

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY

H.P. 1498 - L.D. 2103

**An Act To Implement the Recommendations of the Right To Know Advisory
Committee Regarding Public Records Exceptions**

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

PART A

Sec. A-1. 1 MRSA §402, sub-§3, ¶C-1, as enacted by PL 2011, c. 264, §1, is amended to read:

C-1. Information contained in a communication between a constituent and an elected official if the information:

(1) Is of a personal nature, consisting of:

- (a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
- (b) Credit or financial information;
- (c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family; or
- (d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or
- ~~(e) An individual's social security number; or~~

(2) Would be confidential if it were in the possession of another public agency or official;

Sec. A-2. 1 MRSA §402, sub-§3, ¶K, as amended by PL 2003, c. 392, §1, is further amended to read:

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational

programs or services, ~~if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure.~~ This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A;

Sec. A-3. 1 MRSA §402, sub-§3, ¶M, as amended by PL 2011, c. 662, §2, is further amended to read:

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure, systems and software, including records or information maintained to ensure government operations and technology continuity and to facilitate disaster recovery. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;

Sec. A-4. 3 MRSA §997, sub-§1, as enacted by PL 2001, c. 702, §2, is amended to read:

1. Review and response. Prior to the presentation of a program evaluation under this chapter to the committee by the office, the director of the evaluated state agency or other entity must have an opportunity to review a draft of the program evaluation report. Within 15 calendar days of receipt of the draft report, the director of the evaluated state agency or other entity may provide to the office comments on the draft report. If provided to the office by the comment deadline, the comments must be included in the final report when it is presented to the committee. Failure by the director of an evaluated agency or other entity to submit its comments on the draft report by the comment deadline may not delay the submission of a report to the committee or its release to the public.

All documents, writings, drafts, electronic communications and information transmitted pursuant to this subsection are confidential and may not be released to the public ~~prior to the time the office issues its program evaluation report pursuant to subsection 3.~~ A person violating the provisions of this subsection regarding confidentiality is guilty of a Class E crime.

Sec. A-5. 3 MRSA §997, sub-§3, as enacted by PL 2001, c. 702, §2, is amended to read:

3. Confidentiality. ~~The director shall issue program evaluation reports, favorable or unfavorable, of any state agency or other entity, and these reports are public records; except that, prior to the release of a program evaluation report pursuant to subsection 2 or the point at which a program evaluation is no longer being actively pursued, all papers, physical and electronic records and correspondence and other supporting materials comprising the working Working papers in the possession of the director or other entity charged with the preparation of a program evaluation report~~ an entity with which the director has contracted for the conduct of program evaluations pursuant to section 995, subsection 2 are confidential and exempt from disclosure pursuant to Title 1, chapter 13, including disclosure to the Legislative Council or an agent or representative of the Legislative Council. All other records or materials in the possession of the director or

~~other entity charged with the preparation of a program evaluation report under this chapter~~ an entity with which the director has contracted for the conduct of program evaluations pursuant to section 995, subsection 2 that would otherwise be confidential or exempt from disclosure are exempt from disclosure pursuant to the provisions of Title 1, chapter 13. ~~Prior to the release of a program evaluation report pursuant to subsection 2 or the point at which a program evaluation is no longer being actively pursued, all papers, physical and electronic records and correspondence and other supporting materials comprising the working papers in the possession of the director or other entity charged with the preparation of a program evaluation report are confidential and may not be released or disclosed by the director to the Legislative Council or an agent or representative of the Legislative Council. This subsection may not be construed to prohibit or prevent public access to the records of a state agency or other entity in the possession of the director that would otherwise be subject to disclosure pursuant to the provisions of Title 1, chapter 13. The director shall refer requests for access to those records directly to the state agency or other entity that is the official custodian of the requested records, which shall respond to the request for public records.~~

Sec. A-6. 3 MRSA §997, sub-§5, as enacted by PL 2001, c. 702, §2, is amended to read:

5. Confidentiality of working papers Disclosure to agency or entity subject to program evaluation. Except as provided in this subsection, working papers are confidential pursuant to subsection 3 and may not be disclosed to any person. Prior to the release of the final program evaluation report, the director has sole discretion to disclose working papers to the state agency or other entity subject to the program evaluation when disclosure will not prejudice the program evaluation. After release of the final program evaluation report, working papers may be released as necessary to the state agency or other entity that was subject to the program evaluation under this chapter.

Sec. A-7. 5 MRSA §4572, sub-§2, ¶C, as enacted by PL 1995, c. 393, §13, is amended by amending subparagraph (2) to read:

(2) ~~Information obtained regarding the Any medical condition or and disability information and~~ history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that:

- (a) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
- (b) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
- (c) Government officials investigating compliance with this Act are provided relevant information on request; and

Sec. A-8. 5 MRSA §4572, sub-§2, ¶E, as enacted by PL 1995, c. 393, §13, is amended to read:

E. A covered entity may conduct voluntary medical examinations, including voluntary medical ~~histories and disability information and history~~, that are part of an employee health or wellness program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions. Information obtained under this paragraph regarding the medical ~~condition or~~ and disability information and history of an employee is subject to the requirements of paragraph C, subparagraphs (2) and (3).

Sec. A-9. 5 MRSA §4573, sub-§2, as amended by PL 1995, c. 393, §16, is further amended to read:

2. Records. After employment or admission to membership, to make a record of such features of an individual as are needed in good faith for the purpose of identifying ~~them~~ the individual, provided the record is intended and used in good faith solely for identification, and not for the purpose of discrimination in violation of this Act. Records ~~of features~~ regarding physical or mental disability that are collected must be collected and maintained on separate forms and in separate files and be treated as confidential records;

PART B

Sec. B-1. 1 MRSA §402, sub-§3, ¶E, as repealed and replaced by PL 1989, c. 878, Pt. A, §2 and amended by PL 2003, c. 20, Pt. OO, §2 and affected by §4, is further amended to read:

E. Records, 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 when the subject matter is confidential or otherwise protected from disclosure by statute, other law, legal precedent or privilege recognized by the courts of this State. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B;

Sec. B-2. 1 MRSA §402, sub-§3, ¶J, as amended by PL 2001, c. 675, §1, is further amended to read:

J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed ~~by a member~~ ~~or~~ in a public meeting of the advisory organization;

Sec. B-3. 1 MRSA §402, sub-§3, ¶O, as corrected by RR 2009, c. 1, §1, is amended by amending subparagraph (1) to read:

(1) "Personal contact information" means ~~home~~ personal address, ~~home~~ telephone number, ~~home~~ facsimile number, ~~home~~ e-mail address ~~and personal~~, cellular telephone number ~~and personal~~, pager number ~~and~~ username, password and uniform resource locator for a personal social media account as defined in Title 26, section 615, subsection 4; and

Sec. B-4. 1 MRSA §402, sub-§3, ¶U, as amended by PL 2017, c. 118, §2, is further amended to read:

U. 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, except that records related to a discharge of hazardous materials transported by a railroad company that poses a threat to public health, safety and welfare are subject to public disclosure after that discharge. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5; and

Sec. B-5. 5 MRSA §244-E, sub-§3, as enacted by PL 2009, c. 567, §1, is amended to read:

3. Coordination with Office of Program Evaluation and Government Accountability and Attorney General; disclosure to state agencies. The State Auditor may disclose information that is confidential under this section to the Director of the Office of Program Evaluation and Government Accountability and the Attorney General to ensure appropriate agency referral or coordination between agencies to respond appropriately to all complaints made under this section. The State Auditor may disclose information that is confidential under this section related to a complaint alleging fraud, waste, inefficiency or abuse to a department or agency that is the subject of a complaint to ensure that the department or agency can respond appropriately to the complaint. The department or agency shall maintain as confidential any information related to a complaint furnished by the State Auditor.

Sec. B-6. 7 MRSA §2992-A, sub-§1, ¶C, as amended by PL 2007, c. 597, §9 and PL 2011, c. 657, Pt. W, §6, is further amended by amending subparagraph (2) to read:

(2) All meetings and records of the board are subject to the provisions of Title 1, chapter 13, subchapter 1, except that, by majority vote of those members present recorded in a public session, records and meetings of the board may be closed to the public when public disclosure of the subject matter of the records or meetings would adversely affect the competitive position of the milk industry of the State ~~or segments of that industry.~~ The Commissioner of Agriculture, Conservation and Forestry and those members of the Legislature appointed to serve on the joint standing committee of the Legislature having jurisdiction over agricultural, conservation and forestry matters have access to all material designated confidential by the board;

Sec. B-7. 7 MRSA §2998-B, sub-§1, ¶C, as amended by PL 2007, c. 597, §10 and PL 2011, c. 657, Pt. W, §6, is further amended by amending subparagraph (2) to read:

(2) All meetings and records of the council are subject to the provisions of Title 1, chapter 13, subchapter 1, except that, by majority vote of those members

present recorded in a public session, records and meetings of the council may be closed to the public when public disclosure of the subject matter of the records or meetings would adversely affect the competitive position of the milk industry of the State ~~or segments of that industry~~. The Commissioner of Agriculture, Conservation and Forestry and those members of the Legislature appointed to serve on the joint standing committee of the Legislature having jurisdiction over agricultural, conservation and forestry matters have access to all material designated confidential by the council;

Sec. B-8. Public records exceptions and confidential records; drafting templates. The Office of Policy and Legal Analysis, in consultation with the Office of the Revisor of Statutes and the Right To Know Advisory Committee, shall examine inconsistencies in statutory language related to the designation as confidential or not subject to public disclosure of information and records received or prepared for use in connection with the transaction of public or governmental business or containing information relating to the transaction of public or governmental business and shall recommend standardized language for use in drafting statutes to clearly delineate what information is confidential and the circumstances under which that information may appropriately be released. On or before September 1, 2021, the Office of Policy and Legal Analysis shall submit a report with its recommendations to the Right To Know Advisory Committee.