

STATUTE: 20-A MRSA §4008, sub-§2

AGENCY: Department of Education

CONTACT PERSON: Kelli Deveaux

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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

This statute ensures parity for school social workers in relation to the privacy privilege of a clinician/client interaction. This applies professional standards explicitly to those who are licensed within the counseling field and who are seeing clients within a school setting as part of their employment. The Department does not employ social workers or counselors who are seeing clients or patients. This law is not applicable to our department operations; I have never invoked this in response to a FOAA inquiry. I do expect that school counselors do respect their professional standards, and do not release client information, including that of minor children to school personnel or family members.

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

This law is critically important for school counselors to address the needs of the students they serve and should remain an exception.

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

This is clear and consistent to professional standards.

4. Does your agency recommend changes to this exception?

No

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

Maine School Psychologists Association, social work providers, DHHS who licenses them.

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

STATUTE: 20-A MRSA §5001-A, sub-§3

AGENCY: Department of Education

CONTACT PERSON: Kelli Deveaux

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QUESTIONS

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This statute ensures that homeschooled student records are limited to directory information only. FERPA is a federal statute that limits what student information can be released, and to whom. The Department provides aggregated data as to number of home instruction students, we have not been asked for directory information, and there is a secure web portal through which parents/guardians can submit the required information, including academic progress information for their students.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
We support, it's federal law, and protects students.

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

It is clear.

4. Does your agency recommend changes to this exception?

No

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

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

STATUTE: 20-A MRSA §6001, sub-§3

AGENCY: Department of Education

CONTACT PERSON: Kelli Deveaux

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Thank you.

QUESTIONS

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

This statute protects the student information, including images and education records. This statute has the greatest impact on local school units, as the Department has limited information at the student level. We apply this law to any of our notices and "good news" stories on our webpage, requiring a media release form to be signed by the parent of any students mentioned or shown. On occasion information may be requested in which student information is included (for example in an email exchange) and therefore redacted. On occasion a parent or legal counsel may request any records of the student for which they have legal interest and access, and it is provided.

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

We support continuation, it aligns with federal law (FERPA) and protects children. It places limited exception for the sharing of records for law enforcement.

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

It is clear from a Department standpoint, but is more frequently directing school staff in their day to day operations. We believe it is clear.

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

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available. Maine Principals Association, Maine School Superintendents Association, Maine Administrators of Services for Children with Disabilities (MADSEC)

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

STATUTE: 20-A MRSA §6101, sub-§2

AGENCY: Department of Education

CONTACT PERSON: Kelli Deveaux

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Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
The records in this statute are employee records of education personnel. All schools in Maine are held to this requirement to keep confidential the personal information that includes job applications, supervision and evaluation documents or medical information. The findings of any investigation is not subject to exception. The Department is not considered the employer and would have very limited possession of this information as part of the certification process, which has its own statute related to confidentiality.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
We do support the continuation of this exception.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

It is clear.

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

Reference # 47

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

STATUTE: 20-A MRSA §6103, sub-§3

AGENCY: Department of Education

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Thank you.

QUESTIONS

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

This statute keeps confidential any information obtained by the Department as part of a criminal history background check. Any person who is working within a school, including volunteers, must submit fingerprints for conducting the criminal history records check (CHRC); based on the contents of the records, CHRC clearance is granted, or not. This status is publicly available, but the details of the file are not. Requests for information contained in the records review is common, typically in the form of a media inquiry, not a formal FOAA inquiry, when there are allegations against a person who may or may not hold a CRHC approval.

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

We do support the continued privacy of records that are accessed as part of the licensing and employment process. We believe that making these records public does not serve any public interest and may deter qualified employees and volunteers from working in schools at a time when our workforce is perilously understaffed.

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

It is clear; when providing the statute to those requested confidential information, it is clear to them that the information is protected.

4. Does your agency recommend changes to this exception?

No

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

Maine Education Association, Maine Principals Association, Maine School Board Association, Maine School Superintendents Association; Maine Administrators for Education of Students with Disabilities (MADSEC)

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

STATUTE: 20-A MRSA §6205

AGENCY: Department of Education

CONTACT PERSON: Kelli Deveaux

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Thank you.

QUESTIONS

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This statute protects the assessment results of students, making scores on the federally required state assessments available to the school and guardians for each student. The disaggregated data and scores is protected by both state and federal (FERPA) statute. Aggregated data is required and publicly available. We do receive requests for school or statewide data, which is provided on a publicly facing dashboard, as required by United States Department of Education.

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

We believe it is in the best interest of children to keep their assessment records confidential in alignment with FERPA

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

It is clear

4. Does your agency recommend changes to this exception?

No

Reference # 49

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

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

STATUTE: 20-A MRSA §6357, subsection 1

AGENCY: Department of Education

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Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation). This statute directs school superintendents to both collect and keep confidential immunization records of students in their school administrative unit(SAU); this information may be accessed by state and local health authorities in the case of an emergency. The Department does not possess these records, and does not receive inquiries for data. I cannot speak to whether SAUs are asked for these records on an individual student level.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
We support the continued confidentiality of children's medical information.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
It is clear. The Sept. 1, 2021 requirement that all students be vaccinated to attend school in Maine has heightened the attention to this statute, as school personnel who collect and have access to this information are required to deny access to the school for those who do not produce proof of vaccination.

4. Does your agency recommend changes to this exception?

No

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

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

STATUTE: 20-A MRSA §13004, subsection 2

AGENCY: Department of Education

CONTACT PERSON: Kelli Deveaux

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Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation). This statute makes confidential certain materials found within a person's application and file for professional certification and personnel files. The Department receives inquiries, most frequently from media, about personnel records or complaint investigations, this statute is provided in response.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
We support the continuation; the statute as written makes public limited information, while respecting the privacy rights of the citizens who make up our education workforce.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
We believe it is clear.
4. Does your agency recommend changes to this exception?
No.

Reference # 56

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

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

STATUTE: 20-A MRSA §13004, subsection 2-A

AGENCY: Department of Education

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1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation). This statute also limits access to details and information related to a complaint or investigation of an educator who holds a credential in education. It limits the Department in sharing information but permits access to the Department for the purpose of reviewing complaints and supporting documentation in the investigation of complaints. The details of an investigation are confidential, the action taken is public. We frequently get inquiries from media about open investigations or outcomes, and whether a person's certification has been suspended or revoked. A person's certification status, including if it is revoked, is shared. This statute is cited for not providing details of an investigation.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

We support the exception; it balances the right to know, the safety obligation for investigating and certifying educators, with the privacy rights and presumption of innocence for our educator workforce.

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

4. Does your agency recommend changes to this exception?

No

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

Maine Education Association, Maine School Superintendents Association, Maine School Boards Association, Maine Principals Association, Dept. of Public Safety maybe?

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