

RIGHT TO KNOW ADVISORY COMMITTEE

AGENDA

July 20, 2016

1:00 p.m.

Room 438, State House, Augusta

Convene

1. Welcome and Introductions
2. Review of public records exception enacted in LD 484 (Public Law 2015, chapter 161) relating to hazardous material transported by railroads
3. Review and potentially develop recommendations for treatment of personal contact information for professions and occupations licensed by the State
4. Update on meeting between Sen. Burns and Rep. Monaghan and presiding officers relating to Freedom of Access requests made to Maine Warden Service; Advisory Committee request to Colin Woodard and Sigmund Schutz for input and suggestions for changes in policy or law or for the development of best practices
5. Review subcommittee recommendations relating to existing public records exceptions
6. *Potential topic for future discussion*- Consider legislation requiring local boards and committees to record their executive sessions and to preserve these records so that they may be legally discoverable if there is a later dispute about either the content or propriety of the discussion held during these sessions
7. *Potential topic for future discussion* - Review of 10 factors for estimating time to respond to a request under the Freedom of Access Act suggested by Eric Stout
8. Other items?

Adjourn

BACKGROUND INFORMATION:

Public records exception for records relating to hazardous materials transported by railroads

- A. Letter to RTKAC from Judiciary Committee outlining request to consider issue
- B. Public Law 2015, chapter 161
- C. Governor's veto letter (veto overridden)
- D. Original bill and Committee amendment
- E. Written testimony submitted at public hearing
- F. Media publications raising issue related to availability of information to the public about crude oil transported in Maine, Center for Public Interest Reporting, February and March 2016
- G. Current law definition of "public record", 1 MRSA §402, sub-§3
- H. Checklist based on 1 MRSA §432, sub-§2
- I. Response to Questionnaire Submitted by DEP, rec'd 7/14/16

SENATE

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AMY F. VOLK, DISTRICT 30
CHRISTOPHER K. JOHNSON, DISTRICT 13

MARGARET J. REINSCH, SENIOR LEGISLATIVE ANALYST
HENRY D. FOUTS, LEGISLATIVE ANALYST
SUSAN M. PINETTE, COMMITTEE CLERK



HOUSE

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JEFFREY EVANGELOS, FRIENDSHIP
THEODORE BEAR MITCHELL I, PENOBSCOT NATION

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

February 24, 2016

Senator David C. Burns, Chair
Representative Kimberly J. Monaghan, Co-Chair
Members
Right to Know Advisory Committee

Re: Railroad cargo public records exception

Dear Right to Know Advisory Committee Members:

During the First Regular Session of the 127th Legislature, the Judiciary Committee heard, worked and reported out LD 484, An Act Regarding the Confidentiality of Railroad Carrier Cargo, sponsored by Representative Shaw. The bill originally proposed a public records exception for records describing "commodities transported by a railroad" in the possession of law enforcement, fire departments or other first responders or emergency management entities.

The testimony at the public hearing indicated that railroads wanted to provide information to emergency entities and first responders, but were concerned that all the information would become public which could cause business consequences or result in heightened security concerns. Representative Shaw, Pan Am Railways and St. Lawrence and Atlantic Railroad testified in favor of the bill. No other individuals, organizations or entities provided testimony or participated in the public hearing or work sessions.

The Judiciary Committee ended up reporting out the bill with a narrowed public records exception, limited to hazardous material, as defined by the federal Department of Transportation, reported by a railroad company to state or local emergency management entity or law enforcement agency, a fire department or other first responder. The public records exception covers the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes. The Judiciary Committee discussed the confidentiality and public interest issues in the proposed bill and the amendment they finally approved, which they always do when considering public records exceptions. Members of the Committee were concerned that information about hazardous materials could be used in the furtherance of terrorism and

supported the confidentiality provision in the interest of public safety. The bill was enacted by the Legislature, vetoed by the Governor, and the veto was overridden. It is now Public Law 2015, chapter 161, codified as Title 1, section 402, subsection 3, paragraph U.

Recent publications have indicated that the new public records exception has caused problems for citizens trying to know whether crude oil is being transported through the State. The Judiciary Committee did not receive any information about public concerns in this area, and we would like to ensure that the public has an additional opportunity to comment and recommend changes, if necessary. The Judiciary Committee therefore requests that the Right to Know Advisory Committee include in its continuing review of existing public records exceptions Title 1, section 402, subsection 3, paragraph U. The Judiciary Committee will be happy to share all files and correspondence.

Please feel free to contact us or our committee analyst if you have any questions.

Thank you.

Sincerely,


Senator David C. Burns
Senator Chair


Representative Barry J. Hobbins
House Chair

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

H.P. 323 - L.D. 484

An Act Regarding the Confidentiality of Railroad Carrier Cargo

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

Sec. 1. 1 MRSA §402, sub-§3, ¶S, as amended by PL 2013, c. 518, §2, is further amended to read:

S. E-mail addresses obtained by a political subdivision of the State for the sole purpose of disseminating noninteractive notifications, updates and cancellations that are issued from the political subdivision or its elected officers to an individual or individuals that request or regularly accept these noninteractive communications; ~~and~~

Sec. 2. 1 MRSA §402, sub-§3, ¶T, as enacted by PL 2013, c. 518, §3, is amended to read:

T. Records describing research for the development of processing techniques for fisheries, aquaculture and seafood processing or the design and operation of a depuration plant in the possession of the Department of Marine Resources; ~~and~~

Sec. 3. 1 MRSA §402, sub-§3, ¶U is enacted 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. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5.

COMMUNICATIONS

(2-1) The Following Communication: (H.C. 213)

and accompanying veto, item (2-2)

**STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0001**

June 10, 2015

The 127th Legislature of the State of Maine
State House
Augusta, Maine

Dear Honorable Members of the 127th Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 484, "An Act Regarding the Confidentiality of Railroad Carrier Cargo."

This bill adds an additional public records exception to the Freedom of Access Act to cover records describing hazardous materials transported by a railroad in this State when those records are in the possession of law enforcement, fire departments or other first responders or emergency management entities. In essence, railroad companies want these records shielded from public view when they are in the possession of first responders and emergency management entities.

One of the hallmarks of my administration has been transparency in government; another has been the protection of Maine citizens. I cannot support a bill that is inconsistent with these goals. When information about hazardous cargo traveling through this State is in the possession of first responders and/or emergency management entities, it is highly possible that one reason these entities have this information in the first place is that something has gone wrong. I am not at all comfortable shielding this information from the Maine citizens that may be placed in harm's way by these transports. If trains are carrying hazardous materials through our State and this information is shared with our first responders and emergency management entities, then this information needs to be available to our citizens.

For these reasons, I return LD 484 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,

S/Paul R. LePage
Governor

(2-2) The accompanying item An Act Regarding the Confidentiality of Railroad Carrier Cargo
(H.P. 323) (L.D. 484)
(C. "A" H-181)



127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 484

H.P. 323

House of Representatives, February 24, 2015

An Act Regarding the Confidentiality of Railroad Carrier Cargo

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative SHAW of Standish.

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

2 **Sec. 1. 1 MRSA §402, sub-§3, ¶S**, as amended by PL 2013, c. 518, §2, is further
3 amended to read:

4 S. E-mail addresses obtained by a political subdivision of the State for the sole
5 purpose of disseminating noninteractive notifications, updates and cancellations that
6 are issued from the political subdivision or its elected officers to an individual or
7 individuals that request or regularly accept these noninteractive communications; ~~and~~

8 **Sec. 2. 1 MRSA §402, sub-§3, ¶T**, as enacted by PL 2013, c. 518, §3, is
9 amended to read:

10 T. Records describing research for the development of processing techniques for
11 fisheries, aquaculture and seafood processing or the design and operation of a
12 depuration plant in the possession of the Department of Marine Resources; and

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

14 U. Records describing commodities transported by a railroad in this State in the
15 possession of law enforcement, fire departments or other first responders or
16 emergency management entities.

17 **SUMMARY**

18 This bill adds an additional public records exception to the Freedom of Access Act to
19 cover records describing commodities transported by a railroad in this State when those
20 records are in the possession of law enforcement, fire departments or other first
21 responders or emergency management entities.

D-2

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Date: (Filing No. H-)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 323, L.D. 484, Bill, “An Act Regarding the Confidentiality of Railroad Carrier Cargo”

Amend the bill in section 3 by striking out all of paragraph U (page 1, lines 14 to 16 in L.D.) and inserting the following:

'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. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5.'

SUMMARY

This amendment clarifies that the exception to the definition of "public record" proposed in the bill is limited to records provided by a railroad company that describe hazardous materials that are transported by the railroad company, the routes of the hazardous materials shipments and the frequency of the hazardous materials operations, on those routes when those records are in the possession of state or local emergency management entities or law enforcement agencies, fire departments or other first responders. The amendment also provides that "hazardous material" has the same definition as in 49 Code of Federal Regulations, Section 105.5.

COMMITTEE AMENDMENT

D-3



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002

(207) 287-1400

TTY: (207) 287-4469

Michael A. Shaw

5 Perimeter Avenue
Standish, ME 04084

Residence: (207) 787-4352

Fax: (207) 787-4352

Mike.Shaw@legislature.maine.gov

TESTIMONY OF REP. MICHAEL SHAW

BEFORE THE JOINT STANDING COMMITTEE ON JUDICIARY

LD 484: An Act Regarding the Confidentiality of Railroad Carrier Cargo

April 1, 2015

Senator Burns, Representative Hobbins and members for the Judiciary Committee, I am Representative Mike Shaw of House District 23, which includes part of Standish. I am here today as the sponsor of LD 484: An Act Regarding the Confidentiality of Railroad Carrier Cargo.

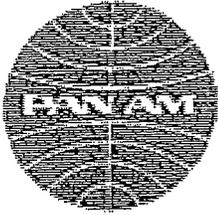
This bill proposes a narrow and specific exemption to the current public records exemptions to the state's Freedom of Access Act. Specifically, as drafted, the bill adds an additional public records exception to the Freedom of Access Act to cover records describing commodities transported by a railroad in this state when those records are in the possession of law enforcement, fire departments or other first responders or emergency management entities. I would ask that this be expanded to a general exemption to ensure any state or local agency that wants the information can access it without need for disclosure.

This is a proposal to increase safety. As you know, our railroads transport many items, some of them dangerous. Everything from crude oil to chemicals used to make paper travel our rail lines on a daily basis and the more information our local first responders can have the better. While we all hope that information is not needed, having it available in the event of an accident or other crisis can be critical.

While railroads want those officials to have that information, they are leery to provide it in a way that can be made public. The simple fact is there is a great deal of competition in the shipping business and disclosing publicly what, how much and how often you are transporting a product can be a serious competitive disadvantage.

This exemption seeks to allow our railroads to share this important information with our first responders without the fear that information will be used to cut into their business.

This narrow exemption will ensure that information is available to those who need it without damaging the intent or spirit of the state's "right to know" law. I urge you to support the bill and I am happy to answer any questions you may have.



PAN AM RAILWAYS

IRON HORSE PARK
No. BILLERICA, MA 01862

TESTIMONY OF CYNTHIA SCARANO

Executive Vice President Pan Am Railways

Before the Joint Standing Committee on Judiciary LD 484: An act regarding the Confidentiality of Railroad Carrier Cargo

Senator Burns, Representative Hobbins and members of the judiciary Committee, I am Cynthia Scarano, Executive Vice President Pan Am Railways. Pan Am Railways is in favor of LD 484 An Act regarding the confidentiality of Railroad Carrier Cargo.

Pan Am has historically tried to work with various emergency response agencies in Maine and other States by providing training in preparation for a rail related incident. Where we get to an impasse is sharing specific information in writing. Emergency responders have been requesting more specific information relating to the commodities and their quantities being shipped through Maine by Pan Am. While Pan Am sees the benefit of sharing this information, unfortunately any information shared would become a public document under current Freedom of Access laws. That is why the proposed amendment to the FOA laws is being presented today, so that Pan Am may more freely share information that will benefit emergency responders and the residents of Maine, without the risk of the information being publicly disseminated. We have historically tried to work with various emergency response agencies in Maine and other States

The risks associated with public knowledge of this information include heightened security

concerns and protection of information that might otherwise be confidential between Pan Am and shippers.

I urge you to support the bill and I am happy to answer any questions you may have.

Pine Tree Watchdog (<https://pinetreewatchdog.org/legislature-sidestepped-records-law-to-end-public-access-to-oil-train-data/>)



Categories

More

Legislature sidestepped records law to end public access to oil train data

By: DAVE SHERWOOD ©MAINE CENTER FOR PUBLIC INTEREST REPORTING | February 10, 2016

After a runaway oil train killed 47 people in Lac-Mégantic, Quebec, just miles from the Maine border in 2013, the Maine public demanded to know more about the railways here.

How much oil was moving through Maine? Which companies shipped it and along what routes? Was the government doing enough to keep communities safe?

At about the same time, the rail industry began its own campaign to keep much of that information secret (<https://www.documentcloud.org/documents/2703188-Maine-Letter-of-Confidentiality.html#document/p1/a275139>), according to interviews and correspondence with regulators.

Those efforts paid off last year when state officials – who for years had reported the volumes of monthly crude oil shipments – abruptly stopped providing them to the public in October.

The new law that gagged them not only blocked the public's right to know what dangers lurked on the train tracks, but its passage followed a haphazard process in which lawmakers repeatedly ignored red flags and safeguards designed to prioritize the public's right-to-know over private business interests.

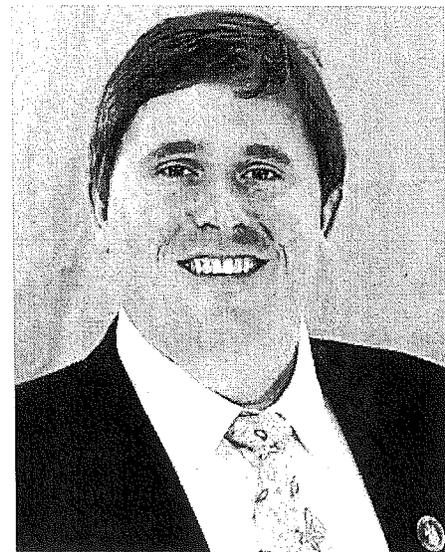
The bill, An Act Regarding the Confidentiality of Railroad Carrier Cargo (http://legislature.maine.gov/legis/bills/bills_127th/chapters/PUBLIC161.asp), passed into law with no debate and over a forceful veto from Gov. LePage. Its sponsor, former Rep. Mike Shaw, D-Standish, had sold it as a commonsense compromise: If state officials promised to make confidential shipments of hazardous materials, he said, then railroads – who had argued such details could be used by competitors to undercut their business – would volunteer to share them.

“I thought it would facilitate communication between first responders and the railroads,” Shaw said, four months after the bill took effect.

But the spare, 80-word exemption

(<https://www.documentcloud.org/documents/2703429-Maine-127-HP-323-Item-3.html#document/p1/a275240>) did not require railroads to share information with local first responders. Instead, it simply forced the state to keep those details secret from the public.

“When people are aware of what's coming through their community, they pay attention,” said Bob Klotz, a spokesman for 350 Maine, an activist group that has protested oil-by-rail cargoes in the state. “To take that information away is very concerning.”



Contributed photo / Bangor Daily News

Former Rep. Mike Shaw, D-Standish, wanted rail carriers to provide information about hazardous materials to first responders.

Flawed Process

Shaw's legislation marked the 460th exception (<https://www.documentcloud.org/documents/2701522-Public-Records-Exceptions-Database-for-RTK.html>) to Maine's 40-year old Freedom of Access Act (<https://www.documentcloud.org/documents/2705743-Public-Access-Ombudsman-Report-2015-FINAL.html#document/p3/a276230>).

The act requires any effort to hide government information from the public to conform with a series of minimum requirements (<https://www.documentcloud.org/documents/2699934-FOAA-Statute.html#document/p26/a274192>). But the normal legislative process, which includes reviewing a 12-point checklist (<https://www.documentcloud.org/documents/2700218-Matrix-Blank-for-127th.html>) to ensure each requirement is met, was not followed in this case, according to an examination by the Maine Center for Public Interest Reporting.

"I don't have that piece of paper and can't document that we actually did it," said Peggy Reinsch, the legislative analyst who worked on the bill, referring to the checklist.

Among the problems the Center identified:

- Private business interests must "substantially outweigh (<https://www.documentcloud.org/documents/2699934-FOAA-Statute.html#document/p27/a274576>)" the public's right-to-know in order for lawmakers to amend the state's open records act. Yet legislators failed to seek out opposing views, relying instead on industry lobbyists (<https://www.documentcloud.org/documents/2701520-AAR-EmailtoReinsch.html#document/p1/a274526>), railroad companies (<https://www.documentcloud.org/documents/2701521-PanAmTestimony.html>) and Shaw's own testimony (<https://www.documentcloud.org/documents/2698135-Testimony24382.html>), committee records show. First Amendment experts, environmentalists and state and federal railroad regulators were never consulted, leaving lawmakers with only half the story.
- Shaw's written testimony (<https://www.documentcloud.org/documents/2698135-Testimony24382.html>) implied secrecy was the only way to ensure railroads provided first responders with details about hazardous materials. But federal regulators already required railroads report large shipments (https://www.fra.dot.gov/eLib/details/LO5223#p9_z5_gD_IPR) of crude oil — among the most controversial of hazardous materials — and top U.S. Dept. of Transportation officials had encouraged states to disclose that information (<https://www.fra.dot.gov/eLib/Details/L16747>). In an interview after the bill took effect, Shaw acknowledged: "I didn't really know any of those details when I went into this."
- Shaw pitched his bill as a proposal to "increase safety," (<https://www.documentcloud.org/documents/2698135-Testimony24382.html#document/p1/a274180>) but federal regulators, including the Department of Homeland Security (<https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p2/a275766>), had already vetted the risks and were unconvinced. "The Department finds no basis to conclude that the public disclosure of the information is detrimental to transportation safety," stated a notice published in the Federal Register in October 2014. (<https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p2/a273288>) Lawmakers in Maine never discussed the notice, the culmination of a two-year-long national discussion of railroad safety. (<http://www.phmsa.dot.gov/hazmat/osd/chronology>)
- Shaw said disclosing information about trains carrying hazardous materials like crude oil put railroads at a "serious competitive disadvantage (<https://www.documentcloud.org/documents/2698135-Testimony24382.html#document/p1/a274180>)," a claim reiterated by industry lobbyists (<https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p2/a274522>) but unsupported by evidence (<https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p2/a274523>), according to federal regulators and the courts (<https://www.documentcloud.org/documents/2703441-CSX-v-MDE-Memorandum-Opinion.html>). The U.S. Department of Transportation had already determined (<https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p2/a274122>) information about oil shipments was not "commercially-sensitive."

- Shaw is a conductor for the passenger railroad Amtrak, according to income disclosure filings (<https://www.documentcloud.org/documents/2678427-RepMikeShaw-Disclosure2013.html#document/p2/a270490>). While ethics laws in Maine (<https://www.documentcloud.org/documents/2701342-Title1MRSACH25-GovernmentalEthics12-2015.html#document/p13/a274472>) would not have stopped Shaw from presenting the bill, the co-chairman of the Judiciary Committee reviewing the bill expressed reservations about Shaw's closeness to the industry. "I sensed a little bit of conflict of interest there," said Sen. David Burns, R-Whiting.
- The final check and balance in the law-making process was lost amid the most contentious legislative session in recent memory. Gov. LePage, who vetoed the bill alongside more than 100 others (<https://www.documentcloud.org/documents/2678915-Ld-484-Veto-Message.html>), warned lawmakers: "If trains are carrying hazardous materials through our State ...then this information needs to be available to our citizens."

As Maine goes...



Jeff Pouland Photography

Rail tracks through Jackman

Confidentiality.html#document/p1/a275139).

Two weeks later, Melanie Loyzim, then-director of the state DEP's Bureau of Remediation and Waste Management, told Pan Am vice president Cynthia Scarano that Maine's attorney general found no basis for hiding the information from the public.

Though not an oil producer, Maine had been among the largest exporting states in the nation. It's a transit point between the oil fields of western North America and the 300,000-barrel-per-day Irving oil refinery in neighboring Saint John, New Brunswick, one of New England's largest suppliers of gasoline.

As shipments spiked nationally

(<https://www.aar.org/Pages/Crude-Oil-Rail-Traffic.aspx>), citizens demanded more information but railroads increasingly lobbied to give them less (<https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p1/a273287>), citing security risks and the need to keep the information from competitors.

Though the Maine Department of Environmental Protection had made public summary information (<https://www.documentcloud.org/documents/2704491-Regform.html>) on many hazardous materials shipped by rail (<http://www.pressherald.com/2013/08/06/hazardous-materials-common-on-maine-railroads/>) — all of it now off-limits to the public — oil dominated the railroad's agenda.

Just 12 days after the 2013 Lac-Mégantic accident, while fires still smoldered in the city's flattened downtown, Pan Am Railways sent a letter to the DEP requesting the state keep records of crude shipments confidential

([https://www.documentcloud.org/documents/2703188-Maine-Letter-of-](https://www.documentcloud.org/documents/2703188-Maine-Letter-of-Confidentiality.html#document/p1/a275139)

“Therefore, it appears that legislative action would be required to make such information confidential based on security concerns,” Loyzirm said in a letter dated Aug. 2, 2013 (<https://www.documentcloud.org/documents/2703188-Maine-Letter-of-Confidentiality.html#document/p3/a275140>).

The next year, Shaw said a public safety officer from Pan Am approached him at work and raised the issue of keeping some records confidential.

By then, oil shipments through Maine had dropped off sharply, a result of market forces (<http://pinetreewatchdog.org/irving-no-more-oil-trains-in-maine/>), and Pan Am was the only railway moving small amounts of crude through Maine (<http://bangordailynews.com/2015/04/16/business/oil-by-train-shipments-resume-in-maine-after-long-hiatus/>).

“It went under the radar and all of a sudden, it was passed” — David Madore, DEP spokesman

Shaw, who understood the ins and outs of the rail business, liked the idea and submitted a bill.

At a public hearing, Pan Am’s Scarano told the legislature’s Judiciary Committee (<https://www.documentcloud.org/documents/2701521-PanAmTestimony.html#document/p1/a274527>) that state emergency workers were increasingly asking for more details (<https://www.documentcloud.org/documents/2701521-PanAmTestimony.html#document/p1/a275768>) about shipments of hazardous materials and reiterated her point that secrecy would allow her company to “freely share information that will benefit emergency responders and the people of Maine.”

The committee’s research staff sought the advice of the Association of American Railroads (<https://www.documentcloud.org/documents/2701520-AAR-EmailtoReinsch.html>), a Washington, D.C.-based lobby group, according to a review of committee files (<https://www.documentcloud.org/documents/2701541-Committee-File-LD484.html>), but state and federal regulators were never consulted.

“It went under the radar and all of a sudden, it was passed,” said David Madore, a Department of Environmental Protection (DEP) spokesman in December. “It was not something we were involved in.”

The legislation’s only real opposition came from Gov. LePage, who, at the time was issuing vetoes at a record pace and chiding lawmakers (<https://www.documentcloud.org/documents/2704511-LD-1342-Veto-Message.html#document/p1/a275771>) for “hastily passing bills they haven’t even read.”

Yet LePage’s veto of Shaw’s bill (<https://www.documentcloud.org/documents/2678915-Ld-484-Veto-Message.html>) differed from the others.

If first responders have information about hazardous cargo moving in Maine, LePage reasoned, it suggests, at least, the possibility of danger. He added, “I am not at all comfortable shielding this information from the Maine citizens that may be placed in harm’s way by these transports.”

LePage’s veto was overridden in both the House (146-1) and the Senate (31-4).

Right to know?



Photograph: Jeff Pouland

Gov. Paul LePage vetoed the bill. “I am not at all comfortable shielding this information from... Maine citizens.

F.4

Today, Maine residents can no longer know for sure if train cars laden with volatile crude oil are passing through their communities or standing on nearby sidetracks for hours and days at a time.

“Without some information about what railroads are actually doing, how can the public judge whether regulations are protective of human health and the environment?” said Sigmund Schutz, a First Amendment attorney from Portland. “Ultimately, this type of thing undermines people’s confidence in government.”

Some lawmakers and legislative staff, in retrospect, agree the process was flawed.



Contributed photo

State Sen. David Burns, R-Whiting, co-chairman of the Judiciary Committee

Sen. Burns, the Judiciary committee co-chairman, acknowledged lawmakers may not have had all the information they needed. “We saw this as a safety issue, more than an effort to hide things,” said Burns. “If we need to put a change in, we can do that.”

Rep. Barry Hobbins (D-Saco), the committee’s other co-chairman, did not respond to repeated requests for comment.

For his part, Rep. Shaw, who resigned from the legislature in August for personal reasons, says he would encourage his former colleagues to put in “some tweaks” so that some information, like total volumes of crude oil passing through Maine, once again would be made public.

“Keeping them confidential was really never my intention,” said Shaw.

Dave Sherwood is a contributing writer to the Maine Center for Public Interest Reporting, a nonpartisan, non-profit news service based in Augusta. Email: pinetreewatchdog@gmail.com. Web: www.pinetreewatchdog.org (<http://www.pinetreewatchdog.org>).

F-5

Pine Tree Watchdog (<https://pinetreewatchdog.org/dep-to-make-oil-train-data-public-again/>)



Categories

More

DEP to make oil train data public again

By: DAVE SHERWOOD ©MAINE CENTER FOR PUBLIC INTEREST REPORTING | March 2, 2016

AUGUSTA — After nearly five months of silence on the subject, state environmental officials will resume releasing information about the passage of oil trains through Maine.

The change in policy follows consultations with the Attorney General's office on a controversial [law](https://www.documentcloud.org/documents/2703429-Maine-127-HP-323-Item-3.html#document/p1/a275240) (<https://www.documentcloud.org/documents/2703429-Maine-127-HP-323-Item-3.html#document/p1/a275240>), enacted in October, which prevents state and local officials from divulging any information about rail shipments of hazardous materials through Maine.

Before the law took effect, the Department of Environmental Protection had provided summary data on crude oil shipments to the public. Environmental, health and safety advocates supported government transparency, claiming that public awareness of the shipments would enable communities to prepare for or respond to catastrophic events such as the runaway train explosion at Lac-Mégantic, Quebec that killed 47 people in 2013. But the railway industry had argued in Maine and nationally

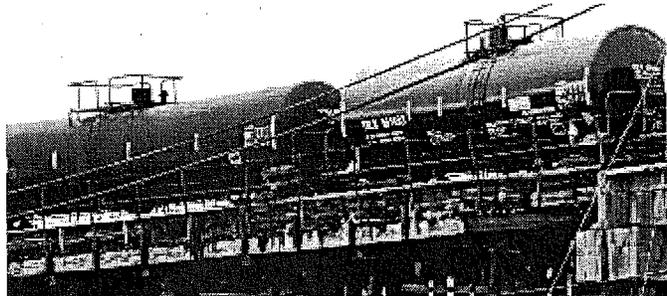


Photo courtesy of Roy Luck. Used under the Creative Commons Attribution 2.0 Generic license. / Wikimedia

The DEP will resume releasing data on oil and other hazardous materials moving on Maine rails.

(<https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p1/a273287>) that information about oil and other hazardous materials they carried should be confidential, citing concerns that it could be used to undercut their business or to carry out acts of terrorism.

In February, the Maine Center for Public Interest Reporting filed a request under Maine's open records act to examine the oil data. In response, DEP spokesman David Madore said the Attorney General's office concluded that the law does not prevent his agency from releasing summaries of the monthly crude oil volumes traveling by rail and the companies that transported it.

"We had decided to stop reporting the data until we had a better idea about what was permitted under the new law," Madore said. "We didn't want to go against its spirit or intent."

"It's not surprising they aren't currently shipping crude by rail through Maine. But even if the current amount is zero,

the public has the right to be informed.” — Michelle Fournier of 350Maine

The newly disclosed data shows that no crude oil has passed through Maine in the months since the law went into effect. Irving Oil, which operates Canada’s largest oil refinery in Saint John, New Brunswick, last year said (<http://pinetreewatchdog.org/irving-no-more-oil-trains-in-maine/>) current market conditions favor receiving oil by tanker from overseas rather than by rail.

But environmentalists and open government advocates say market conditions could change anytime.

“It’s not surprising they aren’t currently shipping crude by rail through Maine,” said Michelle Fournier of 350Maine, a climate change advocacy group that has protested oil cargoes in Maine. “But even if the current amount is zero, the public has the right to be informed.”

HAPHAZARD LAWMAKING

The DEP’s decision to release the data also follows an investigation by the Center (<http://pinetreewatchdog.org/legislature-sidestepped-records-law-to-end-public-access-to-oil-train-data/>) that showed lawmakers who approved the bill repeatedly bypassed safeguards designed to prioritize the public’s right-to-know over private business interests (<https://www.documentcloud.org/documents/2699934-FOAA-Statute.html#document/p27/a274576>).



Contributed photo / Bangor Daily News

Former Rep. Mike Shaw, D-Standish, sponsored a 2015 bill that shielded hazardous rail shipments from the public’s right to know.

Former Rep. Mike Shaw, D-Standish, a railroad conductor by trade, had initially argued (<https://www.documentcloud.org/documents/2698135-Testimony24382.html>) the legislation was needed to ensure railroads provided emergency officials with details about hazardous material shipments through Maine.

But the 80-word bill that emerged last year did nothing to make railroads provide information to local first responders. Instead, it only forced the state to keep those details secret from the public when railroads volunteered the data.

The legislation, which created the 460th exception to Maine’s Freedom of Access Act (<https://www.documentcloud.org/documents/2701522-Public-Records-Exceptions-Database-for-RTK.html>), also contradicted the findings of federal regulators. A year earlier, they had determined that information about oil train shipments was “neither security-sensitive nor commercially-sensitive,” according to a notice published in the Federal Register (<https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p2/a274122>).

The bill nonetheless became law in June 2015 over a sharply worded veto from Gov. Paul LePage (<https://www.documentcloud.org/documents/2678915-Ld-484-Veto-Message.html>).

When presented with these findings in an interview in January, former Rep. Shaw, who resigned from the legislature in August for personal reasons, said he was willing to encourage lawmakers to amend the bill to allow officials to disclose volumes of crude oil moving through Maine.

“Keeping them confidential was really never my intention,” said Shaw.

AGENCY CONFUSION

State environmental officials, rail regulators and the Attorney General’s office all expressed reservations about the bill just days before a public hearing for the legislation, according to emails obtained under the state’s open record act.

But the documents show no action was taken.

Just one day before the public hearing for the bill in April, Erle Townsend, a DEP energy regulation specialist, drafted a letter to lawmakers (<https://www.documentcloud.org/documents/2719557-ErleTownsendEmail.html#document/p3/a279596>) warning of the need to balance the public's right-to-know with security concerns.

"We trust the members of this Committee will consider both of these issues as they evaluate the merits of this legislation," Townsend wrote.

But the letter was never submitted, legislative records show (<https://www.documentcloud.org/documents/2701541-Committee-File-LD484.html>).

Then in May, days before the final vote in the House and Senate, Mary Sauer, an assistant attorney general, once again warned environmental officials (<https://www.documentcloud.org/documents/2719560-MarySauerAG.html#document/p1/a279597>) to seek "clarification from the legislative committee ... to avoid legal arguments and litigation down the road."

Yet regulators never consulted with lawmakers, nor did lawmakers seek out their opinion — a flawed process that the governor, some lawmakers and transparency experts now say needs a second look.

Sigmund Schutz, a First Amendment attorney from Portland, called the reversal good news but said more clarification was needed.

"It's encouraging that they said 'Gee, this slipped through the cracks' and then, 'we have to fix this'," said Schutz. "But we need to be sure there's no ambiguity going forward. It seems there's a real need to amend the legislation to remove any lingering doubt."

Dave Sherwood is a contributing writer to the Maine Center for Public Interest Reporting, a nonpartisan, non-profit news service based in Augusta. See his previous story on Maine's oil trains [here](http://pinetreewatchdog.org/legislature-sidestepped-records-law-to-end-public-access-to-oil-train-data/) (<http://pinetreewatchdog.org/legislature-sidestepped-records-law-to-end-public-access-to-oil-train-data/>). Email: pinetreewatchdog@gmail.com. Web: www.pinetreewatchdog.org.



Sigmund Schutz

Maine Revised Statutes
Title 1: GENERAL PROVISIONS
Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

§402. DEFINITIONS

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.

[1975, c. 758, (NEW) .]

1-A. Legislative subcommittee. "Legislative subcommittee" means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.

[1991, c. 773, §1 (NEW) .]

2. Public proceedings. The term "public proceedings" as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:

A. The Legislature of Maine and its committees and subcommittees; [1975, c. 758, (NEW) .]

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Community College System and any of its committees and subcommittees; [1989, c. 358, §1 (AMD); 1989, c. 443, §1 (AMD); 1989, c. 878, Pt. A, §1 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; [1991, c. 848, §1 (AMD) .]

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1995, c. 608, §1 (AMD) .]

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees; [2009, c. 334, §1 (AMD) .]

F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and [2009, c. 334, §2 (AMD) .]

G. The committee meetings, subcommittee meetings and full membership meetings of any association that:

- (1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and
- (2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.

This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach. [2009, c. 334, §3 (NEW) .]

[2009, c. 334, §§1-3 (AMD) .]

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:

A. Records that have been designated confidential by statute; [1975, c. 758, (NEW) .]

B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding; [1975, c. 758, (NEW) .]

C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over; [1991, c. 773, §2 (AMD) .]

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;

(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; [2011, c. 264, §1 (NEW) .]

D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives; [1989, c. 358, §4 (AMD) .]

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. 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; [1989, c. 358, §4 (AMD); 1989, c. 443, §2 (AMD); 1989, c. 878, Pt. A, §2 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1991, c. 448, §1 (AMD) .]

G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1991, c. 448, §1 (AMD) .]

H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct; [1995, c. 608, §4 (AMD) .]

I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter; [1999, c. 96, §1 (AMD) .]

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; [2001, c. 675, §1 (AMD) .]

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; [2003, c. 392, §1 (AMD) .]

L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records 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. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure; [2003, c. 614, §1 (AMD) .]

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure, systems and software. 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; [2011, c. 662, §2 (AMD) .]

N. Social security numbers; [2011, c. 320, Pt. E, §1 (AMD) .]

O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:

(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and

(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials; [2009, c. 1, §1 (COR) .]

P. Geographic information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information; [2011, c. 149, §1 (AMD) .]

(Paragraph P as enacted by PL 2009, c. 339, §3 is REALLOCATED TO TITLE 1, SECTION 402, SUBSECTION 3, PARAGRAPH Q)

Q. (REALLOCATED FROM T. 1, §402, sub-§3, ¶P) Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the general public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials or the Department of Corrections under conditions that protect the information from further disclosure; [2015, c. 335, §1 (AMD) .]

R. Social security numbers in the possession of the Secretary of State; [2013, c. 518, §1 (AMD) .]

S. E-mail addresses obtained by a political subdivision of the State for the sole purpose of disseminating noninteractive notifications, updates and cancellations that are issued from the political subdivision or its elected officers to an individual or individuals that request or regularly accept these noninteractive communications; [2015, c. 161, §1 (AMD) .]

T. Records describing research for the development of processing techniques for fisheries, aquaculture and seafood processing or the design and operation of a depuration plant in the possession of the Department of Marine Resources; and [2015, c. 161, §2 (AMD) .]

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. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5. [2015, c. 161, §3 (NEW) .]

[2015, c. 161, §§1-3 (AMD); 2015, c. 335, §1 (AMD) .]

3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:

A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of furlough and dates of furlough; [2013, c. 267, Pt. B, §1 (AMD) .]

B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of residence and dates of supervision; and [2013, c. 267, Pt. B, §1 (AMD) .]

C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information. [2013, c. 267, Pt. B, §1 (AMD) .]

[2013, c. 267, Pt. B, §1 (AMD) .]

4. Public records of interscholastic athletic organizations. Any records or minutes of meetings under subsection 2, paragraph G are public records.

[2009, c. 334, §4 (NEW) .]

5. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.

[2011, c. 662, §3 (NEW) .]

6. Reasonable office hours. "Reasonable office hours" includes all regular office hours of an agency or official.

[2011, c. 662, §3 (NEW) .]

SECTION HISTORY

1973, c. 433, §1 (AMD). 1975, c. 243, (RPR). 1975, c. 483, §2 (AMD).
1975, c. 758, (RPR). 1977, c. 164, §§1,2 (AMD). 1977, c. 696, §9 (AMD).
1985, c. 695, §§1,2 (AMD). 1985, c. 779, §§1,2 (AMD). 1987, c. 20, §1
(AMD). 1987, c. 402, §A1 (AMD). 1987, c. 477, §1 (AMD). 1989, c. 358,
§§1-4 (AMD). 1989, c. 443, §§1,2 (AMD). 1989, c. 878, §§A1,2 (AMD).
1991, c. 448, §§1,2 (AMD). 1991, c. 773, §§1,2 (AMD). 1991, c. 848, §1
(AMD). 1995, c. 608, §§1-5 (AMD). 1997, c. 714, §1 (AMD). 1999, c. 96,
§§1-3 (AMD). 2001, c. 477, §1 (AMD). 2001, c. 675, §§1-3 (AMD). 2003,
c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2003, c. 392, §§1-3 (AMD).
2003, c. 614, §§1-3 (AMD). 2005, c. 381, §§1-3 (AMD). 2007, c. 597, §1
(AMD). RR 2009, c. 1, §§1-3 (COR). 2009, c. 176, §§1-3 (AMD). 2009, c.
334, §§1-4 (AMD). 2009, c. 339, §§1-3 (AMD). 2011, c. 149, §§1-3 (AMD).
2011, c. 264, §1 (AMD). 2011, c. 320, Pt. E, §1 (AMD). 2011, c. 662,
§§2, 3 (AMD). 2013, c. 267, Pt. B, §1 (AMD). 2013, c. 339, §§1-3 (AMD).
2013, c. 518, §§1-3 (AMD). 2015, c. 161, §§1-3 (AMD). 2015, c. 335, §1
(AMD) .

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PUBLIC RECORDS EXCEPTION REVIEW CHECKLIST

Revised 2/13/12

A. Whether the record protected needs to be collected (Conclusion of committee of jurisdiction?)		
B. The value to the agency or official or to the public in maintaining the record (Conclusion of committee of jurisdiction?)		
C. Whether federal law requires the record to be confidential		
Does the proposed exception meet one or more of the following (D, E, F, G or I)		
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in disclosure		
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records		
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records		
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records		
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception		
H. Whether the proposed exception is as narrowly tailored as possible		
<i>If the proposed exception creates broad confidentiality for an entity: 2-A. Accountability review of agency or official.</i> In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.		
2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.		

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4-1

Submitted by DEP
to RTKAC

RTKAC REVIEW RE: LD 484

STATUTE: 1 MRSA §402, sub-§3, ¶ U

RCVD JUL 14 '16

AGENCY: Dept. of Environmental Protection

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).
 - Soon after the exemption was passed into law the Department began receiving inquires, estimated at roughly a dozen information requests, from local and national media services. Due to a lack of clarity in the final language of the exemption the DEP's initial response was to exempt the information requested by those entities. During that time the Department consulted with the Attorney General's Office to seek their assistance in clarifying what information was exempted under the new law. A determination was made by the Attorney General's Office which the Department used to response to a FOA request for information on January 4th, 2016. The request was made by David Sherwood, Maine Center for Public Interest Reporting, for information detailing total volumes, by month and carrier, of crude and other petroleum products traversing Maine's railroads during the months of October, November and December of 2015. It was determined that the requested information did not meet the requirements of the exemption because it was after the date of transport, therefore the information was provided to the reporter.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
 - The Department would support reducing the scope of the exemptions to reflect the original intent of the bill, which according to testimony provided by Representative Shaw, was to increase safety. The current exemption references a list of hazardous materials defined by 49 CFR 172.101. This exemption represents over 200 pages of Hazardous materials. The additional burden reviewing this list to see which materials are exempt and the limited information that is provided to the Department prior to transport provides no increase in safety for the citizens of Maine. The Department also seeks to clarify the exact information that is exempted by the law.

RTKAC REVIEW RE: LD 484

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?
 - Some of the information provided to the Department is used to calculate fees for the transportation of petroleum products. A summary report, attached to this document, is provided each month but contains only limited information which the Department in consultation with the Attorney General's Office deemed not covered by the exemption. The current language lacks clarity on many issues such as which agencies are included in the exemption, how long the information is protected and is information collected for other purposes included in the exemption (DEP spill reports).

4. Does your agency recommend changes to this exception?
 - The Department would recommend reviewing the exemption as currently written. The initial concern was with the transportation of crude oil because of the incident in Lac-Megantic, Canada (No crude oil has been transported by rail in Maine since February 2015). It appears that the current law has gone well beyond that. The Department would also like to have clarified exactly what information is covered by the exemption and how the information may be provided in a summary format that does not provide information about routes and frequency. The Department needs clarification on whether information collected by DEP from a railroad as a result of a discharge of oil or hazardous materials is covered by the exemption.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
 - Railroads, environmental groups and media outlets.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
 - The Department is concerned that the exemption may give citizens the misconception that rail cargo information is readily available to the Department, which it is not. As currently written the law states that information "in the possession of a state or local emergency management entity or law enforcement agency, fire department or first responder. There is some question as to whether the Department of Environmental Protection is included in this list and if so does the exemption include information that our first responders collect.

Barrels of Crude by Month

2013

All Crude	Reg #	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Total 2013
Portland Pipeline	306	4,663,561	5,231,611	5,128,650	3,859,630	4,312,763	4,955,119	4,528,148	5,400,081	5,177,393	3,073,453	4,624,764	1,820,151	52,775,324
Maine Central Railroad	903	441,820	312,583	385,566	NR	NR	NR	NR	NR	0	70,484	0	0	1,210,453
Montreal, Maine & Atlantic	914	489,687	501,294	484,614	519,971	347,721	512,132	179,094	0	0	0	0	0	3,034,514
Total Crude 2013														57,020,291

2014

All Crude	Reg #	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Total 2014
Portland Pipeline	306	4,215,328	2,030,814	4,219,484	2,426,495	680,909	2,504,744	2,525,136	3,588,942	2,212,664	2,824,336	2,500,968	2,880,175	32,609,995
Maine Central Railroad	903	0	0	15,545	0	0	0	0	0	0	0	0	0	15,545
Montreal, Maine & Atlantic	914	0	0	0	0	0	0	0	0	0	0	0	0	0
Central Maine & Quebec	919	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Crude 2014								No longer a company sold to Central Maine and Quebec Railway.						32,625,540

2015

All Crude	Reg #	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Total 2015
Portland Pipeline	306	3,239,312	1,665,980	2,851,096	3,359,043	1,544,625	1,497,568	1,458,392	2,372,185	593,926	742,312	2,227,453	602,537	22,154,429
Maine Central Railroad	903	0	37,128	0	0	0	0	0	0	0	0	0	0	37,128
Central Maine & Quebec	919	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Crude 2015														22,191,557

2016

All Crude	Reg #	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Total 2016
Portland Pipeline	306	0	0	0	0	0	0	0	0	0	0	0	0	0
Maine Central Railroad	903	0	0	0	0	0	0	0	0	0	0	0	0	0
Central Maine & Quebec	919	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Crude 2016														0

BACKGROUND INFORMATION:
TREATMENT OF PERSONAL CONTACT INFORMATION FOR PROFESSIONS AND
OCCUPATIONS LICENSED BY THE STATE

I. LD 1499 materials:

- A. Letter to RTKAC from Judiciary Committee outlining request to consider issue
- B. Public Law 2015, chapter 476 (effective 7/29/16);
- C. Governor's veto letter (veto overridden 4/15/16);
- D. Original bill and Committee amendment; and
- E. Written testimony submitted at public hearing

II. Professions and Occupations Licensed by the State of Maine:

- A. Outline of professions and occupations licensed/registered
- B. Sample license application—contact information requested (social worker; nursing)
- C. Frequently Asked Questions document provided to applicants and licensees

III. Maine Laws Providing for Confidentiality of Personal Contact Information for Applicants or Professional Licenses:

- A. Emergency medical services (32 MRSA §§ 90-B & 91-B)
- B. Nursing (32 MRSA §2109)
- C. Osteopathic medicine (32 MRSA §2600-A)
- D. Medicine (32 MRSA §3300-A)
- E. Social workers (32 MRSA §7032)
- F. Professional investigators (32 MRSA §8124)
- G. Securities (32 MRSA §16607 designating residential addresses and telephone numbers used as business addresses or telephone numbers as “not public records”)
- H. *Also 32 MRSA §9418 related to private security guards which seems to designate information related to a private security guard collected by the Commissioner of Public Safety as confidential but also allows for the Commissioner to provide a list of names and current addresses of security guards employed by licensed companies upon specific request.

SENATE

DAVID C. BURNS, DISTRICT 6, CHAIR
AMY F. VOLK, DISTRICT 30
CHRISTOPHER K. JOHNSON, DISTRICT 13

MARGARET J. REINSCH, SENIOR LEGISLATIVE ANALYST
HENRY D. FOUTS, LEGISLATIVE ANALYST
SUSAN M. PINETTE, COMMITTEE CLERK



HOUSE

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JEFFREY EVANGELOS, FRIENDSHIP
THEODORE BEAR MITCHELL I, PENOBSCOT NATION

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

April 15, 2016

Senator David C. Burns, Chair
Representative Kimberly J. Monaghan, Co-Chair
Members
Right to Know Advisory Committee

Re: State regulation of professions and occupations: personal contact information

Dear Right to Know Advisory Committee Members:

During the Second Regular Session of the 127th Legislature, the Judiciary Committee heard, worked and reported out LD 1499, An Act to Increase the Safety of Social Workers, sponsored by Representative Goode. The bill originally proposed to designate as confidential the home address of licensed social workers held by the State Board of Social Worker Licensure. The purpose is to ensure that social workers and their families cannot be tracked down and endangered at home by emotionally distraught clients or others the social workers come into contact with professionally. The Judiciary Committee has sympathy for those concerns.

The Judiciary Committee also recognizes that the State regulates professions and occupations in the interest of public safety and welfare. Professional and Financial Regulation Commissioner Anne Head provided the following testimony.

State regulation of a profession or occupation is a public process. Licensing board meetings are open to the public, adjudicatory hearing proceedings are open to the public, and information submitted by applicants seeking state licenses is in the public domain. A license application and information contained within an application – with one exception – is considered a “public record” under Title 1, section 402. The only item of information required on a license application that is confidential is an applicant’s social security number pursuant to Title 1, section 402(3)(N).

The notice to applicants on every application form includes the sentence, “Names, license numbers and mailing addresses listed on or submitted as part of this application will be available to the public and may be posted on our website.”

A few licensing entities other than those boards that are part of the Department of Professional and Financial Regulation do provide confidentiality for personal contact information of their licensees, including the Emergency Medical Services Board, the Board of Licensure in Medicine, the Board of Osteopathic Licensure, the State Board of Nursing and the Department of Public Safety as it licenses professional investigators.

The Judiciary Committee ended up reporting out the bill as amended, replacing the proposed text with language designating the address and telephone number of an applicant as well as a licensee under the Social Worker chapter as confidential when in the possession of the licensing board. It specifically provides that the board and its staff may use and disclose the address and telephone number as necessary to perform the duties and functions of the board.

The Judiciary Committee would like to see a uniform policy for the treatment of personal contact information for professions and occupations regulated by the State. We are therefore requesting that the Right to Know Advisory Committee take up this topic and try to develop comprehensive recommendations that can be applied to all professions and occupations, balancing the protection of privacy with the public interest in an open and transparent regulatory process, a regulatory process whose underlying purpose is the protection of the health, safety and welfare of the public. In the case of social workers, their privacy interest includes the need to manage their risk in a profession that can present danger because of the nature of their work; this is a concern that may apply in several professions and occupations. Commissioner Head has agreed to work with the Advisory Committee to provide the Department's input in discussions and formulations of appropriate requirements. The Judiciary Committee will be happy to share all files and correspondence on this bill.

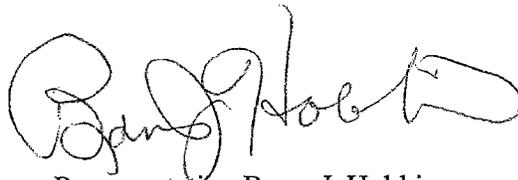
Please feel free to contact us or our committee analyst if you have any questions.

Thank you.

Sincerely,



Senator David C. Burns
Senator Chair



Representative Barry J. Hobbins
House Chair

Attachment: Committee Amendment to LD 1499

c: Commissioner Anne Head, DPFR
Lori Gramlich, NASW Maine Chapter

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
H.P. 1022 - L.D. 1499

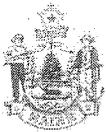
An Act To Increase the Safety of Social Workers

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

Sec. 1. 32 MRSA §7032 is enacted to read:

§7032. Addresses confidential

The address and telephone number of an applicant for licensure or a person licensed under this chapter that are in the possession of the board are confidential. Nothing in this section prohibits the board and its staff from using and disclosing the address and telephone number of an applicant or licensee as necessary to perform the duties and functions of the board.



STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

Paul R. LePage
GOVERNOR

12 April 2016

The 127th Legislature of the State of Maine
State House
Augusta, ME

Dear Honorable Members of the 127th Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 1499, "An Act To Increase the Safety of Social Workers."

This bill would remove from the public record the addresses and phone numbers of licensed social workers in Maine. It would carve out a special exemption, leaving dozens of other professions and occupations licensed under Title 32 without this consideration.

The original purpose of making licensee contact information public was to support the role of the state and the licensing boards in ensuring that licensees are accountable to the public. If a social worker fears for his or her safety, he or she may provide a Post Office box number to the Department of Professional and Financial Regulation or take advantage of the Secretary of State's alternative address program.

The purpose of publicizing contact information is not to ensure that anybody may glean a social worker's home address, but that the public is able to contact that social worker or other licensee directly with complaints, requests or other relevant communications. There are countless legitimate reasons members of the public may have for trying to contact a licensed social worker. They should not be deprived of that ability lightly or unnecessarily.

Furthermore, if somebody really wants to find a licensee in the internet age, they will do so. Making previously public information confidential for the purposes of a state website will only make legitimate contact more difficult while serving merely as a speed bump to anyone with ill intent.

For these reasons, I return LD 1499 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,


Paul R. LePage
Governor



PRINTED ON RECYCLED PAPER

I.C-1



127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1499

H.P. 1022

House of Representatives, December 23, 2015

An Act To Increase the Safety of Social Workers

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 21, 2015. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative GOODE of Bangor.
Cosponsored by Senator KATZ of Kennebec and
Representatives: BEEBE-CENTER of Rockland, CHENETTE of Saco, GATTINE of
Westbrook, GIDEON of Freeport, HOBBS of Saco, McCREIGHT of Harpswell, WARREN
of Hallowell, Senator: PATRICK of Oxford.

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Date: 3/25/16

L.D. 1499
(Filing No. H-605)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1022, L.D. 1499, Bill, "An Act To Increase the Safety of Social Workers"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 32 MRSA §7032 is enacted to read:

§7032. Addresses confidential

The address and telephone number of an applicant for licensure or a person licensed under this chapter that are in the possession of the board are confidential. Nothing in this section prohibits the board and its staff from using and disclosing the address and telephone number of an applicant or licensee as necessary to perform the duties and functions of the board.'

SUMMARY

This amendment replaces the bill. This amendment specifies that the addresses and telephone numbers of applicants for licensure as well as of licensed social workers are confidential; the bill provides that only the home addresses of licensed social workers are confidential. The amendment also revises the language in the bill regarding confidentiality to be consistent with other references to confidential information in the Maine Revised Statutes. The amendment specifies that the confidentiality provision does not prohibit the Department of Professional and Financial Regulation, State Board of Social Worker Licensure from using and disclosing the addresses and telephone numbers of applicants or licensees as necessary to perform the duties and functions of the board.

FISCAL NOTE REQUIRED
(See Attached)

COMMITTEE AMENDMENT

ID-3



Approved: 03/17/16 *MAC*

127th MAINE LEGISLATURE

LD 1499

LR 2422(02)

An Act To Increase the Safety of Social Workers

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-605)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Additional costs to the State Board of Social Worker Licensure, Office of Professional and Occupation Regulation, Department of Professional and Financial Regulation to implement the requirements of this legislation can be absorbed within existing budgeted resources.

D-4



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002

(207) 287-1400

TTY: (207) 287-4469

Adam A. Goode

P. O. Box 2681

Bangor, ME 04402

Cell Phone: (207) 991-7000

State House E-Mail:

RepAdam.Goode@legislature.maine.gov

February 16, 2016

Testimony of Rep. Adam Goode

LD 1499, An Act to Increase the Safety of Social Workers

Before the Joint Standing Committee on Judiciary

Good afternoon Senator Burns, Representative Hobbins and members of the Judiciary Committee. I am Adam Goode and I represent House District 127. I am proud to present **LD 1499, An Act to Increase the Safety of Social Workers**.

This bill seeks to improve the safety and privacy of social workers who hold a license from the Department of Professional and Financial Regulation. The statute changes in this legislation seek to ensure that the home address of a social worker is confidential and not open to the public.

The National Association of Social Workers has issued guidelines noting that the clients' social workers serve may pose safety threats. It is unfortunate, but true, that social workers practice in settings that are increasingly unpredictable or unsafe. This had led to some social workers becoming permanently injured or losing their lives. This concern for safety is brought into the community and poses challenges to the personal lives of social workers if their home addresses are made available over the internet.

The goal of this legislation is to minimize the likelihood of social workers being exposed to harassment from former clients. Having home addresses of social workers accessible on the licensing board's website makes it easier to invite harassment, intimidation, loss of privacy and assault from an individual who may be emotionally unstable.

An additional concern related to this legislation relates to FOIA policy in this area. Suppressing personal street addresses or contact information on the internet would serve as a positive step forward. That alone does not prevent a person from requesting specific information from the social work licensing board. Changes in FOIA policy could help address such requests.

If the committee is interested in tackling this problem, I would recommend exploring the possibility of having an opt-in or opt-out component of the application for licensure.

There is an interest in keeping social workers safe. I submitted this legislation because keeping personal information of professional social workers private, if chosen, can be a tool to increase safety and better serve the public. I look forward to your work on the bill and encourage you to vote "ought to pass".

District 15 Bangor (part)

Printed on recycled paper

I, E1

February 16, 2016

TO: Joint Standing Committee on Judiciary
FROM: Lori K. Gramlich, LMSW, Executive Director Maine Chapter National Association of Social Workers
REGARDING: LD 1499 An Act Increase the Safety of Social Workers

Good Afternoon, Sen. Burns, Rep. Hobbins and esteemed members of the Judiciary Committee.

My name is Lori Gramlich, and I am the Executive Director of the Maine Chapter of the National Association of Social Workers. Founded in 1955 the National Association of Social Workers (NASW) is the largest organization of professional social workers in the world, with over 150,000 members in fifty-six chapters nationwide and internationally. Our Maine Chapter has approximately 1,000 members and is the major professional social work organization in the state. We are committed to advancing professional social work practice and to promoting human rights, social and economic justice, and unimpeded access to services for everyone. Part of NASW's mission is to promote, develop, and protect the practice of social work and social workers.

I am here today in support of LD 1499.

Every day social workers across this country and certainly in the State of Maine provide a wide range of services in increasingly complex environments including community mental health centers, family service agencies, private practice, child welfare services, K-12 schools, universities, hospitals, homeless shelters, nursing homes, domestic violence shelters, rape crisis centers, courts, prisons, and in a variety of other public and private agencies. Professional social workers address an array of societal issues including but not limited to mental illness, substance abuse, and other issues relating to social injustice. We are in fact the largest group of mental health service providers.

Presently there are at approximately 175 licensed social workers employed by the Department of Health and Human Services. Many of these professionals provide services in some of our most contentious situations, namely child protective services. There are hundreds more Licensed Clinical Social Workers who provide behavioral health services either in mental health organizations or in their own private practice.

Safety is a concern in most if not all of these settings. Social workers are often engaging in risky situations on behalf of their clients. Unfortunately, too many social workers have been the targets of verbal and physical assaults and some have even tragically lost their lives while performing their job responsibilities.

Concerns related to the safety of social workers are brought to the attention of the public each time social worker is killed "in the line of duty." Sadly, this was the case this past August, for a social worker in Vermont, who lost

her life after a contested child protective custody issue. This is a critical issue to the National Association of Social Workers and its 55 chapters.

NASW regularly receives calls from social workers expressing alarm about being harassed by former clients or sometimes the abusive spouse or parent of a client. Recently, a social worker expressed a feeling of real danger because a violent, abusive parent of a client was threatening her and stalking her home.

In recognition of these concerns, states which have previously made social workers' home addresses public are reversing themselves. For instance, in West Virginia and Missouri, their social work licensing board changed their policy following reports of health care workers who were attacked by patients who became aware of their home addresses. Additionally, 14 State Boards of Social Work Licensure, (Louisiana, West Virginia, California, Wisconsin, Idaho, Oregon, Texas, Iowa, Tennessee, Wyoming, North Carolina, Massachusetts and Montana) as a matter of practice DO NOT publish the home addresses of social workers on their public web page. Many other states are exploring this issue as well.

The goal of this legislation is to minimize the likelihood of social workers being exposed to harassment and potential life threatening abuse from current or former clients. Having home addresses of social workers accessible on the licensing board's website makes it easier to invite harassment, intimidation, loss of privacy and assault from an individual who may be emotionally unstable.

Currently, when searching if an individual is licensed to practice social work in the state of Maine, a list of all licensed social workers can be accessed – this list contains over 5,500 individuals. One can simply click on the hyperlink of that individual's name and their private information, including home address and phone number appear on the web page.

In conversations with the Department of Professional and Financial Regulation, Commissioner Anne Head informed me that the Department would be willing to suppress the home addresses of social workers from their public accessible web page. While this seems reasonable in the Certified Nursing Assistants, for example do not have their private information listed, we see this as a good first step.

With regard to the FOIA aspect of this legislation, and as Representative Goode identified, we would be very interested in exploring an option whereby social workers could opt out of having their private information shared under the Freedom of Information Act.

We look forward to our continued working relationship with the Department of Professional and Financial Regulation and the Social Work Licensing Board.

I would be happy to try to answer any questions for you and will make myself available for the work session. Thank you for your time and consideration.

I.E-3



Position in Support of LD 1499
"An Act to Increase the Safety of Social Workers"

Individuals who elect to build a career in human or mental health services are often required to hold a license issued by the State of Maine. As licensed professionals, their home addresses are often publically available in connection to the licensure information. Mental health and human service professions have higher percentages of women than men; with the social work profession estimated to be about 70-80% female. Given the high number of women in the field, and their work with challenging populations, the public accessibility of home addresses creates an unnecessary safety risk. NAMI Maine strongly supports enhancing the protections afforded to individuals licensed in the field of mental health and human services as outlined in LD 1499. The safety of individuals who choose to serve in these honorable professions is paramount.

The vast majority of individuals who utilize mental health or human service professionals present no risk to those who provide the service. However, it is currently too easy for an unhappy parent in a child welfare case or a counseling client with inappropriate transference to find the home address of the professional involved. The state should not be facilitating access to this level of personal information and increasing the vulnerability of mental health and human service professionals. If there is a need to list a method of contact, an email address is a significantly safer option.

While NAMI Maine strongly supports the intent of this bill, we cannot support it as drafted. Without an amendment that recognizes the need to protect the home addresses of not only LSWs, LCSWs, and LMSWs, but also professionals such as: licensed clinical professional counselors (LCPC); LCPC (conditional); licensed marriage and family counselors; licensed drug and alcohol counselors; and psychologists, NAMI Maine would need to oppose the legislation as it only serves to protect a percentage of those delivering services. While social workers have a very strong trade association (NASW), the protection afforded to social workers should be extended to all licensed individuals involved in the delivery of mental health or human services.

Jenna Mehnert, MSW, Executive Director
jenna@namimaine.org | (800) 464-5767 ext. 2313

NAMI Maine is the state's largest grassroots, mental health advocacy organization. Sustained by seven affiliates and thousands of supporters across the state, NAMI Maine is an active voice for the families, individuals and professionals whose daily lives are impacted by mental illness. For more information about our programs, visit www.namimaine.org.

E4



Loren Andrews
MA, MSW, LCSW

OFFICE
313 Main Street, S. 203
Rockland, ME 04841

PHONE/TEXT
207/236-7007

EMAIL
LA.LCSW@me.com

WEB
discovery-solutions.net

TWITTER
@LorenAndrews

**Testimony before the
Joint Standing Committee on Judiciary
of the 127th Legislature**

L.D. 1499, An Act To Increase the Safety of Social Workers

Loren Andrews, MA, MSW, LCSW
National Association of Social Workers, Maine Chapter
February 16, 2016

Senator Burns, Representative Hobbins, and members of the Committee on Judiciary, good afternoon. My name is Loren Andrews, I am a Licensed Clinical Social Worker in private practice in Rockland, and I am Chair of the Legislative Action Committee for the Maine Chapter of National Association of Social Workers. Thank you for accepting my testimony in favor of L.D. 1499, *An Act To Increase the Safety of Social Workers*.

Social workers have many roles and many different jobs in our state, from child protection, to working intensively with families, to case management, to psychotherapy. In every instance, there are measures of risks involved. One never knows from one hour to the next if a client might be angry or even violent. It's a reality of our clinical world, and we take it on strongly and confidently.

But in this professional context, we need to know that our homes are safe environments. We need to know that possibly violent clients cannot track us down there, cannot call us there, and cannot stop by. This is especially true when we have spouses, partners, and children involved. Let me restate this: this level of safety is especially true when we have spouses, partners, and children involved. The very thought that my professional role could bring harm to my family brings pause to me every time.

This bill represents a simple change to law governing social work licensure and the public listing of our home address. It simply takes away the ability for the licensing board to list our home address. But it provides us an enormous degree of safety and comfort to know that our home environments are safe, and that we

have sanctuary for sometimes difficult and challenging client populations.

Please know that it is rare for a social worker to feel in danger by a client or insecure of their safety. But in those rare moments when it happens, this simple change will provide generations of caring, competent, and dedicated social workers a measure of safety they certainly deserve.

In closing, I urge you to give your full support to L.D. 1499, *An Act To Increase the Safety of Social Workers*. Your support will not only create a sense of safety for hundreds of dedicated professionals in our state, it may literally save lives. Thank you for your consideration of this important legislation.

Good Afternoon Senator Burns, Representative Hobbins and Honorable Members of the Judiciary Committee.

My name is April Turner and I am from Freedom, ME. I am a senior at the University of Maine, in the Social Work Program. I am a member of the Nation Association of Social Workers. In addition to being a social work student and a NASW member, I am a mother by birth, adoption, and foster care. I work as a Youth and Family Counselor at a children's Crisis Unit and as a Visitation Supervision Worker for families with children in foster care.

I am here today to testify in support of LD 1499 **An Act To Increase the safety of Social Workers**. For Safety and privacy reasons it is important that the home addresses of social workers not be made public.

As a mother I am concerned that my family could be placed in danger because a client that I work with could obtain my home address. As a foster parent that concern grows even greater since I am expected to provide a safe home for a child that has already experienced trauma. Publishing my address will not only put me at risk, it also puts my husband and four children in my home at risk.

Today I am choosing to share my concerns with you because I am setting an example for my children. I lecture and preach to them, to ensure that they are being safe with their identities and information. How could I sit back and not protect my own? I have accepted that once I become a social worker there is a possibility of harm and harassment when I am at my workplace or in the

field. And, I wear no blinders when it comes to the expectations for the work ahead of me. An NASW report, Guidelines for Social Worker Safety in the Workplace states, “Unfortunately, the number and variety of people to whom social workers provide services and the variety of settings in which these services are provided have contributed to an increasingly unpredictable, and often unsafe, environment for social work practice. Social workers have been the targets of [client] verbal and physical assaults Tragically, some social workers have also been permanently injured or have lost their lives” These concerns can carry over into the community if the home addresses of social workers are made available.

According to the National Bureau of Labor and Statistics Maine has 4,050 Social Workers. As I previously mentioned I am from Freedom- putting 4,050 social workers at risk is the same as putting all of the residents of Freedom, Knox, Montville, Thorndike, and Jackson at risk. This is far beyond what I know you want to do. I ask that you don't put Maine's Social Workers at risk. Allowing our home addresses to be published serves no benefit to our clients and only puts social workers at risk.

Thank you. I would be happy to answer any questions that any of you might wish to ask me.

References:

Anastas, J. W., PhD, LMSW, Clark, E. J., PhD, ACSW, MPH, Domingo, B., Hickman, S. A., ACSW, LCSW, Munch, S., PhD, LCSW, Newhill, C. E., LCSW, . . . Omari, K., LMSW-C&M, ACSW. (2013). Guidelines for Social Worker Safety in the Workplace. Retrieved February 15, 2015, from <https://www.socialworkers.org/practice/naswstandards/safetystandards2013.pdf>



Paul R. LePage
Governor

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
35 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0035

Anne L. Head
Commissioner

TESTIMONY OF ANNE L. HEAD

COMMISSIONER, DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

NEITHER FOR NOR AGAINST

LD 1499

“An Act To Increase the Safety of Social Workers”

Sponsored by Representative Adam Goode

BEFORE THE JOINT STANDING COMMITTEE ON JUDICIARY

Public Hearing: February 16, 2016

Senator Burns, Representative Hobbins and members of the Committee, my name is Anne Head. I serve as Commissioner of the Department of Professional and Financial Regulation and Director of its Office of Professional and Occupational Regulation. The Department takes no position on this bill but wishes to provide information about the professional licensing application process that may be helpful during committee deliberations on this matter.

Office of Professional and Occupational Regulation

The Office of Professional and Occupational Regulation is responsible for administering thirty-seven individual state licensing programs and serves over 110,000 licensees. LD 1499 provides that the “home address” of one group of licensees--licensed social workers-- in the possession of the Office should be designated confidential by law and not accessible by the public.

State regulation of a profession or occupation is a public process. Licensing board meetings are open to the public, adjudicatory hearing proceedings are open to the public, and information submitted by applicants seeking state licenses is in the public domain. A license application and the information contained within an application--with one exception--is considered a “public record” under Title 1 § 402. The only item of information required on a license application that is confidential is an applicant’s social security number pursuant to Title 1, sec. 402 (3)(N). The following notice to applicants is on every application form:

PUBLIC RECORD: This application is a public record for purposes of the Maine Freedom of Access Law (1 MRSA §401 et seq). Public records must be made available to any person upon request. This application for licensure is a public record and information supplied as part of the application (other than social security number and credit card information) is public information. Other licensing records to which this information may later be transferred will also be considered public records. Names, license numbers and mailing addresses listed on or submitted as part of this application will be available to the public and may be posted on our website.

OFFICES LOCATED AT: 76 NORTHERN AVENUE, GARDINER, MAINE

PHONE: (207)624-8511 (VOICE)

TTY users: call Maine Relay 711

FAX: (207)624-8595

EA

Purpose of Collecting Licensee Address

License application forms used by the Office of Professional and Occupational Regulation require applicants to provide a mailing address. A mailing address may be a professional or business address, a post office box, a home address or any address where the applicant or licensee can receive communications from the Department about a licensing matter. We do not inquire of an applicant what type of address the applicant has submitted. The mailing address simply provides a mechanism by which the Department can contact a licensee by mail in the event that such contact is necessary. The Department does not ask for a home address or a residential address, nor does it ever identify an address supplied by a licensee as a home address. I've attached a document called "Frequently Asked Questions" that consistently refers to a "contact" address to be supplied by licensees.

Use of Available Technology

Public policy underlying the aspect of this public process is the use of information technology to maximize public access to public records. Title 1 § 414 entitled PUBLIC RECORDS; INFORMATION TECHNOLOGY provides:

An agency shall consider, in the purchase of and contracting for computer software and other information technology resources, the extent to which the software or technology will:

1. **Maximize public access.** Maximize public access to public records; and
2. **Maximize exportability; protect confidential information.** Maximize the exportability of public records while protecting confidential information that may be part of public records.

The Office of Professional and Occupational Regulation has complied with this provision by using technology to inform the public about all non-confidential aspects of the licensing process through its technology resources. The Office receives many requests each year for rosters of licensee names and addresses for use by professional and trade associations, and other governmental agencies within and outside the state for valid business purposes. In order to make use of available technology, businesses and members of the public can access and download those rosters at no cost. For example, organizations that sponsor or offer continuing education courses and programs frequently use this on-line feature to publicize their offerings. This information is also accessed for many valid business purposes. Making addresses of any type confidential by law would preclude this use of public information.

Issues that require the balancing of the public's right to know with an individual's right to privacy are always difficult and require careful deliberation. The Department stands ready to work with the bill's proponents and the Committee if the Committee intends to make changes in this area of state law.

Thank you for the opportunity to comment. I'd be happy to answer questions now or at the work session.

Attachment—Frequently Asked Questions about Professional Licensing Process

Outline of Professions and Occupations Licensed/Registered in Maine

State Agency	Profession/Occupation
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	OLOR administers 37 licensing programs—29 are overseen by independent licensing boards; 8 are administered directly by OLOR Accountants, Acupuncturists, Alcohol and Drug Counselors, Architects, Athletic Trainers, Auctioneers, Audiologists, Barbers, Boiler Inspectors, Boiler Operators, Charitable Solicitations, Chiropractors, Complementary Health Care Providers, Cosmetologists, Counselors, Dietetic Technicians, Dietitians, Elevator Inspectors and Mechanics, Foresters, Funeral Practitioners, Geologists, Hearing Aid Dealers and Fitters, Interior Designers, Interpreters for the Deaf, Land Surveyors, Landscape Architects, Manufactured Housing Professionals, Massage Therapists, Naturopathic Doctors, Nursing Home Administrators, Occupational Therapy Assistants, Occupational Therapists, Physical Therapists, Plumbers, Podiatrists, Propane & Natural Gas Technicians, Professional Solicitors, Psychologists, Radiologic Technologists, Real Estate Appraisers, Real Estate Professionals, Respiratory Care Practitioners, Social Workers, Soil Scientists, Speech-Language Pathologists, Stationary Steam Engineers
DPFR, Office of Securities	Broker-dealers, investment advisers and investment adviser representatives
DPFR, Bureau of Insurance	Insurance producers (agents), consultants, adjusters
Board of Licensure in Medicine	Physicians (MDs), physician assistants
Board of Dental Examiners	Dentists, dental hygienists, dental assistants, denturists, dental radiographers
Board of Osteopathic Licensure	Osteopathic physicians (DOs)
State Board of Nursing	Professional registered nurses, practical nurses, advanced practice registered nurses, nurse practitioners
State Board of Optometry	Optometrists
State Board of Registration for Professional Engineers	Professional engineers
Department of Public Safety	Private investigators, private security guards, polygraph examiners
Department of Health and Human Services	Certified nursing assistants, direct care workers (Direct Care Worker Registry), radon service providers

STATE OF MAINE

BOARD OF SOCIAL WORKER LICENSURE

APPLICATION FOR LICENSED SOCIAL WORKER (LS)



Department of Professional and Financial Regulation
Office of Licensing and Registration
35 State House Station
Augusta, ME 04333-0035

Office Telephone: (207) 624-8674
Office Facsimile: (207) 624-8637
TTY/HEARING IMPAIRED (888) 577-6690
E Internet: www.maine.gov/professionallicensing

Office located at: 76 Northern Avenue, Gardiner, Maine

Revised 2/2011

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APPLICANT INFORMATION GUIDE

The application material you have requested from the Board of Social Worker Licensure is enclosed. It contains all the relevant materials you need to complete your application for licensure as a Social Worker in the State of Maine. Please read all the information carefully. If you have any questions after reading this packet, please call or e-mail our office.

FURNISHED TO APPLICANT

- Application Guide for Licensure as a Social Worker
- Individual License Application
- Verification of Consultation Form
- Verification of Licensure Form

ADDITIONAL RESOURCES

- ASWB Social Work Licensing Examination Candidate Handbook

Available: <http://www.aswb.org/handbook.pdf> or call (207) 624-8674

- Licensing Law for Social Workers

Please read carefully and review periodically for changes. You are responsible for knowing and complying with all Maine Laws throughout your licensure.

Available: <http://www.mainelegislature.org/legis/statutes/32/title32ch83sec0.html> or call (207) 624-8674

- Licensing Rules for Social Workers

Please read carefully and review periodically for changes. You are responsible for knowing and complying with all Board Rules throughout your licensure.

Available: <http://www.maine.gov/sos/cec/rules/02/chaps02.htm#416> or call (207) 624-8674

- National Association of Social Workers (NASW) Code of Ethics

Available: <http://www.naswdc.org/pubs/code/> or call 1-800-638-8799 ext. 238

- Statutory Authority, Titles 5 & 10

Available: <http://www.mainelegislature.org/legis/statutes/10/title10ch901sec0.html>

<http://www.mainelegislature.org/legis/statutes/5/title5ch341sec0.html>

APPLICATION PROCEDURE:

- Please submit your application materials by mail or hand delivery to our offices. Fax submissions will not be accepted. If the application you submit to us is complete, it will be reviewed and processed in the order it was received.
- If there are deficiencies with your application, you will be notified by mail. **Please note:** Candidates whose applications have been incomplete for more than one (1) year will be required to submit new applications if they still wish to be considered for licensure.
- Please do not call our office regarding the status of your application. Information about the status of applications may be found at the Office of Licensing & Registration's website: http://www.maine.gov/professionallicensing/license_search.htm. We appreciate your thoughtful attention to this request.

CONTINUING EDUCATION

Continuing education is required for the renewal of a license. A minimum of twenty-five (25) contact hours of continuing education must be completed within the two-year licensing cycle. Four (4) of the twenty-five (25) hours must be related to social work ethics. LSW-Conditional licensees licensed on or after January 1, 2004 must complete six (6) hours of ethics and six (6) hours of psychosocial assessment. Please be sure to review the Rules, Chapter 14 for more information or for possible changes to continuing education requirements.

DESCRIPTION:

A "Licensed Social Worker" (LSW) is a person who has received a license as a Social Worker from the Board. A LSW may:

- Conduct basic data gathering of records and specific life issues of individuals, groups, couples and families;
- Assess the above data, formulate and implement a plan to achieve specific goals related to specific life issues;
- Serve as an advocate for clients or groups of clients for the purpose of achieving specific goals relating to specific life issues;
- Refer clients to other professional services;
- Plan, manage, direct or coordinate social services;
- Participate in the training and education of social work students; and
- Supervise other LSWs, other professionals practicing related professions and paraprofessionals engaged in related activities.

LSWs cannot engage in private/independent social work practice.

If applying for LSW Licensure and you have a Bachelor of Social Work (BSW) or Social Welfare degree from a Council on Social Work Education (CSWE) accredited program, you must submit:

- A completed and signed Application;
- Official Transcript of an earned Bachelor of Social Work (BSW) degree from a Council on Social Work Education (CSWE) accredited program;
- Request for Examination (Bachelors) or Official documentation of successful passage of the required examination (Bachelors);
- Three (3) current (dated within the past year) letters of professional recommendation, two (2) of which must be from licensed social workers (at any level of licensure from any state);
- A completed Agreement to Provide Consultation Form;
- Payment of a non-refundable \$25.00 Application fee;
- Payment of a Licensure fee of \$70.00; and
- Payment of a non-refundable Criminal History Check fee of \$21.00.

Note: All fees can be in one payment.

For applicants currently licensed in another state:

If you are currently licensed in another state and are applying for licensure in Maine, you must submit the following **in addition** to the items mentioned above:

- A copy of the state laws and rules under which the applicant is licensed;
- A copy of the applicant's social work license; and
- A completed Verification of Licensure Form.

If applying for LSW Licensure and you are currently licensed as a LSW Conditional and you have completed 96 hours of consultation concurrent with 3200 hours of social work employment occurring in not less than two (2) nor more than four (4) years you must submit:

- Completed and signed Application;
- A completed Verification of Consultation Form documenting completion of 96 hours of consultation concurrent with 3200 hours of social work employment occurring in not less than two (2) nor more than four (4) years;
- Request for Examination (Basic/Bachelors) or Official documentation of successful passage of the required examination (Basic/Bachelors)
- Official Transcript if not already on file with the Board;
- Three (3) current (dated within the past year) letters of professional recommendation, two (2) of which must be from licensed social workers (at any level of licensure from any state);
- Agreement to Provide Consultation Form;
- Payment of a non-refundable \$25.00 Application fee;
- Payment of a Licensure fee of \$70.00; and
- Payment of a non-refundable Criminal History Check fee of \$21.00.

Note: All fees can be in one payment.

STATE OF MAINE DEPARTMENT OF PROFESSIONAL & FINANCIAL REGULATION - OFFICE OF LICENSING & REGISTRATION
Mailing Address: 35 State House Station, Augusta, Maine 04333 Courier/Delivery address: 76 Northern Avenue, Gardiner, Maine 04345
Phone: (207) 624-8603 Fax: (207) 624-8637 Hearing Impaired: (888) 577-6690 Web: www.maine.gov/professionallicensing

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Frequently Asked Questions:

- **Where do I send my application?** Our mailing address is 35 State House Station, Augusta, Maine 04333-0035.
- **Where are you located?** 76 Northern Avenue, Gardiner, Maine.
- **What hours are you open?** 8:00 a.m. to 5:00 p.m. weekdays.
- **Can I come to Gardiner to drop off my application?** Yes. You will not leave with a license, though.
- **Can I come to Gardiner to pick up my license?** No. Your license will be mailed to you.
- **How can I check the status of my application?** You can check our website: www.maine.gov/professionallicensing/license_search.htm.
- **How far back do I go answering the criminal conviction question?** Any conviction, ever.
- **Can I fax my application?** No.

NOTICES

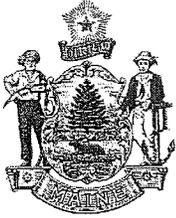
BACKGROUND CHECK: Pursuant to 5 M.R.S.A. §5301 - 5303, the State of Maine is granted the authority to take into consideration an applicant's criminal history record. The Office of Licensing and Registration requires a criminal history records check as part of the application process for all applicants.

PUBLIC RECORD: This application is a public record for purposes of the Maine Freedom of Access Law (1 MRSA §401 et seq). Public records must be made available to any person upon request. This application for licensure is a public record and information supplied as part of the application (other than social security number and credit card information) is public information. Other licensing records to which this information may later be transferred will also be considered public records. Names, license numbers and mailing addresses listed on or submitted as part of this application will be available to the public and may be posted on our website.

SOCIAL SECURITY NUMBER: The following statement is made pursuant to the Privacy Act of 1974 (§7(B)). Disclosure of your Social Security Number is mandatory. Solicitation of your Social Security Number is solely for tax administration purposes, pursuant to 35 MRSA §175 as authorized by the Tax Reform Act of 1975 (42 USC §405(C)(2)(C)(1)). Your Social Security Number will be disclosed to the State Tax Assessor or an authorized agent for use in determining filing obligations and tax liability pursuant to Title 36 of the Maine Revised Statutes. No further use will be made of your Social Security Number and it shall be treated as confidential tax information pursuant to 36 MRSA §191.

Before you seal the envelope, did you:

- Complete every item on the application including the criminal background disclosure question.
- Sign and date your application.
- Include the required fee(s). Make checks payable to "Maine State Treasurer" or complete the credit card section on the application. DO NOT SEND CASH.
- Make a copy of your application to keep for your records.



**STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
OFFICE OF LICENSING AND REGISTRATION
INDIVIDUAL LICENSE APPLICATION**

APPLICANT INFORMATION (please print)			
FULL LEGAL NAME			
ANY OTHER NAMES EVER USED			
DATE OF BIRTH	/	/	SOCIAL SECURITY NUMBER
MAILING ADDRESS			
CITY	STATE	ZIP CODE	COUNTY
PHONE ()	FAX ()	E-MAIL	

CRIMINAL BACKGROUND DISCLOSURE	
<i>NOTE: Failure to disclose criminal convictions may result in denial, fines, suspension and/or revocation of a license.</i>	
1. Have you ever been convicted by any court of any crime? (circle one)	NO YES
If yes, enclose a detailed description of what happened (including dates) and a copy of the court judgment.	
2. Has any jurisdiction taken disciplinary action against any professional license you hold or have held, or denied your application for licensure? (circle one)	NO YES
If yes, enclose a detailed explanation and copies of all documents.	
By my signature, I hereby certify that the information provided on this application is true and accurate to the best of my knowledge and belief. By submitting this application, I affirm that the Office of Licensing and Registration will rely upon this information for issuance of my license and that this information is truthful and factual. I also understand that sanctions may be imposed including denial, fines, suspension or revocation of my license if this information is found to be false.	
SIGNATURE	DATE

Board of Social Worker Licensure	
Please Select License Type: <input type="checkbox"/> Licensed Social Worker (LS1421)	Office Use Only: 1421 - \$70.00 1446 - \$25.00 2619 - \$21.00
Required Fee: \$116 (includes Criminal History Records Check Fee)	Office Use Only: Check # _____ Amount: _____ Cash # _____ Lic. # _____
Rev. 2/2011	

PAYMENT OPTIONS:	
Make checks payable to "Maine State Treasurer" - If you wish to pay by Mastercard or Visa, fill out the following:	
NAME OF CARDHOLDER (please print)	
I authorize the Dept. of Professional and Financial Regulation, Office of Licensing and Registration to charge my	
<input type="checkbox"/> VISA <input type="checkbox"/> MASTERCARD	the following amount: \$ _____
Card number: _____	Expiration Date / / _____
SIGNATURE	DATE

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Undergraduate Education

Name of Academic Institution:

Mailing Address:

City:

State:

Zip Code:

Major:

Degree Granted:

Date Conferred:

Credentialing History

Have you ever held a professional license/certification/registration in this or any other state/country? [] YES [] NO

If yes:

Profession	License #	State/Country	Date Issued	Expiration Date

Have you ever taken a social work examination? [] YES [] NO

If yes:

Which Exam & Level?	Where?	Date Taken:

Disciplinary History

1. Do you have pending against you any complaints from a regulatory board or professional organization? If yes, please enclose a detailed explanation. [] YES [] NO
2. Have you ever been or are you currently a defendant in a civil proceeding related to your professional activities? If yes, please enclose a detailed explanation. [] YES [] NO

Affirmation

By my signature, I hereby certify that the information provided on this application is true and accurate to the best of my knowledge and belief. By submitting this application, I affirm that the Office of Licensing and Registration will rely upon this information for issuance of my license and that this information is truthful and factual. I also understand that sanctions may be imposed including denial, fines, suspension or revocation of my license if this information is found to be false.

SIGNATURE: _____ DATE: _____

STATE BOARD OF
NURSING APPLICATION

PUBLIC RECORD: This application is a public record for purposes of the Maine Freedom of Access Law (1 MRSA §401 et seq). Public records must be made available to any person upon request. This application for licensure is a public record and information supplied as part of the application (other than social security number and credit card information) is public information. Other licensing records to which this information may later be transferred will also be considered public records. Names, license numbers and mailing addresses listed on or submitted as part of this application will be available to the public and may be posted on our website. The mailing address is considered your public contact address.



MAINE STATE BOARD OF NURSING

161 Capitol Street • 158 State House Station
Augusta, Maine 04333-0158
(207) 287-1133

APPLICATION FOR EXAMINATION AND LICENSE AS A REGISTERED PROFESSIONAL NURSE

DO NOT WRITE IN THIS SPACE

Application Approved by Board of Nursing:

Application Received _____

Fee: CC Cash Check MO _____

Examination Date _____

Re-examination Date(s) _____

LICENSE NUMBER _____ License Date _____

Chair

Executive Director

Date

INSTRUCTIONS

An applicant must submit to the Board of Nursing office the following:

1. application form completed in ink or typewritten and properly notarized with signature in applicant's handwriting, and
2. fee of \$75 in the form of Visa/Mastercard, U.S. check or money order in U.S. funds, made payable to the Treasurer of State of Maine, and
3. recent passport type photograph (2x2 and not more than two years old), signed and dated, and enclosed with the application form and
4. transcripts (for out of state programs only)

It is imperative that you supply us with your entire name, including any and all previously used names. If you do not have middle, maiden, or previous names, then you must write NONE in the appropriate space.

THE APPLICATION FEE IS NOT REFUNDABLE

SECTION I. PROFILE INFORMATION

Print legal name _____
(first) (full middle) (maiden) (last)

List any other names used previously _____

Mailing address* (street) _____

*This is considered your public contact address.

(city) (county) (state and zip code)

Residential address (if different from above) _____

Telephone Number(s) _____
(home) (mobile) (business)

Email address _____ Social Security #: _____

Birthplace _____ Date of Birth _____
(city/state) (month/day/year)

High School _____
(name and location)

Date of Graduation _____ G.E.D. YES NO Date of G.E.D Diploma _____

SECTION II. BASIC NURSING EDUCATION

School of Professional Nursing _____
(name)

(address)

Date of Entrance _____ Date of Graduation _____ Length of Program* _____

**If program is less than 2 years, please give details on a separate piece of paper (i.e. if you have a previous degree)*

Diploma Associate Baccalaureate Masters Doctoral Certificate

Have you ever been licensed as a practical nurse? YES NO

If YES, indicate state(s), date(s), of licensure and license number(s).

SECTION III. TO BE COMPLETED BY ADMINISTRATIVE OFFICER OF SCHOOL OF NURSING

I hereby certify that _____ has successfully completed the prescribed
(applicant's name)

nursing education program on _____ and will graduate on _____
(month/day/year) (month/day/year)

(signature)

SCHOOL SEAL

(title)

SECTION IV. EXAMINATION HISTORY

Have you ever taken an examination for registered nurse licensure?

YES NO
If YES, indicate state(s) and date(s).

SECTION V. DISCIPLINARY INFORMATION

- A. Has any licensing authority refused to issue you a license or ever revoked, annulled, cancelled, accepted surrender of, suspended, placed on probation, refused to renew a professional license, certificate or multi-state privilege held by you now or previously, or ever fined, censured, reprimanded or otherwise disciplined you? YES NO
- B. Is there any complaint pending against your license in any state or jurisdiction? YES NO
- C. Have you ever been disciplined for problems resulting from a physical illness or condition? YES NO
- D. Have you ever been disciplined for problems resulting from mental illness? YES NO
- E. Within the past five (5) years have you been addicted to and/or treated for the use of alcohol or any other drug? YES NO

- F. Have you ever been disciplined for problems resulting from chemical dependency? YES NO
- G. For any criminal offense, including those pending appeal, have you: *(please circle below all that apply)* YES NO
- a. Been convicted of a misdemeanor?
 - b. Been convicted of a felony?
 - c. Pled nolo contendere, no contest, or guilty?
 - d. Received deferred adjudication?
 - e. Been place on community supervision or court-ordered probation, whether or not adjudicated guilty?
 - f. Been sentenced to serve jail or prison time? court ordered confinement?
 - g. Been granted pre-trial diversion?
 - h. Been arrested or have any pending criminal charges?
 - i. Been cited or charge with any violation of the law? *(other than parking tickets and/or other traffic violations)*
 - j. Been subject of a court-martial; Article 15 violation; or received any form of military judgment/punishment/action?
- H. Are you currently the target or subject of a grand jury or governmental agency investigation? YES NO

NOTE: If you answered "YES" to questions A-G listed above, attach a letter of explanation that is dated and signed indicating the circumstance you are reporting to the Board. If you answered "YES" to questions G or H, you must also attach the document(s) showing the disposition of the case(s).

SECTION VI: DECLARATION OF LEGAL RESIDENCE

- A. I declare that the State of _____ is my primary state of residence as of _____ (date) and that such constitutes my permanent and principal home for legal purposes. ("Primary state of residence" is defined as the state of a person's declared fixed permanent and principal home for legal purposes; domicile.)
- B. Upon licensure in Maine, in which state(s) do you intend to practice?
- C. Are you currently employed in the U.S. Military (Active Duty) or the U.S. Federal Government? YES NO

TAPE TOP ONLY

one recent photograph

Sign back of photo and indicate year taken

Photo must be:

- Full face view
- Passport type

← 2 x 2 only →

Clear and recognizable likeness

I, the undersigned, being duly sworn, say that I am the person referred to in this application for licensure in the State of Maine, that the statements contained herein and on all attachments are true and correct in every respect, that I have complied with all requirements of the law, and that I have read and understand this affidavit.

Signature of Applicant _____

Sworn to before me this _____ day of _____, 20 _____

Notary Public _____

(SEAL)

My commission expires _____ in and for the State of _____

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Professional and Financial Regulation

Home → Professional Licensing → OPOP Applicant/Licensee FAQ's

OPOP Applicant/Licensee FAQs

1. **Application Disclosure/Process**
2. **Online Renewals**
3. **Other Questions**

Application Disclosure/Process:

Why do I need to provide my social security number?

Solicitation of your Social Security Number is solely for tax administration purposes, pursuant to 36 MRS §175 as authorized by the Tax Reform Act of 1975 (42 USC §405 (C)(2)(C)(i)). Your social security number will be disclosed to the State Tax Assessor or an authorized agent for use in determining filing obligations and tax liability and shall be treated as confidential tax information pursuant to 36 MRS §191.

Is my application confidential?

No. This application is a public record for purposes of the Maine Freedom of Access Law (1 MRS §401 et seq.). Public records must be made available to any person upon request. This application for licensure is a public record and information supplied as part of the application, other than social security number and credit card information, is public information.

Why is a background check (criminal history records check) done?

Pursuant to 5 MRS §5301-5303, the State of Maine has authority to consider an applicant's criminal history record in determining eligibility for licensure. The Office of Professional and Occupational Regulation requires a Maine State Bureau of Identification criminal history record check as part of the application process for all applicants.

Do I need to let the Office know that I have a new address and name?

10 MRS §8003-G, applicants and licensees are required to report in writing to the Board the following information no later than ten (10) days after the change or event, as the case may be:

1. Change of name or address of the licensee;
2. A criminal conviction of the licensee or anyone listed on this application as having an ownership interest in the licensee;
3. A revocation, suspension, or other disciplinary action taken in this or any other jurisdiction against any occupational or professional license held by the

- applicant/licensee or anyone listed on this application as having an ownership interest in the licensee; or
4. Any material change in the conditions or qualifications set forth in the original application for licensure submitted to the Board.

How long does the application process take?

Applications are processed in the order in which they are received. Processing times do vary depending on the volume of applications being received and the type of license for which you are applying. You may check the status of your application by clicking on the link listed below:

[Check Application Status](#)

If I personally deliver my application and required fee to the Office, can you review and act on my application while I wait?

No. Your application will be reviewed and acted on in the order received.

When will I receive my new license?

Once your license has been approved and activated your license will be emailed to you. You may practice as soon as your license has been approved and activated. You may check the status of your license by clicking on the link listed below:

[Check Application Status](#)

Can I pick up my license once issued?

No, your license will be emailed to you.

What address should I use for a courier package delivery service, such as FedEx or UPS Overnight?

All courier delivery packages should be sent to the physical location of the office. The physical address is:

Office of Professional and Occupational Regulation
76 Northern Avenue
Gardiner, ME 04345

I do not want to overnight my packet. I'm going to send my application packet using the United States Postal Service (USPS). What address should I use?

The mailing address for the office is:

Office of Professional and Occupational Regulation
35 State House Station
Augusta, ME 04333

Online Renewal:**When am I eligible to renew my license?**

All licenses may be renewed sixty (60) days prior to the expiration date. For example,

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a license that expires on March 31st may be renewed on or after January 31st and a license that expires on June 18th may be renewed on or after April 20th.

Can I renew my license over the phone?

No. The office is not authorized to take any payment information over the phone. Also, renewal applications contain questions which must be answered at the time of renewal.

How do I get to the online renewal site?

Please click on the link below and follow the instructions:

www.maine.gov/online/pfrrenewal

Why can't I get the system to work?

First verify that you have chosen the correct regulator (licensing program). Then verify that you are entering your full license number, including the 2-3 letter prefix, and that you are using the correct access code.

I forgot my access code, what can I do?

Please click the link below and follow the instructions:

www.maine.gov/online/pfrrenewal

I think someone may have stolen my access code. How can I get a new code?

Please click on the link below to send an email to board staff to request a new access code be issued:

[OPOR Email list](#)

When will I receive my new license?

Once your license has been approved and activated your license will be emailed to you. You may practice as soon as your license has been approved and activated. You may check the status of your license by clicking on the link listed below:

[Check Application Status](#)

Why do I keep getting an error message saying the website cannot be found?

Please type the website address (www.maine.gov/online/pfrrenewal) directly in the address line.

Please note going through a search engine, such as Google, Yahoo or MSN Search, will return no results or re-direct you to a different website not affiliated with the agency

Other Questions:**Can I update my contact information online?**

Contact addresses, phone numbers and email addresses can be updated on-line. Name changes must be submitted in writing to the office. Please click on the link below and

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follow instructions to update contact information other than a name change:

Update Contact Information

How do I submit a name change to the Office?

Please click on the link below to contact the board for instructions on how to update your name.

Board email addresses

How can I get a verification of my Maine license?

Licensees can download a pdf verification of licensure, free of charge, on our website.

Verify a License

You may also send a letter/request including your name, license number, mailing address, and payment of \$25.00 for a manually produced license verification. The difference between the free online license verification and the manually prepared verification is an embossed State seal. Please send the request to:

Office of Professional and Occupational Regulation

35 State House Station

Augusta, ME 04333

Please note: Checks/money orders may be made payable to "Treasurer, State of Maine" or you may submit a credit card authorization form.

How do I get to the Office of Professional and Occupational Regulation ("OPOR")?

Please click on link below for directions:

<http://www.maine.gov/pfr/professionallicensing/directions.html>

What are the hours of operation?

The office is open from 8:00 a.m. to 5:00 p.m. Monday through Friday. The office is closed on bank holiday(s); for a complete listing of holiday closures please click on the link below

http://www.maine.gov/bhr/employee_center/holiday.htm

How do I find other Maine state offices on the web?

Please visit the website listed below for a full listing of other state agencies:

<http://www.maine.gov/portal/government/agencies.html>

Can't find the answer to your question(s)? Click prof.lic@maine.gov to send us an email.

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Maine Revised Statutes

Title 32: PROFESSIONS AND OCCUPATIONS

Chapter 2-B: MAINE EMERGENCY MEDICAL SERVICES ACT OF 1982

§90-B. ADDRESS OF APPLICANT

Beginning on January 1, 2012, an applicant for a license or renewal of a license under this chapter shall provide the board with: [2011, c. 271, §18 (NEW).]

1. Public record address. A contact address, telephone number and e-mail address that the applicant is willing to have treated as a public record, such as a business address, business telephone number and business e-mail address; and

[2011, c. 271, §18 (NEW) .]

2. Personal address. The applicant's personal residence address, personal telephone number and personal e-mail address.

[2011, c. 271, §18 (NEW) .]

If the applicant is willing to have the applicant's personal residence address and telephone number and personal e-mail address treated as public records, the applicant shall indicate that in the application and is not required to submit a different address under subsection 1. [2011, c. 271, §18 (NEW) .]

SECTION HISTORY

2011, c. 271, §18 (NEW) .

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Maine Revised Statutes

Title 32: PROFESSIONS AND OCCUPATIONS

Chapter 2-B: MAINE EMERGENCY MEDICAL SERVICES ACT OF 1982

§91-B. CONFIDENTIALITY EXCEPTIONS

1. **Confidentiality.** Except as otherwise provided in this chapter, all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the board and all reports, information and records provided to the committee are confidential and may not be disclosed or obtained by discovery from the committee, the board or its staff. Quality assurance information may be disclosed to a licensee as part of any board-approved educational or corrective process. All complaints and investigative records of the board or any committee or subcommittee of the board are confidential during the pendency of an investigation and may not be disclosed by the committee, the board or its staff. Information or records that identify or permit identification of any patient that appears in any reports, information or records provided to the board or department for the purposes of investigation are confidential and may not be disclosed by the committee, the board or its staff.

A. A personal residence address, personal telephone number or personal e-mail address submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as permitted under this section or as otherwise required by law unless the applicant who submitted the information indicated pursuant to section 90-B that the applicant is willing to have the applicant's personal residence address, personal telephone number or personal e-mail address treated as a public record. Personal health information submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as otherwise permitted under this section or otherwise required by law.

The board and its committees and staff may disclose personal health information about and the personal residence address and personal telephone number of a licensee or an applicant for a license under this chapter to a government licensing or disciplinary authority or to a health care provider located within or outside this State that requests the information for the purposes of granting, limiting or denying a license or employment to the applicant or licensee. [2011, c. 271, §19 (NEW) .]

B. Any materials or information submitted to the board in support of an application that are designated as confidential by any other provision of law remain confidential in the possession of the board. Information in any report or record provided to the board pursuant to this chapter that permits identification of a person receiving emergency medical treatment is confidential. [2011, c. 271, §19 (NEW) .]

C. Information provided to the board under section 87-B is confidential if the information identifies or permits the identification of a trauma patient or a member of that patient's family. [2011, c. 271, §19 (NEW) .]

D. Examination questions used by the board to fulfill the cognitive testing requirements of this chapter are confidential. [2011, c. 271, §19 (NEW) .]

[2011, c. 271, §19 (NEW) .]

2. **Exceptions.** Information designated confidential under subsection 1 becomes a public record or may be released as provided in this subsection.

A. Confidential information may be released in an adjudicatory hearing or informal conference before the board or in any subsequent formal proceeding to which the confidential information is relevant. [2011, c. 271, §19 (NEW) .]

B. Confidential information may be released in a consent agreement or other written settlement when the confidential information constitutes or pertains to the basis of board action. [2011, c. 271, §19 (NEW) .]

C. Investigative records and complaints become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this paragraph, an investigation is concluded when:

- (1) Notice of an adjudicatory proceeding, as defined under Title 5, chapter 375, subchapter 1, has been issued;
- (2) A consent agreement has been executed; or
- (3) A letter of dismissal has been issued or the investigation has otherwise been closed. [2011, c. 271, §19 (NEW) .]

D. During the pendency of an investigation, a complaint or investigative record may be disclosed:

- (1) To Maine Emergency Medical Services employees designated by the director;
- (2) To designated complaint officers of the board;
- (3) By a Maine Emergency Medical Services employee or complaint officer designated by the board to the extent considered necessary to facilitate the investigation;
- (4) To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies;
- (5) By the director, to the extent the director determines such disclosure necessary to avoid imminent and serious harm. The authority of the director to make such a disclosure may not be delegated;
- (6) When it is determined, in accordance with rules adopted by the department, that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; or
- (7) To the person investigated on request of that person. The director may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the director determines that disclosure would prejudice the investigation. The authority of the director to make such a determination may not be delegated. [2011, c. 271, §19 (NEW) .]

E. Data collected by Maine Emergency Medical Services that allows identification of persons receiving emergency medical treatment may be released for purposes of research, public health surveillance and linkage with patient electronic medical records if the release is approved by the board, the Medical Direction and Practices Board and the director. Information that specifically identifies individuals must be removed from the information disclosed pursuant to this paragraph, unless the board, the Medical Direction and Practices Board and the director determine that the release of such information is necessary for the purposes of the research, public health surveillance or linkage with patient electronic medical records. [2015, c. 82, §8 (AMD) .]

F. Confidential information may be released in accordance with an order issued on a finding of good cause by a court of competent jurisdiction. [2011, c. 271, §19 (NEW) .]

G. Confidential information may be released to the Office of the Chief Medical Examiner within the Office of the Attorney General. [2011, c. 271, §19 (NEW) .]

[2015, c. 82, §8 (AMD) .]

3. Violation. A person who intentionally violates this section commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

[2011, c. 271, §19 (NEW) .]

SECTION HISTORY

2011, c. 271, §19 (NEW) . 2015, c. 82, §8 (AMD) .

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Maine Revised Statutes
Title 32: PROFESSIONS AND OCCUPATIONS
Chapter 31: NURSES AND NURSING

§2109. CONFIDENTIALITY OF PERSONAL INFORMATION OF APPLICANT OR LICENSEE

For applications for licensure and for renewal of licensure submitted on or after July 1, 2004, an applicant or licensee shall provide the board with a current professional address and telephone number, which is the public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number, and e-mail address if provided by the applicant, are confidential information and may not be disclosed except as permitted by this section or as required by law unless the personal residence address, telephone number and e-mail address have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted or required by law. [2003, c. 64, §1 (NEW) .]

SECTION HISTORY

2003, c. 64, §1 (NEW) .

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Maine Revised Statutes
Title 32: PROFESSIONS AND OCCUPATIONS
Chapter 36: OSTEOPATHIC PHYSICIANS

§2600-A. CONFIDENTIALITY OF PERSONAL INFORMATION OF APPLICANT OR LICENSEE

An applicant or licensee shall provide the board with a current professional address and telephone number, which will be their public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number is confidential information and may not be disclosed except as permitted by this section or as required by law, unless the personal residence address and telephone number have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted by this section or as required by law. The personal health information and personal residence address and telephone number may be provided to other governmental licensing or disciplinary authorities or to any health care providers located within or outside this State that are concerned with granting, limiting or denying a physician's employment or privileges. [2001, c. 214, §1 (NEW) .]

SECTION HISTORY
2001, c. 214, §1 (NEW) .

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Maine Revised Statutes
Title 32: PROFESSIONS AND OCCUPATIONS
Chapter 48: BOARD OF LICENSURE IN MEDICINE
HEADING: PL 1993, c. 600, Pt. A, §197 (rpr)

§3300-A. CONFIDENTIALITY OF PERSONAL INFORMATION OF APPLICANT OR LICENSEE

An applicant or licensee shall provide the board with a current professional address and telephone number, which will be their public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number is confidential information and may not be disclosed except as permitted by this section or as required by law, unless the personal residence address and telephone number have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted by this section or as required by law. The personal health information and personal residence address and telephone number may be provided to other governmental licensing or disciplinary authorities or to any health care providers located within or outside this State that are concerned with granting, limiting or denying a physician's employment or privileges. [2001, c. 214, §2 (NEW) .]

SECTION HISTORY

2001, c. 214, §2 (NEW) .

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Effective July 29, 2016

GOVERNOR'S
VETO
OVERRIDDEN

CHAPTER

476

APRIL 15, 2016

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

H.P. 1022 - L.D. 1499

An Act To Increase the Safety of Social Workers

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

Sec. 1. 32 MRSA §7032 is enacted to read:

§7032. Addresses confidential

The address and telephone number of an applicant for licensure or a person licensed under this chapter that are in the possession of the board are confidential. Nothing in this section prohibits the board and its staff from using and disclosing the address and telephone number of an applicant or licensee as necessary to perform the duties and functions of the board.

Maine Revised Statutes
Title 32: PROFESSIONS AND OCCUPATIONS
Chapter 89: PROFESSIONAL INVESTIGATORS

§8124. CONFIDENTIAL INFORMATION

The home address and home telephone number of a professional investigator or investigative assistant obtained by the State under this chapter are confidential and may not be disclosed by the board except by written consent of the subject of the information, by court order, for criminal justice purposes or for permitting purposes by law enforcement agencies or permitting authorities. [2015, c. 295, §1 (NEW) .]

SECTION HISTORY

2015, c. 295, §1 (NEW) .

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Maine Revised Statutes

Title 32: PROFESSIONS AND OCCUPATIONS

Chapter 135: MAINE UNIFORM SECURITIES

ACT HEADING: PL 2005, c. 65, Pt. A, §2 (new)

§16607. PUBLIC RECORDS; CONFIDENTIALITY

1. **Presumption of public records.** Except as otherwise provided in subsection 2, records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing or report, are public records and are available for public examination in accordance with Title 1, chapter 13, subchapter 1.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Nonpublic records.** The following records are not public records and are not available for public examination under subsection 1:

A. A record obtained by the administrator in connection with an audit or inspection under section 16411, subsection 4 or an investigation under section 16602; [2005, c. 65, Pt. A, §2 (NEW) .]

B. A part of a record filed in connection with a registration statement under section 16301 and sections 16303 to 16305 or a record under section 16411, subsection 4 that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law; [2005, c. 65, Pt. A, §2 (NEW) .]

C. A record that is not required to be provided to the administrator or filed under this chapter and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure; [2005, c. 65, Pt. A, §2 (NEW) .]

D. A record received from a person specified in section 16608, subsection 1 that has been designated as confidential by the agency furnishing the record; [2005, c. 65, Pt. A, §2 (NEW) .]

E. Any social security number, residential address unless used as a business address and residential telephone number unless used as a business telephone number contained in a record that is filed; [2005, c. 65, Pt. A, §2 (NEW) .]

F. A record obtained by the administrator through a designee of the administrator that, pursuant to a routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A, or an order under this chapter, has been:

(1) Expunged from the administrator's records by the designee; or

(2) Determined to be nonpublic or nondisclosable by that designee if the administrator finds the determination to be in the public interest and for the protection of investors; [2005, c. 65, Pt. A, §2 (NEW) .]

G. Records to the extent that they relate solely to the administrator's internal personnel rules and practices, including, but not limited to, protocols, guidelines, manuals and memoranda of procedure for employees of the Office of Securities; [2005, c. 65, Pt. A, §2 (NEW) .]

H. Interagency or intra-agency memoranda or letters, including generally records that reflect discussions between or consideration by the administrator and employees of the Office of Securities of any action taken or proposed to be taken by the administrator or employees of the Office of Securities, including, but not limited to, reports, summaries, analyses, conclusions or other work product of the administrator or employees of the Office of Securities, except those that by law would routinely be discoverable in litigation; and [2005, c. 65, Pt. A, §2 (NEW) .]

I. Records to the extent that disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. [2005, c. 65, Pt. A, §2 (NEW) .]

[2005, c. 65, Pt. A, §2 (NEW) .]

3. Administrator discretion to disclose. If disclosure is for the purpose of a civil, administrative or criminal investigation, action or proceeding or to a person specified in section 16608, subsection 1, the administrator may disclose a record obtained in connection with an audit or inspection under section 16411, subsection 4 or a record obtained in connection with an investigation under section 16602. Prior to disclosure to a person specified in section 16608, subsection 1, the administrator may require the requesting agency to certify that under applicable law reasonable protections exist to preserve the integrity, confidentiality and security of the information comparable to the protections existing under the laws of this State.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. Public disclosure for enforcement purposes. The administrator may disclose to the public any information obtained in connection with an investigation that would otherwise be nonpublic information, but only if the administrator determines that disclosure is necessary for the protection of investors or the public.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY

2005, c. 65, §A2 (NEW) .

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Maine Revised Statutes
Title 32: PROFESSIONS AND OCCUPATIONS
Chapter 93: PRIVATE SECURITY GUARDS

**§9418. CONFIDENTIALITY OF APPLICATION AND INFORMATION
COLLECTED BY THE COMMISSIONER**

Notwithstanding Title 1, chapter 13, subchapter 1, all applications for a license to be a contract security company and any documents made a part of the application, refusals and any information of record collected by the commissioner during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 9405 and 9411-A, and all information of record collected by the commissioner during the process of ascertaining whether a natural person meets the requirements of section 9410-A, are confidential and may not be made available for public inspection or copying. The applicant or natural person may waive this confidentiality by written notice to the commissioner. All proceedings relating to the issuance of a license to be a contract security company are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant. [2011, c. 662, §20 (AMD).]

The commissioner or his designee shall make a permanent record of each license to be a contract security company in a suitable book or file kept for that purpose. The record shall include a copy of the license and shall be available for public inspection. Upon a specific request, the commissioner or his designee shall provide a list of names and current addresses of security guards employed by licensed contract security companies. [1987, c. 170, §19 (NEW).]

SECTION HISTORY

1987, c. 170, §19 (NEW). 2011, c. 662, §20 (AMD).

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July 18, 2016

VIA EMAIL AND FIRST-CLASS MAIL

Sen. David C. Burns, Chair
Right to Know Advisory Committee
Maine State Senate
3 State House Station
Augusta, ME 04333

Rep. Kimberly J. Monaghan
Right to Know Advisory Committee
Maine House of Representatives
2 State House Station
Augusta, ME 04333

RE: Your Letter of June 24, 2016

Dear Sen. Burns and Rep. Monaghan:

I am responding on behalf of the *Portland Press Herald/Maine Sunday Telegram* to your letter of June 24, 2016 concerning the upcoming meeting of the Right to Know Advisory Committee.

Your letter suggests that the Committee will not be holding a public hearing regarding the conduct of the Maine Warden Service in response to the *Press Herald's* November 2, 2015 request for communications between members of the Warden Service and personnel with the North Woods Law television program. Nonetheless, I previously copied the Committee on the *Press Herald's* July 1, 2016 letter to the Warden Service. That letter outlines the *Press Herald's* position that the Warden Service did not provide a complete or timely response, at reasonable cost, to a straightforward request for public correspondence between state employees and an entertainment company.

Your letter asks the *Press Herald* to suggest changes to improve the public records law based on its recent experience with the Warden Service. As a news organization, the *Press Herald* does not engage in lobbying. If the Committee focuses only on changes in the law, however, it may overlook related but no less important issues of compliance and enforcement. Are state agencies complying with the law now on the books? Is the law adequately enforced? The newspaper's fundamental concern is simple: it wants public records to be public, and it wants them promptly when asked for.

PRETI FLAHERTY

Sen. David C. Burns, Chair
Rep. Kimberly J. Monaghan
July 18, 2016
Page 2

Although we appreciate your request and acknowledge that the Committee is charged with considering changes in the law, it would be unwise for the newspaper to start to engage in legislative advocacy now. Thank you for contacting us about this important matter.

Very truly yours,



Sigmund D. Schutz

SDS:jac

cc: Henry Fouts (*via email*)
Craig Nale (*via email*)
Colleen McCarthy Reid (*via email*)
Cliff Schectman (*via email*)
Steve Greenlee (*via email*)
Colin Woodard (*via email*)



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF
INLAND FISHERIES & WILDLIFE
284 STATE STREET
41 STATE HOUSE STATION
AUGUSTA, ME 04333-0041
TEL: 207-287-8000

CHANDLER E. WOODCOCK
COMMISSIONER

July 15, 2016

Sigmund D. Schutz, Esq.
Preti, Flaherty, Beliveau and Pachios, LLP
One City Center
P.O. Box 9546
Portland, Maine 04112-9546

Dear Attorney Schutz:

This is in response to your July 1, 2016 letter to Denise M. Brann, AAG Mark Randlett and AAG Brenda Kieilty regarding the Department of Inland Fisheries and Wildlife's ("IFW") response to the FOAA request from the Portland Press Herald/Maine Sunday Telegram ("PPH") for records relating to correspondence between members of the Warden Service and the production company for Northwoods Law. Your letter contains numerous inaccuracies and IFW disagrees with your assertions that it has been untimely and incomplete in its response. To the contrary, IFW believes it has worked diligently and in good faith to provide every public record requested in a timely manner. Without addressing each point in your letter, much of which we have discussed with you before, we feel it necessary to set the record straight on several issues.

Upon receipt of the initial request IFW immediately responded by having Corporal John MacDonald of the Warden Service search his records. Corporal MacDonald is the Northwoods Law project manager and all significant communications having to do with the production of the show anywhere in the State of Maine would have involved him. Because of the Corporal's high level of involvement with the show, IFW thought this approach was reasonable and adequate to capture all of the responsive documents and, after providing his records, IFW believed the request had been fully satisfied. However, as later communications with you and your client revealed that modifications to the parameters of the search were necessary, we attempted to work with you to develop an approach, including the use of more specific search terms, that would satisfy your client's demands. IFW also consulted with AAGs in the Attorney General's Office and, ultimately, enlisted the assistance of the Maine Office of Information Technology ("OIT").

Since the start of OIT's involvement in mid-March, more than 250 additional documents (e-mails) have been produced, which we believe comprises 95 to 100% of the responsive records. Eric Stout from OIT devised a comprehensive search protocol and worked personally with every IFW staff person determined to be a possible repository for records relating to the FOAA request. Several factors contributed to the time and expense involved in responding to the request, such as a high volume of "raw hits" found during the computer searches (2,949 e-mails) that needed to be reviewed. Of these, most were either duplicative or non-responsive (relating to matters outside the scope of the request). Based on our consultation with OIT, IFW believes the search process used was appropriate because it involved a consistent method that was designed to produce complete results in the most time-efficient manner.

The charges for IFW's response to your client's request, which has been modified on more than one occasion, are reasonable and directly related to the time required to search for, compile, review, redact and produce responsive documents. IFW has provided your client with good faith estimates of these costs at every step. In fact, IFW conducted some searches at no cost to your client and did not charge for many hours that were actually required to conduct others. Further, IFW looked for ways to reduce the time and cost of responding to your client's request. For example, IFW believed the call sheets (mentioned in your letter) had limited informative value and, at our request, AAG's Randlett and Kieilty contacted you to determine whether your client really wanted

FISH AND WILDLIFE ON THE WEB!
www.maine.gov/ifw

E-MAIL ADDRESS:
ifw.webmaster@maine.gov



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GOVERNOR

STATE OF MAINE
DEPARTMENT OF
INLAND FISHERIES & WILDLIFE
284 STATE STREET
41 STATE HOUSE STATION
AUGUSTA, ME 04333-0041
TEL: 207-287-8000

CHANDLER E. WOODCOCK
COMMISSIONER

us to go to the time and expense of producing them. What your letter doesn't disclose is that, after reviewing a number of sample call sheets we provided, at your request, your client decided that, in fact, it did not want them.

Your claim that IFW "intends to charge thousands of dollars to provide the requested correspondence" has no grounds. This appears to be related to your client's demand that IFW's search include the personal e-mail addresses of all of the relevant Northwoods Law production company personnel as search terms. You and your client were provided with a document prepared by Mr. Stout, dated June 22, 2016, that shows the estimated time and cost for searching for these emails under four alternative scenarios – the most expensive alternative being \$345 for approximately 23 hours of anticipated work time.

Also incorrect is your assertion that responsive documents have been withheld for no good reason. Every public record that has been located to date has been produced. IFW has only redacted or withheld documents to the extent they contain information that is confidential by law. Further, the search methodology used by IFW and OIT was not designed to exclude responsive documents. Your belief in this regard appears to be related to search instructions from Mr. Stout dated April 6, 2016. However, during searches Mr. Stout observed that some Northwoods Law crew members included in group communications were listed by their personal e-mails and Mr. Stout modified his instructions to account for this. Such e-mails were not "culled" from the documents as you claim, but were included with the records produced. IFW believed, based on its discussions with Mr. Stout, that the global search terms that were used captured most, if not all of the relevant e-mails. However, recognizing that there might be outliers – e-mails where a crew member communicated with an IFW employee using personal e-mail that wasn't captured in a group e-mail – IFW is willing to refine the search to look for those documents. On June 22, 2016 IFW provided an estimate for that search, as discussed above.

In conclusion, IFW takes its FOAA responsibilities seriously and has made a reasonable and good faith effort to meet your client's requests. It will continue to do so.

Sincerely,

Chandler E. Woodcock - Commissioner
Maine Department of Inland Fisheries & Wildlife

CC: Craig Nale, Henry Fouts, & Colleen McCarthy-Reid
Office of Policy and Legal Analysis

FISH AND WILDLIFE ON THE WEB!
www.maine.gov/ifw

E-MAIL ADDRESS:
ifw.webmaster@maine.gov

Sigmund D. Schutz
sschutz@preti.com
Direct Dial: 207.791.3247

July 1, 2016

VIA EMAIL & U.S. MAIL

Denise M. Brann
Maine Warden Service
284 State Street
41 State House Station
Augusta, ME 04333-0041

Mark Randlett, Esq.
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006

Brenda Kielty, Esq.
Public Access Ombudsman
Office of the Attorney General
6 State House Station
Augusta, Maine 04333

Re: November 2, 2015 Public Records Request re. North Woods Law

Dear Ms. Brann, Mr. Randlett, and Ms. Kielty:

The Maine Warden Service ("MWS") has failed to provide a timely and complete response to a public records request by the *Portland Press Herald / Maine Sunday Telegram* for correspondence between wardens and the production company responsible for the North Woods Law television show. The request is now eight months old and the response remains far from complete. The MWS has now indicated that it intends to charge thousands of dollars to provide the requested correspondence, far in excess of what Maine law allows for this sort of straightforward request.

I have reviewed the MWS invoice of June 27, 2016, in the amount of \$397.50. I have also reviewed the June 29 invoice for another \$15.00. My client, the *Press Herald*, disputes both invoices, requests a waiver of all further fees, and will not pay any further invoices issued by MWS without advance written approval.

I will explain the background and the basis for our position.

I. Background

The MWS allowed the producers of the North Woods Law television program, Engel Entertainment, to film its activities in Maine over the past few years, including activities in Aroostook County.

On November 2, 2015, about eight months ago, *Press Herald* staff writer Colin Woodard made a routine public records request to the MWS for the following:

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Copies of all correspondence – including emails and letters – between personnel at the Maine Warden Service and Engel Entertainment, its agents and subsidiaries in regards to potential or actual filming and/or production in Aroostook County. We request only records created between 1 January 2012 and 1 August 2015.

The *Press Herald* later narrowed the date range of the request to August 1, 2013 to August 1, 2015. A number of wardens communicated in writing with Engel personnel on a frequent basis, so numerous responsive documents exist.

Responding to this request should have been a simple task for the MWS. When the MWS worked with Engel staff to pair film crews and producers with wardens engaged in law enforcement activity, the MWS circulated “call sheets,” including a detailed daily log showing exactly who at Engel was working with the MWS, where and when they were working, and with which members of the MWS. A sample call sheet is attached as Exhibit A. The call sheets list the names and email addresses of all Engel personnel involved in filming at any point in time and describe their movements and locations in Aroostook County and elsewhere. To respond to the *Press Herald's* public records request, the MWS simply had to look at the call sheets to see which wardens were working with which Engel personnel on the relevant dates, and then gather and turn over communications between those wardens and Engel. The *Press Herald* was in the dark, until recently, about the existence of the detailed information contained in the call sheets.

When the *Press Herald* made its request for all correspondence between the MWS and Engel personnel related to filming and production in Aroostook County, the MWS knew exactly which wardens would have created responsive documents, because wardens who interacted with Engel in Aroostook County are all listed on the call sheets. The MWS could easily have complied with the *Press Herald's* request – and Maine’s public record law – by instructing its personnel identified on the call sheets to produce all emails sent to or from the addresses of Engel representatives. Identifying the relevant MWS employees would have been a simple task, given that interactions between the MWS and Engel had been precisely documented on the call sheets.

II. Initial Response Limited to 1 Warden and 29 Emails

For months after receiving the *Press Herald's* request, the MWS inexplicably confined its search to the emails of just one employee, Col. John MacDonald. To make matters worse, the MWS chose to search only for documents with the word “Aroostook” or “county” in them. This obviously ineffectual methodology produced just 29 emails.

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III. The *Press Herald* Protests and Discovers that Many More Wardens Communicated with Engel

Because the response by the MWS was incomplete and untimely, I filed a complaint on behalf of the *Press Herald* with the ombudsman on January 20. I later filed two more complaints. The MWS eventually revealed that a dozen or so other MWS employees had regularly corresponded with Engel personnel. The MWS suggested, however, that it was incapable of identifying who those Engel personnel were, despite having compiled and circulated call sheets and other materials to an email list of precisely those personnel.

When the *Press Herald* pointed out the obvious – that many Engel personnel used email addresses ending in “@engelentertainment.com,” and that the MWS could simply have searched for those email addresses – the MWS, in consultation with the Ombudsman and then Office of Information Technology (“OIT”), conferred privately and developed a complicated system for conducting those searches, one requiring each warden to travel to a state broadband connection, interact with remote servers at OIT, and move emails to remote folders. It was not clear then and remains unclear why wardens could not simply find their own e-mail responsive to the public records request. The *Press Herald* questioned the necessity and efficacy of such a complex and time-consuming process from the outset.

IV. Responsive Documents Are Withheld for No Good Reason

As part of the search process, OIT provided detailed instructions to the wardens to collect emails from a specific list of Engel personnel – a list they presumably received from senior MWS leadership – and then to cull many of the documents responsive to the *Press Herald's* request simply because they were not sent from emails ending in “@engelentertainment.com.” In other words, the process the MWS set up features an extra step designed to remove responsive documents that would otherwise have been made public.

Soon after the *Press Herald* received the OIT instructions it also received from Mr. Randlett sample call sheets – the same documents described above – that list names and e-mail addresses for Engel personnel. Most of their e-mail addresses are not “@engelentertainment.com.” I then received a call from Ms. Kielty and Mr. Randlett asking whether the *Press Herald* actually does want what it had asked for eight months ago: that is, all communications. I responded that it does.

V. Less than Halfway Complete After Eight Months and a \$400 Charge to Search for a Single E-mail Address.

It has now become apparent that the MWS intends to charge thousands of dollars to redo its search to correct the errors it made the first time around. This is unacceptable.

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The June 26 invoice for \$400 reflects a search for correspondence between MWS personnel and a *single* Engel staff member's "@gmail.com" address. The *Press Herald* had no idea that the charge would be this substantial to find communications with a single e-mail address. Based on that charge, I infer that MWS intends to charge thousands of dollars to search for the dozen or so additional e-mail addresses listed on the call sheets. In addition to the fact that these searches should have been done right the first time, the charges are out of proportion to the actual cost of typing an email address into a database and hitting the enter key. An excessive charge constitutes a de facto denial of access to public records.

VII. Conclusion

Either the Maine Warden Service is prepared to make its correspondence with persons involved with the North Woods Law television show public, or it is not. The issue now is not what the requested correspondence shows about the conduct of the MWS. Instead, it is the agency's unwillingness to provide a timely and complete response to the *Press Herald's* public records request.

The *Press Herald* disputes the two invoices mentioned above, and requests that further charges be waived because public disclosure of the requested records would contribute to the public understanding of MWS activities. The Legislature's interest in the agency's response to the *Press Herald's* public records request supports a waiver. Whether or not a waiver is granted, the two invoices are excessive and unreasonable, and the *Press Herald* is not willing to pay them, or any additional amounts beyond what it has already paid to get access to the requested public records.

The *Press Herald* simply wants public records to be public, and wants them promptly when it asks for them.

Very truly yours,



Sigmund D. Schutz

SDS:jac

Enclosure

cc: Cliff Schectman, Executive Editor, *Portland Press Herald* (via email)
Steve Greenlee, Managing Editor, *Portland Press Herald* (via email)
Colin Woodard, State & National Affairs Writer *Portland Press Herald* (via email)
Maine Right to Know Advisory Committee (via email)

engelentertainment

everything but the everyday

CALL SHEET: TEAM 1 SOUTH	"NORTH WOODS LAW"	Saturday, May 31, 2014
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Weather Forecast (5/30/14) Cloudy with a few showers. High around 60F. Winds ENE at 5 – 10 mph. Chance of rain 30%.	Weather Forecast (06/01/14) Sunny, along with a few afternoon clouds. High 67F. Winds ESE at 5 to 10 mph.
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UNIT SCHEDULE:

END OF DAY SUMMARY	Saturday 5/31 – Sgt. Spahr and Crpl. Mike Joy continue to work on an OGT complaint about a man possessing illegal wild game. Warden Cody Louder preps for the Academy. Warden Pete Herring reflects on and wraps up the search for Jaden.
FIVE DAY SCHEDULE SUMMARY	Sunday 6/1 – Sgt. Spahr & Crpl. Joy OGT complaint investigation Monday 6/2 – Wrapping out for the week down / Travel Tuesday 6/3- Off Wednesday 6/4- Off Thursday 6/5 - Off

ENGEL ENTERTAINMENT	212-413-9200 OFFICE	212-413-9201 FAX	535 8 th Ave, 7 th fl, New York, NY 10018
Jen Egan	Line Producer 212-413-9205 o	516-807-4729 c	jegan@engelentertainment.com
Molly Corbally	Production Coord. 917-344-7222 o	717-468-2531 c	mcorbally@engelentertainment.com
Jon Goodman	Head of Production 212-413-9207 o	646-239-0222 c	jgoodman@engelentertainment.com
FIELD CREW			
Andy Seestedt	Supervising Producer	917-301-4180 c	Aseestedt@gmail.com
Neil Ray Sommerlatte	FP TEAM 1/SOUTH	281-216-4891 c	Nsommerlatte@yahoo.com
Justin Fitzpatrick	DP TEAM 1/SOUTH	832-746-8234 c	justinkfitz@yahoo.com
Abbey Wells	AP TEAM 1/SOUTH	860-639-9659 c	wells.abbey@gmail.com
Jay King	AP TEAM 1/SOUTH	917-324-8883 c	jaychristopherking@gmail.com
Jimmy Collins	MM/PA TEAM 1/SOUTH	207-749-3489 c	jimmycfilms@gmail.com
Brad Moore	FP TEAM 2/WEST	603-545-8500 c	bdmoore15@comcast.net
Ronnie Hernandez	DP TEAM 2/WEST	646-526-5157 c	rchpictures@earthlink.net
Evan Olmsted	AP TEAM 2/WEST	207-671-5418 c	eolmsted35@gmail.com
Jimmy Wright	MM/PA TEAM 2/WEST	716-572-3760 c	Jwright8887@gmail.com

CAR INFO: AVIS (Sedan) & ENTERPRISE (SUV)

Portland International Jetport [PWM] Office: 207-875-7500 (AVIS) Office: 207-615-0030 (ENTERPRISE)	1001 Westbrook St Portland, ME 04101 HRS: Sun-Sat 6AM-12:15AM (AVIS) HRS: Mon-Sun 6AM-11:59PM (ENT.)	ROADSIDE ASSISTANCE: AAA 1-800-AAA-HELP
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HOTEL INFO:

TEAM 1 Homewood Suites 200 Southborough Dr Scarborough, ME 04074 207-775-2700	CREW MEMBERS Neil Sommerlatte Justin Fitzpatrick Abbey Wells Jay King Jimmy Collins	ROOM NUMBERS Local Room 203 Room 229 Room 124 Local
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Hon. David C. Burns, Chair
Hon. Kimberly Monaghan
Suzanne Goucher
A. J. Higgins
Richard LaHaye
Mary Ann Lynch
Judy Meyer
Kelly Morgan



Christopher Parr
Linda Pistner
Harry Pringle
Helen Rankin
Luke Rossignol
William Shorey
Eric Stout

STATE OF MAINE
RIGHT TO KNOW ADVISORY COMMITTEE

June 24, 2016

Sigmund D. Schutz, Esq.
Preti Flaherty
One City Center
Portland, Maine 04101

Colin S. Woodard
Portland Press Herald/Maine Sunday Telegram
Mainetoday.com
One City Center, 5th Floor
Portland, Maine 04101

VIA E-MAIL AND USPS MAIL

Dear Mr. Schutz and Mr. Woodard,

The Right to Know Advisory Committee has been asked to hold a public meeting regarding the conduct of the Maine Warden Service in response to requests for public records made by the Portland Press Herald/Maine Sunday Telegram pursuant to Maine's Freedom of Access Act (FOAA). The primary role of the Right to Know Advisory Committee is to serve as a resource to ensure compliance with FOAA and to uphold the integrity of the purposes underlying FOAA. See 1 MRSA §411, sub-§ 1. The Advisory Committee is not a fact-finding body or an arbiter of a dispute between a government entity and an individual making a request for public records, but may obtain information about, discuss and consider solutions to problems concerning access to public records. The Advisory Committee also has the authority to make recommendations for statutory changes or best practices in providing the public access to records. See 1 MRSA § 411, sub-§6, ¶¶ G and I.

On behalf of the Advisory Committee, we are writing to ask for your input and any suggestions you may have for changes in policy or law or for the development of best practices based on your recent experience with the Maine Warden Service. To date, the Advisory Committee has not been made aware of any specific suggestions for revisions to the FOAA or changes in practices that might improve the process for those seeking access to public records in the future. We are seeking more information about suggested improvements or revisions to existing law.

Without that necessary input, the Advisory Committee is not able to have any meaningful discussion.

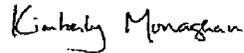
The next meeting of the Advisory Committee is scheduled for Wednesday, July 20, 2016. Please submit any input and suggestions you may have in writing before then. If you have any questions, contact Advisory Committee staff, Craig Nale, Henry Fouts or Colleen McCarthy Reid, in the Office of Policy and Legal Analysis.

Thank you for your consideration.

Sincerely,



Sen. David C. Burns, Chair
Right to Know Advisory Committee



Rep. Kimberly J. Monaghan
Right to Know Advisory Committee

cc: Right to Know Advisory Committee
Brenda L. Kielty, Esq., Public Access Ombudsman

Nale, Craig

From: Robert E. Garland <rgarland7@roadrunner.com>
Sent: Monday, July 18, 2016 3:18 PM
To: Nale, Craig
Cc: Hubbell, Brian
Subject: Discussion item for RTKAC meeting, Wednesday, July 20, 2016

Hi Craig,

Thank you for taking my call. This request, for the Right to Know Advisory Committee to undertake discussion relative to considering legislation requiring local boards and committees to record their executive session meetings held in consideration of personnel matters, came about as a result of my participation in a series of Bar Harbor Town Council executive session meetings leading to the eventual dismissal of the Bar Harbor Police Chief by the Town Manager. I was a member of the Bar Harbor Town Council at the time, and I attended all of the sessions which were held (I believe there were a total of 13 - 14 meetings) except one.

As is well known, the upshot of all of these executive sessions, including a Police Chief requested public "hearing" by the Town Council on Feb 26, 2014, was that the Town Council voted five to two to uphold the Town Manager's decision to dismiss the Police Chief. My principal concern in the aftermath of this affair, after the Police Chief sued the Town Manager for inappropriate dismissal, (which lawsuit is still ongoing) was that the large role the Town Council played in this matter was essentially "off limits"; things said in executive session meetings and the contribution they may or may not have had in the final outcome were protected by executive session privilege. It seemed to me then, and even more so now that it has been disclosed (in depositions taken by the Police Chief's Attorney, Greg Frame) that either the Town Council Chairperson or myself has a very inaccurate recall of what transpired during those meetings, that a record of what was said, by whom, and what the manner of delivery was, could very well become extremely important if legal proceedings develop in personnel matters such as this.

As is much less well known, since no legal proceedings ultimately developed and therefore no depositions were taken, (but which might have been an option had records of the executive sessions existed), was the nature of the Bar Harbor Town Council executive sessions relative to the dismissal (oops, "resignation") of the Town Manager by the Bar Harbor Town Council which followed immediately on the heels of the Police Chief's dismissal. Simply put, there ought to be an avenue of investigation available when such life-changing decisions are under consideration by municipal Councils or Selectmen. "Executive Session" ought not to be an opportunity for mischief, especially when people's lives and livelihoods are at stake. Also, just knowing that such records are available for investigation in the event legal considerations do ultimately arise, might be sufficient to maintain greater civility and adherence to better protocol during executive session meetings.

FYI, although I was one of the two Councilors to vote not to approve the Town Manager's dismissal of the Police Chief, that vote by me was based solely on consideration of the facts presented to us. I have no relationship whatsoever with the dismissed Police Chief beyond a friendly greeting when we meet on the street.

Thank you, Craig, and I hope some of this proves helpful. I do not know the nature of the RTKAC meetings, but if putting a face to this e-mail would be helpful, I would be willing to come to Augusta to appear before the Committee.

Respectfully,

Robert Garland, former Councilor, Town of Bar Harbor

Freedom of Access Act (FOAA) Email Searches
10 Factors for Estimating Time – variables described in sample chart

Eric.Stout@maine.gov, 624-9981

IT Member on Right to Know Advisory Committee

June 10, 2016



This document is based on 7 years of experience assisting with email searches on hundreds of Freedom of Access Act (FOAA) requests. The factors described below are the variables that result in wide-ranging estimates on FOAA requests, even with the best of good-faith intentions.

Factors Affecting Time/ Cost and Accuracy/ Completeness of Email Searches

Most FOAA requests are unique. Some are very narrow and specific, but others are broad and vague. Obviously, it is easier and quicker to respond to FOAA requests that ask for email and documents from a small # of people for a limited/ recent period of time. It's much harder to respond to requests for "anyone in the agency that has information about a certain topic for the past several years." The chart below attempts to break down 10 factors that affect the ease or difficulty in responding to FOAA requests, focusing on the challenges with email and email archive files.

As a general rule of thumb, I would say that a simple FOAA request of 3 search terms should take a person with medium-level skills about 1 hour to find and assemble the resulting emails. The 10 factors listed below and in the chart explain how estimates can vary greatly.

In addition to finding and assembling emails, there may be a need to review emails to redact FOAA-exempt information, such as personally identifiable information (PII). See long list of FOAA statutory exemptions at: <http://www.maine.gov/foaa/law/exceptions.htm>. If the redaction step is needed (especially for certain agencies with sensitive or exempt information), it is hard to estimate the amount of time required, because it requires a careful review, sometimes by attorneys. The amount of time for redaction (if needed) depends on the volume of results found. See #8 below and in the chart.

There are a lot of "ifs" in this general estimate (1 hour for 1 person of medium skill to find and assemble emails using 3 search terms).

The 10 factors I've observed that affect how long a FOIA request will take, and also affect the varying quality of the results are:

1. Skill of the person searching
2. # of people searching
3. Current staff v. former staff
4. Recent (current year) v. past (prior years)
5. Scope of request (broad v. narrow)
6. Search terms (specific v. vague, and # of terms/ topics)
7. Volume of results (10's, 100's, or 1,000's)
8. Amount of review and redaction time needed (for sensitive data, personally identifiable information, exempt by statute, etc.)
9. Attachments requested in the response (or only email)?
10. Delivery of results – paper v. electronic

For the chart below, I use an example of 3 search terms going back 3 years. If the FOIA request is asking for email from prior years, this usually triggers the need to search the person's email archive files, beyond their current mailbox, which has a limit of 2 gigabytes of storage. Mail above that limit of the mailbox size must be archived to separate database files known as Personal Storage (PST) archive files that are stored outside the mailbox, either on the PC hard drive (C drive) or the user's network drive. When the mailbox is close to full, the user is prompted by Outlook to archive emails to a separate archive file that is outside of the regular mailbox.

See chart on next pages.

Example: Assuming a FOAA search with 3 search terms, going back 3 years

Factors Affecting Search Time and Quality of Results	Continuum	Results – Quality/ Completeness	Time to Search and Assemble Results (assuming 3 search terms going back 3 years)
1. Skill of person searching (skill with email searches of multiple folders, including archive files)	Low skill	Poor - won't know how to search archive files, so results incomplete	Variable time (hard to estimate) – depending on if they search by “browsing” through their email and trying to remember what they may have that’s relevant.
	Medium skill	Fair – may know how to search archive files, but results likely incomplete	1 hour average (but results likely incomplete).
	High skill	Good - likely to be complete results, but may miss some older archive files if not actively “attached” to Outlook	1 hour average (results likely good).
2. # of people searching	1 person	Quality depends on the skill of the person, unless assisted by someone with more skill.	Fairly easy to search, assemble, and forward to the agency FOAA Coordinator.
	Few people		Requires assembling multiple results.
	Many people		The more people involved, the more their results have to be assembled and then reviewed by the FOAA coordinator.
3. Current staff v. former staff	current	Even current staff may not know where their older email archive files are stored. They may either miss searching them, or need help from OIT to locate and attach the archive files	Before an older email archive file can be searched, it has to be “attached” to their Outlook. Then it takes several hours for Outlook to “index” the newly attached archive file, before it is search-ready.
	former	Email archives of former staff may not be available, especially back several years	If former staff’s files are to be accessed, they first have to be found, and given to someone else to do the searches. This may require help from OIT to locate the files, and copy for supervisor or someone else to search.

Factors Affecting Search Time and Quality of Results	Continuum	Results – Quality/ Completeness	Time to Search and Assemble Results (assuming 3 search terms going back 3 years)
4. Recent (current year) v. past (prior years)	recent	Typically in active mailbox. Current mailbox folders are easier to search, but even here, people with low/ medium skill typically don't realize that when they activate the search bar, Outlook is only searching "Current folder" ... In order to search all folders, they have to change the option to search "All Items" (people with low/ medium skill typically don't realize this).	
5. Scope of request (broad v. narrow)	past	Uncertain based on availability or archive files. If the FOIA request is overly broad (all emails from all agency staff on a certain subject), it is almost impossible to comply because the email search has to be person-by-person, for each email account. There is no ability to "Google it" to get at email across multiple people's accounts.	Longer time to find, load and search email archive files. There is no ability with our current email system (Microsoft Outlook) to search across multiple people at one pass. Generally these broad FOIA requests would require an extensive amount of time. At \$15 per hour, the requestor generally can't afford what they are asking for. So there should be a discussion about what is a reasonable request that the requestor can afford, and is not overly burdensome to the agency.
	broad	FOIA requests that are very specific are easier to comply with. Remember that email searches have to be done person-by-person, for each individual account.	
	narrow		

Factors Affecting Search Time and Quality of Results	Continuum	Results – Quality/ Completeness	Time to Search and Assemble Results (assuming 3 search terms going back 3 years)
<p>6. Search terms (specific v. vague, and #)</p>	<p>Specific</p>	<p>Specific search terms are best in terms of ability to use Outlook's search function (versus the person's memory). This leads to a better quality and more complete results.</p>	<p>As a general rule of thumb, I would say that a simple FOIA request of 3 search terms should take a person with medium-level skills about 1 hour to find and assemble the resulting emails. There are a lot of "ifs" in this general estimate, depending on the 10 factors described in this chart.</p>
<p>7. Volume of results (10's, 100's, 1,000's)</p>	<p>Vague</p> <p>For any FOIA request, it's hard to know at the start what the resulting volume will be, especially if doing a computer search using defined search terms. It depends mostly on the scope, # of people, and how specific or vague the request is.</p>	<p>FOIA requests that ask for responses on a general topic are harder to comply with, because what would the person search for? If too vague/broad, the results could be in the thousands, and not be affordable to the requestor @ \$15 per hour search time.</p>	<p>The times above are for searching/ finding relevant emails. If only 10's are found, it is faster to review and produce them. But if 1,000's are found, then that takes much longer. Sometimes it is best to do some initial searches to get an idea of volume, and then discuss with the requestor whether they want to make the request more specific or scope it back, in order to be affordable @ \$15 per hour search time.</p>

Factors Affecting Search Time and Quality of Results	Continuum	Results – Quality/ Completeness	Time to Search and Assemble Results (assuming 3 search terms going back 3 years)
<p>8. Amount of review and redaction time</p>	<p>See comments above. This depends largely on the scope of the request, which results in variable volume of results.</p>	<p>Some agencies have sensitive data that cannot be released under FOIA, and is statutorily exempt from being a public record. See: http://www.maine.gov/foia/law/exception.shtml</p>	<p>Often the review and redaction time can be much greater than the actual search time. This is hard to predict, not knowing from the beginning what the volume of results will be. If there is a large volume, then it may be best to discuss with the FOIA requestor to consider scoping back on the request in order to reduce the volume and therefore the cost @ \$15 per hour.</p>
<p>9. Attachments requested (or only email)?</p>	<p>Some email results have a large number of attachments.</p>		<p>If the attachments are to be included in the response, then the agency FOIA Coordinator has to review those documents for possible redaction/ exemption. If those are agreed to be bypassed, then the FOIA response will be less costly.</p>
<p>10. Delivery of results - paper v electronic</p>	<p>Paper Electronic</p>	<p>The FOIA requestor can request what format they want the responses to be delivered. Some FOIA requestors prefer electronic files, so that they are more easily searchable on their computers.</p>	<p>If paper copies, then the time to make those copies is included in the cost. If electronic files, they can be delivered on a thumb drive, or even forwarded via email.</p>



To members of the Right to Know Advisory Committee:

Planned Parenthood of Northern New England (PPNNE) would like to provide some information as it relates to Agenda item #3 - *Review and potentially develop recommendations for treatment of personal contact information for professions and occupations licensed by the State.*

As a health care provider, we employ a number of licensed medical professionals, who provide health care to 10,000 patients in Maine. We go to great lengths to hire highly qualified professional physicians, physician assistants, nurse midwives, nurse practitioners and nurses and are proud of the services they offer the community.

Unfortunately, our organization and our medical practitioners can find themselves the target of harassment by individuals willing to go to extremes to threaten and intimidate them. Over the course of the past year, we have experienced a nine-fold increase in violence and harassment of our health care providers and as a result, we are deeply committed to protecting the safety of our employees and patients.

In recent years, we have found that unknown individuals are exploiting public right to know laws to harass and intimidate our employees. In Maine, anonymous emails have submitted FOIA requests seeking all information available for a number of our medical practitioners. On one occasion in the fall of 2012, the entire nursing licensing file of an employee was made public to unidentified entities and subsequently posted in hostile contexts on the internet. Information that was released included: home address and telephone numbers, the licensee's social security number, and a photograph of the licensee's face provided at the time of original application as well as other sensitive information, which caused a legitimate concern for the personal safety of our employee.

Following this incident, safety concerns were raised to the Maine State Board of Nursing and the Attorney General's office. During those conversations, we received conflicting answers regarding what information is protected, what is considered public and how these requests should be satisfied. At the conclusion of the conversations, we were told that social security numbers would be redacted, and nurses would be notified when the state receives these requests prior to the release of information to provide the impacted person an opportunity to take action if they chose.

Last year, another series of anonymous emails were submitted for our practitioners. The nurses received no notification aside from a copy of the letter indicating that their licensing file had been released to guptro2@hushmail.com. While no social security numbers were released this time, the information still included addresses, school transcripts, photos and other personal information collected for a license application. The release of this information was incredibly upsetting for our employees and posed legitimate security risks for our organization.

While these requests impacted our employees, the safety risks that exist are not unique to us. Any licensed professional could find themselves a victim of harassment or worse as a result of the information released through these types of FOAA requests.

Recognizing the need for safety precautions, the legislature has enacted laws that provide added protections for certain licensed professionals including private investigators, social workers and members of the Maine Gaming Board. In these cases, a variety of personal information is protected from public disclosure.

Further highlighting the need for legislation is the fact that we have found that licensing boards respond to these FOAA requests differently as there is no uniform response laid out in the law that fairly balances the rights of the public with the safety concerns of the private citizen.

We ask the Right to Know Advisory Committee to consider developing legislation that creates a consistent approach to FOAA requests that provides appropriate protections for licensed individuals.

Thank you for your time and attention.

Sincerely,
Nicole Clegg
Vice President of Public Policy
Planned Parenthood of Northern New England