



STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY

JANET T. MILLS
GOVERNOR

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COMMISSIONER

LD 2139, An Act To Increase Government Accountability

***** PROPOSED AMENDMENT *****

Sec. 1. 16 M.R.S.A. § 807, as enacted by PL 2013, c. 267, Pt. A, §3 and amended by PL 2013, c. PL 2013, c. 507, §8, is repealed.

Sec. 2. 16 M.R.S.A. § 807-A is enacted to read:

807-A. Confirming existence or nonexistence of confidential intelligence and investigative record information

1. A criminal justice agency may refuse to confirm the existence or nonexistence of intelligence and investigative record information, regardless of whether the record exists or does not exist, only if there is a reasonable possibility that the fact of the record's existence or nonexistence would:
 - A. Interfere with law enforcement proceedings relating to crimes;
 - B. Endanger the life or physical safety of any individual, including, but not limited to, a victim of domestic violence, a victim of abuse, a confidential source, or law enforcement personnel;
 - C. Constitute an unwarranted invasion of the personal privacy of one or more individuals; or
 - D. Reveal specific investigatory techniques that are not known to the general public and that, if disclosed, would cause the use of those techniques to be compromised. "Specific investigatory techniques" does not include types of technology that might be used for investigative purposes.

2. A person may appeal the decision of a criminal justice agency to refuse to confirm the existence or nonexistence of intelligence and investigative record information within 30 calendar days of the receipt of the written notice from the agency to the Superior Court within the State for the county where the person resides or the agency has its principal office. The agency or official shall file a statement of position explaining the basis for the agency's decision within 14

calendar days of service of the appeal. At the same time, the agency or official may additionally file an *ex parte* statement of position providing further explanation of the basis for the agency's decision, if such *ex parte* explanation is necessary to avoid revealing the information withheld under subsection 1. If a court, after a review, including a review of the agency's statement, and an *in camera* review of the *ex parte* statement, if any, with taking of testimony and other evidence as determined necessary, determines the agency's decision was not for just and proper cause and not in accordance with subsection 1, the court shall enter an order requiring the agency to confirm the existence or nonexistence of the information and to further respond to the request as appropriate and permitted by law. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.