

RIGHT TO KNOW ADVISORY COMMITTEE

Thursday, September 5, 2019
1:00 p.m.
State House Room 438

Organizational Meeting Agenda

1. Introductions
2. Election of Chair
3. Review and discussion of the Thirteenth Annual Report of the Right to Know Advisory Committee (Jan. 2019) and actions related to those recommendations
4. Review and discussion of bills affecting freedom of access carried over in the Judiciary Committee
 - a. LD 639, An Act To Protect Student Privacy
 - b. LD 1575, An Act To Improve the Freedom of Access Laws of Maine
5. Review and discussion of LD 627, An Act Regarding Portable Electronic Devices, Location Information and Tracking Devices (Public Law 2019, chapter 489) relating to directive to RTKAC to review current law related to the application for and issuance of search warrants authorizing the installation and monitoring of tracking devices and obtaining content information and location information
6. Review and discussion of legislation including public records exceptions evaluated by Judiciary Committee pursuant to 1 MRSA §434
7. Update on Subcommittee to review existing public records exceptions
8. Discussion of formation of additional subcommittees
9. Discussion of issues and topics to cover
10. Establish future meeting dates
11. Brenda Kielty, Public Access Ombudsman
12. Adjourn

RIGHT TO KNOW ADVISORY COMMITTEE

1 §411. Right To Know Advisory Committee

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

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

A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate;

B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House;

C. One representative of municipal interests, appointed by the Governor;

D. One representative of county or regional interests, appointed by the President of the Senate;

E. One representative of school interests, appointed by the Governor;

F. One representative of law enforcement interests, appointed by the President of the Senate;

G. One representative of the interests of State Government, appointed by the Governor;

H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House;

I. One representative of newspaper and other press interests, appointed by the President of the Senate;

J. One representative of newspaper publishers, appointed by the Speaker of the House;

K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House;

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

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

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

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

3. Terms of appointment. The terms of appointment are as follows.

RIGHT TO KNOW ADVISORY COMMITTEE

A. Except as provided in paragraph B, members are appointed for terms of 3 years.

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

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

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

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

6. Duties and powers. The advisory committee:

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

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

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

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

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

RIGHT TO KNOW ADVISORY COMMITTEE

legislation;

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

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

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

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

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

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

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

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

RIGHT TO KNOW ADVISORY COMMITTEE

equal to the legislative per diem for their attendance at authorized meetings of the advisory committee.

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

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

Right to Know Advisory Committee

1 MRSA, sec. 411

Tuesday, September 3, 2019

Appointment(s) by the Governor

Mary-Anne LaMarre
406 East Side Trail
Oakland, ME 04963

Representing School Interests

Paul Nicklas
67 Pine Street, Apt. 2
Bangor, ME 04401
207 650-0685

Representing Municipal Interests

Christopher Parr
DPS
104 State House Station
Augusta, ME 04333
207 624-7205

Representing State Government Interests

Eric Stout
15 S. Ridge Dr.
Winslow, ME 04901
624-9981

Member with experience in Information Technology issues
and costs in multiple areas

Appointment(s) by the President

Sen. Michael E. Carpenter
P.O. BOX 1406
Houlton, ME 04730
207 532-2491

Senate Member of Judiciary Committee

Chief Richard LaHaye
Searsport Police Dept.
3 Union Street
Searsport, ME 04974
207 548-2304

Representing Law Enforcement Interests

Amy Beveridge
10 Stonewall Lane
Saco, ME 04072
207 577-9171

Representing Broadcasting Interests

Stephanie Grinnell
The Rubican Journal
156 High Street
Belfast, ME 04915
207 338-3333

Representing the Press

Luke Rossignol
1019 State Road
Mapleton, ME 04757

Representing the Public

William D. Shorey
Board of Waldo County Commissioners
39-B Spring Street
Belfast, ME 04915

Representing County or Regional Interests

Appointment(s) by the Speaker

Rep. Thomas Harnett
52 Marston Road
Gardiner, ME 04345
207 522-1254

House Member of the Judiciary Committee

Taylor Asen
126 William Street
Portland, ME 04103
207 653-6663

Representing the Public

James Campbell
Maine Freedom of Information Coalition
Monroe Road
Searsport, ME 04974

Representing a Statewide Coalition of Advocates of
Freedom of Access

Suzanne Goucher
ME. Assoc. of Broadcasters
69 Sewall Street Suite 2
Augusta, ME 04330
207 623-3870

Representing Broadcasting Interests

Judy Meyer
Lewiston Sun Journal
104 Park Street
Lewiston, ME 04243-4400
207 689-2902

Representing Newspaper Publishers

Attorney General

Phyllis Gardiner
Assistant AG
6 SHS
Augusta, ME 04333
207 626-8830

Or Designee

Chief Justice

Member of the Judicial Branch

Staff:

Peggy Reinsch

Colleen McCarthy Reid

Hillary Risler

Recommendations from the thirteenth annual report (January 2019) of the Right to Know Advisory Committee:

RECOMMENDATION	RESULT
Enact legislation to require municipal officials to complete Freedom of Access Act training when appointed to offices for which training is required if elected to those offices;	LD 1416, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Freedom of Access Training for Public Officials ENACTED: Public Law 2019, chapter 300
Amend certain provisions of law in Titles 1 through 7-A relating to previously-enacted public records exceptions;	LD 1511, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions NOT ENACTED
Enact legislation to establish a tiered schedule of fines for repeated willful violations of the Freedom of Access Act within a four-year period; and	LD 1414, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Penalties for Violations of the Freedom of Access Act ENACTED: Public Law 2019, chapter 247
Establish a legislative study on remote participation.	LD 1183, Resolve, To Implement the Recommendations of the Right To Know Advisory Committee Concerning Remote Participation by Members of Public Bodies NOT ENACTED

SENATE

MICHAEL E. CARPENTER, DISTRICT 2, CHAIR
SHENNA BELLOWS, DISTRICT 14
LISA M. KEIM, DISTRICT 18



HOUSE

DONNA BAILEY, SACO, CHAIR
CHRISTOPHER W. BABBITT, LEWISTON
BARBARA A. CARDONE, BANGOR
LOIS GALGAY RECKITT, SOUTH PORTLAND
RACHEL TALBOT ROSS, PORTLAND
THOM HARNETT, GARDNER
DAVID G. HAGGAN, HAMPDEN
PHILIP CURTIS, MADISON
JOHN DEVEAU, CARIBOU
JEFFREY EVANGELOS, FRIENDSHIP

MARGARET J. REINSCH, SENIOR LEGISLATIVE ANALYST
LYNNE CASWELL, LEGISLATIVE ANALYST
SUSAN M. PINETTE, COMMITTEE CLERK

STATE OF MAINE
ONE HUNDRED AND TWENTY-NINTH LEGISLATURE
COMMITTEE ON JUDICIARY

July 9, 2019

TO: Members, Right to Know Advisory Committee

FROM: Senator Michael E. Carpenter, Senate Chair
Representative Donna Bailey, House Chair
Joint Standing Committee on Judiciary

Re: LD 639, An Act To Protect Student Privacy
LD 1575, An Act To Improve the Freedom of Access Laws of Maine
LD 627, An Act Regarding Portable Electronic Device Content, Location Information
and Tracking Devices

During the First Regular Session of the 129th Legislature, the Joint Standing Committee on Judiciary heard and began working on two bills dealing with Freedom of Access issues. Recognizing that both bills will need in-depth analysis and discussion, not possible during the session, the Judiciary Committee voted to carry over both bills and informally refer them to the Right to Know Advisory Committee for review, analysis and the development of recommendations back to the Judiciary Committee in January 2020.

LD 639, An Act To Protect Student Privacy, provides that video and audio recordings made by security or surveillance cameras on school grounds or in school vehicles are not public records. Also introduced into the First Regular Session was LD 296, An Act Regarding Student Privacy with Respect to Video Recordings, which was referred to the Education and Cultural Affairs Committee. The Education Committee voted Ought Not To Pass on LD 296, with the understanding that the broader issues raised at the public hearing on LD 296 would be better addressed by the Judiciary Committee in LD 639, which amends the Freedom of Access Act. A copy of the Education Committee's memo to the Judiciary Committee is attached to this memo.

We are aware that the Advisory Committee had an initial discussion in 2018 about school surveillance recordings, but did not have time to pursue the topic in-depth. We believe that the Advisory Committee is uniquely suited to conduct such an in-depth examination, especially if it is broadened to include all governmental entities' surveillance and similar recordings. We respectfully request that the Advisory Committee explore the topic of public accessibility of surveillance recordings made by public entities, including schools, and start with the premise that the recordings are a type of public records subject to the Freedom of Access Act, and then determine if there are appropriate exceptions – weighing privacy and other interests supporting confidentiality against the public's interest in the disclosure of a record collected and maintained by a governmental entity.

LD 1575, An Act To Improve the Freedom of Access Laws of Maine, proposes several changes to the Freedom of Access Act (FOAA). The sponsors and supporters are very interested in clarifying

terms in and the application of the FOAA. In addition, one of the sponsors proposed that the statute include a maximum copying fee of 10¢ per page. The purpose of the bill is stated as to enhance access to public records without imposing undue burdens on the efficient and effective functioning of government. The Judiciary Committee supports those goals, but is concerned that the proposed changes will result in significant unintended consequences. We believe the Advisory Committee is better equipped to delve into each of the proposals and identify changes that actually do enhance public access but do not unduly burden the efficient and effective functioning of government.

LD 1575 also includes language directing the Right to Know Advisory Committee to examine the specific challenges of ensuring public access to public records in the face of new and emerging technologies, and to develop recommendations that are designed to preserve communications that can be accessed by the public. The Judiciary Committee supports the idea that RTKAC take on this challenge, recognizing that it is not simple and may take longer than a legislative interim to develop recommendations. We respectfully ask that the Advisory Committee consider commencing this inquiry this year, even while LD 1575 is still pending in committee.

We would also like to draw your attention to LD 627, An Act Regarding Portable Electronic Device Content, Location Information and Tracking Devices, now Public Law 2019, chapter 489. It contains an unallocated section directing the Right to Know Advisory Committee to review the law concerning the application for and issuance of search warrants authorizing the installation and monitoring of tracking devices, as well as obtaining content information and location information, and make recommendations concerning the public's right to know aggregate information about the warrants, including warrants in which the application for the warrant included a request for an order to waive notice of the issuance of the warrant. The Advisory Committee is required to include in its annual report submitted in January 2020 a summary of its review and any recommendations.

In addition to the bills referred to the Judiciary Committee, we would like to point out the changes adopted by the Transportation Committee's LD 166, An Act To Protect Schoolchildren by Providing Additional Enforcement and Prevention Options for Unlawful Passing of a School Bus, now Public Law 2019, chapter 318. Chapter 318 authorizes the use of cameras on the extended stop arm on school buses, and restricts access to those recordings. Although we reviewed the LD 166 amendments pursuant to our Title 1, section 434 authority regarding proposed public records exceptions, we think it would make sense for the Advisory Committee to consider this law in the context of the other school surveillance records, while recognizing that these are a different type of recording.

The Judiciary Committee is appreciative of the work of the Right to Know Advisory Committee, and we are glad the Advisory Committee serves as such an outstanding resource. We recognize that you may have your own identified agenda, and we hope you will be able to include our requests in your activities this year.

We look forward to hearing from you.

Attachments

cc: Chairs, Joint Standing Committee on Education and Cultural Affairs
Senator Catherine Breen, cosponsor LD 1575
Victoria Wallach, Maine School Management Association
Kelli Deveaux, Department of Education

4-2



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 639

S.P. 201

In Senate, February 7, 2019

An Act To Protect Student Privacy

Reference to the Committee on Judiciary suggested and ordered printed.

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

DAREK M. GRANT
Secretary of the Senate

Presented by Senator CARPENTER of Aroostook.
Cosponsored by Senator GRATWICK of Penobscot, Representative McCREA of Fort Fairfield
and Senator: DILL of Penobscot, Representatives: HARNETT of Gardiner, NADEAU of
Winslow.

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

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

4 U. Records provided by a railroad company describing hazardous materials
5 transported by the railroad company in this State, the routes of hazardous materials
6 shipments and the frequency of hazardous materials operations on those routes that
7 are in the possession of a state or local emergency management entity or law
8 enforcement agency, a fire department or other first responder. For the purposes of
9 this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of
10 Federal Regulations, Section 105.5; ~~and~~

11 **Sec. 2. 1 MRSA §402, sub-§3, ¶V**, as enacted by PL 2017, c. 118, §3, is
12 amended to read:

13 V. Participant application materials and other personal information obtained or
14 maintained by a municipality or other public entity in administering a community
15 well-being check program, except that a participant's personal information, including
16 health information, may be made available to first responders only as necessary to
17 implement the program. For the purposes of this paragraph, "community well-being
18 check program" means a voluntary program that involves daily, or regular, contact
19 with a participant and, when contact cannot be established, sends first responders to
20 the participant's residence to check on the participant's well-being; ~~and~~

21 **Sec. 3. 1 MRSA §402, sub-§3, ¶W** is enacted to read:

22 W. Video and audio recordings made by security or surveillance cameras on school
23 grounds as defined in Title 20-A, section 6554, subsection 2, paragraph E.

24 **SUMMARY**

25 This bill provides that video and audio recordings made by security or surveillance
26 cameras on school grounds or in school vehicles are not public records for purposes of
27 the Freedom of Access Act.

SENATE

REBECCA J. MILLETT, DISTRICT 29, CHAIR
EVERETT BROWNIE CARSON, DISTRICT 24
MATTHEW POULIOT, DISTRICT 15

HILLARY RISLER, LEGISLATIVE ANALYST
KAREN S. NADEAU, LEGISLATIVE ANALYST
JAYNE DENEEN, COMMITTEE CLERK



HOUSE

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HEIDI H. SAMPSON, ALFRED
GARY A. DRINKWATER, MILFORD
JUSTIN PECTEAU, AUGUSTA
SHELLEY RUDNICKI, FAIRFIELD

STATE OF MAINE
ONE HUNDRED AND TWENTY-NINTH LEGISLATURE
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS

May 15, 2019

TO: Senator Michael Carpenter, Senate Chair,
Representative Donna Bailey, House Chair, and
Members of the Joint Standing Committee on Judiciary

FROM: Senator Rebecca J. Millett, Senate Chair, *RM*
Representative Victoria P. Kornfield, House Chair, *VPK*
Members of the Joint Standing Committee on Education & Cultural Affairs

SUBJ: LD 296, "An Act Regarding Student Privacy with Respect to Video Recordings"

On behalf of the members of the Joint Standing Committee on Education and Cultural Affairs ("Education Committee"), we are writing to you regarding LD 296, "An Act Regarding Student Privacy with Respect to Video Recordings." LD 296 proposes to require an elementary or secondary school to keep confidential a video recording in which a student is present, including a video recording taken in a bus or other means of student transportation used by the school, and prohibits the school from disseminating or publishing the video recording without the written permission of a parent of the student.

LD 296 was proposed by Representative Kornfield to address an issue concerning student privacy that was raised by the decision in a 2018 court case from the Commonwealth of Pennsylvania. In this case, the media requested a bus surveillance video under the state's Freedom of Access law. The video recorded on a school bus captured a teacher disciplining a student. The court upheld a lower-court ruling that although the video was maintained by the school, the video was not protected by the federal Family Educational Rights and Privacy Act (FERPA) because it did not meet the FERPA requirement that it also be directly related to any of the students in the video. The video was released to the media, although it contained clearly identifiable students. The court's decision raised concern that anyone could potentially request school videos under Maine's Freedom of Access law. Currently, Maine does not have a law that would protect the release of school surveillance videos to the public.

During the public hearing on LD 296, the City of Bangor recommended that the bill be amended to extend confidentiality provisions for students under Maine's Right-to-Know law to all security footage from vehicles and facilities owned by the state or local governments, with exceptions for body cameras, dash cameras and intelligence and investigative information requests. The proposed amendment would protect student's privacy not only in school buildings, on school

grounds and in school buses, but also in state and municipal building and on state and municipal grounds. A copy of the proposed amendment is attached to this memo.

The Judiciary Committee's bill, LD 639, "An Act to Protect Student Privacy," is similar to LD 296. LD 639 proposes to provide that video and audio recordings made by security or surveillance cameras on school grounds or in school vehicles are not public records for purposes of the Freedom of Access Act. After holding a public hearing and a work session on LD 296, the Education Committee voted unanimously "ought not to pass" on the bill. The Committee's vote was based on the issues raised at the bill's public hearing that have been outlined in this memo and the belief that those issues could be better addressed in LD 639.

Thank you for your time and attention to this matter and should you have any questions or require additional information, please do not hesitate to contact us.

provided by Paul Nicklas -

LD 296

5-6-19

**An Act Protecting the Confidentiality of Security Camera Videos from Schools,
Buses, and Other Government Facilities**

Whereas, schools, school buses, recreational programs, and other governmental facilities increasingly use security cameras in order to help maintain security and safety;

Whereas, at present, such security camera footage may be subject to the Freedom of Access Act;

Whereas, release of this footage would lead to privacy and safety concerns for children and others;

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

Sec. 1. 1 MRS §402, sub-§3, is amended to read:

3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

...

W. Video footage from cameras installed for security or safety purposes in vehicles and facilities used by or on behalf of the State, a local government, a quasi-governmental entity, or a school district. For purposes of this paragraph, "vehicles and facilities" means buses, schools, libraries, recreational program facilities, and other vehicles and facilities. This paragraph does not apply to records governed by Title 16, Chapter 9, or to body cameras or dash cameras.



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1575

H.P. 1137

House of Representatives, April 16, 2019

An Act To Improve the Freedom of Access Laws of Maine

Reference to the Committee on Judiciary suggested and ordered printed.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

Presented by Representative HARNETT of Gardiner.
Cosponsored by Senator BREEN of Cumberland.

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

2 **Sec. 1. 1 MRSA §402, sub-§1-B** is enacted to read:

3 **1-B. Public or governmental business.** "Public or governmental business" means
4 the administration of public policy and the exercise of governmental power through laws,
5 rules, ordinances, regulations and the equivalent. "Public or governmental business" does
6 not include personal communications of agency staff or public officials unless the subject
7 of the communication is the administration of public policy or the exercise of
8 governmental power through laws, rules, ordinances, regulations or the equivalent.

9 **Sec. 2. 1 MRSA §408-A, sub-§1-A** is enacted to read:

10 **1-A. Request.** A person who requests to inspect or copy a public record under this
11 section shall provide to the office of the agency or official having custody of the public
12 record sufficient information to identify the record sought. At a minimum, a request for a
13 public record must include:

14 A. The specific subject matter contained in the record; and

15 B. The date or dates upon which the record was created. If the person is not aware of
16 the specific date or dates upon which the record was created, the person may provide
17 a broad range of dates within which the record may have been created.

18 **Sec. 3. 1 MRSA §408-A, sub-§3,** as amended by PL 2015, c. 317, §1, is further
19 amended to read:

20 **3. Acknowledgment; clarification; time estimate; cost estimate.** The agency or
21 official having custody or control of a public record shall acknowledge receipt of a
22 request made according to this section within 5 working days of receiving the request and
23 may request clarification concerning which public record or public records are being
24 requested. ~~Within a reasonable time~~ 30 days of receiving the request, the agency or
25 official shall provide ~~a good faith, nonbinding estimate of the time within which the~~
26 ~~agency or official will comply with the~~ to the requester an update on the agency's or
27 official's progress on the request, as well as a cost estimate as provided in subsection 9.
28 ~~The~~ Within 30 days of providing the update on the agency's or official's progress, the
29 ~~agency or official shall make a good faith effort to fully respond to the request within the~~
30 ~~estimated time~~ fulfill the request or, if fulfillment of the entirety of the request is not
31 possible within the 30-day time frame, the agency or official shall fulfill that portion or
32 portions of the request that it can fulfill within the 30-day time frame and shall provide to
33 the requester an explanation of the reason or reasons that the request cannot be fulfilled
34 within the 30-day time frame and a written estimate of the expected date of compliance
35 with the remainder of the request. A requester that is aggrieved by the inability of an
36 agency or official to comply with a request within the 30-day time frame may file a
37 complaint with the Public Access Ombudsman appointed under Title 5, section 200-I.
38 For purposes of this subsection, the date a request is received is the date a sufficient
39 description of the public record, in accordance with subsection 1-A, is received by the
40 agency or official at the office responsible for maintaining the public record. An agency
41 or official that receives a request for a public record that is maintained by that agency but

1 is not maintained by the office that received the request shall forward the request to the
2 office of the agency or official that maintains the record, without willful delay, and shall
3 notify the requester that the request has been forwarded and that the office to which the
4 request has been forwarded will acknowledge receipt within 5 working days of receiving
5 the request.

6 **Sec. 4. Review; report.** The Right To Know Advisory Committee, established
7 under the Maine Revised Statutes, Title 5, section 12004-J, subsection 14, shall examine
8 the specific challenges of ensuring public access to public records in the face of new and
9 emerging technologies and shall develop recommendations that are designed to preserve
10 communications that can be accessed by the public. In conducting its review, the
11 committee shall specifically examine:

12 1. The effect of the increasing reliance on the use of text messaging to conduct
13 business and how text messaging fits within the parameters of the Freedom of Access
14 Act;

15 2. How to ensure the preservation of public records when the use of technology that
16 does not create a permanent record, such as Snapchat, is surging; and

17 3. Strategies to encourage public agencies and public officials to adopt business
18 practices that are specifically designed to preserve public records that are subject to the
19 Freedom of Access Act.

20 The Right To Know Advisory Committee shall submit its report, together with any
21 proposed implementing legislation, to the Joint Standing Committee on Judiciary by
22 December 4, 2019. Upon receipt and review of the report, the joint standing committee
23 may report out a bill to the Second Regular Session of the 129th Legislature.

24 **SUMMARY**

25 The purpose of this bill is to enhance access to public records without imposing
26 undue burdens on the efficient and effective functioning of government. This bill makes
27 the following changes to the Freedom of Access Act.

28 1. Current law defines public records that are subject to the Freedom of Access Act
29 as matter in the possession or custody of an agency or public official that has been
30 received or prepared for use in connection with, or that contains information relating to,
31 the transaction of public or governmental business. This bill defines "public or
32 governmental business" as the administration of public policy and the exercise of
33 governmental power through laws, rules, ordinances, regulations and the equivalent.

34 2. The bill requires that, when requesting to inspect or to receive a copy of a public
35 record, a person must provide to the agency or official with custody of the record
36 sufficient information to identify the record sought. Under the bill, a request for a public
37 record must include, at a minimum, the specific subject matter contained in the record
38 and the date or dates upon which the record was created or a range of dates within which
39 the record may have been created.

1 3. Current law requires that, within "a reasonable time" of receiving a request for
2 information, the agency or official must provide a good faith, nonbinding estimate of the
3 time within which the agency or official will comply. This bill instead requires that the
4 agency or official, within 30 days of receiving the request, provide to the requester an
5 update on progress on the request and, within 30 days of providing the update, fulfill the
6 request. If the agency or official is unable to fulfill the entirety of the request within the
7 specified time period, the agency or official must provide to the requester an explanation
8 of the reason or reasons it was unable to comply, fulfill those portions of the request that
9 it can fulfill and provide a written estimate of the expected date of compliance with the
10 remainder of the request.

11 4. The bill directs the Right To Know Advisory Committee to examine the specific
12 challenges of ensuring public access to public records in the face of new and emerging
13 technologies and to develop recommendations that are designed to preserve
14 communications that can be accessed by the public. The Right To Know Advisory
15 Committee is directed to report its findings and recommendations to the Joint Standing
16 Committee on Judiciary, which is authorized to report out a bill to the Second Regular
17 Session of the 129th Legislature.

APPROVED
JUNE 17, 2019
BY GOVERNOR

4-4
CHAPTER
318
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND NINETEEN

S.P. 53 - L.D. 166

**An Act To Protect Schoolchildren by Providing Additional Enforcement and
Prevention Options for Unlawful Passing of a School Bus**

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

Sec. 1. 29-A MRSA §2117, as enacted by PL 2009, c. 223, §1, is amended to read:

§2117. Use of traffic surveillance cameras restricted

~~The~~ Except as provided in subsections 1 and 2, the State or a municipality may not use a traffic surveillance camera to prove or enforce a violation of this Title. For purposes of this section, "traffic surveillance camera" means a device that, in conjunction with a lighted traffic-control device or a lane direction control device, as described in section 2057, subsections 1 and 3, or a speed measurement device as described in section 2075, subsection 4, automatically produces one or more photographs, one or more microphotographs, a videotape or any other recorded image of a vehicle at the time the vehicle is operated in violation of state law.

~~This section does not apply to a photo-monitoring system, as defined by Title 23, section 1980, subsection 2-A, paragraph B, subparagraph 4, used by the Maine Turnpike Authority for toll enforcement purposes.~~

1. School buses. The State or a municipality may use a traffic surveillance camera mounted on a school bus in conjunction with a lighted traffic-control device to prove or enforce a violation of section 2308, subsection 2. A photograph, microphotograph, videotape or other recorded image or audio produced by a traffic surveillance camera mounted on a school bus is confidential and may only be released to a law enforcement officer for the purpose of an investigation into a violation of the law or to a law enforcement officer, prosecutor, defendant or court for the purpose of a prosecution of a violation of the law.

The state or a municipality may not retain a photograph, microphotograph, videotape or other recorded image or audio produced by a traffic surveillance camera mounted on a

school bus for more than 30 days from the date of production unless it is released in accordance with this subsection.

For the purposes of this subsection, "prosecutor" means a person who by virtue of public employment is vested by law with a duty to prosecute offenders for crimes, whether that duty extends to all crimes or is limited to specific crimes.

2. Toll enforcement. The Maine Turnpike Authority may use a photo-monitoring system, as defined by Title 23, section 1980, subsection 2-A, paragraph B, subparagraph (4), for toll enforcement purposes.

Sec. 2. 29-A MRSA §2301, sub-§§1-D and 5-C are enacted to read:

1-D. Extended stop arm. "Extended stop arm" means a stop arm that when activated extends 3 to 6 feet outward from the left side of a school bus.

5-C. Stop arm. "Stop arm" means a device mounted on the left side of a school bus that when activated displays a stop sign to traffic in front of and behind that school bus.

Sec. 3. 29-A MRSA §2302, sub-§1, ¶G, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

G. May be equipped with a system of stop arms or extended stop arms to be operated only with the red signal lights; and

Sec. 4. 29-A MRSA §2308, sub-§6, as amended by PL 2019, c. 113, Pt. C, §75, is further amended to read:

6. Penalty. A violation of ~~this section~~ subsection 2 is a Class E crime that is punishable by a \$250 minimum fine for the first offense and a mandatory 30-day suspension of a driver's license for a 2nd offense occurring within 3 years of the first offense.

Sec. 5. 29-A MRSA §2380, sub-§3-A, as enacted by PL 2005, c. 482, §6, is amended to read:

3-A. Maximum width; additional exceptions. In addition to the exceptions in subsection 3, the following are excluded from the measurement of vehicle width:

- A. Reflecting mirrors;
- B. Turn signal lamps; ~~and~~
- C. Appurtenances on motor homes, truck campers and camp trailers, if such appurtenances extend no more than 6 inches from either side of the body of the vehicle; and
- D. Extended stop arms as defined in section 2301, subsection 1-D.

APPROVED
JUNE 27, 2019
BY GOVERNOR

5
CHAPTER
489
PUBLIC LAW

STATE OF MAINE
—
IN THE YEAR OF OUR LORD
TWO THOUSAND NINETEEN

See Sec. 18 on
page 7

—
H.P. 455 - L.D. 627

**An Act Regarding Portable Electronic Device Content, Location Information
and Tracking Devices**

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

Sec. 1. 15 MRSA §56, sub-§1, ¶A, as enacted by PL 2017, c. 144, §3, is amended to read:

A. "Adverse result" means:

- (1) Immediate danger of death or serious physical injury to any person;
- (2) Flight from prosecution;
- (3) Destruction of or tampering with evidence;
- (4) Intimidation of a potential witness;
- (5) ~~Potentially~~ Seriously jeopardizing an investigation; or
- (6) Undue delay of a trial; ~~or,~~
- ~~(7) Other significantly detrimental consequence.~~

Sec. 2. 15 MRSA §56, sub-§4, as enacted by PL 2017, c. 144, §3, is amended to read:

4. Application for expedited production of records. Notwithstanding the 14-day period specified in subsection 2 or 3 for production of the records, if an applicant for a search warrant believes that delaying production is reasonably likely to cause an adverse result, the applicant may request that the court require the production of the records sooner than 14 days after service pursuant to this subsection.

A. The applicant shall demonstrate to the court the specific adverse result or results, as specified in subsection 1, paragraph A, subparagraphs (1) to ~~(7)~~ (6), that delaying production for 14 days is reasonably likely to cause.

B. If the court finds that the delay may cause an adverse result, the court shall state the adverse result specified in subsection 1, paragraph A, subparagraphs (1) to ~~(7)~~ (6) and may require the provider to produce the records in a specified number of days.

C. If the court specifies that the provider has less than 14 days to produce the record and the adverse result finding is listed in subsection 1, paragraph A, subparagraphs (1) to (4), the provider must respond within the time specified by the court.

D. If the court specifies that the provider has less than 14 days to produce the record and the only adverse result findings are results listed in subsection 1, paragraph A, subparagraphs (5) ~~to (7)~~ and (6), the provider must notify the law enforcement officer serving the warrant that compliance within that period specified by the court is not practicable and must state the date within 14 days from service by which the provider will respond. The law enforcement officer shall file the provider's response with the court, and, upon a demonstration of good cause by the provider, the response period may be extended by the court to no more than 14 days from the date of service of the warrant. As used in this paragraph, good cause includes, but is not limited to, impracticability of timely response, difficulty of identifying and retrieving the data requested and the volume of data or number of sources sought.

Sec. 3. 16 MRSA c. 3, sub-c. 9-A is enacted to read:

SUBCHAPTER 9-A

TRACKING DEVICE INFORMATION

§638. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Adverse result. "Adverse result" means:

A. Immediate danger of death or serious physical injury to any person;

B. Flight from prosecution;

C. Destruction of or tampering with evidence;

D. Intimidation of a potential witness;

E. Seriously jeopardizing an investigation; or

F. Undue delay of a trial.

2. Law enforcement officer. "Law enforcement officer" means any person who by virtue of public employment is vested by law with a duty to maintain public order, to prosecute offenders, to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes, or to perform probation functions or who is an adult probation supervisor.

3. Tracking device. "Tracking device" means an electronic or mechanical device the primary purpose of which is to track the movement of a person or object. "Tracking device" does not include devices covered in subchapters 10 and 11.

§639. Authority to install and monitor a tracking device

1. Application. This subchapter only applies to tracking devices that are placed by law enforcement officers.

2. Installation and monitoring. A law enforcement officer may install and monitor a tracking device only in accordance with a valid search warrant issued by a duly authorized justice, judge or justice of the peace using procedures established pursuant to Title 15, section 55 or 56 or as otherwise provided in this subchapter.

3. Authorization of use. A court empowered to issue a search warrant or other order for the installation of a tracking device may authorize the use of that device within the jurisdiction of the court and outside that jurisdiction if the device is installed within the jurisdiction of the court.

4. Time period. A justice, judge or justice of the peace may issue a search warrant authorizing the installation and monitoring of a tracking device pursuant to this section. The warrant must require the installation of the tracking device within 14 days of the issuance of the warrant and allow the tracking device to be monitored for a period of 30 days following installation. A justice, judge or justice of the peace may grant an extension of the monitoring period for an additional 30 days upon a finding of continuing probable cause.

§640. Notice

1. Service of notice. Unless the court determines under subsection 3 that no notice is required, within 14 calendar days after the use of the tracking device has ended, the law enforcement officer who executed the warrant shall serve a copy of the warrant on the person who was tracked or whose property was tracked. The time period provided in this subsection may be extended for good cause shown.

2. Means of providing notice. The notice required under subsection 1 must be made by:

- A. Delivering a copy to the person who was tracked or whose property was tracked;
- B. Leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location; or
- C. Mailing a copy to the person's last known address.

3. Notification not required. A law enforcement officer acting pursuant to section 639 may include in the application for a warrant a request for an order to waive the notification required under this section. The court may issue an order waiving notification if the court determines that there is reason to believe that notification will have an adverse result.

Sec. 4. 16 MRSA §641, sub-§1, as enacted by PL 2013, c. 402, §1, is amended to read:

1. Adverse result. "Adverse result" means:

- A. Immediate danger of death or serious physical injury to any person;
- B. Flight from prosecution;
- C. Destruction of or tampering with evidence;
- D. Intimidation of a potential witness;
- E. ~~Potentially~~ Seriously jeopardizing an investigation; or
- F. Undue delay of a trial; ~~or,~~
- G. ~~Other significantly detrimental consequence.~~

Sec. 5. 16 MRSA §641, sub-§6, as enacted by PL 2013, c. 402, §1, is amended to read:

6. Portable electronic device. "Portable electronic device" means a ~~portable~~ device that is portable and electric that enables access to, or use of, an electronic communication service or remote computing service.

Sec. 6. 16 MRSA §641, sub-§7-A is enacted to read:

7-A. Serious physical injury. "Serious physical injury" means:

- A. Bodily injury that creates a substantial risk of death, serious, permanent disfigurement or loss or substantial impairment of the function of a bodily member or organ or extended convalescence for recovery of physical health; or
- B. Any harm potentially caused by a violation of Title 17-A, chapter 11 or Title 17-A, section 282, 301, 302 or 303.

Sec. 7. 16 MRSA §643, first ¶, as enacted by PL 2013, c. 402, §1, is amended to read:

Notice must be given to the owner or user of a portable electronic device whose content information was obtained by a government entity. The notice requirements of this section do not apply if the government entity is unable to identify the owner or user of a portable electronic device.

Sec. 8. 16 MRSA §643, sub-§1, as enacted by PL 2013, c. 402, §1, is amended to read:

1. Timing and content of notice. Unless the court determines under subsection 2 that no notice is required, the government entity shall provide notice to the owner or user that content information was obtained by the government entity from ~~that owner's or user's portable electronic device~~ a provider of electronic communication service or remote computing service within 3 days of obtaining the content information. The notice must be made by service or delivered by registered or first-class mail, e-mail or any other

means reasonably calculated to be effective as specified by the court issuing the warrant. The notice must contain the following information:

- A. The nature of the law enforcement inquiry, with reasonable specificity;
- B. The content information of the owner or user that was supplied to or requested by the government entity and the date on which it was provided or requested; and
- C. ~~If content information was obtained from a provider of electronic communication service or other 3rd party, the~~ The identity of the provider of electronic communication service or ~~the 3rd party~~ remote computing service from whom the information was obtained.

Sec. 9. 16 MRSA §644, sub-§§1 and 3, as enacted by PL 2013, c. 402, §1, are amended to read:

1. Consent of owner or user. When disclosure of portable electronic device content information is not prohibited by federal law, a government entity may obtain the information without a warrant with the informed, affirmative consent of the owner or user of the portable electronic device concerned, except when the device is known or believed by the owner or user to be in the possession of a 3rd party ~~known to~~ authorized to possess the device by the owner or user.

3. Emergency. When a government entity cannot, with due diligence, obtain a warrant in time to address an emergency that involves or is believed to involve ~~an imminent threat to life or safety~~ danger of death or serious physical injury to any person, a government entity may obtain the content information from a portable electronic device without a warrant, and a provider of electronic communication service or remote computing service may disclose such information to the requesting government entity without a warrant.

Sec. 10. 16 MRSA §647, sub-§1, as reallocated by RR 2013, c. 1, §28, is amended to read:

1. Adverse result. "Adverse result" means:

- A. Immediate danger of death or serious physical injury to any person;
- B. Flight from prosecution;
- C. Destruction of or tampering with evidence;
- D. Intimidation of a potential witness;
- E. ~~Substantially~~ Seriously jeopardizes an investigation; or
- F. Undue delay of a trial.

Sec. 11. 16 MRSA §647, sub-§3, as reallocated by RR 2013, c. 1, §28, is amended to read:

3. Electronic device. "Electronic device" means a device that is electric and that enables access to, or use of, an electronic communication service, remote computing service or location information service.

Sec. 12. 16 MRSA §647, sub-§8-A is enacted to read:

8-A. Serious physical injury. "Serious physical injury" means:

A. Bodily injury that creates a substantial risk of death, serious, permanent disfigurement or loss or substantial impairment of the function of a bodily member or organ or extended convalescence necessary for recovery of physical health; or

B. Any harm potentially caused by a violation of Title 17-A, chapter 11 or Title 17-A, section 282, 301, 302 or 303.

Sec. 13. 16 MRSA §648, as amended by PL 2017, c. 144, §5, is further amended by adding at the end a new paragraph to read:

This subchapter does not apply to tracking devices, as defined in section 638, placed by law enforcement officers.

Sec. 14. 16 MRSA §649, sub-§1, ¶C, as reallocated by RR 2013, c. 1, §30, is amended to read:

C. If location information was obtained from a provider of electronic communication service ~~or~~, location information service or remote computing service or other 3rd party, the identity of the provider of electronic communication service ~~or~~, location information service or remote computing service or the 3rd party from whom the information was obtained.

Sec. 15. 16 MRSA §649, sub-§3, as amended by PL 2013, c. 588, Pt. A, §21, is further amended to read:

3. Preclusion of notice to owner or user subject to warrant for location information. A government entity acting under section 648 may include in its application for a warrant a request for an order directing a provider of electronic communication service, remote computing service or location information service to which a warrant is directed not to notify any other person of the existence of the warrant. The court may issue the order if the court determines that there is reason to believe that notification of the existence of the warrant will have an adverse result.

Sec. 16. 16 MRSA §650, sub-§§2 and 4, as reallocated by RR 2013, c. 1, §31, are amended to read:

2. Consent of owner or user. With the informed, affirmative consent of the owner or user of the electronic device concerned, except when the device is known or believed by the owner or user to be in the possession of a 3rd party ~~known to~~ authorized to possess the device by the owner or user;

4. Danger of death or serious injury. If the government entity reasonably believes that an emergency involving ~~immediate~~ imminent danger of death or serious physical

injury to a person requires the disclosure, without delay, of location information concerning a specific person and that a warrant cannot be obtained in time to prevent the identified danger, and the possessor of the location information, in good faith, believes that an emergency involving danger of death or serious physical injury to a person requires the disclosure without delay.

Within a reasonable period of time after seeking disclosure pursuant to this subsection, the government entity seeking the location information shall file with the appropriate court a written statement setting forth the facts giving rise to the emergency and the facts as to why the person whose location information was sought is believed to be important in addressing the emergency.

Sec. 17. 16 MRSA §650-A, sub-§1, as reallocated by RR 2013, c. 1, §32, is amended to read:

1. Conditions of use of location information in proceeding. Location information obtained pursuant to this subchapter or evidence derived from that information may be received in evidence or otherwise disclosed in a trial, hearing or other proceeding only if each party, not less than 10 days before the trial, hearing or proceeding, has been furnished with a copy of the statement of emergency filed under section 650, subsection 4 or the warrant and accompanying application under which the information was obtained.

Sec. 18. Right To Know Advisory Committee; warrants for tracking devices and content and location information. The Right To Know Advisory Committee shall review the law concerning the application for and issuance of search warrants authorizing the installation and monitoring of tracking devices and seeking content and location information under the Maine Revised Statutes, Title 16, chapter 3, subchapters 9-A, 10 and 11 and shall make recommendations concerning the public's right to know aggregate information about warrants, including warrants in which the application for the warrant included a request for an order to waive notice of the issuance of the warrant. The Right To Know Advisory Committee shall include in its report submitted by January 15, 2020, pursuant to Title 1, section 411, subsection 10, a summary of its review and any recommendations.

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LD	COMMITTEE	SUBJECT	MEMO DATE	REVIEW DATE	REPORT DATE	RESULT	STATUTE	RESULT
112	ENR	With 1628, 1649 and 1668 Recycling establishment information submitted to DEP if designated as confidential	May 17, 2019	May 28, 2019	May 29, 2019	Approved	38 MRSA §2145, sub-§3	PL 2019, c. 291
166	TRA	Recorded image or audio produced by a traffic surveillance camera mounted on a school bus	May 8, 2019	May 16, 2019 May 28, 2019	May 29, 2019	Majority: not approved Minority: approved	29-A MRSA §2117, sub-§1	PL 2019, c. 318
553	VLA	1: Criminal history background information for applicants of sports wagering licenses 2: Information obtained by DHHS or child support registry operator from a licensee; information obtained by licensee from DHHS or child support registry operator	May 30, 2019	June 14, 2019	June 17, 2019	Approved	<i>Not law:</i> 1: 8 MRSA §1204, sub-§3, ¶G 2: 8 MRSA §1214, sub-§10	Enacted, held by Governor
1001	AFA	Criminal history background information for applicants, contractors and employees of Maine Revenue Services	None			Not reviewed	36 MRSA §194-D, sub-§4 (replaces §194-B and §194-C)	PL 2019, c 343, Part G

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LD	COMMITTEE	SUBJECT	MEMO DATE	REVIEW DATE	REPORT DATE	RESULT	STATUTE	RESULT
1162	HCIFS	With 1499 Prescription drug price information provided by manufacturer, wholesale distributor or pharmacy benefits manage to the Maine Health Data Organization	May 17, 2019	May 22, 2019	May 28, 2019	Approved	22 MRSA §8733	PL 2019, c. 470
1219	JUD	Records of Deadly Force Review Panel	---	June 11, 2019 June 17, 2019	June 19, 2019	Approved	5 MRSA §200-K, sub-§6	PL 2019, c. 435
1313	HHS	Medical record documentation information collected regarding compliance with Death With Dignity Act	May 13, 2019	May 16, 2019	May 20, 2019	Approved	22 MRSA §2140, sub-§17, ¶C	PL 2019, c. 271
1340	SLG	Criminal history background information for prospective and current employees of the Office of the State Auditor	May 13, 2019	May 28, 2019	May 29, 2019	Approved	5 MRSA §247, sub-§6	PL 2019, c. 416
1377	HHS	Records held by the coordinator of the Aging and Disability Mortality Review Panel	June 7, 2019	June 14, 2019	June 17, 2019	Approved	<i>Not law:</i> 22 MRSA §264, sub-§8	Carried over

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LD	COMMITTEE	SUBJECT	MEMO DATE	REVIEW DATE	REPORT DATE	RESULT	STATUTE	RESULT
1451	LBHS	Names of employees within a bargaining unit and communications between a bargaining agent and its members: municipal; state; University, academy and community college; Judicial Branch	June 5, 2019	June 14, 2019	June 17, 2019	Approved	26 MRSA §975, sub-§2, ¶B (municipal) 26 MRSA §979-T, sub-§2, ¶B (state) 26 MRSA §1037, sub-§2, ¶B (university, academy, community college) 26 MRSA §1295, sub-§2, ¶B (Judicial Branch)	PL 2019, c. 389
1499	HCIFS	With 1162 Prescription drug spending data submitted to the Maine Prescription Drug Affordability Board	May 17, 2019	May 22, 2019	May 28, 2019	Approved with changes discussed with JUD	5 MRSA §2042, sub-§2	PL 2019, c. 471
1511	JUD	Recommendations of Right to Know Advisory Committee – public records exceptions	---	No official review	June 19, 2019	Accepted recommendations of RTKAC	<i>Not law:</i> 1 MRSA §402, sub-§3, ¶K 1 MRSA §402, sub-§3, ¶M 3 MRSA §997, sub-§§1 and 3	-----

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LD	COMMITTEE	SUBJECT	MEMO DATE	REVIEW DATE	REPORT DATE	RESULT	STATUTE	RESULT
1550	CJPS	Compensation fund for victims of property crimes	June 6, 2019	June 14, 2019	June 17, 2019	Approved	<i>Not law:</i> 5 MRSA §3360-S, sub-§13	Enacted, held by Governor
1628	ENR	With 112, 1649 and 1668 Proprietary inform submitted by initiator of deposit or pick-up agent submitted to DEP if designated as confidential	May 17, 2019	May 28, 2019	May 29, 2019	Approved	38 MRSA §3119, sub-§3	PL 2019, c. 526
1649	ENR	With 112, 1628 and 1668 Stewardship template: sales information submitted as part of performance goal identified as proprietary information is confidential and handled as under 38 §1310-B See also LD 112, LD 1628 and LD 1668	Included in May 17, 2019 memo on LD 112, LD 1628 and LD 1668			Not reviewed because just a template for other statutes	38 MRSA §1776, sub-§5, ¶J	PL 2019, c. 227
1668	ENR	With 112, 1649 and 1668 Proprietary information related to mercury-added lamps as part of stewardship program	May 17, 2019	May 28, 2019	May 29, 2019	Approved	38 MRSA §1672, sub-§4, ¶A, sub-¶(8), div. (c)	PL 2019, c. 286
1702	JUD	Information collected during the investigation of a complaint of violation of Maine Human Rights Act	---	June 17, 2019	June 19, 2019	Approved	5 MRSA §4612, sub-§1-A	PL 2019, c. 465

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LD	COMMITTEE	SUBJECT	MEMO DATE	REVIEW DATE	REPORT DATE	RESULT	STATUTE	RESULT
1704	HCIFS	Personal information in application for restitution assistance for securities violation	May 30, 2019	June 4, 2019	June 5, 2019	Approved	<i>Not law:</i> 32 MRSA §16524	Carried over
1790	JUD	Personal information of state, county and municipal employees	---	June 17, 2019	June 19, 2019	Approved	5 MRSA §7070, sub-§2, ¶D-1 30-A MRSA §503, sub-§1, ¶B, sub-¶(6) 30-A MRSA §2702, sub-§1, ¶B, sub-¶(6)	PL 2019, c. 451
1792	HHS	Criminal background check information for employees of children's residential care facilities (Federal Families First Prevention Services Legislation)	June 11, 2019	June 14, 2019	June 17, 2019	Approved	22 MRSA § 8110, sub-§5	PL 2019, c. 399
1801	HHS	Criminal background check information of employees or applicants of DHHS with access to federal tax information	June 11, 2019	June 14, 2019	June 17, 2019	Approved	19-A MRSA §2111, sub-§5	PL 2019, c. 402

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Public Records Exceptions Subcommittee

Existing public records exceptions for which review and evaluation are not yet completed as of September 3, 2019:

- (Ref #6) 1 MRSA section 402, subsection 3, paragraph E (records used by or prepared for committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System: could exception be more narrowly tailored?)
- (Ref #11) Title 1, section 402, subsection 3, paragraph J (records used by an advisory organization: how broad is the application?)
- (Ref #16) 1 MRSA section 402, subsection 3, paragraph O (personal contact information of public employees other than elected officials: concern about use personal information in agency social media)
- (Ref # 24) 1 MRSA section 538, subsection 3 (InforME subscriber information: needs more review because not sure of application)
- (Ref #27) 1 MRSA section 1013, subsection 3-A (complaints alleging a violation of legislative ethics: should complaints be confidential indefinitely?)
- (Ref #35A) 4 MRSA section 17, subsection 15, ¶C (court security records: inadvertently omitted from review list)
- (Ref #53) 5 MRSA section 7070, subsection 2 (state employee’s personal information: possibly expand to include gender orientation and genetic information?)
- (Ref #73) 5 MRSA section 244-E, subsection 2 (contents of a complaint to the State Auditor alleging fraud, waste, inefficiency or abuse: Auditor’s recommended amendment)
- (Ref ## 85 and 86) 7 MRSA section 4204, subsection 10 and section 4205, subsection 2 (nutrient management plans filed with DACF)
- (Ref #88) 7 MRSA section 2992-A, subsection 1 (Maine Dairy Promotion Board: too broad?)
- (Ref #89) 7 MRSA section 2998-B, subsection 1 (Maine Dairy and Nutrition Council: too broad?)
- (Ref #90) 7 MRSA section 306-A, subsection 3 (agricultural development grant program, market research or development activities: concerned about enduring confidentiality)
- (Ref #92) 7 MRSA section 951-A (minimum standards for planting potatoes: concerned about enduring confidentiality)

Reinsch, Margaret

From: Parr, Christopher <Christopher.Parr@maine.gov>
Sent: Tuesday, August 20, 2019 9:44 AM
To: Reinsch, Margaret
Subject: ** Suggested topics for the RTKAC to consider

Peggy:

Good morning!

Listed below are suggested topics for the RTKAC to consider.

Please note that I am submitting these suggestions solely in my capacity as a member of the RTKAC.

Best, C

SUGGESTED TOPICS

1. The addition to the list of the considerations that are taken into account during the Judiciary Committee’s public records exception evaluation process (*see* 1 M.R.S.A. § 432, sub-§ 2 at <http://legislature.maine.gov/statutes/1/title1sec432.html>) of the consideration of whether or not the content of records subject to a review would, if publicly accessible, advance the public’s understanding of the activities of government agencies and officials;
2. The addition to the list of the considerations that are taken into account during the Judiciary Committee’s public records exception evaluation process (*see* 1 M.R.S.A. § 432, sub-§ 2 at <http://legislature.maine.gov/statutes/1/title1sec432.html>) of the consideration of whether or not the content of records subject to a review would, if publicly accessible, enable members of the public to make informed personal health and/or safety decisions;
3. A modification of the FOAA to prohibit use of the law for commercial, for-profit, non-journalistic purposes, or, alternatively, a modification of the FOAA to provide that actual costs to process such requests may be charged by government agencies and officials;
4. A modification of the FOAA to increase both (a) the number of hours for which government agencies and officials may not charge to process FOAA requests, and (b) the hourly staff time fee that may be charged by agencies and officials thereafter. *See* 1 M.R.S.A. § 408-A, sub-§ 8, ¶ B at <http://legislature.maine.gov/statutes/1/title1sec408-A.html>;
5. A clarification to the FOAA to expressly state that the law does not apply to the Judicial Branch;
6. A modification to the FOAA to require government agencies and officials to give first priority to requests made for journalistic/news-reporting or scholarly purposes;
7. A modification of the FOAA to prohibit anonymous FOAA requests;
8. A modification of the FOAA to limit its use/availability to State of Maine residents or, in the alternative, a modification of the FOAA to enable Maine government agencies and officials to charge actual costs to process FOAA requests made by non-residents;

9. A modification of the FOAA to eliminate the annual State agency FOAA reporting requirement, or, alternatively, a modification of the FOAA to update that requirement. See 5 M.R.S.A. § 200-I, sub-§ 2, ¶ F at <http://legislature.maine.gov/statutes/5/title5sec200-I.html>;
10. A modification of the exception to the definition of “public records” that applies to “[r]ecords, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System” – namely, to narrow the applicability of the exception to records pertaining to specific, identifiable students of those schools. See 1 M.R.S.A. § 402, sub-§ 3, ¶ E at <http://legislature.maine.gov/statutes/1/title1sec402.html>;
11. A modification of the exception to the definition of “public records” that applies to records “provided by a railroad company describing hazardous materials transported by the railroad company in this State, the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes that are in the possession of a state or local emergency management entity or law enforcement agency, a fire department or other first responder” – namely, to narrow the applicability of the exception to records pertaining to materials that are to be, or are in the process of being, transported. See 1 M.R.S.A. § 402, sub-§ 3, ¶ U at <http://legislature.maine.gov/statutes/1/title1sec402.html>;
12. A modification of the FOAA to prohibit during public proceedings the use of technologies that permit individuals to communicate in real-time with members of a committee, board, etc., holding the proceedings;
13. The matter of public access to government agency professional licensing administrative files;
14. A RTKAC recommendation that the recommendations of the RTKAC reflected in LD 1511 (*An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions*) of the First Regular Session of the 129th Legislature be re-submitted to the Judiciary Committee for consideration. See generally LD 1511 at http://www.mainelegislature.org/legis/bills/bills_129th/billtexts/HP110301.asp;
15. A RTKAC recommendation that a Maine Privacy Act, similar to the Federal Privacy Act, be enacted;
16. A RTKAC recommendation that a representative of personal privacy interests be added to the RTKAC;
17. A RTKAC recommendation that PL 2019, c. 389, *An Act Providing Labor Unions with Reasonable Access to Current and Newly Hired Public Sector Workers*, be clarified through legislation to provide that information that may be disclosed by government agencies and officials to labor unions pursuant to the new law may not be further disclosed by the unions and must be treated as confidential. See generally PL 2019, c. 389 at http://www.mainelegislature.org/legis/bills/bills_129th/chapters/PUBLIC389.asp;
18. A RTKAC recommendation that a Legislative joint select committee or joint standing committee be established to review legislation and public policy issues relating to public access to, and privacy protection of, government records and data, as well as the retention and appropriate disposition of such;
19. A RTKAC recommendation that the RTKAC be permitted to meet during Legislative Sessions without legislative staffing.

Reinsch, Margaret

From: Judy Meyer <jmeyer@sunjournal.com>
Sent: Wednesday, August 28, 2019 1:04 PM
To: Reinsch, Margaret
Subject: Re: Right to Know Advisory Committee - upcoming meeting

Peggy,

I am finding more and more that the schedule for disposition of local government records, when updated, is eliminating access to what were previously public documents.

Police duty rosters, for instance (although duty rosters for Corrections officers remain public).

These are changes made through the Secretary of State's Office, in archives, without any input whatsoever from RTK or any other stakeholder group.

I'd like to put that incongruity on the agenda for discussion, and I'll bring some other examples with me.

Thanks.

Judy

Judith Meyer, Executive Editor

Sun Journal

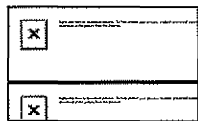
Kennebec Journal

Morning Sentinel

104 Park Street

Lewiston, ME 04243

(207) 689-2902



From: Reinsch, Margaret
Sent: Wednesday, August 28, 2019 12:52 PM
To: Amy Beveridge (abeveridge@hearst.com) ; Carpenter, Mike ; Chief LaHaye (searsportpolicechief@gmail.com) ; Clark, Elaine ; Condon, Tanya ; Finn, Julia ; Gardiner, Phyllis ; Harnett, Thomas ; Harrison, Arlene ; James Campbell (modmedia@earthlink.net) ; Judy Meyer ; Langlin, Steven ; 'Luke Rossignol' ; Mary-Anne LaMarre (mlamarre@rsu18.org) ; McCarthyReid, Colleen ; Parr, Christopher ; Paul Nicklas (paul.nicklas@bangormaine.gov) ; Reinsch, Margaret ; Risler, Hillary ; Sacre, Nicole ; S Grinnell ; Stephanie Grinnell (stephaniegrinnel@gmail.com) ; Stout, Eric ; suzanne@mab.org ; tasen@bermansimmons.com ; William Shorey (wmshorey@myfairpoint.net)
Cc: Risler, Hillary ; McCarthyReid, Colleen
Subject: Right to Know Advisory Committee - upcoming meeting
Dear Right to Know Advisory Committee members –

We are looking forward to the first meeting of the RTKAC on Thursday, September 5th. The meeting will start at 1:00 p.m. and will be held in the Judiciary Committee Room (Room 438) of the State House in Augusta. The audio of the meeting will be streamed live over the Legislature's internet connection: <http://legislature.maine.gov/Audio/#438>
Please let us know if you will not be able to attend.

Attached are several documents for the meeting (some are repeats) – we will have paper copies for you at the meeting, so do not feel obligated to print them out. Attached are the draft agenda, the memo from the Judiciary Committee to RTKAC, the memo from the Education Committee to the Judiciary Committee (related to LD 639), copies of bills carried over by the Judiciary Committee (LD 639 and LD 1575) and two Public Law chapters (PL 2019, c 489 and PL 2019, c. 318). The bills and the Public Law chapters are mentioned in the memo from the Judiciary Committee. Also attached is the list of proposed public records exceptions reviewed by the Judiciary Committee pursuant to Title 1, section 434, during the First Regular Session.

As part of the first meeting of the Advisory Committee, the members usually identify the topics, questions and concerns they think the Advisory Committee should explore. If you have ideas that aren't already listed on the attached agenda, please feel free to send your suggestions to us and we will be happy to share them with the Advisory Committee either before the meeting or at the meeting; and of course feel free to raise any suggestions during the meeting. Chris Parr shared his suggestions with us in an email, and that is attached as well.

Please bring your calendars in case you have an opportunity to schedule future meetings.

Please contact us if you have any questions.

Looking forward to seeing everyone!

Peggy, Hillary and Colleen

P.S. Here's a link to the most recent report of the Advisory Committee, submitted January 2019.

<https://www.maine.gov/legis/opla/RTKACAnnual%20Report2019.pdf>

And the RTKAC website is: <https://www.maine.gov/legis/opla/righttoknow.htm> We are still working on updating the membership list and the staff contacts; otherwise, it is a great resource!

Margaret J. Reinsch, Esq., Legislative Analyst

Joint Standing Committee on Judiciary

Maine State Legislature

Office of Policy and Legal Analysis

Room 215, Cross State Office Building

13 State House Station

Augusta, Maine 04333

(207) 287-1670 (office number)

(207) 287-1673 (direct and voice mail)

(207) 287-1275 (fax)

margaret.reinsch@legislature.maine.gov

Reinsch, Margaret

From: Judy Meyer <jmeyer@sunjournal.com>
Sent: Friday, August 30, 2019 1:31 PM
To: Reinsch, Margaret
Subject: Rules for disposition of local government records
Attachments: Rules for Disposition of Local Government Records changes.xls

Peggy,

I did a cursory comparison of some of the disposition rule changes between 2005 and 2018, ones that I don't remember coming before RTK in any form. There were many rule adjustments that did come before RTK, like school security plans and the like, and by no means is the attached a full accounting of the changes, but something to make the point that these rules generally might deserve a little more oversight:

Here are the current rules:

<https://www.maine.gov/sos/arc/records/local/localschedules.html>

What might be the most glaring change is that the old schedule said right on it what was confidential and what was not. The new rules lack that definition.

Thanks. See you next week.

Judy

Judith Meyer, Executive Editor

Sun Journal

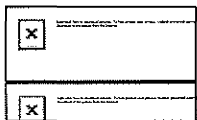
Kennebec Journal

Morning Sentinel

104 Park Street

Lewiston, ME 04243

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**Rules for Disposition of
Local Government Records**

<https://www.maine.gov/sos/arc/records/local/localschedules.htm>

Schedule	Title	2005	Change	Schedule	Title	2018
A.07	Appointments/Oaths	25 years; not confidential		1.4	Appointments/Oaths	End of Term Plus 10 Years
A.09	Audits, Internal (Working Papers)	6 years; not confidential	EXPANDED	18.77	Audits, Internal (Working Papers)	7 years
A.12	Bids	6 years; not confidential		2.7.a; 2.7.b	Bids and proposals	Successful, 6 years; unsuccessful, 2 years
A.22.a	Certified Mail Receipts	3 months; not confidential	EXPANDED	1.21	Mail delivery and receipt	1 year It was decided this schedule was unnecessary because it would either be covered by a union agreement schedule or an inventory schedule.
A.24	Clothing records	3 years; not confidential	REMOVED			
A.27.a	Correspondence- transitory	1 year; not confidential	REDUCED	18.39.a	Correspondence- transitory	30 days or until no longer needed Retain for 4 fiscal years after date of inventory or until disposition of asset and completion of Local Audit, whichever is sooner then Destroy.
A.32	Equipment Records	2 years from disposal; not confidential	EXPANDED	1.12	Equipment/Asset Inventory	Until closed, plus 6 years
A.34	Grants	3 years; not confidential	EXPANDED	18.49	Federal, State and Private Grants	30 years after separation
A.36.b	Health records, individuals	60 years; confidential	REDUCED	18.103	Health records, individuals	No legal basis for having this series. Anything like this would be recorded at the State level.
A.36.c	Health Records - Historic	Permanent; not confidential	REMOVED		Health Records - Historic	
A.39.c	Insurance Policies, General Liability	30 years after expiration; not confidential	REDUCED	1.19.b	Insurance Policies, General Liability	20 years after expiration Retain for 4 fiscal years after date of inventory or until disposition of asset and completion of Local Audit, whichever is sooner then Destroy.
A.40	Inventories	6 years; not confidential	REDUCED	1.12	Inventories	One year after resolution
A.42	Labor Citations - Safety Violations	Current plus one year; not confidential	REDUCED	18.54	Labor Citations - Safety Violations	10 years after termination of lease
A.43	Leases	Permanent; not confidential	REDUCED	18.69	Leases	6 years
A.44	Ledgers/Journal Entries	Permanent; not confidential	REDUCED	18.83.a	Ledgers/Journals	
A.53.c	Personnel Records - Form I-9	1 year after termination or 3 years after hire, whichever is later; confidential	EXPANDED	4.6.b	Personnel Records - Form I-9	3 years after separation; confidential
A.63	Union agreements	Retain until new agreement is signed and time limit for filing grievances under old agreement has expired; not confidential	EXPANDED	18.110.b	Union Records - Union Agreements (Signed)	Permanent
A.64	Vacation and Holiday schedules	Current year; not confidential	REMOVED	18.105	Leave files	Three years; confidential
A.65	Volunteer files	6 years after separation; confidential	REDUCED	18.111	Volunteer records	5 years
D.01	Copies of Court and Law Enforcement Records	1 year; not confidential	REDUCED	17.1	Copies of Court and Law Enforcement Records	Destroy when no longer needed
E.02	Ballots, All Other Elections	Retain until any required action has been taken, or until any substantive information has been filed with appropriate record series; confidential	REDUCED	5.2	Ballots, All Other Elections	22 months; confidential
E.03	Incoming Voting Lists	2 years; not confidential	EXPANDED	5.4	Incoming Voting Lists	5 years
E.06	Record of Receipts for Ballots Issued and Received - Municipal, State	1 year; not confidential	REDUCED	5.10.a	Record of Receipts for Ballots Issued and Received - Municipal, State	6 months
E.10	Municipal Referendum Petitions	2 years; not confidential	REDUCED	5.7	Municipal Referendum Petitions	6 months

F.02.a	Bomb Threat Reports - Identified	Until perpetrator reaches age 80 (if SBI confirms no contact with Criminal Justice System in last 5 years); not confidential	THIS IS JUST QUIRKY		
G.02	Alcoholic Beverages (On Premises Consumption)	Current year; not confidential	EXPANDED 6.2	Alcoholic Beverages (On Premises Consumption)	3 years after separation; confidential
G.11.b	Building - Plans and Specifications	6 years; not confidential	EXPANDED 6.9.c	Building - Plans and Specifications	Life of building, plus one year
G.26	Fishing license	3 years; not confidential	EXPANDED 6.26	Fishing license	6 years
G.30	Hunting license	7 years; not confidential	REDUCED 6.3	Hunting license	6 years
I.08	Tax exemption records	6 years; not confidential	REDUCED 12.8.a	Blind exemptions	3 years after exemption has expired
			EXPANDED 12.8.b	Denial of Homestead Exemption	10 years; not confidential
			REDUCED 12.8.c	Estates of veterans	3 years after exemption has expired
			REDUCED 12.8.d.	maine resident Homestead tax exemption	3 years after exemption has expired
			REDUCED 12.8.e	Taxpayers list	3 years after exemption has expired
L.02.a	Administrative Files (Including Files Kept by Teachers, Principals, and Superintendents) – Nonrecord	Retain current information only; not confidential	REDUCED 18.2.b	Administrative Files (Including Files Kept by Teachers, Principals, and Superintendents) – Nonrecord	Nonrecord
L.15.b	Curriculum (syllabi, lesson plans, etc., for innovative, new, experimental materials in introductory year only)	Permanent; not confidential	REMOVED		
L.24	Student Health Records	6 years after student reaches age 18, or return to parent or student; confidential	EXPANDED 18.23	Student Health Records	Until 26 years
O.01	ATV registration	3 years; not confidential	EXPANDED 7.1	ATV registration	6 years
O.03	Boat registration	3 years; not confidential	EXPANDED 7.3	Boat registration	6 years
	TOTAL RULES: 382			TOTAL RULES: 431	

Reinsch, Margaret

From: Reinsch, Margaret
Sent: Monday, June 24, 2019 11:44 AM
To: Kielty, Brenda
Subject: RE: Capron/Greater Portland Council of Governments

Hi, Brenda –

Thanks for forwarding your communications. I will add it to the list of things for RTKAC to consider, once they convene.

Thanks!
Peggy

Margaret J. Reinsch, Esq., Legislative Analyst
Joint Standing Committee on Judiciary
Maine State Legislature
Office of Policy and Legal Analysis
Room 215, Cross State Office Building
13 State House Station
Augusta, Maine 04333
(207) 287-1670 (office number)
(207) 287-1673 (direct and voice mail)
(207) 287-1275 (fax)
margaret.reinsch@legislature.maine.gov

From: Kielty, Brenda [<mailto:Brenda.Kielty@maine.gov>]
Sent: Monday, June 24, 2019 11:34 AM
To: Reinsch, Margaret
Subject: FW: Capron/Greater Portland Council of Governments

Peggy,

Mr. Capron suggested that the RTK AC should look at the question of whether intergovernmental groups, such as the Greater Portland Council of Governments, are used to avoid the open meeting requirements of municipal governmental bodies. I attached my communication with him on this question.

Brenda

Brenda L. Kielty
Assistant Attorney General
Public Access Ombudsman
6 State House Station | Augusta, ME 04333
207.626.8577 (direct) | 207.287.3145 (fax)
brenda.kielty@maine.gov | www.maine.gov/foaa

Correspondence to and from this office is considered a public record and may be subject to a request under the Maine Freedom of Access Act. Information that you wish to keep confidential should not be included in email correspondence.

From: Kielty, Brenda
Sent: Monday, June 24, 2019 11:31 AM
To: KenCapron1 <kcapron1@maine.rr.com>
Subject: RE: Capron/Greater Portland Council of Governments

I will forward your concern on the RTK AC.

Brenda L. Kielty

Assistant Attorney General
Public Access Ombudsman
6 State House Station | Augusta, ME 04333
207.626.8577 (direct) | 207.287.3145 (fax)
brenda.kielty@maine.gov | www.maine.gov/foaa

Correspondence to and from this office is considered a public record and may be subject to a request under the Maine Freedom of Access Act. Information that you wish to keep confidential should not be included in email correspondence.

From: KenCapron1 <kcapron1@maine.rr.com>
Sent: Friday, June 21, 2019 5:52 PM
To: Kielty, Brenda <Brenda.Kielty@maine.gov>
Subject: Re: Capron/Greater Portland Council of Governments

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you.

I guess that would be equivalent to a meeting of the Maine Municipal Association, correct.

I'd like to be a fly on the wall because I suspect they will be talking critical issues and policies. In fact, I have come to believe that towns and cities form groups like GPCOG just to avoid the FOAA laws. Just label it as a "social" event and it is protected from discovery. The RTK committee should address this. It is a loophole.

Ken Capron

From: Kielty, Brenda
Sent: Friday, June 21, 2019 4:22 PM
To: KenCapron1
Subject: Capron/Greater Portland Council of Governments

Mr. Capron,

The meeting you reference in your email called "Chairs in a Circle Learning Session" appears to be a leadership training program. The description in the email states the objective to be an opportunity to "learn from each other, support each other, and discover new best practices" as well as a chance to "get to know each other and strengthen relationships..."

A group of elected officials from various towns and cities convened under the auspices of the Greater Portland Council of Governments to participate in a leadership training session is not a body that is subject to the Freedom of Access Act. This is not a public meeting.

The statute does not prohibit communications outside of public proceedings between members of a public body, such as a municipal government entity, unless those communications are used to defeat the purposes of the law.

The purpose of the meeting provisions of the Freedom of Access Act is to ensure open deliberations and open actions.

A training session aimed at improving leadership and regional relationships that does not involve substantive policy-making deliberations between members of the same board or council is not a public meeting.

Brenda

Brenda L. Kielty

Assistant Attorney General
Public Access Ombudsman
6 State House Station | Augusta, ME 04333
207.626.8577 (direct) | 207.287.3145 (fax)
brenda.kielty@maine.gov | www.maine.gov/foaa

Correspondence to and from this office is considered a public record and may be subject to a request under the Maine Freedom of Access Act. Information that you wish to keep confidential should not be included in email correspondence.

From: KenCapron1 <kcapron1@maine.rr.com>
Sent: Friday, June 21, 2019 3:43 PM
To: Kielty, Brenda <Brenda.Kielty@maine.gov>
Subject: Shouldn't this meeting be public?

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Brenda - Shouldn't this meeting be public? And what rational is there for your conclusion?

<https://www.eventbrite.com/e/chairs-in-a-circle-learning-session-tickets-62199163372>

Kenneth A. Capron, ret. CPA, MCSE
1375 Forest Avenue D-11
Portland, Maine 04103
Phone: 207-797-7891
Email: kcapron1@maine.rr.com



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Department of the Secretary of State

Home → State Archives → About the Archives → Advisory Groups

Advisory Groups

Maine State Archives Advisory Board

The Board reviews proposed records retention schedules and related policy issues for both Maine state government and local governments, including municipalities, counties, schools, and special districts; ensuring proper records management procedures and schedules are in place.

Board reviews also impact the public's "right-to-know" regarding access to public records. Their input helps preserve those records with archival value. Serving in an advisory role to the Maine State Archivist, the Board makes certain records of continuing value are preserved for use by future generations.

While the voluntary Archives Advisory Board represents a broad area of interests and backgrounds, additional advice is welcome, and may strengthen our final decisions.

Archives Advisory Board Members:

- Twila Lycette, Chair, Lisbon
- Susan Bulay, Old Town
- Howard Lowell, Bangor
- Nina Osier, Augusta
- Sam (Sumner) Webber, Hallowell
- Maine State Archivist, ex-officio.

Maine Historical Records Advisory Board

The Board's mission is to coordinate and encourage the preservation of and access to historical records in a variety of ways. These include providing information and training to those responsible for such records; guiding the preparation of grant requests to the NHPRC; reviewing those requests; developing an informational base regarding the condition and needs of historical records; promoting the importance of historical records to policy-makers and the general public, and encouraging priority preservation and access projects through advice, grant reviews and a regrant program.

The Board pursues collaborative ventures, where appropriate, such as advising the State Archives on its archaeological- archival materials grant program and coordinating Board planning with Maine Archives and Museums, an association of

organizations and individuals providing educational programs, public support, and volunteer consultation services to the archival and museum community in Maine.

The Board's mission is framed by the Executive Order creating it, regulations developed by the National Historical Publications and Records Commission, and by the Board's interpretation of its role as the lead coordinating entity in the state regarding historical records.

Maine Historical Records Advisory Board Members:

- Chris O'Brien, Farmington
- Heather Moran, Camden
- Anne Schlitt, Portland
- Erin Rhodes, Newcastle
- Greg Curtis, Orono
- Sophia Mendoza, Portland
- Steve Bromage, Portland

Credits

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