meanwhile, work is ongoing to reorganize the DAT to meet the planning requirements in the new State Interagency Recovery Plan and new partnerships among State agency partners not previously involved in emergency planning are being formed.

## **Public Alerting and Warning**

### **Emergency Alerting**

Alerting the public quickly is critical in those fast-breaking events when, for example, a fast-approaching tornado, a dam breach, or a hazardous-material tank truck rollover threatens a community and fast action is needed. Early alerting is typically followed up by more in-depth communication to the public, coordinated through the Joint Information Center.

The Emergency Alert System (EAS) sends out emergency and Amber alerts through radio and TV broadcasters and cable systems. Maine Public Broadcasting Network (MPBN) provides the operational "backbone" for this system. In the past year, MEMA has installed and is finalizing the implementation of new EAS technology. This was a federally mandated action and the culmination of a three-year planning process in Maine which included the broadcast and cable community, emergency management, public safety and the National Weather Service. (No federal funds dedicated to this mandatory transition were provided; broadcasters and MEMA funded the transition out of operating budgets.)

The explosion of communications technology over the last several years has greatly increased alerting pathways. FEMA has implemented an alerting portal known as the Integrated Public Alert and Warning System (IPAWS) through which standardized alert messages are routed to channels including EAS, e-mail, text messaging, message boards, sirens, etc. The new Maine EAS system interfaces with this portal, as will the Virtual Maine project.

MEMA has also implemented and continues to enhance subscription e-mail and text messaging capability through the GovDelivery system, a program of InforMe.

### **Interface with Maine Public Broadcasting Network**

Included in last year's budget (PUBLIC Law 2012 Chapter 655 PART BBB) was a requirement that MEMA participate with the Department of Administrative and Financial Services (DAFS) and MPBN to examine, among other topics, MPBN's role in emergency broadcasting and other ways in which MPBN's assets and infrastructure might support the State. The results of a number of collaborative meetings held over the summer were captured in a report that DAFS submitted to the Appropriations Committee in September of 2012.

Work with MPBN and state partners continues to ensure that communications infrastructure enhancements and investments are coordinated among all partners to the greatest extent possible.

MPBN has received federal funding from FEMA to support the transmission of alert messages through MPBN transmitters to cell phone systems. They have also applied for grant funding to establish a robust "closed circuit" communications system, using a blend of Internet and broadcast technology and leveraging existing infrastructure to transmit longer-format emergency messages such as a Governor's address, or detailed emergency instructions, to radio and TV stations for re-broadcast. Assuming funding is received, MEMA will be working closely with MPBN in the coming year to implement this system.

### **Finance Office Activities**

#### **Public Assistance**

With initiatives contained in the Governor's Supplemental Budget we expect the State-share shortfall to drop to about \$10K. No new disasters in the last (14) months has allowed time to guide the remaining applicants through the process of closing out each applicant file. Only 19 applicants with open projects remain dating as far back as the 2008 Aroostook May Day event.

#### **Witt Group Holdings Contract**

MEMA completed a successful competitive RFP (request for proposal) award to Witt Group Holdings, LLC for Disaster Management, Preparedness, Response and Recovery services. It is a 3-year contract (11/1/12-10/31/15) with two 1-year renewals. There is no cost to this contract until the State actually asks for assistance, most likely in response to a catastrophic event such as Hurricane Sandy.

#### **Commodity Contracts**

MEMA executed several commodity contracts with private sector vendors. The two radio and ten hazardous materials equipment contracts have reduced costs. Each contract was also set up to allow other state agencies and municipalities to buy at the contracted rate.

These contracts are for such items as: Decontamination Shelters, Hazardous Incident Response Equipment, Level A Suits, Level B Suits, Dosimeters, Radioisotope Identifiers, Gas Meters, Response Kits, Chemical Detectors, ICOM Radios & Motorola Radios.

## **County Emergency Management Activities**

There is an often-used expression in emergency management that, “All emergencies are local, and the control of those emergencies is also local.” It is MEMA’s responsibility to ensure that our local communities are prepared for, respond to and recover from the whole range of events that might impact our State. The success we have in meeting that responsibility is in large part a reflection of the day to day efforts of the County and local EMA Directors. To provide members of the Committee with an appreciation of the scope of work being accomplished at the local level, we have included a partial list of those activities the County Directors feel are most significant.

### **Androscoggin County**

- Worked with all local communities to ensure they had complete and updated Emergency Operations plans and are currently working to develop Functional Annexes.
- Developed and distributed a County-wide resource management program to catalogue all response equipment owned by the various first responder agencies.
- Installed RACES ham radio equipment at each of six regional shelter locations and the County EOC to ensure the presence of vital communications.
- Developed a Post-Disaster Damage Assessment Program for local officials.

### **Aroostook County**

- Completed work on Narrowbanding, to include assisting all response communities with acquiring the needed equipment and receiving the necessary training to operate the new equipment.
- Continued second year of work on the Border Interoperability Demonstration Project (BIDP).
- Completed a full update of the County Emergency Operations Plan.
- Accomplished an exercise program that included working with eight of our communities in running and exercising their emergency operations centers.
- Completed work on a review of all 8 regional shelters, a more detailed look as well as looking to meet accessibility issues.

### **Cumberland County**

- Organized multiple public safety personnel training opportunities with the Federal Railroad Administration and Amtrak to enhance readiness in anticipation of extended Amtrak service to Brunswick.
- Conducted several exercises, to include a county-wide Hurricane Table Top Exercise for Emergency Managers, public safety personnel and other public/private partners and a Full Scale Hazardous Materials (HazMat) Exercise for the county's four HazMat Teams at a local Extremely Hazardous Substance (EHS) facility.

### **Franklin County**

- Provided public educational outreach programs at local schools, the Extension Agency, Civic groups and at local warming centers.
- Provided S.T.E.P (Student Tools for Emergency Planning) instruction and materials to over 300 grade 4 and 5 students in an effort to instill a culture of preparedness at an early age level and perhaps influence action by entire families.
- Continued to work with Canadian, State, County, and Local partners on the development and implementation of the Border Interoperability Demonstration Project.
- Completed Radio Narrowband project with agencies in Franklin County.

### **Hancock County**

- Completed the successful transition to entirely new County EMA staffing brought about by three retirements by long-time members.
- Completed the revision of the County's Mitigation plan and received formal approval from FEMA and the individual communities.
- Completed the County's transition to narrowband radio equipment.

### **Kennebec County**

- Hired a dedicated planner to contact 55 of 62 schools and assisted in developing and exercising emergency plans for 24 schools.
- Greatly enhanced communications capabilities with a mobile tower and cross band repeaters. Now have the ability to provide emergency communications to the scene of emergencies throughout the county and the state of Maine if necessary. These communications assets were used over a dozen times in 2012.
- Worked with communities in Kennebec County interested in setting up an emergency operations center (EOC) in their towns during significant events. Trained staff and conducted table top exercises to enhance their capabilities and experience in effectively gathering information and communicating this information to the county EOC. This in turn has greatly enhanced the County's capability to keep MEMA informed as to the status of Kennebec County and is essential for resource coordination.

### **Knox County**

- Completed the third year of a Knox EMA managed statewide pooled radio equipment purchase to leverage local municipal investment, competitive grant awards and pooled discount pricing to achieve a cost avoidance of approximately \$260K for the 13 participating Maine Counties in 2012 and a total of \$160K for Knox County during the last three years.
- Assisted with the coordination of renovations for the Public Safety facility with occupancy by EMA, Emergency Operations Center and other public safety agencies planned for early 2013, thereby increasing operational effectiveness and efficiency.
- EMA staff facilitated creation of a Public Works working group and adoption of a countywide resource sharing and acquisition memorandum of understanding to provide a mechanism for multi-town equipment and road maintenance/construction



materials purchasing and sharing, discipline-specific “training days” and a professional forum for local Public Works leaders and Road Commissioners.

- Worked with island community partners to bring planning, emergency response training and exercises to them in their home environments custom-designed to meet the unique challenges presented by their offshore locations.

### **Lincoln County**

- Conducted a Table Top Exercise on Monhegan Island involving a domestic dispute that eventually involved a fully engaged hotel fire. This was the first exercise actually held on the island since 11 September 2001; and included all stakeholders on Monhegan as well as major mainland players including USCG, Lifeflight of ME, ME Fire Marshal’s Office, Red Cross, Lincoln County Commissioners, LCSO, Hardy Boat Ferry, BBH Harbor Master, and local FDs and EMA reps.
- Conducted a Table Top Exercise for the Southport Island Dam. This was the first dam in Lincoln County to have an EAP exercised. Participants included MEMA, Lincoln County EMA, LCSO, Town of Southport, Southport FD.
- Revitalized and greatly improved LC HAZMAT and DECON Strike Teams. Significantly improved response capabilities with the addition of 2 new trailers (1 equipment and 1 mobile DECON unit) and DECON tent as well air packs and gas meters. The County now has 3 trailers and response capabilities strategically located around county.

### **Oxford County**

- Coordinated a full scale hazardous materials response exercise at New Page Corporation in Rumford. For the first time, this exercise brought together the mill’s hazmat team along with Rumford Fire Department and the Androscoggin COBRA Team. The teams collaborated in mitigating a variety of simulated leaks and spills and set up a joint incident command and decontamination line.
- Configured the CERT Communications Trailer, as a dual-purposed Regional Communications Center Back-up Dispatch, which is in direct response to communication issues and tower failure during Tropical Storm Irene. Two Communication Team members, who are also members of our IMAT team, completed the COML training offered through MEMA in the fall of 2011. The trailer was also deployed in early April and used to track teams working a mountain fire in Gilead in conjunction with the Forest Service. The Communications Trailer is an asset that has had considerable use over the last five years and those opportunities continue to grow as more capability is added to the trailer and the team members go above and beyond in training and strive to better integrate with first responder agencies.

### **Penobscot County**

- Hosted a Preparedness Exposition that brought together 30+ agencies for the public to gain a better understanding of preparedness and response assets in the County.
- Conducted the County’s first School Violence Tabletop Exercise. This exercise was attended by 75+ attendees including RSU 34, Brewer Public Schools, Red Cross, Healthcare industry, Public Safety and the school bus company.

### **Piscataquis County**

- May 1, 2012 Piscataquis County Sheriff's Office Dispatch switched over all operations to narrow band. This included all first responders' radios (police, fire & EMS) in the county that were narrow banded by this date. The narrow banding was paid for by Piscataquis County EMA through a Homeland Security Grant.
- Piscataquis County and Penobscot County LEPC's sponsored an "LEPC Preparedness Expo" for the public in May.
- The Piscataquis County Hazard Mitigation Plan was updated and completed.

### **Sagadahoc County**

- Implemented of a County-wide Mass Notification System down to the residents and businesses of Sagadahoc County. This system has the ability to alert thousands residents and businesses in the event of a disaster with minutes to their landlines, cell-phone and VOIP services. The implementation of this system aligns with the PPD-8 Directive with regard to mass notification.

### **Somerset County**

- Initiated and completed update of the County Mitigation Plan and approval by FEMA.
- Worked with the other Counties and MEMA to install a new IP based radio system for all of the County Communications as part of the Border Interoperability Demonstration Project (BIDP).
- Hired a new staff member to focus efforts of Special Response Teams in the County and re-energized of the Somerset County Animal Response Team (CART).
- Increased efforts to incorporate the County Amateur Radio Emergency Services (ARES) Team into response activities and participated with them in several exercises.

### **Waldo**

- The County of Waldo joined with the County of Knox to develop a year-long series of training, seminars, workshops, tabletop exercises, and full scale exercises for Mass Rescue Operations in Penobscot Bay. These activities brought together a diverse group of representatives from municipal, county, State and Federal agencies that included emergency medical, hospital, fire protection, law enforcement, harbor masters, non-government organizations, emergency management, search and rescue, emergency communications, elected officials, and maritime response and patrol. Participants were provided a great deal of information that is currently being used to update and develop mutual aid agreements, standard operating procedures and emergency plans.

### **Washington**

- Continued work on the Hazard Mitigation Plan with the local towns/cities and submitted for FEMA approval. To date the County is just finishing the last few approvals before sending for final approval.
- Completed the narrowband requirements by including local response units with the county communications systems and doing so without major lapses in communication capabilities.

**York County**

- Purchase of narrowband radios completed August. Continue to work with our partners and vendors to ensure transition by the end of the year.
- The County Hazard Mitigation Plan was accepted by FEMA this year. It was hard work but eventually successful with the buy-in from all of the towns.
- Reviewed and signed MOU'S with PSNY and a new MOU for alternate EOC between the York and Cumberland Counties EOC's.

**Conclusion:**

The State was fortunate not to experience any major disasters during the past year. That freed the Agency to focus our attention of the myriad of other opportunities that were presented to us. Although a great deal was accomplished, there remains much more to be done. The Agency will continue working to improve the readiness of our communities and citizens to ensure all are prepared to respond to any event. While we cannot avoid many of the potential disasters we face, by being prepared at all levels (State, County, local, personal and private sector), our ability to respond will be improved significantly.

FY12 HSGP County/Local Distribution Formula

Total HSGP	\$573,873.48
Total LETPP	\$253,144.76
<b>Total Available</b>	<b>\$827,018.24</b>

County	Total	Special Team Stipends (from Statewide Shared Programs funding)					Total FY12 Allocation (60/25/15 model)	% of avail funding
		Amount for LETPP	IMAT Stipend	CERT Stipend	RRT Stipend	DST Stipend		
Androscoggin	\$51,313.75	\$15,907.26		\$1,500.00	(metro)		\$52,813.75	5.4%
Aroostook	\$59,127.25	\$18,329.45	\$1,500.00	\$750.00	\$15,000.00	\$10,000.00	\$86,377.25	8.8%
Cumberland	\$81,676.35	\$25,319.67	\$1,500.00	\$1,500.00	(metro x2)	\$10,000.00	\$94,676.35	9.7%
Franklin	\$41,107.83	\$12,743.43		\$1,500.00			\$42,607.83	4.4%
Hancock	\$48,831.32	\$15,137.71	\$1,500.00	\$1,500.00		\$5,000.00	\$56,831.32	5.8%
Kennebec	\$57,352.49	\$17,779.27	\$1,500.00	\$1,500.00	\$15,000.00	(metro)	\$75,352.49	7.7%
Knox	\$41,745.71	\$12,941.17	\$1,500.00	\$2,500.00			\$45,745.71	4.7%
Lincoln	\$41,176.70	\$12,764.78	\$1,500.00	\$1,000.00		\$5,000.00	\$48,676.70	5.0%
Oxford	\$49,110.20	\$15,224.16	\$1,500.00	\$1,500.00	\$15,000.00	\$5,000.00	\$72,110.20	7.4%
Penobscot	\$70,129.93	\$21,740.28		\$1,750.00	\$15,000.00		\$86,879.93	8.9%
Piscataquis	\$38,542.85	\$11,948.28					\$38,542.85	3.9%
Sagadahoc	\$39,032.94	\$12,100.21	\$1,500.00				\$40,532.94	4.1%
Somerset	\$47,479.84	\$14,718.75		\$3,000.00		\$5,000.00	\$55,479.84	5.7%
Waldo	\$43,619.07	\$13,521.91	\$1,500.00	\$2,500.00		\$5,000.00	\$52,619.07	5.4%
Washington	\$47,749.15	\$14,802.24				\$5,000.00	\$52,749.15	5.4%
York	\$69,022.85	\$21,397.08	\$1,500.00	\$1,500.00		\$5,000.00	\$77,022.85	7.9%
<b>TOTAL</b>	<b>\$827,018.24</b>		<b>\$15,000.00</b>	<b>\$22,000.00</b>	<b>\$60,000.00</b>	<b>\$55,000.00</b>	<b>\$979,018.24</b>	

CART = \$750    ARES = \$750    CERT = \$750    SAR= \$1000



26

**Public Records Exceptions Subcommittee**  
Proposed Draft  
#26

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

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

**Summary**

This amendment adds a cross-reference to the definition of “trade secret”.



27

**McCarthyReid, Colleen**

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**From:** Marvinney, Robert G. <Robert.G.Marvinney@maine.gov>  
**Sent:** Tuesday, October 22, 2013 10:32 AM  
**To:** McCarthyReid, Colleen; Margerum, Mark T  
**Cc:** Reinsch, Margaret; Wells, Mari  
**Subject:** RE: Right to Know Advisory Committee's Review of Title 38, Section 470-D  
**Attachments:** 2011\_Water\_Use\_Data\_OFR.docx

Dear Colleen and Peggy,

With regard to the Water Withdrawal Reporting Program, I offer the following responses to your questions.

- 1) Reports are submitted to the following departments and programs, and almost all reports are required as conditions of other permits.
  - a. Public water supplies: required to report to the DHHS and PUC as conditions of permits.
  - b. Bottled water facilities: Required to report to DHHS Drinking Water Program as conditions of permits.
  - c. Ski areas: Report to DACF Maine Geological Survey.
  - d. Pulp and paper industry: Report to DEP as conditions of waste water discharge permits.
  - e. Agricultural users: Only irrigators with permits in the Unorganized Territories administered by the Land Use Planning Commission are required to report to the LUPC as conditions of their permits. This reported use is used to estimate other agricultural use, based on past statistics.
  
- 2) The Maine Geological Survey retrieves water use data from the various agencies and aggregates data by type of use and source type (surface water, groundwater) in an annual report, the most recent version of which I attach. Agricultural use is estimated by county. We are currently in the process of redesigning our website. When this process is completed, annual water use reports will be posted there.

I hope this information adequately answers your questions and that attendance at the subcommittee meeting will be unnecessary. If you would still prefer that one of us participate in that meeting, you will need to make a formal request to that effect through the Governor's Office.

Bob

Robert G. Marvinney, Ph.D.  
State Geologist, Maine Geological Survey  
Director, Bureau of Resource Information and Land Use Planning  
Maine Department of Agriculture, Conservation, and Forestry  
93 State House Station  
Augusta, ME 04333

Direct line: 207-287-2804  
Main line: 207-287-2801  
Fax: 207-287-2353  
[robert.g.marvinney@maine.gov](mailto:robert.g.marvinney@maine.gov)  
[www.maine.gov/doc/nrimc/mgs/mgs.htm](http://www.maine.gov/doc/nrimc/mgs/mgs.htm)

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**From:** McCarthyReid, Colleen [<mailto:Colleen.McCarthyReid@legislature.maine.gov>]  
**Sent:** Wednesday, October 16, 2013 11:15 AM  
**To:** Margerum, Mark T; Marvinney, Robert G.  
**Cc:** Reinsch, Margaret  
**Subject:** Right to Know Advisory Committee's Review of Title 38, Section 470-D



Good morning,

The Right to Know Advisory Committee's Public Exception Subcommittee is reviewing the confidentiality exception contained in Title 38, section 470-D. You may recall this provision was up for review last Fall; the Subcommittee tabled it for consideration this year. Last year, DEP completed a survey for the Subcommittee to use in its review of the exception. We've attached it for your reference.

In discussion the exception, the Subcommittee members had some questions about the water withdrawal reports and the aggregate information that may be available to the public about water withdrawals from the DEP and Maine Geological Survey. The Subcommittee is interested in knowing the following:

1. As written, the statute requires reports to be submitted to 3 commissioners and mentions a list of which users report to which departments. Can you provide information about which users report to which departments and describe how the process for reporting works?
2. While the statute protects the confidentiality of individual water withdrawal reports, the survey indicates DEP and MGS provide aggregate data publicly. What information is made available publicly? Can you provide copies or examples of aggregate data? Are annual reports prepared and release publicly (or posted to the web) or is aggregate data provided in response to specific requests?

The RTKAC has tabled its consideration of the provision until its next Subcommittee meeting on November 4, 2013 at 1pm in Room 438, State House. Are one or both of you available on November 4<sup>th</sup> to come to the next Subcommittee meeting and respond to these questions in person? If not, any information you can provide in response to their questions in writing would be very much appreciated.

Please let us know if you have any questions or need additional information.

Thanks, Colleen and Peggy

Colleen McCarthy Reid, Esq.  
Margaret J. Reinsch, Esq.  
Right to Know Advisory Committee Staff  
Office of Policy and Legal Analysis  
13 State House Station  
Augusta, Maine 04333-0013  
(207) 287-1670  
[Colleen.mccarthyreid@legislature.maine.gov](mailto:Colleen.mccarthyreid@legislature.maine.gov)

**DEPARTMENT OF AGRICULTURE, CONSERVATION &  
FORESTRY**

**Maine Geological Survey**

Robert G. Marvinney, State Geologist

**OPEN-FILE NO. 13-18**

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**Title:** Water Use in Maine - 2011

**Author:** Robert Johnston, Dan Burke and Hannah Glover (compilers)

**Date:** 2013

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**Contents:** 9 p. report



## *Water Use in Maine – 2011*

*Robert Johnston, Dan Burke and Hannah Glover*

*Maine Geological Survey  
93 State House Station  
Augusta, ME 04333*

### **INTRODUCTION**

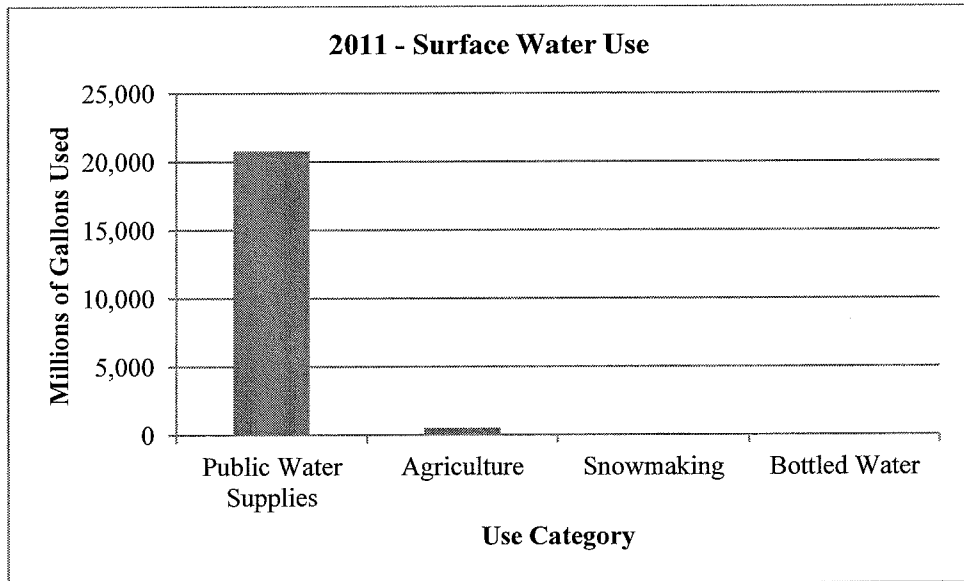
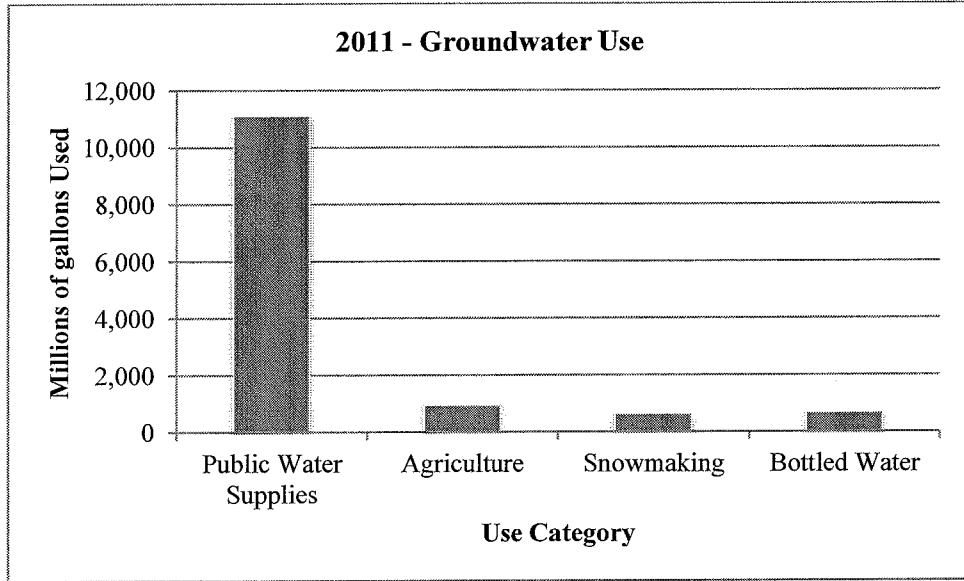
This report presents an overview of water use in Maine during the 2011 calendar year. The information was compiled from various sources identified in each section. Under Title 38 MRSA, §§ 470-A through 470-H, water users who withdraw quantities in excess of the

thresholds contained in the statute are required to provide information about their annual water use to appropriate state agencies. The Maine Geological Survey compiles this information on an annual basis.

### **WATER USE DATA**

<b>2011 Maine Water Use Totals by Source (millions of gallons):</b>			
	<b>Total</b>	<b>Groundwater</b>	<b>Surface Water</b>
<b>Public Water Supplies</b>	31,905	11,124	20,781
<b>Paper Mills</b>	63,269		63,269
<b>Agriculture</b>	1,488	967	521
<b>Snowmaking</b>	765	653*	112*
<b>Bottled Water</b>	708	708	
<b>Total</b>	<b>98,134</b>	<b>13,452</b>	<b>84,683</b>

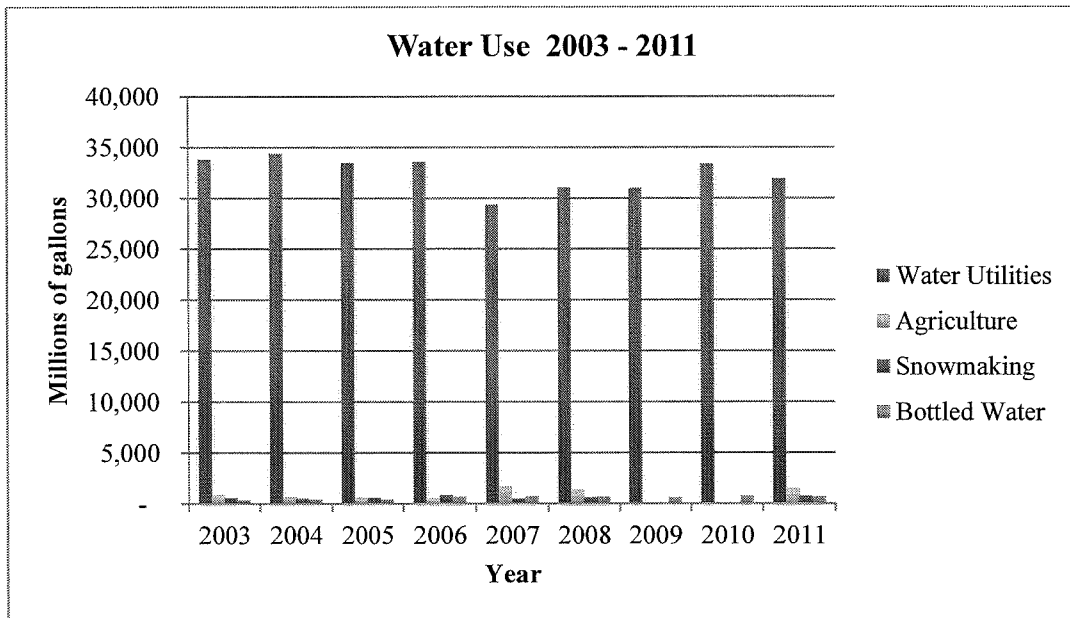
*\*estimated proportion of reported total that is ground water or surface water based on previous year's proportion.*



Reported Water Use by Type - 2003 - 2011										
Type of Use	Withdrawals Reported (millions of gallons)									
	2003	2004	2005	2006	2007	2008	2009	2010	2011	
Water Utilities	33,800	34,400	33,500	33,600	29,355	31,065	31,000	33,400	31,905	
Paper Mills	70,000	66,000	63,000	57,900	64,919	67,533	60,957	66,768	63,269	
Agriculture	861	719	622	514	1,691	1,380	*	*	1,488	
Snowmaking	590	559	606	863	537	661	198**	*	765	
Bottled Water	365	448	440	699	742	702	609	768	708	

\* no data to report

\*\* three ski areas reporting



**PUBLIC WATER SUPPLIES**

There are approximately 2,200 Public Water Systems (PWS) in Maine, and of these 400 are community public water systems with 25 or more users. Data for these systems, including location, source and population served, is maintained in a GIS database by the Department of Health & Human Services, Center for Disease Control and Prevention, Division of Environmental Health as part of their Drinking Water Program.

Production/consumption data for many of the larger water utilities comes from an existing reporting program to the Public Utilities Commission (PUC). Water utilities report to the PUC on an annual (Jan. - Dec.) basis, with data due by April of the following

year. The production/withdrawal data is broken down into monthly segments, and is also further divided by source -- either ground-water or surface water. For calendar year 2011, there were 110 large water utilities who reported to the PUC. Of those reporting, annual production for 2011 was 31.9 billion gallons, for an average of 2.7 billion gallons per month, or 87.3 million gallons per day. Of the total water use reported, 65.2 % (20.8 billion gals.) was obtained from surface water sources, and 34.8 % (11.1 billion gals.) was obtained from groundwater sources. There were 33 community systems that reported using surface water. These systems serve large population centers and therefore use the largest quantities of water. The remaining community systems, and nearly all the smaller systems, rely primarily on groundwater sources for their supply.

## **BOTTLED WATER**

There were 22 operational bottled water facilities in Maine in 2011. Total water use for 2011 was 708 million gallons, or an average of 59 million gallons per month. This represents an approximate 14% increase from 2009. All (100 %) of the water produced by the bottled water plants and bulk loading facilities was derived from groundwater sources. Bottled water facilities are required to report volumes to the Maine Drinking Water Program.

## **COMMERCIAL AND INDUSTRIAL USE**

Maine's pulp and paper manufacturers report their waste water discharges to the DEP and the volume of withdrawal can be calculated from the wastewater discharge volume. Analysis of wastewater discharge volumes from ten (10) paper mills indicates that they used approximately 63 billion gallons of water in 2011. This is down from approximately 66.7 billion gallons in 2010, which is attributed to mill shut-downs during the reporting period. Most of this water is discharged back to the rivers after use and treatment. All the pulp and paper mills lie on Maine's larger rivers, and get 100% of their water from these surface water sources. Pulp and paper mills are required to report discharge

volumes to the Maine Department of Environmental Protection.

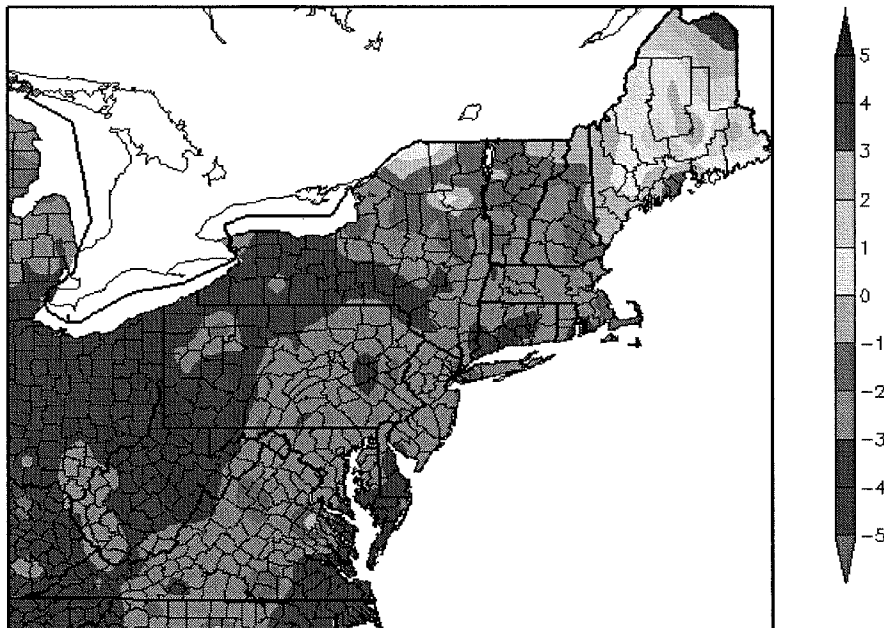
## **SKI AREAS**

Six Maine ski areas reported snowmaking during 2011 (another ski area lost its 2011 records in a fire). Reports were obtained by contacting water managers at each area. The 6 ski areas that reported in 2011 derive their water supplies from multiple sources: ponds, wells, streams, and rivers. Data is collected on both an annual (Jan. - Dec.) and ski season (Nov. - Mar.) basis. Of the 6 ski areas reporting, a total volume of 765 million gallons of water was used for snowmaking for the calendar year 2011. The breakdown of sources for snowmaking water use is 652 million gallons (84%) from surface water and 122 million gallons (16%) from groundwater. Proportions of water from surface water vs. groundwater sources were taken from 2008 as the data collected for 2011 did not include source values.

Climatic conditions in 2011 led to an increase in snowmaking activity. According to the Northeast Regional Climate Center at Cornell University, temperatures in the winter of 2011 were normal to slightly above normal, while precipitation was either normal or less than normal.



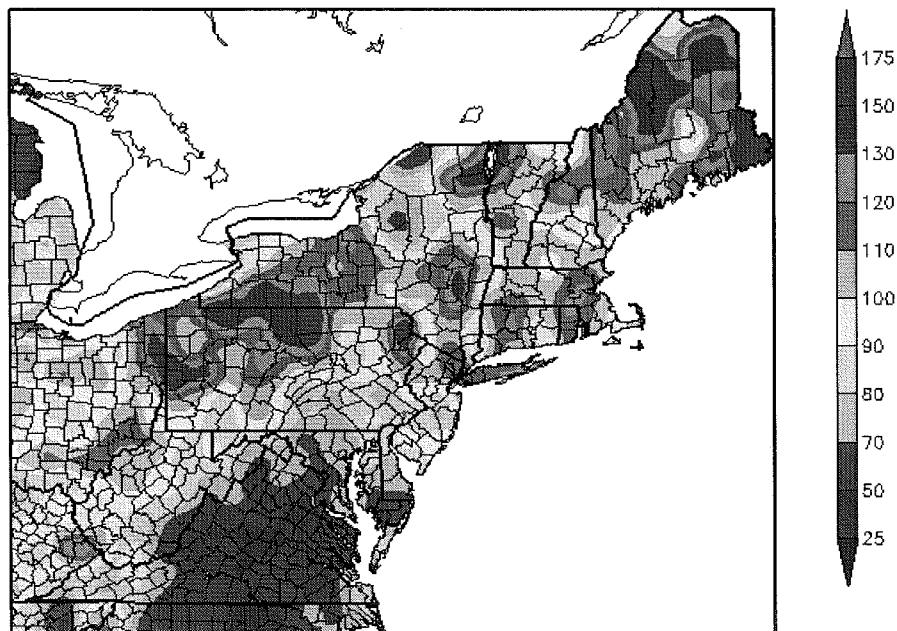
### Departure from Normal Temperature (F) 12/1/2010 - 2/28/2011



Generated 6/15/2012 at HPRCC using provisional data.

Regional Climate Centers

### Percent of Normal Precipitation (%) 12/1/2010 - 2/28/2011



Generated 6/15/2012 at HPRCC using provisional data.

Regional Climate Centers



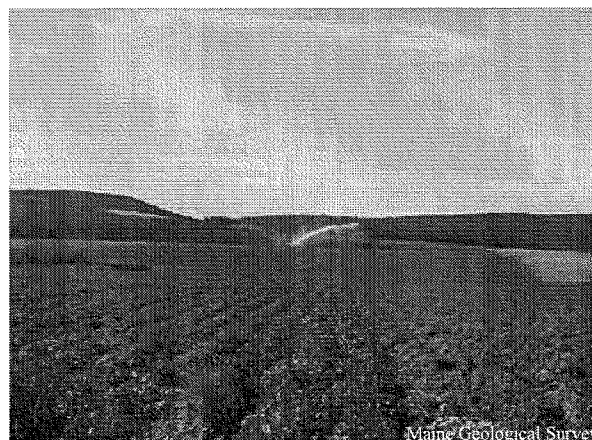
**AGRICULTURAL WATER USE**

2011 Agricultural Water Use Reported by county (millions of gallons)							
County	2003	2004	2005	2006	2007	2008	2011*
Washington	581.97	549.44	558.12	458.42	1,407.70	1,357.46	1,005.39
Kennebec	27.76	105.14			11.17		47.96
York	77.55	48.46		32.36	0.56		133.98
Aroostook	69.62	8.69	37.54	10.49	162.35	21.16	120.28
Oxford	7.55	4.80	16.79				13.05
Cumberland	49.49	2.14		5.60			85.50
Franklin	0.38	0.68	0.58		0.33		0.65
Penobscot	23.00				105.92		39.74
Androscoggin	14.50		8.85	7.61	3.55	1.75	25.06
Lincoln	8.12						14.02
Sagadahoc	0.46				0.36		0.80
Waldo	0.45						0.77
Somerset	0.25						0.43
Hancock	0.13						0.22
<b>Total</b>	<b>2,864.22</b>	<b>2,723.35</b>	<b>2,626.89</b>	<b>2,520.48</b>	<b>3,698.92</b>	<b>3,388.37</b>	<b>1,487.85</b>

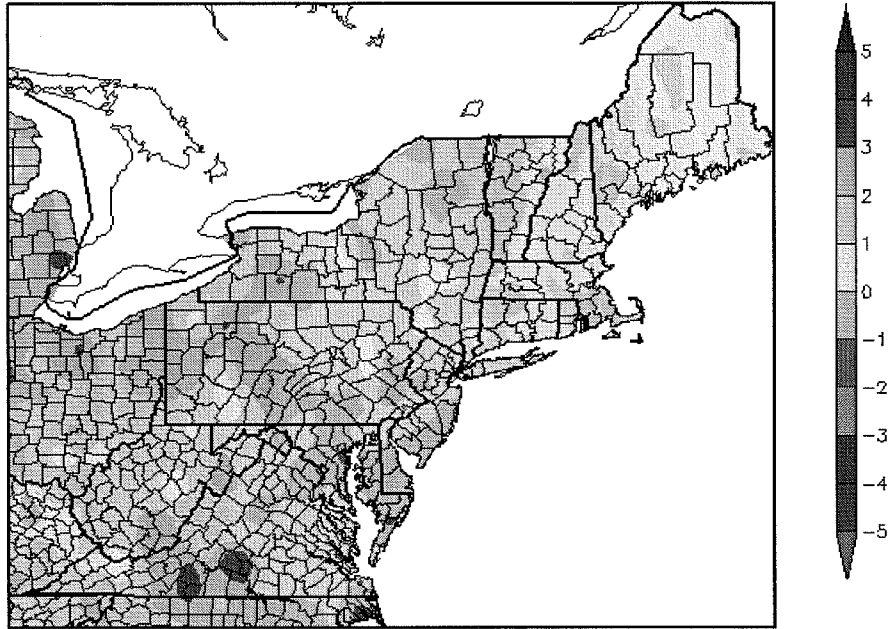
*\*2011 county values based on percent increase from 2003*

The majority of agriculture’s water use occurred in Washington County, primarily by the blueberry industry. The breakdown of sources for agriculture water use in 2011 is 521 million gallons (35%) from surface water and 967 million gallons (65%) from groundwater. Agricultural irrigators are no longer required to report water usage under Maine’s water use reporting law. However, some major irrigators are required to report water use as a condition of permits. These reported values were used as the basis for estimating agricultural water use in each county, using the 2003 data to establish the proportions.

Maine temperatures in the summer of 2011, as reported from the Northeast Regional Climate Center, were well above normal. Precipitation, other than in the hot, dry month of July, was also above normal in the summer of 2011. Hurricane Irene, in late August, pushed precipitation levels in Maine to near record levels. Higher than normal precipitation normally results in reduced need for agricultural irrigation, so long as at least an inch of water per week is obtained from rain. In 2011, irrigation would normally have been minimal in June, but would increase in the July and early August dry periods.



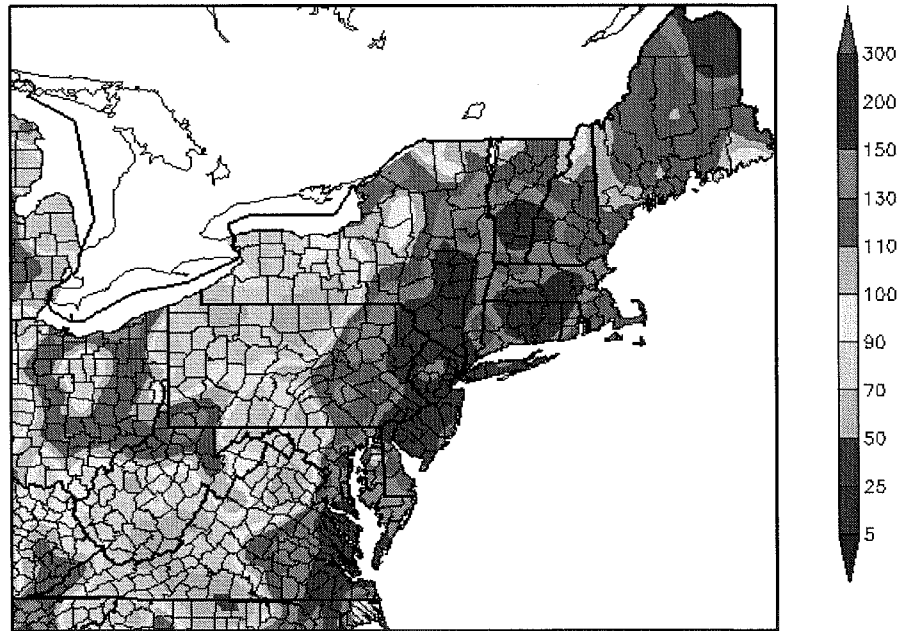
### Departure from Normal Temperature (F) 6/1/2011 – 8/31/2011



Generated 6/15/2012 at HPRCC using provisional data.

Regional Climate Centers

### Percent of Normal Precipitation (%) 6/1/2011 – 8/31/2011



Generated 6/15/2012 at HPRCC using provisional data.

Regional Climate Centers



# MHA

Maine Hospital Association

*Representing community hospitals and the patients they serve.*

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**To:** Right To Know Legislative Sub-Committee

**From:** Jeffrey Austin, MHA

**Date:** November 4, 2013

**Re:** Sentinel Event Confidentiality

Thank you for accepting further comment from MHA on our objection to changes to the Freedom of Access Laws and hospital Sentinel Event reporting.

At your last meeting you asked for some information.

**I: Comparison of Publicly Reported Metrics on MHDO and Sentinel Events**

There are 33 sentinel events in Maine. Maine has more categories of sentinel event than do other states. However, most categories of sentinel event have never been reported in Maine.

**Sentinel Events Reported at Least Once (10)**

1. An unanticipated death, or patient transfer to another health care facility, unrelated to the natural course of the patient's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility
2. A major permanent loss of function unrelated to the natural course of the patient's illness or underlying condition or proper treatment of that illness or underlying condition
3. Surgery or other invasive procedure performed on the wrong site
4. Unintended retention of a foreign object in a patient after surgery or other invasive procedure
5. Patient suicide, attempted suicide, or self-harm that results in serious injury, while an inpatient
6. Patient death or serious injury associated with unsafe administration of blood products
7. Patient death or serious injury associated with a fall while being cared for in a healthcare setting
8. Any Stage 3, Stage 4, and unstageable pressure ulcers acquired after admission
9. Sexual abuse/assault on a patient or staff member within or on the grounds of a healthcare setting
10. Death or serious injury of a patient or staff member resulting from a physical assault (i.e., battery) that occurs within or on the grounds of a healthcare setting

Numbers 1, 6, 8, 9 and 10 have some overlap with the MHDO public reporting system.

### **Sentinel Events Never Reported In Maine (23):**

1. Patient death or serious disability due to spinal manipulative therapy
2. Artificial insemination with the wrong donor sperm or wrong egg
3. Patient death or serious injury from the irretrievable loss of an irreplaceable biological specimen
4. Patient death or serious injury resulting from failure to follow up or communicate laboratory, pathology, or radiology test results
5. Patient or staff death or serious injury associated with an electric shock in the course of patient care
6. Any incident in which systems designated for oxygen or other gas to be delivered to a patient contains no gas, the wrong gas, or is contaminated by toxic substances
7. Patient or staff death or serious injury associated with a burn incurred from any source in the course patient care
8. Patient death or serious injury of a patient associated with the use of physical restraints or bedrails
9. Death or serious injury of a patient/staff associated with the introduction of a metallic object near MRI
10. Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed healthcare provider
11. Abduction of a patient/resident of any age
12. Maternal death or serious injury associated with labor or delivery in a low-risk pregnancy while being cared for in a healthcare setting
13. Death or serious injury of a neonate associated with labor or delivery in a low-risk pregnancy
14. Patient death or serious injury associated with a medication error (e.g., errors involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration)
15. Intraoperative or immediately postoperative/ postprocedure death in an ASA Class I patient
16. Patient death or serious injury associated with the use of contaminated drugs, devices, or biologics provided by the healthcare setting
17. Patient death or serious injury associated with the use or function of a device in patient care, in which the device is used or functions other than as intended
18. Patient death or serious injury associated with intravascular air embolism that occurs to an inpatient
19. Discharge or release of a patient/resident of any age, who is unable to make decisions, to other than an authorized person
20. Patient death or serious injury associated with patient elopement (disappearance)
21. An unanticipated perinatal death or major permanent loss of function in an infant, with a birth weight over 2,500 grams that is unrelated to the natural course of the infant's or mother's illness or underlying condition or unrelated to the proper treatment of the infant's or mother's illness or underlying condition in a healthcare facility.

22. Surgery or other invasive procedure performed on the wrong patient
23. Wrong surgical or other invasive procedure performed on a patient

Numbers 8, 15, and 22 have some overlap with the MHDO public reporting system.

## **II: Public Information Sources**

Looking at this issue a different way, the public reporting systems cover much of sentinel event. (Bold is overlap with sentinel event reporting system.)

### Maine Health Data Organization Patient Safety Website

1. **Dying in the hospital because a serious condition was not identified and treated**
2. Hip fracture after surgery
3. **Dying in the hospital during or after having a surgery to bypass a blocked blood vessel in the heart**
4. **Dying in the hospital during or after a procedure to open up blocked vessels in the heart (angioplasty)**
5. Bleeding or bruising after surgery
6. Abnormal changes in internal body functions after surgery
7. Breathing failure after surgery
8. Blood clot in the lung or leg vein after surgery
9. Severe bloodstream infection after surgery
10. **Dying in the hospital after heart failure**
11. Dying within 30-days after getting care in the hospital for heart failure
12. Returning to the hospital after getting care for heart failure
13. Surgical wound splits open after surgery on stomach or pelvis
14. **Dying in the hospital after bleeding from stomach or intestines**
15. **Dying in the hospital after fractured hip**
16. **Dying in the hospital while getting care for a condition that rarely results in death**
17. **Developing a pressure ulcer (bed sore) in the hospital**
18. **Surgical tool accidentally left in body during surgery**
19. Accidental puncture of the lung
20. **Dying in the hospital after heart attack**
21. Dying within 30-days after getting care in the hospital for a heart attack
22. Returning to the hospital after getting care for a heart attack
23. **Blood infection that patients with catheters developed while in the hospital**
24. Accidental cut or tear
25. **Blood transfusion reaction**
26. **Dying in the hospital while getting care for pneumonia**
27. Dying within 30-days after getting care in the hospital for pneumonia
28. Returning to the hospital after getting care for pneumonia
29. **Dying in the hospital after stroke**

30. Dying in the hospital during or after a procedure to open up a blocked blood vessel leading to the brain
31. Dying in the hospital during or after surgery on the esophagus
32. Dying in the hospital during or after pancreas surgery
33. Dying in the hospital during or after a surgical repair of an aortic aneurysm
34. Dying in the hospital during or after brain surgery
35. Dying in the hospital during or after hip replacement

Maine Health Data Organization/Maine Quality Forum Chapter 270

1. Patient falls and falls with injury
2. **Central line-associated blood stream infections**
3. MRSA bacteremia
4. Clostridium difficile infections
5. **Percent of patients with vest or limb restraint**
6. **Hospital-acquired pressure ulcer rate**

Maine Health Management Coalition Website

1. Leapfrog Patient Safety score, which includes 8 National Quality Forum Safe Practices
2. **Falls with injury**
3. Early elective delivery rate
4. Episiotomy rate
5. Medication safety score

Centers for Medicare & Medicaid Services Hospital Compare Website (no CAH data)

1. Serious complication rate
2. **Deaths among patients with serious treatable complications after surgery**
3. Rate of complications for hip and knee replacement patients
4. Catheter-associated urinary tract infections
5. Surgical site infections from colon surgery
6. Surgical site infections from abdominal hysterectomy
7. **Air embolism**
8. **Blood incompatibility**
9. **Catheter-associated blood stream infections**
10. **Falls and trauma**
11. **Foreign objects left in body after surgery**
12. **Pressure ulcers**
13. Uncontrolled blood sugar levels
14. **Death rate for heart failure patients**
15. **Death rate for heart attack patients**
16. **Death rate for pneumonia patients**
17. **Readmission within 30 days after discharge for heart failure patients**
18. **Readmission within 30 days after discharge for heart attack patients**

19. Readmission within 30 days after discharge for pneumonia patients
20. Readmission within 30 days after discharge (hospital-wide)
21. Readmission within 30 days after discharge for hip or knee surgery

**III: Comparison of Maine to 7 States With Public Reporting**

As I understand the AG/intern memo, seven states with public reporting include: California, Connecticut, Louisiana, Minnesota, Nevada, Washington and the Wash. D.C.

First, we remain a little unclear if these states actually do public reporting. For example, the D.C. report we found online does not list information by hospital name but instead looks like the Maine report. (For what it's worth, the D.C. report is outstanding in that it actually discusses quality improvement.)

Second, it's hard to meaningfully compare states on issues such as this. However, thankfully, a national organization called Leapfrog conducts studies of hospital quality, by state. The Leapfrog effort, which is one of many nationally, is helpful to us because it focuses on patient safety issues rather than the broader topic of hospital quality.

Last month, Leapfrog announced its most recent quality ratings by state. The results were as follows:

- Maine - #1.
- California - #8
- Washington - #17
- Minnesota - #25
- Louisiana - #32
- Nevada - #45
- Wash. D.C. - #49.

MHA is proud of its members and this significant accomplishment. The Sentinel Event program, including confidentiality, is part of the effort. This #1 ranking should give pause to making changes to the Sentinel Event program.

We continue to strongly oppose loss of confidentiality for sentinel events.



**RIGHT TO KNOW ADVISORY COMMITTEE  
LEGISLATIVE SUBCOMMITTEE  
AND  
PUBLIC POLICY SUBCOMMITTEE**

DRAFT AGENDA  
December 17, 2013  
9:00 a.m.

Room 438, State House, Augusta

**Convene**

1. Welcome and Introductions  
Judy Meyer and Chris Parr, Subcommittees Chairs
2. Overview of drafts being presented to Advisory Committee
  - Meetings using communications technology for remote participation (LD 258)
  - FOAA deadlines and appeals (PL 2013, c. 350)
  - Relief from overly burdensome FOAA requests (MMA survey)
  - Change reporting date for Public Access Ombudsman
  - Add IT expertise to membership of Advisory Committee
  - Allow Registers of Deeds to redact Social Security numbers

*see  
packet  
for Advisory  
Committee  
mtg*

The following topics were tabled on November 12th for discussion at this meeting:

3. Update on State e-mail management protocol
4. Can FOA requests be made anonymously? Does it matter if the request is in writing?
5. Should FOAA requests for commercial purposes be subject to the fee restrictions of 1 MRSA §408-A, sub-§8? What is a commercial purpose?
6. Review of standard fees and fee schedules adopted by agencies
7. Review of allocation of responsibilities between the Advisory Committee and the Ombudsman
8. Additional issues, questions?

**Adjourn**





STATE OF MAINE

POLICY ON PRESERVATION OF STATE GOVERNMENT RECORDS

Effective: October 11, 2013

**TO: All State Employees**

**Applicability:** This policy applies to all employees of Maine state government, including all Executive Branch agencies, employees of the Judicial Branch, Legislative Branch, the Constitutional Offices, and semi-independent agencies.

**Statutory Authority:** Maine State Revised Statutes, Title 5, Chapter 6, Section 95, §7 ([www.mainelegislature.org/legis/statutes/5/title5sec95.html](http://www.mainelegislature.org/legis/statutes/5/title5sec95.html)).

**Policy:** Records management statutes, rules and policies provide the public with the evidentiary assurance and proper documentation that state and local government operations are operating in accordance with their public mandate and that their work is carried out with transparency. Public records are the property of the public and must be made available to citizens unless specifically proscribed in law. Agencies may destroy records only in accordance with statutorily-approved retention schedules. If agencies wish to destroy records earlier than those retention times, they must get approval from the State Archivist.

**Purpose:** This policy establishes uniform records management practices throughout Maine state government. State government employees create and receive documents and e-mails as part of their official duties, therefore, most documents and e-mails are official state records. State Archives records retention schedules dictate how long to retain any document or email created or received in connection with official government business; or evidence of the agency's functions, policies, and procedures; or because of its informational or historical value. These records schedules apply to both paper and electronic records. General Records Schedules apply to records common to most agencies. Most agencies also have agency-specific records schedules to supplement the General Records Schedules for paper and electronic records.

**For questions about records retention schedules specific to your agency, contact your agency records officer. See list at: <http://www.maine.gov/sos/arc/records/state/statero.html>.**

**Guidelines for Correspondence and E-mail:** E-mail is considered general correspondence. In the General Records Schedules, most general correspondence, and therefore most e-mail, has a retention period of 3 years. The only exceptions are:

- Commissioner or Agency head correspondence and e-mail is considered of historical value and to be kept permanently.
- Correspondence and e-mail related to the official state budget is to be kept for 4 years (two biennia) and then destroyed.

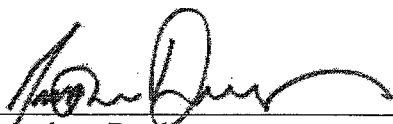
- Correspondence and e-mail related to equipment and property is to be kept for 5 years, and then destroyed.
- Junk mail such as advertisements and any personal e-mails an employee may have in their state e-mail accounts do not need to be preserved, since these are not official state government records.

In summary, most state agency correspondence and e-mail has a retention schedule of 3 to 5 years (unless for a commissioner or agency head, which is archival / permanent). In most cases, agency users should be managing their e-mail to retain for 3 to 5 years.

**Guidelines for Other Record Types:** Non-correspondence records have various retention periods, some even permanent. For example, contracts must be kept 7 years, official budget records 10 years, personnel records 60 years, and some record types that have historical value must be kept permanently (transferred to the State Archives). For details on each record type, see links to the records schedules below.

**Actions by Employees:** Every State employee shall comply with this policy by taking the following actions:

1. Properly manage all of their State government records, including correspondence, e-mail and electronic documents.
  - a. Employees are to save (archive) their correspondence, email and other documents so that it is preserved for the amount of time required by the records schedules. It is the responsibility of Agency managers and supervisors to secure and archive records of former employees. For steps on how to archive e-mail, see the instructions on the State internal website at: <http://inet.state.me.us/foaa/archiving.aspx>.
  - b. Executive Branch: If assistance is needed, employees can call the OIT Help Desk at 624-7700.
  - c. Judicial Branch, Legislative Branch, Constitutional Offices and semi-independent agencies: If assistance is needed, employees should call their individual HelpDesk.
2. Review the following Schedules and Guides:
  - General Records Schedules: [www.maine.gov/sos/arc/records/state/gensched2.html](http://www.maine.gov/sos/arc/records/state/gensched2.html).
  - State Agency Schedules (pertaining to their agency): <http://www.maine.gov/sos/arc/records/state/stsched.html>.
  - Email Retention Guide: <http://www.maine.gov/sos/arc/records/state/emailguide.pdf>.
  - Basics of Records Management Guide: <http://www.maine.gov/sos/arc/records/state/trainaug13.pdf>.
3. Annually sign the web-based acknowledgement form (within 60 days of receiving notice): <http://www.maine.gov/sos/arc/records/state/policyform.html>.



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Matthew Dunlap  
Secretary of State

6

### Fees and fee schedules for responding to document requests

Email responses from query to State FOA Contacts

AGENCY	CHARGE FOR COPIES?	PER PAGE	TIME	COMMENTS
Bureau of Capitol Police, Department of Public Safety	Yes	See DPS schedule	\$15 per hour after first hour	
Bureau of Consolidated Emergency Communications, Department of Public Safety	Yes	See DPS schedule	No	
Bureau of Highway Safety, Department of Public Safety	No	No	No	
Emergency Medical Services, Department of Public Safety	Yes	See DPS schedule	No	
Gambling Control Board, Department of Public Safety	No	See DPS schedule	No	
Maine Criminal Justice Academy, Department of Public Safety	Yes	See DPS schedule	No	
Maine Drug Enforcement Agency, Department of Public Safety	No	No	No	
Maine State Police, Department of Public Safety	Yes	See DPS schedule	Yes	

AGENCY	CHARGE FOR COPIES?	PER PAGE	TIME	COMMENTS
State Fire Marshal's Office, Department of Public Safety	Yes	See DPS schedule	Yes	
Maine Human Rights Commission	Yes	\$0.12 per page	\$15 per hour after first hour	Written policy
Department of Transportation	Yes	(not specified)	\$15 per hour after first hour	
State Treasurer		No fee schedule		Consider charging only if time to produce documents excessive; look to AG's Office for guidance
Workers' Compensation Board	Yes	\$0.10 per page	\$15 per hour after first hour	Research charge generally applied only if request is large and, as a result, time-consuming for staff
Maine Turnpike Authority	Generally no	\$0.25	As allowed by statute	Most requests not that big
Public Advocate	No	No	No	
Public Utilities Commission	Yes	\$0.25 if PUC makes copies \$0.10 if requester makes copies at PUC	\$15 per hour after first hour	Written policy
State Auditor	Generally no			Don't receive many requests; most responses can be emailed
Maine State Board of Nursing	Yes	\$0.25	\$15 per hour after first hour	Charge for time only if requires substantial time

AGENCY	CHARGE FOR COPIES?	PER PAGE	TIME	COMMENTS
Finance Authority of Maine	Yes	\$0.05	\$15 per hour after first hour	Also charge actual postage fees
Department of Corrections	Yes – if not electronic record	\$0.25		
Department of Environmental Protection	Yes	\$0.25 Larger format = \$0.50 Color copies = \$0.60	\$15 per hour after first hour	Actual shipping costs
Maine Ethics Commission	If a lot of documents	\$0.20 if Commission makes copies \$0.10 if requester does copying	\$15 per hour after first hour	Rarely charge for time – only when a huge effort on part of staff Most request are small Very few records not in electronic format
Maine Emergency Management, Department of Defense, Veterans and Emergency Management	No	No	No	
Office of Profession and Financial Regulation, Department of Professional and Financial Regulations	After first 7 pages	\$0.25	\$10 per hour after first hour	Requests rarely result in requestors being invoiced
Office of Securities, Department of Professional and Financial Regulations	Yes	\$0.20	Not typically	

AGENCY	CHARGE FOR COPIES?	PER PAGE	TIME	COMMENTS
Bureau of Insurance, Department of Professional and Financial Regulation	Yes – if not transmitted electronically	\$0.50	No	
Bureau of Financial Institutions, Department of Professional and Financial Regulations	Yes	\$0.25	No	
Bureau of Consumer Credit Protection, Department of Professional and Financial Regulation	No	-	No specific set price	Provides firm estimate on cost in advance based on time and materials it will require, then agree with the requesting party ahead of time on the charge
Maine Historic Preservation Commission	No	No	No	
Department of Education	Yes	\$0.10	\$15 per hour after first hour	
Department of Agriculture, Conservation and Forestry	No charge for small requests	Large requests: \$1.00 for first page, \$0.25 for each subsequent page	\$15 per hour after the first hour	

See attached schedules and policies:

- Department of Public Safety, Maine State Police
- Maine Human Rights Commission
- Public Utilities Commission

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**State of Maine**  
DEPARTMENT OF PUBLIC SAFETY

UNIFORM FREEDOM OF ACCESS ACT FEE SCHEDULE

ITEM	FEE
Paper documents (for example, paper copies of incident reports, notes, memoranda, e-mails, etc.)	Incremental fee of ten dollars (\$10.00) per every twenty-five (25) pages: <ul style="list-style-type: none"> <li>▪ 1 to 25 pages: \$10.00</li> <li>▪ 26 to 50 pages: \$20.00</li> <li>▪ 51 to 75 pages: \$30.00... etc.</li> </ul>
Photographs <ul style="list-style-type: none"> <li>▪ 4" x 6" photos provided from 35mm film only</li> <li>▪ 8½" x 11" prints made from digital photos</li> <li>▪ Digital photos on CD ROM</li> </ul>	<ul style="list-style-type: none"> <li>▪ \$2.00 each</li> <li>▪ \$2.00 each</li> <li>▪ \$6.00 each</li> </ul> <p>No fee is to be charged if digital photos are being provided to a defense attorney or prosecuting authority for purposes of discovery in the context of a pending criminal case.</p>
Forensic maps <ul style="list-style-type: none"> <li>▪ 8½" x 11" black and white / color map</li> <li>▪ Color/e-mailed</li> <li>▪ 33" x 44" plotter size map</li> </ul>	<ul style="list-style-type: none"> <li>▪ \$15.00 each / \$15.00 each</li> <li>▪ \$15.00 each</li> <li>▪ \$35.00 each</li> </ul>
CDs DVDs	<ul style="list-style-type: none"> <li>▪ \$6.00 each</li> <li>▪ \$6.00 each</li> </ul>
E911 call recording transcripts	<ul style="list-style-type: none"> <li>▪ \$15 for the cover and first page of a transcript; 5 dollars per transcript page thereafter</li> </ul>
Staff time dedicated to searching for, retrieving, and compiling any type of requested records	<p>"The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$15 per hour after the first [free] hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information." (1 MRSA § 408-A(8)(B))</p>
<p><b>NOTES</b></p> <ul style="list-style-type: none"> <li>▪ The fees provided in this schedule supersede any and all fees provided in current Department of Public Safety policies.</li> <li>▪ Fees for types of records that are not considered in this schedule are to be reasonable and determined on a case-by-case basis.</li> <li>▪ The Department of Public Safety may make reasonable deviations from this fee schedule at any time.</li> <li>▪ Payment of fees may be made with a check or money order made payable to, "Treasurer, State of Maine."</li> </ul>	

▪ Amended: 11/20/2013

**MAINE HUMAN RIGHTS COMMISSION POLICY  
PUBLIC RECORDS AVAILABLE FOR PUBLIC INSPECTION AND COPYING**

1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record<sup>1</sup> during the regular business hours of the agency within a reasonable period of time after making a request to inspect or copy the public record. The Commission may request clarification concerning which public record or public records are being requested and shall acknowledge receipt of the request within a reasonable period of time.

Any information relating to a complaint prior to the conclusion of the investigation, settlement or conciliation information, and information identifying persons who are not parties to a complaint are confidential and will not be disclosed. *See* 5 M.R.S.A. § 4612(1)(A, B), (3), (5).

2. Inspection; translation and copying scheduled. Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the Commission or official having custody of the public record sought.
3. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows.
  - A. The Commission charges .12<sup>2</sup> per page to cover the cost of copying.
  - B. The Commission charges a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.
  - C. The Commission charges for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format.
  - D. The Commission does not charge for on-site inspection of the file by parties to a complaint.
  - E. The Commission charges for actual mailing costs incurred with a request.
4. Estimate. Commission provides the requester with an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than \$30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 5 applies.
5. Payment in advance. The Commission may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:
  - A. The estimated total cost exceeds \$100; or
  - B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.
6. Waivers. The Commission may waive part or all of the total fee if:
  - A. The requester is indigent; or
  - B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

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<sup>1</sup> Public records. 1 M.R.S.A. § 402(3).

<sup>2</sup> Fees. 5 M.R.S.A. §2051

## PUC Policy on Costs Associated with FOAA Requests

In addition to the requirements in 1 M.R.S.A. § 408-A, the Commission's policy concerning FOAA requests is as follows:

1. Documents may be viewed at the Commission for free.
2. If paper copies are requested, the charge is .25¢ per page if the Commission makes the copies or .10¢ per page if the requester makes his/her own copies at the Commission. Requests consisting of less than ten pages will be at no charge.
3. The first hour for Commission staff searching, retrieving and compiling a response is free. Time over one hour shall be charged at \$15.00 per hour.
4. If electronic copies are requested, the searching, retrieving and compiling charges described in #3 shall apply.
5. When documents are available through the Commission's electronic filing system, the requester will first be directed to the electronic case files where the documents exist to determine if this satisfies the request.
6. If an individual claims he/she is indigent and cannot afford any charges, the Commission shall apply the rules applied by the courts in determining indigency as set forth in the Maine Rules of Civil Procedures, Rule 91. This requires the requester to file an affidavit stating:
  - a. the person's monthly income and necessary monthly expenses;
  - b. that the person possesses no other source to pay the charges;
  - c. if the person is receiving poverty-based public assistance income identifying the government program and nature and duration of the assistance and;
  - d. that the request is made in good faith.

There will be an assumption that the requester is without sufficient funds if the person's income is derived from poverty-based public assistance programs. The information in the affidavit shall be treated as confidential. Based on the information filed, the Commission's Administrative Director will determine whether the charges should be waived and notify the requester.

*MacImage of Maine LLC, et al. v Androscoggin County, et al.*

*MacImage of Maine LLC, et al. v Androscoggin County, et al.*, 2012 ME 44, 40 A.3d 975. The Supreme Judicial Court held that county registries of deeds must establish reasonable fees for responding to bulk requests for real estate records that are available to the public by law. The Law Court found that the fees charged by the counties for the transfer of bulk records were reasonable and the counties were not required to provide bulk transfers of the records at the price requested by a private entity. In making its ruling, the Law Court relied heavily on recently enacted legislation (Public Law 2011, chapter 378) that established fees and applied retroactively.

In 2010, this case was initiated in Superior Court by MacImage of Maine, LLC and its general manager, John Simpson, who brought suit against six counties seeking access to the computer database of records maintained by each county's registry of deeds. MacImage's plan to build a single website on which the land records of all counties are available for review and copying was dependent on MacImage's ability to obtain the records of the registries of deeds both initially and on a regular basis for updates. MacImage requested the electronic bulk transfer of the records from each county, which the counties were not willing or able to do at the price MacImage was willing to pay.

The Superior Court determined that the Legislature's 2010 amendment to Title 33, sections 651 and 751 made clear that the Title 33 statute, and not the fees provisions of the Freedom of Access Act, applies to the establishment of copying fees for the records of the registry of deeds in each county. The Court found that section 751 did not, however, authorize the counties to charge fees based on the overall cost of maintaining their data in electronic form. The Court then reviewed each county's fees for the bulk transfer of records to MacImage, and found that each county's fees were not reasonable and constituted constructive denial of MacImage's public records requests. The Court ordered each county to provide a download of the requested records using county-specific cost formulas.

After the counties had commenced their appeals, the Legislature enacted Public Law 2011, chapter 378, which repealed section 751, subsection 14, replaced that subsection with new statutory language, and provided a retroactive explanation of what qualified as a reasonable fee between September 1, 2009, and June 16, 2011, the effective date of the Act.

In vacating the Superior Court's ruling, the Law Court held that the real estate records held by the county registries of deeds, along with the indexes to those records, are available to the public pursuant to Title 33, section 651 and not through the more general provisions under the Freedom of Access Act (Title 1, section 402, subsection 3 and section 408 [now section 408-A]). It also noted that the Legislature through Public Law 2011, chapter 378, established reasonable fees for responding to record requests for records and indexes, including the transfer of electronic data. The Law Court held that the legislation is applicable to the disputed fees and that those fees fall within the parameters for "reasonable fees" established by that legislation.

**Evolution of Advisory Committee and Ombudsman responsibilities**

7

RESPONSIBILITY	2005 LD 301	2005 COM AMD	CURRENT LANGUAGE
<b>Statutes/Legislation</b>			
1. adviser to Legislature when legislation concerning public access is considered	AC	AC	<b>1 MRSA §411, sub-§6</b> H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered;
2. submit legislation	AC	AC	(No authority)
3. examine inconsistencies in statutory language			<b>1 MRSA §411, sub-§6</b> F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released;
4. review existing public records exceptions	AC	AC	<b>1 MRSA §411, sub-§6</b> E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation;
5. make statutory recommendations	AC PAO	AC	<b>1 MRSA §411, sub-§6</b> G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations;  <b>5 MRSA §200-I, sub-§</b> E. Make recommendations concerning ways to improve public access to public records and proceedings; and

**Evolution of Advisory Committee and Ombudsman responsibilities**

<b>RESPONSIBILITY</b>	<b>2005 LD 301</b>	<b>2005 COM AMD</b>	<b>CURRENT LANGUAGE</b>
<b>Complaints</b>			
6. compliance issues			<p><b>1 MRSA §411, sub-§6</b>                      A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws;</p>
7. review info from PAO about lack of access and frivolous requests	AC		
8. respond to and work to resolve complaints	PAO		<p><b>5 MRSA §200-I, sub-§2</b>                      C. Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws;</p>
9. advisory opinions			<p><b>5 MRSA §200-I, sub-§2</b>                      D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved;</p>
<b>Guidance/Education</b>			
10. recommendations to state and local government – law and practices (same as #5 above)			<p><b>1 MRSA §411, sub-§6</b>                      G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing</p>

**Evolution of Advisory Committee and Ombudsman responsibilities**

RESPONSIBILITY	2005 LD 301	2005 COM AMD	CURRENT LANGUAGE
			committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations;
11. prepare interpretative and educational materials and programs	PAO	AC	<b>5 MRSA §200-I, sub-§2</b> A. Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right To Know Advisory Committee established in Title 1, section 411;
12. make available to elected or appointed public officials educational materials	PAO		
13. resource to support training and education - core resources, best practices			<b>1 MRSA §411, sub-§6</b> D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section 412, subsection 3 and for making that information publicly available;
<b>Guidance/Information</b>			
14. requests for interpretation and clarification			<b>1 MRSA §411, sub-§6</b> A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws;
15. central source and coordinator			<b>1 MRSA §411, sub-§6</b>

**Evolution of Advisory Committee and Ombudsman responsibilities**

<b>RESPONSIBILITY</b>	<b>2005 LD 301</b>	<b>2005 COM AMD</b>	<b>CURRENT LANGUAGE</b>
of information			B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for agencies and public officials. The advisory committee shall also provide general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries;
16. respond to inquiries from public and officials	PAO	AC	<b>5 MRSA §200-I, sub-§2</b> B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws;
17. furnish upon request guidelines and other appropriate information	PAO		
<b>Website</b>			
18. central publicly accessible website: statutes, guidance on using the law, contact information, complaints, statutory exceptions			<b>1 MRSA §411, sub-§6</b> C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as whom to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws;



**Evolution of Advisory Committee and Ombudsman responsibilities**

RESPONSIBILITY	2005 LD 301	2005 COM AMD	CURRENT LANGUAGE
<b>Monitor, data gathering, tracking</b>			
19. review public access to public proceedings and public records	AC	AC	
20. conduct public hearings, conferences, workshops other meetings to obtain information, discuss, publicize needs of and consider solutions	AC	AC	<b>1 MRSA §411, sub-§6</b> I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records;
21. review collection, maintenance and use of records by agencies			<b>1 MRSA §411, sub-§6</b> J. Shall review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public; and
22. coordinate with state agency PAOs to compile data about requests, time, costs			<b>5 MRSA §200-I, sub-§2</b> F. Coordinate with the state agency public access officers the compilation of data through the development of a uniform log to facilitate record keeping and annual reporting of the number of requests for information, the average response time and the costs of processing requests.
23. report			<b>5 MRSA §200-I</b> <b>5. Report.</b> The ombudsman shall submit a report not later than March 15th of each year to the Legislature and the Right To Know Advisory Committee established in Title 1, section 411 concerning the activities of the ombudsman for the previous year. The report must include: <ul style="list-style-type: none"> <li>A. The total number of inquiries and complaints received;</li> <li>B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials;</li> <li>C. The number of complaints</li> </ul>

**Evolution of Advisory Committee and Ombudsman responsibilities**

RESPONSIBILITY	2005 LD 301	2005 COM AMD	CURRENT LANGUAGE
			<p>received concerning respectively public records and public meetings;</p> <p>D. The number of complaints received concerning respectively:</p> <ul style="list-style-type: none"> <li>(1) State agencies;</li> <li>(2) County agencies;</li> <li>(3) Regional agencies;</li> <li>(4) Municipal agencies;</li> <li>(5) School administrative units;</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>(6) Other public entities; [</li> </ul> <p>E. The number of inquiries and complaints that were resolved;</p> <p>F. The total number of written advisory opinions issued and pending; and</p> <p>G. Recommendations concerning ways to improve public access to public records and proceedings.</p>
Catchall	AC	AC	<p><b>1 MRSA §411, sub-§6</b></p> <p>K. May undertake other activities consistent with its listed responsibilities.</p>

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