

**STATUTE: 5 MRSA § 1541, sub-§ 10-B**

**AGENCY:** Dept. of Administrative and Financial Services – State Controller

**CONTACT PERSON:** Rob Weaver

**CONTACT PERSON'S EMAIL ADDRESS:** robert.weaver@maine.gov

## QUESTIONS

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

**The OSC rarely has had need to deny records requests related to ongoing internal audits and/or investigations, under this exception. This is likely due to the limited number of investigations/audit underway at any point in time and the timing of interest by outside parties typically occurs after the official report has been released.**

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

**The OSC supports the continuation of this exception and believes it is critical to accomplishing the objectives of the internal audit division.**

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? **The OSC has not experienced problems in applying this exception and believes it is clear that the records described are confidential. The language is sufficiently clear to describe the applicable records.**

4. Does your agency recommend changes to this exception?

**The OSC does not recommend any changes to the exception or the language covering this exception.**

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

**Other audit and investigative agencies internal to State Government, including the Office of the State Auditor, the Office of Program Evaluation and Government Accountability and the Office of the Attorney General.**

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

The OSC believes that this exception is critical to ensure that ongoing internal audits and investigations are not jeopardized as a result of the release of working papers used to document and support these investigative activities.

It is also necessary to ensure that data on individuals that could reasonably be used to determine the identity of an individual supplying data for an audit are private if the data supplied by the individual were needed for an audit and the individual would not have provided the data to the auditor without an assurance that the individual's identity would remain private, or the auditor reasonably believes that the subject would not have provided the data. Over the years, State employees and other survey respondents have indicated that they would not feel they can be candid in surveys and interviews about the problems they perceive in their agencies if those documents were not considered protected.

**Maine Revised Statutes**  
**Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES**  
**Chapter 143: ACCOUNTS AND CONTROL**

**§1541. POWERS AND DUTIES RELATING TO ACCOUNTING**

The Department of Administrative and Financial Services, through the Office of the State Controller, has authority: [2003, c. 600, §2 (AMD) .]

**1. Official system of general accounts.** To maintain an official system of general accounts, unless otherwise provided by law, embracing all the financial transactions of the State Government;

**2. Approve contracts and orders.** To examine and approve all contracts, orders and other documents, the purpose of which is to incur financial obligations against the State Government, to ascertain that moneys have been duly appropriated and allotted to meet such obligations and will be available when such obligations will become due and payable;

**3. Audit.** To audit and approve bills, invoices, accounts, payrolls and all other evidences of claims, demands or charges against the State Government; and to determine the regularity, legality and correctness of such claims, demands or charges. The State Controller may elect to audit electronically based systems for adequate safeguards and procedural controls. Notwithstanding any other provision of law, the State Controller may engage through sole source contracts auditors, accountants and investigators the State Controller considers necessary for special audits, financial audits and investigations to monitor and ensure adherence to contracts and to ensure proper financial controls. This subsection may not be construed to limit the powers and duties conferred and imposed by law upon the State Auditor as provided in Title 5, chapter 11;

[ 2005, c. 3, Pt. L, §1 (AMD) .]

**4. Inspect materials and labor.** To inquire into and cause an inspection to be made of articles and materials furnished, or work and labor performed, for the purpose of ascertaining that the prices, quality and amount of such articles or materials are fair, just and reasonable, and that all the requirements expressed or implied pertaining thereto have been complied with, and to reject or disallow any excess;

**5. Reports.** To make monthly reports on all receipts and expenditures of the State Government to the Governor and the State Auditor; to make monthly reports on appropriations, allotments, encumbrances and authorized payments to the Governor, to the State Auditor and to the head of the department or agency directly concerned;

**6. Forms.** To prescribe the forms of receipts, vouchers, bills or claims to be filed by departments and agencies with the Department of Administrative and Financial Services;

[ 2007, c. 466, Pt. A, §10 (AMD) .]

**7. Subsidiary accounts.** To prescribe such subsidiary accounts, including cost accounts, for the various departments and agencies as may be desired for the purposes of administration, supervision and financial control;

**8. Examine accounts.** To examine the accounts of every department or agency receiving appropriations from the State;

**9. Illegality of expenditures.** To report to the Attorney General for such action, civil or criminal, as he may deem necessary, all facts showing illegality in the expenditure of public moneys or the misappropriation of public properties;

**10. Other rights, powers and duties.** To exercise the rights, powers and duties conferred and imposed by law upon the State Auditor that were effective November 9, 1931 insofar as these relate to financial administration and general accounting control of the State Government, involving the keeping of general accounts, the auditing before payment of bills or vouchers and the authorizing of all claims against the State for which appropriations have been made. The State Controller may delegate authority for final approval of bills and vouchers to state agencies subject to adequate safeguards. This delegation of authority may be revoked by the State Controller at any time. The State Controller shall set up and maintain special accounts with respect to money received for designated purposes from the Federal Government.

[ 1993, c. 410, Pt. C, §1 (AMD) .]

**10-A. Internal control standards.** To implement the following internal control standards that define the minimum level of quality acceptable for internal control systems in operation throughout the various state agencies and departments and constitute the criteria against which such internal control systems must be evaluated by the State Controller. Internal control systems for the various state agencies and departments must be developed in accordance with the following internal control guidelines established by the State Controller.

A. Internal control systems of state agencies and departments are to be clearly documented and readily available for examination. Documentation of a state agency's or department's internal control systems must include internal control procedures, internal control accountability systems and identification of the operating cycles. Documentation of the state agency's or department's internal control systems must appear in management directives, administrative policy, procedures and manuals. [2003, c. 451, Pt. F, §1 (NEW) .]

B. All transactions and other significant events involving state agencies or departments must be promptly recorded, clearly documented and properly classified as to amount, account, fund and fiscal year. Documentation of a transaction or event must include the entire process or life cycle of the transaction or event, including the initiation or authorization of the transaction or event, all aspects of the transaction while in process and the classification in the accounting records. [2003, c. 451, Pt. F, §1 (NEW) .]

C. Transactions and other significant events involving state agencies or departments may be authorized and executed only by persons acting within the scope of their authority. Authorizations must be clearly communicated to managers and employees and must include the specific conditions and terms under which authorizations may be made. [2003, c. 451, Pt. F, §1 (NEW) .]

D. Key duties and responsibilities involving state agencies or departments, including authorizing, approving and recording transactions; issuing and receiving assets; making payments; and reviewing or monitoring transactions, must be assigned systematically to a number of individuals to ensure that effective checks and balances exist. [2003, c. 451, Pt. F, §1 (NEW) .]

E. Qualified and continuous supervision of all transactions and significant events must be provided by state agencies or departments to ensure that internal control objectives are achieved. The duties of a supervisor in carrying out this responsibility include clearly communicating the duties, responsibilities and accountabilities assigned to each staff member, systematically reviewing each member's work to the extent necessary and approving work at critical points to ensure that work flows as intended. [2003, c. 451, Pt. F, §1 (NEW) .]

F. Access to resources and records must be limited to authorized individuals as determined by the state agency or department head, except that the powers and duties of the State Auditor may not be limited by this subsection. Restrictions on access to resources depend upon the vulnerability of the resource and the perceived risk of loss, both of which must be periodically assessed. The state agency or department head is responsible for maintaining accountability for the custody and use of resources and shall assign qualified individuals for that purpose. Periodic comparison must be made between the resources and the recorded accountability of the resources to reduce the risk of unauthorized use or loss and protect against waste and wrongful acts. The vulnerability and value of the state agency or department resources determine the frequency of this comparison.

Within each state agency or department there must be a qualified employee whose responsibility, in addition to the employee's regularly assigned duties, is to ensure that the state agency or department has written documentation of its internal accounting and administrative control system on file. The employee shall, annually, or more often as conditions warrant, evaluate the effectiveness of the state agency's or department's internal control system and establish and implement changes necessary to ensure the continued integrity of the system. The employee shall:

- (1) Ensure that the documentation of all internal control systems is readily available for examination by the State Controller, Commissioner of Administrative and Financial Services and State Auditor;
- (2) Certify to the State Controller that the appropriate updates have been made and implemented by the state agency or department;
- (3) Ensure that the results of audits and recommendations to improve state agency or department internal controls are promptly evaluated by the state agency or department management;
- (4) Ensure that timely and appropriate corrective actions are effected by the state agency or department management in response to an audit;
- (5) Ensure that all actions determined by the state agency or department management as necessary to correct or otherwise resolve matters are addressed by the state agency or department in its budgetary request to the Legislature; and
- (6) Immediately notify the State Controller when an auditor, inspector general or other representative from the Federal Government or another nonstate organization requests access to state agency resources and records related to internal controls. The State Controller shall notify the State Auditor, the Office of Program Evaluation and Government Accountability and other interested parties of the audits and investigations in a timely manner.

All unaccounted for variances, losses, shortages or thefts of funds or property must be immediately reported to the State Controller, who shall review the matter to determine the amount involved that must be reported to the appropriate state agency or department management, law enforcement officials and the State Auditor. The State Controller shall also determine the internal control weakness that contributed to or caused the condition. The State Controller shall then make recommendations to the state agency or department official overseeing the internal control system and other appropriate management officials. The recommendations of the State Controller must address the correction of the conditions found and the necessary internal control policies and procedures that must be modified. The state agency or department oversight official and the appropriate management officials shall immediately implement policies and procedures necessary to prevent a recurrence of the problems identified and report the steps taken to the State Controller. From time to time the State Controller shall examine the policies and procedures implemented to ensure that the relevant policies and procedures are functioning appropriately. [2005, c. 490, §1 (AMD) .]

G. Notwithstanding any other provision of law relating to confidentiality of information, the State Controller is granted access to all information in the files of any department or agency of the State as necessary to carry out the duties of the State Controller under this subsection; [2003, c. 451, Pt. F, §1 (NEW) .]

[ 2005, c. 490, §1 (AMD) .]

**10-B. Confidentiality of internal audit working papers belonging to the Office of the State Controller.** Prior to the release of a final audit or investigation report and in the sole discretion of the State Controller, to disclose internal audit working papers to the department, commission or agency subject to the audit or investigation and to other auditors or law enforcement when such disclosure will not prejudice the audit or investigation. Except as provided in this subsection, internal audit working papers are confidential and may not be disclosed to any person. After release of the final audit or investigation report, internal audit working papers may be released as necessary to:

A. The department, commission or agency that was subject to the audit or investigation; [2007, c. 539, Pt. S, §1 (NEW) .]

B. A federal agency providing a grant to the audited entity; [2007, c. 539, Pt. S, §1 (NEW) .]

C. Law enforcement agencies for the purpose of criminal law enforcement or investigations; and [2007, c. 539, Pt. S, §1 (NEW) .]

D. Other auditors in their work, including but not limited to the State Auditor; [2007, c. 539, Pt. S, §1 (NEW) .]

[ 2007, c. 539, Pt. S, §1 (NEW) .]

**11. Definition.** The words, "the State Government," as used in this section shall include the judiciary and the Executive Department of the Governor.

[ 1967, c. 427, §3 (NEW) .]

**12. Central data procession service.**

[ 1975, c. 322, §2 (RP) .]

**12-A. Conference fee accounts.**

[ 1995, c. 316, §1 (RP) .]

**13. Travel expense reimbursement.** Through the State Controller, with the approval of the Commissioner of Administrative and Financial Services, to establish policies for travel expense reimbursement and carrying out this chapter. Those policies determining which expenses are reimbursable and levels of reimbursement are deemed rules, and must be adopted, modified and repealed, only in accordance with procedures set forth in the Maine Administrative Procedure Act, Title 5, chapter 375.

A. Notwithstanding any other provision of law, a state agency, as defined in section 8002, subsection 2, may not authorize reimbursement for travel by any person at a rate greater than the rate established in section 8 for state employees, except that a community action agency as defined in Title 22, section 5321 and the Maine State Housing Authority may reimburse at a greater rate if:

(1) The employee of the agency being reimbursed is not a state employee for the purpose of collective bargaining;

(2) The source of funds to pay for the reimbursement for travel is a nonstate source, including funds from a federal agency that are passed through the State for distribution; and

(3) The rate of reimbursement for travel does not exceed the standard mileage rate for that year, as established by the United States Department of Treasury. [1997, c. 601, §1 (AMD) .]

[ 1997, c. 601, §1 (AMD) .]

**14. Fixed assets.** To maintain an official statewide system for fixed assets for all state agencies to update and reconcile annually.

[ 1997, c. 90, §1 (NEW) .]

**SECTION HISTORY**

1967, c. 427, §3 (AMD). P&SL 1969, c. 251, §C1 (AMD). 1975, c. 322, §2 (AMD). 1977, c. 248, (AMD). 1979, c. 70, (AMD). 1979, c. 312, §2 (AMD). 1983, c. 209, (AMD). 1985, c. 761, §G9 (AMD). 1985, c. 785, §§A52,53 (AMD). 1987, c. 402, §A38 (AMD). 1991, c. 780, §§Y42,43 (AMD) .

**STATUTE:** 22 MRSA § 2153-A

**AGENCY:** Dept. of Agriculture, Conservation and Forestry

**CONTACT PERSON:** Mari Wells-Eager

**CONTACT PERSON'S EMAIL ADDRESS:** mari.wells@maine.gov

### 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).  
Not often. Quality Assurance and Regulations doesn't receive many FOAA requests.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.  
Absolutely must support, must comply with federal regulation.

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?  
Yes.

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

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.  
Ron Dyer 287-7522

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



## Fouts, Henry

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**From:** Ayotte, Shannon  
**Sent:** Monday, August 22, 2016 10:28 AM  
**To:** Nale, Craig  
**Subject:** RE: Right to Know FOAA Question  
**Attachments:** Ref51 with answers.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Responding on Mari's behalf,

Yes, we still need to follow this confidentiality exception as we must follow the federal requirements and sign confidentiality agreements with them each year. See answers on the form attached.

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**From:** Nale, Craig [<mailto:Craig.Nale@legislature.maine.gov>]  
**Sent:** Tuesday, August 16, 2016 12:08 PM  
**To:** Ayotte, Shannon  
**Subject:** Right to Know FOAA Question

Hi Shannon,

I'm just following up on this as we prepare materials for tomorrow's Right to Know Advisory Committee meeting.

Thanks again,  
Craig

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**From:** Nale, Craig  
**Sent:** Monday, August 15, 2016 11:37 AM  
**To:** Ayotte, Shannon  
**Subject:** RE: FOAA Question

Hi Shannon,

The exception is at 22 MRSA § 2153-A. The questionnaire originally sent to Ms. Wells-Eager is attached. I think the questions are fully outlined below and in the attachment, but I'm happy to talk anytime.

Thanks,  
Craig

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**From:** Ayotte, Shannon [<mailto:Shannon.Ayotte@maine.gov>]  
**Sent:** Monday, August 15, 2016 11:34 AM  
**To:** Nale, Craig  
**Subject:** RE: FOAA Question

I am researching this for Mari Wells-Eagar. What specific exception is this?

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**From:** Wells, Mari  
**Sent:** Monday, August 15, 2016 11:14 AM  
**To:** Ayotte, Shannon  
**Subject:** FW: FOAA Question

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**From:** Nale, Craig [<mailto:Craig.Nale@legislature.maine.gov>]  
**Sent:** Thursday, August 11, 2016 10:44 AM  
**To:** Wells, Mari  
**Subject:** FW: FOAA Question

Hi Mari,

In connection with the review of existing public records by the Right to Know Advisory Committee, I sent the email below last year to gather more information about the exception cited in the attached questionnaire. I don't believe there was any resolution to this issue. Any help with the question below would be greatly appreciated before the Advisory Committee takes the issue up again next week.

Thanks again,  
Craig

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**From:** Nale, Craig  
**Sent:** Tuesday, October 20, 2015 11:51 AM  
**To:** Wells, Mari  
**Subject:** FOAA Question

Hi Mari:

The attached questionnaire was sent to Kevin Wells at the Department of Health and Human Services, but he thought it might be better directed to the DACF. My reading of the statute is that DACF must promulgate the regulations that determine whether documents are confidential, but that DHHS would maintain the documents and therefore respond to FOAA requests for those documents.

Would you mind taking a look either responding to the questionnaire or help clarify who maintains these documents?

I'm happy to discuss further with you or anyone from DACF. Thanks very much,

Craig

**Craig T. Nale, Esq.**  
Legislative Analyst  
Office of Policy and Legal Analysis  
Maine State Legislature  
13 State House, Augusta, ME 04330  
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**Maine Revised Statutes**  
**Title 22: HEALTH AND WELFARE**  
**Chapter 551: PURE FOODS AND DRUGS GENERALLY**

**§2153-A. CONFIDENTIALITY OF CERTAIN INFORMATION**

The following information is confidential and may not be disclosed to the public: [2009, c. 393, §9 (NEW) .]

**1. United States Department of Agriculture, Food Safety and Inspection Service.** Information provided to the department or to any employee of the department by the United States Department of Agriculture, Food Safety and Inspection Service pursuant to 9 Code of Federal Regulations, Section 390.9 (2008) to the extent that the regulations designate the information confidential, the information is otherwise identified pursuant to the regulations as confidential or the regulations require the information to be protected from public disclosure; and

[ 2009, c. 393, §9 (NEW) .]

**2. Food and Drug Administration.** Information provided to the department or to any employee of the department by the United States Food and Drug Administration pursuant to 21 Code of Federal Regulations, Section 20.88 (2008) to the extent that the regulations designate the information confidential, the information is otherwise identified pursuant to the regulations as confidential or the regulations require the information to be protected from public disclosure.

[ 2009, c. 393, §9 (NEW) .]

**SECTION HISTORY**

2009, c. 393, §9 (NEW) .

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STATUTE: 25 M.R.S. § 4202

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## 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).
  - Since the exception was enacted into law, the agency has not had occasion to administer or apply the exception.
  - The records (or, more accurately, data) to which the exception applies are those described in the exception.
  
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
  - The agency supports the continuation of the exception so as to ensure that law enforcement personnel who are involved in or respond to traumatic incidents can seek in confidence the emotional and mental-health support that critical incident stress management teams provide.
  
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?
  - The agency has not had any problems in applying this exception.
  - The type of records/data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records/data covered.
  
4. Does your agency recommend changes to this exception?

- The only change the agency might recommend is that the statute be amended to explicitly state in the exception that records/data covered by the exception are confidential and not "public records" for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not "public records" for the purpose of the FOAA. See 1 M.R.S. § 402(3)(A)).
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include other law enforcement agencies that have critical incident stress management teams, and first responder agencies.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
- The agency does not have any further information to provide at this time.

Maine Revised Statutes

Title 25: INTERNAL SECURITY AND PUBLIC SAFETY

Chapter 501: CRITICAL INCIDENT STRESS MANAGEMENT TEAMS

§4202. CRITICAL INCIDENT STRESS MANAGEMENT TEAMS

**1. Information confidential.** Except as provided in subsection 2, all proceedings, communications and records, including, but not limited to, information concerning the identity of a person seeking or being furnished assistance, connected in any way with the work of a critical incident stress management team are confidential and are not subject to compulsory legal process or otherwise discoverable or admissible in evidence in any civil action unless the confidentiality is waived by the affected person. Statistical data not identifying a person seeking the assistance of a critical incident stress management team must be made available for statistical evaluation and may not be made available for any other purpose.

[ 2009, c. 289, §1 (NEW) .]

**2. Mandatory disclosure of information.** Unless protected by a privilege of law recognized by this State, a member of a critical incident stress management team must disclose to appropriate federal, state or local government agencies or law enforcement agencies the following types of information:

A. An admission by a person seeking the assistance of the critical incident stress management team that the person has committed a crime; [2009, c. 289, §1 (NEW) .]

B. A disclosure of information by a person seeking the assistance of a critical incident stress management team that must be reported pursuant to any applicable law; or [2009, c. 289, §1 (NEW) .]

C. A disclosure of information by a person seeking the assistance of a critical incident stress management team that would lead one to reasonably think that the person seeking assistance is a danger to that person or to another person. [2009, c. 289, §1 (NEW) .]

Information disclosed under this subsection is no longer confidential unless it is otherwise designated confidential by statute.

[ 2009, c. 289, §1 (NEW) .]

SECTION HISTORY

2009, c. 289, §1 (NEW) .

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STATUTE: 29-A MRSA § 2251, sub-§ 7-A

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## 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).

- Since the exception was enacted into law, the agency perhaps has had only two or so occasions to apply the exception.
- The records (or, more accurately, data) to which the exception applies are those described in the exception.

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

- The agency supports the continuation of the exception to ensure that personally identifying information of residents and non-residents of Maine is protected and not publicly disseminated in bulk.

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?

- The agency has not had any problems in applying this exception.
- The type of data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records covered.

4. Does your agency recommend changes to this exception?

- The agency does not recommend any changes to the exception at this time.
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include the Maine Department of Transportation, Maine Office of the Secretary of State, the Maine Turnpike Authority, and the National Highway Traffic Safety Administration.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
- The agency does not have any further information to provide at this time.

Maine Revised Statutes

Title 29-A: MOTOR VEHICLES AND TRAFFIC HEADING:  
PL 1993, c. 683, Pt. A, §2 (new); Pt. B, §5 (aff)

Chapter 19: OPERATION HEADING: PL  
1993, c. 683, Pt. A, §2 (new); Pt. B, §5 (aff)

**§2251. ACCIDENT REPORTS**

**1. Definition.** As used in this section, "reportable accident" means an accident on a public way or a place where public traffic may reasonably be anticipated, resulting in bodily injury or death to a person or apparent property damage of \$1,000 or more. Apparent property damage under this subsection must be based upon the market value of the necessary repairs and may not be limited to the current value of the vehicle or property.

[ 2007, c. 348, §23 (AMD) .]

**2. Report required.** A reportable accident must be reported immediately by the quickest means of communication to a state police officer, or to the nearest state police field office, or to the sheriff's office, or to a deputy sheriff, within the county in which the accident occurred, or to the office of the police department, or to an officer, of the municipality in which the accident occurred. The accident must be reported by:

A. The operator of an involved vehicle; [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]

B. A person acting for the operator; or [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]

C. If the operator is unknown, the owner of an involved vehicle having knowledge of the accident. [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]

[ 1995, c. 2, §71 (COR) .]

**3. Form.** The Chief of the State Police:

A. Shall prepare and supply forms and approve the format for electronic submission for reports that require sufficiently detailed information to disclose the cause, conditions, persons and vehicles involved, including information to permit the Secretary of State to determine whether the requirement for proof of financial responsibility is inapplicable; [2003, c. 688, Pt. A, §35 (RPR).]

B. Shall receive, tabulate and analyze accident reports; [2003, c. 434, §23 (AMD); 2003, c. 434, §37 (AFF).]

B-1. Shall send all accident reports to the Secretary of State; and [2003, c. 434, §23 (NEW); 2003, c. 434, §37 (AFF).]

C. May publish statistical information on the number, cause and location of accidents. [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]

[ 2003, c. 688, Pt. A, §35 (AMD) .]

**4. Investigation.** A law enforcement officer who investigates a reportable accident shall:

A. Interview participants and witnesses; and [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]

B. Within 5 days from the time of notification of the accident, transmit an electronic report or the original written report containing all available information to the Chief of the State Police. [2003, c. 688, Pt. A, §36 (RPR).]

Every reported accident must be promptly investigated.

If the accident results in serious bodily injury or death of any person, the investigation must be conducted by an officer who has met the training standards of a full-time law enforcement officer. A law enforcement officer who investigates an accident involving a bus or truck with a gross vehicle weight rating or a registered weight in excess of 10,000 pounds that results in the death of any person shall request a certified accident reconstructionist and the Bureau of State Police Commercial Vehicle Enforcement Unit to assist in the investigation of the accident. The Attorney General shall designate an assistant attorney general familiar with federal commercial vehicle laws and regulations to serve as a resource to any district attorney who initiates a prosecution arising from an accident involving a bus or truck with a gross vehicle weight rating or a registered weight in excess of 10,000 pounds that results in the death of any person.

[ 2003, c. 688, Pt. A, §36 (AMD) .]

#### 5. Forty-eight-hour report.

[ 2003, c. 434, §37 (AFF); 2003, c. 434, §25 (RP) .]

**6. Financial responsibility information.** The owner or operator of a vehicle involved in an accident shall furnish additional relevant information as the Secretary of State requires to determine the applicability of the requirement of proof of financial responsibility.

The Secretary of State may rely on the accuracy of the information until there is reason to believe that the information is erroneous.

[ 2003, c. 434, §37 (AFF); 2003, c. 434, §26 (RPR) .]

**7. Report information.** An accident report made by an investigating officer or a report made by an operator as required by subsection 2 is for the purposes of statistical analysis and accident prevention.

A report or statement contained in the accident report, or a report as required by subsection 2, a statement made or testimony taken at a hearing before the Secretary of State held under section 2483, or a decision made as a result of that report, statement or testimony may not be admitted in evidence in any trial, civil or criminal, arising out of the accident.

A report may be admissible in evidence solely to prove compliance with this section.

Notwithstanding subsection 7-A, the Chief of the State Police may disclose the date, time and location of the accident and the names and addresses of operators, owners, injured persons, witnesses and the investigating officer. On written request, the chief may furnish a photocopy of the investigating officer's report at the expense of the person making the request. The cost of furnishing a copy of the report is not subject to the limitations of Title 1, section 408-A.

[ 2011, c. 662, §18 (AMD) .]

**7-A. Accident report database; public dissemination of accident report data.** Data contained in an accident report database maintained, administered or contributed to by the Department of Public Safety, Bureau of State Police must be treated as follows.

A. For purposes of this subsection, the following terms have the following meanings.

- (1) "Data" means information existing in an electronic medium and contained in an accident report database.
- (2) "Nonpersonally identifying accident report data" means any data in an accident report that are not personally identifying accident report data.

(3) "Personally identifying accident report data" means:

- (a) An individual's name, residential and post office box mailing address, social security number, date of birth and driver's license number;
- (b) A vehicle registration plate number;
- (c) An insurance policy number;
- (d) Information contained in any free text data field of an accident report; and
- (e) Any other information contained in a data field of an accident report that may be used to identify a person. [2011, c. 654, §8 (AMD).]

B. Except as provided in paragraph B-1 and Title 16, section 805, subsection 6, the Department of Public Safety, Bureau of State Police may not publicly disseminate personally identifying accident report data that are contained in an accident report database maintained, administered or contributed to by the Bureau of State Police. Such data are not public records for the purposes of Title 1, chapter 13. [2013, c. 267, Pt. B, §24 (AMD).]

B-1. The Department of Public Safety, Bureau of State Police may disseminate a vehicle registration plate number contained in an accident report database maintained, administered or contributed to by the Bureau of State Police to a person only if that person provides the Bureau of State Police an affidavit stating that the person will not:

- (1) Use a vehicle registration plate number to identify or contact a person; or
- (2) Disseminate a vehicle registration plate number to another person. [2011, c. 654, §8 (NEW).]

C. The Department of Public Safety, Bureau of State Police may publicly disseminate nonpersonally identifying accident report data that are contained in an accident report database maintained, administered or contributed to by the Bureau of State Police. The cost of furnishing a copy of such data is not subject to the limitations of Title 1, section 408-A. [2011, c. 662, §19 (AMD).]

[ 2013, c. 267, Pt. B, §24 (AMD) .]

**8. Violation.** A person commits a Class E crime if that person:

- A. Is required to make an oral or written report and knowingly fails to do so within the time required; [2001, c. 360, §15 (AMD).]
- B. Is an operator involved in a reportable accident and knowingly fails to give a correct name and address when requested by an officer at the scene; [2011, c. 654, §9 (AMD).]
- C. Is the operator involved in a reportable accident or the owner of a vehicle involved in a reportable accident and knowingly fails to produce the vehicle or, if the vehicle is operational, return it to the scene when requested by the investigating officer; or [2011, c. 654, §9 (AMD).]
- D. Obtains a vehicle registration plate number pursuant to subsection 7-A, paragraph B-1 and knowingly uses that vehicle registration plate number to identify or contact a person or knowingly disseminates that vehicle registration plate number to another person. [2011, c. 654, §9 (NEW).]

[ 2011, c. 654, §9 (AMD) .]

**9. Prima facie evidence.** The absence of notice to a law enforcement agency with jurisdiction where the accident occurred is prima facie evidence of failure to report an accident.

[ 1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF) .]

**10. Suspension.** The Secretary of State may suspend or revoke the motor vehicle driver's license and certificate of registration of a person who is required to make a report and fails to do so or who fails to provide the information required by the Secretary of State.

[ 2003, c. 434, §28 (AMD); 2003, c. 434, §37 (AFF) .]

**11. Exemption.** The operator of a snowmobile or an all-terrain vehicle as defined by Title 12, section 13001, unless the all-terrain vehicle is registered for highway use by the Secretary of State under this Title, is exempt from the reporting requirements of subsection 2.

[ 2003, c. 614, §9 (AFF); 2003, c. 688, Pt. B, §11 (AFF); 2003, c. 688, Pt. B, §10 (RPR) .]

#### SECTION HISTORY

1993, c. 683, §A2 (NEW). 1993, c. 683, §B5 (AFF). RR 1995, c. 2, §71 (COR). 1997, c. 172, §1 (AMD). 1997, c. 178, §3 (AMD). 1999, c. 61, §1 (AMD). 2001, c. 360, §15 (AMD). 2003, c. 340, §§9,10 (AMD). 2003, c. 414, §B46 (AMD). 2003, c. 414, §D7 (AFF). 2003, c. 434, §§23-28 (AMD). 2003, c. 434, §37 (AFF). 2003, c. 614, §9 (AFF). 2003, c. 688, §§A35,36 (AMD). 2003, c. 688, §B10 (AMD). 2003, c. 688, §B11 (AFF). 2003, c. 709, §4 (AMD). 2007, c. 348, §23 (AMD). 2011, c. 390, §§1, 2 (AMD). 2011, c. 420, Pt. K, §1 (AMD). 2011, c. 420, Pt. K, §2 (AFF). 2011, c. 654, §§8, 9 (AMD). 2011, c. 662, §§18, 19 (AMD). 2013, c. 267, Pt. B, §24 (AMD) .

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STATUTE: 29-A MRSA § 2117-A, sub-§4

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- The agency has not had occasion to administer or apply this public records exception.
- The records (or, more accurately, data) subject to the exception are described in the exception.

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

- At this time the agency takes no position on whether the exception should be continued.

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?

- The agency does not know of any problems that have occurred in the application of this exception.
- The type of data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the data covered.

4. Does your agency recommend changes to this exception?

- The agency does not recommend any changes to the exception at this time.
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include law enforcement agencies that currently or might use LPRs (e.g., the South Portland Police Department), the Maine Department of Transportation, and the Maine Turnpike Authority.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
- The agency does not have any further information to provide at this time.

Maine Revised Statutes

Title 29-A: MOTOR VEHICLES AND TRAFFIC HEADING:  
PL 1993, c. 683, Pt. A, §2 (new); Pt. B, §5 (aff)

Chapter 19: OPERATION HEADING: PL  
1993, c. 683, Pt. A, §2 (new); Pt. B, §5 (aff)

§2117-A. USE OF AUTOMATED LICENSE PLATE RECOGNITION SYSTEMS

**1. Definitions.** As used in this section, unless the context otherwise indicates, "automated license plate recognition system" means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration plates into computer-readable data. "Automated license plate recognition system" does not include a photo-monitoring system, as defined in Title 23, section 1980, subsection 2-A, paragraph B, subparagraph (4), when used by the Maine Turnpike Authority or a law enforcement agency for toll enforcement purposes.

[ 2009, c. 605, §1 (NEW) .]

**2. Prohibition.** Except as otherwise provided in subsection 3, a person may not use an automated license plate recognition system.

[ 2009, c. 605, §1 (NEW) .]

**3. Exception.** Subsection 2 does not apply to:

A. The Department of Transportation for the purposes of protecting public safety and transportation infrastructure; [2009, c. 605, §1 (NEW) .]

B. The Department of Public Safety, Bureau of State Police for the purposes of commercial motor vehicle screening and inspection; and [2009, c. 605, §1 (NEW) .]

C. Any state, county or municipal law enforcement agency when providing public safety, conducting criminal investigations and ensuring compliance with local, state and federal laws. For purposes of this paragraph, an automated license plate recognition system may use only information entered by a law enforcement officer as defined by Title 17-A, section 2, subsection 17 and based on specific and articulable facts of a concern for safety, wrongdoing or a criminal investigation or pursuant to a civil order or records from the National Crime Information Center database or an official published law enforcement bulletin. [2009, c. 605, §1 (NEW) .]

An authorized user under this subsection of an automated license plate recognition system may use an automated license plate recognition system only for the official and legitimate purposes of the user's employer.

[ 2009, c. 605, §1 (NEW) .]

**4. Confidentiality.** Data collected or retained through the use of an automated license plate recognition system in accordance with subsection 3 are confidential under Title 1, chapter 13 and are available for use only by a law enforcement agency in carrying out its functions or by an agency collecting information under subsection 3 for its intended purpose and any related civil or criminal proceeding.

A law enforcement agency may publish and release as public information summary reports using aggregate data that do not reveal the activities of an individual or firm and may share commercial motor vehicle screening data with the Federal Motor Carrier Safety Administration for regulatory compliance purposes.

[ 2009, c. 605, §1 (NEW) .]

**5. Data retention.** Data collected or retained through the use of an automated license plate recognition system in accordance with subsection 3 that are not considered intelligence and investigative record information as defined by Title 16, section 803, subsection 7, or data collected for the purposes of commercial motor vehicle screening, may not be stored for more than 21 days.

[ 2013, c. 267, Pt. B, §23 (AMD) .]

**6. Penalty.** Violation of this section is a Class E crime.

[ 2009, c. 605, §1 (NEW) .]

SECTION HISTORY

2009, c. 605, §1 (NEW). 2013, c. 267, Pt. B, §23 (AMD).

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STATUTE: 32 M.R.S. § 91-B, sub-§ 1

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## 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).

- With respect to the quality assurance-related ("QA") records/data contemplated in the provision, the agency has rarely (if ever) administered/applied the exception. Likewise, with respect to the complaint investigation-related ("CI") records/data contemplated in the provision.
- The records/data subject to the exception are described in the exception.

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

- The agency supports the continuation of the QA exception, and supports the continuation of the CI exception so as to ensure for the protection of pending complaint-related information, as well as private, personal health information.

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

- The agency does not know of any problems that have occurred in the application of either the QA or CI exception.
- The type of records/data to which the QA and CI exceptions apply is understandable, and the language of the exceptions is sufficiently clear in describing the records/data covered.

4. Does your agency recommend changes to this exception?
  - The only change the agency might recommend is that the statute be amended to explicitly state in the provision that records/data covered by the exception are confidential and not “public records” for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not “public records” for the purpose of the FOAA. *See* 1 M.R.S. § 402(3)(A)).
  
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
  - Other stakeholders whose input perhaps should be considered in the evaluation of this exception include:
    - AAG Katie Johnson ([Katie.johnson@maine.gov](mailto:Katie.johnson@maine.gov));
    - Jeff Rowe, Chair, Maine Board of EMS ([jrowe@kennebunkmaine.us](mailto:jrowe@kennebunkmaine.us));
    - Michael Senecal, Chair-elect, Maine Board of EMS ([msenecal@fchn.org](mailto:msenecal@fchn.org));
    - Shaun St. Germain, Director, Maine Emergency Medical Services ([shaun.a.stgermain@maine.gov](mailto:shaun.a.stgermain@maine.gov)).
  
6. Please provide any further information that you believe is relevant to the Advisory Committee’s review.
  - The agency does not have any further information to provide at this time.

STATUTE: 32 M.R.S. § 91-B, sub-§ 1, ¶ A

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- The agency has rarely administered/applied the exception, but when it has done so, no problems are known to have been encountered.
- The records/data subject to the exception are described in the exception.

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

- The agency supports the continuation of the exception so as to ensure for the protection of private, personal information.

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

- The agency does not know of any problems that have occurred in the application of the exception.
- The type of records/data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records/data covered.

4. Does your agency recommend changes to this exception?

- The only change the agency might recommend is that the statute be amended to explicitly state in the provision that records/data covered by

the exception are confidential and not "public records" for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not "public records" for the purpose of the FOAA. See 1 M.R.S. § 402(3)(A)).

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

- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include:
  - AAG Katie Johnson ([Katie.johnson@maine.gov](mailto:Katie.johnson@maine.gov));
  - Jeff Rowe, Chair, Maine Board of EMS ([jrowe@kennebunkmaine.us](mailto:jrowe@kennebunkmaine.us));
  - Michael Senecal, Chair-elect, Maine Board of EMS ([msenecal@fchn.org](mailto:msenecal@fchn.org));
  - Shaun St. Germain, Director, Maine Emergency Medical Services ([shaun.a.stgermain@maine.gov](mailto:shaun.a.stgermain@maine.gov)).

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

- The agency does not have any further information to provide at this time.

STATUTE: 32 M.R.S. § 91-B, sub-§ 1, ¶ B

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## 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).

- Please see response to question 1 @ Ref57 vis-à-vis CI records/data.

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

- Please see response to question 2 @ Ref57 vis-à-vis CI records/data.

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?

- Please see response to question 3 @ Ref57 vis-à-vis CI records/data.

4. Does your agency recommend changes to this exception?

- Please see response to question 4 @ Ref. 57 vis-à-vis CI records/data.

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

- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include:

- AAG Katie Johnson ([Katie.johnson@maine.gov](mailto:Katie.johnson@maine.gov));
- Jeff Rowe, Chair, Maine Board of EMS  
([jrowe@kennebunkmaine.us](mailto:jrowe@kennebunkmaine.us));
- Michael Senecal, Chair-elect, Maine Board of EMS  
([msenecal@fchn.org](mailto:msenecal@fchn.org));
- Shaun St. Germain, Director, Maine Emergency Medical Services  
([shaun.a.stgermain@maine.gov](mailto:shaun.a.stgermain@maine.gov)).

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

- The agency does not have any further information to provide at this time.

STATUTE: 32 M.R.S. § 91-B, sub-§ 1, ¶ C

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
  - The agency has rarely administered/applied the exception, but when it has done so, no problems are known to have been encountered.
  - The records/data subject to the exception are described in the exception.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
  - The agency supports the continuation of the exception so as to ensure for the protection of private, personal information, including, e.g., personal health information.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
  - The agency does not know of any problems that have occurred in the application of the exception.
  - The type of records/data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records/data covered.
4. Does your agency recommend changes to this exception?

- The only change the agency might recommend is that the statute be amended to explicitly state in the provision that records/data covered by the exception are confidential and not “public records” for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not “public records” for the purpose of the FOAA. See 1 M.R.S. § 402(3)(A)).

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

- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include:
  - AAG Katie Johnson ([Katie.johnson@maine.gov](mailto:Katie.johnson@maine.gov));
  - Jeff Rowe, Chair, Maine Board of EMS ([jrowe@kennebunkmaine.us](mailto:jrowe@kennebunkmaine.us));
  - Michael Senecal, Chair-elect, Maine Board of EMS ([msenecal@fchn.org](mailto:msenecal@fchn.org));
  - Shaun St. Germain, Director, Maine Emergency Medical Services ([shaun.a.stgermain@maine.gov](mailto:shaun.a.stgermain@maine.gov)).

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

- The agency does not have any further information to provide at this time.

STATUTE: 32 M.R.S. § 91-B, sub-§ 1, ¶ D

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- The agency has not had occasion to administer or apply this exception.
- The records/data subject to the exception are described in the exception.

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

- The agency supports the continuation of the exception so as to ensure for the integrity of the licensing program generally and the examination test specifically.

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?

- The agency does not know of any problems that have occurred in the application of the exception.
- The type of records/data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records/data covered.

4. Does your agency recommend changes to this exception?

- The only change the agency might recommend is that the statute be amended to explicitly state in the provision that records/data covered by

the exception are confidential and not "public records" for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not "public records" for the purpose of the FOAA. See 1 M.R.S. § 402(3)(A)).

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

- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include:
  - AAG Katie Johnson ([Katie.johnson@maine.gov](mailto:Katie.johnson@maine.gov));
  - Jeff Rowe, Chair, Maine Board of EMS ([jrowe@kennebunkmaine.us](mailto:jrowe@kennebunkmaine.us));
  - Michael Senecal, Chair-elect, Maine Board of EMS ([msenecal@fchn.org](mailto:msenecal@fchn.org));
  - Shaun St. Germain, Director, Maine Emergency Medical Services ([shaun.a.stgermain@maine.gov](mailto:shaun.a.stgermain@maine.gov)).

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

- The agency does not have any further information to provide at this time.

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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STATUTE: 34-A MRSA § 11221, sub-§ 13

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

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

- The agency has rarely had occasion to administer or apply this public records exception.
- The records (or, more accurately, data) subject to the exception are described in the exception.

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

- The agency supports continuation of the exception, as it ensures that the State Bureau of Identification is the authoritative and most up-to-date source for Maine sex offender registrant-related information, and also helps to protect the privacy of individuals who formerly needed to register with the Sex Offender Registry.

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?

- The agency is unaware of any problems that have occurred in the application of this exception.
- The type of data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the data covered.

4. Does your agency recommend changes to this exception?
  - The agency does not recommend any changes to the exception at this time.
  
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
  - Other stakeholders whose input perhaps should be considered in the evaluation of this exception include district attorney's offices and the Maine Office of the Attorney General.
  
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
  - The agency does not have any further information to provide at this time.

STATUTE: 34-A MRSA § 11221, sub-§ 9-A

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
  - The agency has very rarely had occasion to administer or apply this public records exception (perhaps once?).
  - The records (or, more accurately, data) subject to the exception are described in the exception.
  
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
  - The agency supports continuation of the exception, as it protects the personal privacy of individuals accessing the online Sex Offender Registry website for information.
  
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
  - The agency is unaware of any problems that have occurred in the application of this exception.
  - The type of data to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the data covered.
  
4. Does your agency recommend changes to this exception?

- The only change the agency might recommend is that the statute be amended to explicitly state in the provision that records/data covered by the exception are confidential and not "public records" for the purposes of 1 M.R.S. c. 13. This change, however, does not *need* to be made, as the statute is clear that the records/data are confidential (and thus, by definition, are not "public records" for the purpose of the FOAA. See 1 M.R.S. § 402(3)(A)).
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include district attorney's offices and the Maine Office of the Attorney General.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
- The agency does not have any further information to provide at this time.

**Maine Revised Statutes**  
**Title 34-A: CORRECTIONS**

**Chapter 15: SEX OFFENDER REGISTRATION AND  
NOTIFICATION ACT OF 1999 HEADING: PL 1999, c. 437, §2 (new)**

**§11221. MAINTENANCE OF SEX OFFENDER REGISTRY**

**1. Maintenance of registry.** The bureau shall establish and maintain a registry of persons required to register pursuant to this subchapter. The registry must include the following information on each registrant:

- A. The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, mailing address and physical location of expected domicile and residence; [2005, c. 423, §9 (AMD) .]
- B. Place of employment and college or school being attended, if applicable, and the corresponding address and location; [2003, c. 371, §4 (AMD) .]
- C. Offense history; [1999, c. 437, §2 (NEW) .]
- D. Notation of any treatment received for a mental abnormality or personality disorder; [1999, c. 437, §2 (NEW) .]
- E. A photograph and set of fingerprints; [1999, c. 437, §2 (NEW) .]
- F. A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; and [2003, c. 711, Pt. C, §17 (AMD); 2003, c. 711, Pt. D, §2 (AFF) .]
- G. Any other information the bureau determines important. [1999, c. 437, §2 (NEW) .]

[ 2005, c. 423, §9 (AMD) .]

**2. National or regional registry.** The bureau is authorized to make the registry available to and accept files from a national or regional registry of registrants for the purpose of sharing information.

[ 2003, c. 711, Pt. C, §18 (AMD); 2003, c. 711, Pt. D, §2 (AFF) .]

**3. Registration form.** The bureau shall develop a standardized registration form to be made available to the appropriate reporting authorities and persons required to register.

[ 1999, c. 437, §2 (NEW) .]

**4. Verification form.** The bureau shall develop and mail a nonforwardable verification form to the last reported mailing address of each person required to meet the verification requirements of this chapter.

[ 1999, c. 437, §2 (NEW) .]

**5. Sexually violent predator directory.**

[ 2003, c. 371, §5 (RP) .]

**6. Distribution of information to department and law enforcement agencies.** The bureau shall distribute information described in subsection 1 to the department and law enforcement agencies having jurisdiction over the address and location of the registrant's domicile, residence, place of employment and college or school being attended.

[ 2005, c. 423, §10 (AMD) .]

**7. Rules.**

[ 2005, c. 423, §11 (RP) .]

**8. Criminal justice agency access to information.** The bureau shall provide access to the information described in subsection 1 to criminal justice agencies. For purposes of this subsection, "criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4.

[ 2013, c. 267, Pt. B, §28 (AMD) .]

**9. Public access to information.** The bureau shall provide information to the public as follows.

A. The bureau shall post on the Internet for public inspection the following information concerning a registrant:

- (1) The registrant's name, date of birth and photograph;
- (2) The registrant's city or town of domicile and residence;
- (3) The registrant's place of employment and college or school being attended, if applicable, and the corresponding address and location;
- (4) The statutory citation and name of the offense for which the registrant was convicted; and
- (5) The registrant's designation as a 10-year registrant or a lifetime registrant. [2011, c. 307, §1 (AMD) .]

B. Upon receiving a written request that includes the name and date of birth of a registrant, the bureau shall provide the following information concerning a registrant to the requestor:

- (1) The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, mailing address and physical location of domicile and residence;
- (2) The registrant's place of employment and college or school being attended, if applicable, and the corresponding address and location;
- (3) A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; and
- (4) The registrant's photograph. [2005, c. 423, §12 (AMD) .]

[ 2011, c. 307, §1 (AMD) .]

**9-A. Registry information.** Registry information created, collected or maintained by the bureau, including, but not limited to, information relating to the identity of persons accessing the registry, is confidential, except the following are public records:

A. Information provided to the public pursuant to subsection 9; and [2011, c. 299, §1 (NEW) .]

B. Applications and bureau decisions, including any documents made part of those decisions, pursuant to section 11202-A. [2011, c. 299, §1 (NEW) .]

[ 2011, c. 299, §1 (NEW) .]

**10. Registrant access to information.** The bureau shall provide all information described in subsection 1, paragraphs A to F to a registrant who requests that person's own information. The process for access and review of that information is governed by Title 16, section 709.

[ 2013, c. 267, Pt. B, §29 (AMD) .]

**11. Maintenance by bureau.** Only the bureau is authorized to maintain a sex offender registry on the Internet for purposes of public access as described in subsection 9.

[ 2005, c. 545, §1 (AMD) .]

**12. Law enforcement agency website.** A law enforcement agency may maintain its own sex offender website and may make that information available for use by the public if:

A. A notice is prominently posted on the website that expressly states that the website is not the official state sex offender registry under subsection 1 and that the law enforcement agency posting the website is solely responsible for the website's content; [2005, c. 545, §2 (NEW).]

B. The website provides a link to the bureau's Internet sex offender registry under subsection 1; [2005, c. 545, §2 (NEW).]

C. The website contains information regarding only registrants who are domiciled, reside, attend college or school or work within the posting law enforcement agency's jurisdiction; and [2005, c. 545, §2 (NEW).]

D. The information on the website is updated by the law enforcement agency as frequently as available resources permit, but no less than every 7 days. The law enforcement agency shall also prominently post on the website the date and time of the most recent update to the website. [2005, c. 545, §2 (NEW).]

[ 2005, c. 545, §2 (NEW) .]

**13. Access to registrant information existing in electronic form restricted.** Notwithstanding Title 1, chapter 13:

A. The bureau may not disseminate in electronic form information about a registrant that is created, collected or maintained in electronic form by or for the bureau, except as made available to the public through the bureau's Internet website pursuant to subsection 9 and made available to the Background Check Center established pursuant to Title 22, chapter 1691; and [2015, c. 299, §26 (AMD) .]

B. Except as made available to the public through an Internet website maintained by a law enforcement agency pursuant to subsection 12, a law enforcement agency may not disseminate in electronic form information about a registrant that is collected or maintained in electronic form by or for the law enforcement agency. [2011, c. 299, §3 (NEW) .]

[ 2015, c. 299, §26 (AMD) .]

#### SECTION HISTORY

1999, c. 437, §2 (NEW). 2003, c. 371, §§4-7 (AMD). 2003, c. 711, §§C17-20 (AMD). 2003, c. 711, §D2 (AFF). 2005, c. 423, §§9-13 (AMD). 2005, c. 545, §§1,2 (AMD). 2011, c. 299, §§1-3 (AMD). 2011, c. 307, §1 (AMD). 2013, c. 267, Pt. B, §§28, 29 (AMD). 2015, c. 299, §26 (AMD).

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#66

Maine Revised Statutes

**Title 34-B: BEHAVIORAL AND DEVELOPMENTAL SERVICES**  
**HEADING: PL 1995, c. 560, Pt. K, §7 (rpr); 2001, c. 354, §3 (amd)**

**Chapter 1: GENERAL PROVISIONS**

**§1931. MENTAL HEALTH HOMICIDE, SUICIDE AND AGGRAVATED ASSAULT REVIEW BOARD**

The Mental Health Homicide, Suicide and Aggravated Assault Review Board, referred to in this subchapter as "the board," is established. The board shall review homicides, suicides and aggravated assaults involving a person with severe and persistent mental illness as defined in section 3801, subsection 8-A. [2007, c. 609, §2 (NEW).]

**1. Members.** The board consists of:

- A. An attorney who is a member of a statewide association of criminal defense lawyers appointed by the President of the Senate; [2007, c. 609, §2 (NEW).]
- B. A psychiatrist appointed by the Speaker of the House; [2007, c. 609, §2 (NEW).]
- C. A psychiatric nurse appointed by the President of the Senate; [2007, c. 609, §2 (NEW).]
- D. A psychologist appointed by the Speaker of the House; [2007, c. 609, §2 (NEW).]
- E. A law enforcement officer appointed by the President of the Senate; [2007, c. 609, §2 (NEW).]
- F. The Commissioner of Health and Human Services or the commissioner's designee; [2007, c. 609, §2 (NEW).]
- G. The Commissioner of Corrections or the commissioner's designee; [2007, c. 609, §2 (NEW).]
- H. The Commissioner of Public Safety or the commissioner's designee; [2007, c. 609, §2 (NEW).]
- I. A judge or justice assigned by the Chief Justice of the Supreme Judicial Court; [2007, c. 609, §2 (NEW).]
- J. A representative of a prosecutors association designated by the Attorney General; [2007, c. 609, §2 (NEW).]
- K. An assistant attorney general responsible for the prosecution of homicide cases designated by the Attorney General; [2007, c. 609, §2 (NEW).]
- L. An assistant attorney general responsible for mental health cases designated by the Attorney General; [2007, c. 609, §2 (NEW).]
- M. A mental health service provider appointed by the Speaker of the House; [2007, c. 609, §2 (NEW).]
- N. A victim-witness advocate designated by the Attorney General; and [2007, c. 609, §2 (NEW).]
- O. Three persons appointed by the Governor from a list of nominees designated by statewide organizations that advocate for the rights of persons with serious and persistent mental illness. At least one of the appointees must represent the interests of persons with severe and persistent mental illness who are victims of crimes. [2007, c. 609, §2 (NEW).]

[ 2007, c. 609, §2 (NEW) .]

**2. Terms.** Members who are not state officials serve 2-year terms without compensation.

[ 2007, c. 609, §2 (NEW) .]

**3. Recommendations.** The board shall recommend to state and local agencies methods of preventing homicides, suicides and aggravated assaults involving persons with severe and persistent mental illness, including modifications of laws, rules, policies and procedures.

[ 2007, c. 609, §2 (NEW) .]

**4. Collect data.** The board shall collect and compile data related to homicides, suicides and aggravated assaults involving persons with severe and persistent mental illness. The board shall ensure that the collection of data and work of the board do not interfere with any pending criminal investigation or prosecution by state or county authorities.

[ 2007, c. 609, §2 (NEW) .]

**5. Information and records.** In any case subject to review by the board, upon written request of the board, any interested party that possesses information or records that are necessary and relevant to a review under this section shall as soon as practicable provide the board with the information and records. Persons disclosing or providing information or records upon the request of the board in compliance with this subsection are not criminally or civilly liable for disclosing or providing information or records.

[ 2007, c. 609, §2 (NEW) .]

**6. Confidentiality.** The proceedings of the board are confidential and are not public meetings for the purposes of the laws governing freedom of access, Title 1, chapter 13. Records of the board are confidential, are not public records for the purposes of the laws governing freedom of access, Title 1, chapter 13 and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The board shall disclose conclusions and recommendations of the board upon request in a manner that does not identify the parties, victims or witnesses. The board and members of the board may not disclose information, records or data that are otherwise classified as confidential.

[ 2007, c. 609, §2 (NEW) .]

**7. Unlawful dissemination.** A member of the board is guilty of unlawful dissemination if the member of the board knowingly disseminates records or information from those records that is confidential pertaining to a homicide, suicide or aggravated assault subject to review by the board. Unlawful dissemination is a Class E crime, punishable by a fine of not more than \$500 or by imprisonment of not more than 30 days.

[ 2007, c. 609, §2 (NEW) .]

**8. Report.** The board shall submit a report on the board's activities, conclusions and recommendations to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 30, 2009 and biennially thereafter. The committee shall review the report in a public meeting at which members of the public are provided an opportunity to address the committee.

[ 2007, c. 609, §2 (NEW) .]

SECTION HISTORY

2007, c. 609, §2 (NEW) .

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STATUTE: 34-B MRSA § 3864, sub-§ 12

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

CONTACT PERSON'S EMAIL ADDRESS: christopher.parr@maine.gov

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
  - The agency is unaware of any occasion when it has administered or applied this exception.
  - The records subject to the exception are described in the exception.
  
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
  - The agency supports continuation of the exception, as it protects individuals' personal health information.
  
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
  - The agency is unaware of any occasion when it has administered or applied this exception.
  - The type of records to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records covered.
  
4. Does your agency recommend changes to this exception?
  - The agency does not recommend any changes to the exception at this time.

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

- Other stakeholders whose input perhaps should be considered in the evaluation of this exception include the Maine Office of the Attorney General, the Maine Judicial Branch, and the National Alliance on Mental Illness.

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

- The agency does not have any further information to provide at this time.

Maine Revised Statutes

Title 34-B: BEHAVIORAL AND DEVELOPMENTAL SERVICES  
HEADING: PL 1995, c. 560, Pt. K, §7 (rpr); 2001, c. 354, §3 (amd)

Chapter 3: MENTAL HEALTH

§3864. JUDICIAL PROCEDURE AND COMMITMENT

1. **Application.** An application to the District Court to admit a person to a psychiatric hospital, filed under section 3863, subsection 5-A, must be accompanied by:

A. The emergency application under section 3863, subsection 1; [1983, c. 459, §7 (NEW) .]

B. The accompanying certificate of the medical practitioner under section 3863, subsection 2; [2009, c. 651, §20 (AMD) .]

C. The certificate of the physician or psychologist under section 3863, subsection 7; [2009, c. 651, §20 (AMD) .]

D. A written statement, signed by the chief administrative officer of the psychiatric hospital, certifying that a copy of the application and the accompanying documents have been given personally to the patient and that the patient and the patient's guardian or next of kin, if any, have been notified of:

(1) The patient's right to retain an attorney or to have an attorney appointed;

(2) The patient's right to select or to have the patient's attorney select an independent examiner; and

(3) How to contact the District Court; and [2009, c. 651, §20 (AMD) .]

E. A copy of the notice and instructions given to the patient. [1997, c. 422, §14 (NEW) .]

[ 2009, c. 651, §20 (AMD) .]

1-A. **Involuntary treatment.** An application under this section may also include a request for an order of involuntary treatment under subsection 7-A.

[ 2007, c. 446, §2 (NEW); 2007, c. 446, §7 (AFF) .]

2. **Detention pending judicial determination.** Notwithstanding any other provisions of this subchapter, a person, with respect to whom an application for the issuance of an order for hospitalization has been filed, may not be released or discharged during the pendency of the proceedings, unless:

A. The District Court orders release or discharge upon the request of the patient or the patient's guardian, parent, spouse or next of kin; [2007, c. 319, §10 (AMD) .]

B. The District Court orders release or discharge upon the report of the applicant that the person may be discharged with safety; [1995, c. 496, §3 (AMD) .]

C. A court orders release or discharge upon a writ of habeas corpus under section 3804; [2015, c. 309, §6 (AMD) .]

D. Upon request of the commissioner, the District Court orders the transfer of a patient in need of more specialized treatment to another psychiatric hospital. In the event of a transfer, the court shall transfer its file to the District Court having territorial jurisdiction over the receiving psychiatric hospital; or [2015, c. 309, §7 (AMD) .]

E. The person has capacity to make an informed decision for informal voluntary admission, agrees to informal voluntary admission and the chief administrative officer of the hospital determines that informal voluntary admission is suitable. [2015, c. 309, §8 (NEW) .]

[ 2015, c. 309, §§6-8 (AMD) .]

**3. Notice of receipt of application.** The giving of notice of receipt of application and date of hearing under this section is governed as follows.

A. Upon receipt by the District Court of the application and accompanying documents specified in subsection 1, the court shall cause written notice of the application and date of hearing:

(1) To be mailed within 2 days of filing to the person; and

(2) To be mailed to the person's guardian, if known, and to the person's spouse, parent or one of the person's adult children or, if none of these persons exist or if none of those persons can be located, to one of the person's next of kin or a friend, except that if the chief administrative officer has reason to believe that notice to any of these individuals would pose risk of harm to the person who is the subject of the application, notice to that individual may not be given. [1997, c. 422, §15 (AMD) .]

B. A docket entry is sufficient evidence that notice under this subsection has been given. [1983, c. 459, §7 (NEW) .]

[ 1997, c. 422, §15 (AMD) .]

**4. Examination.** Examinations under this section are governed as follows.

A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1 and at least 3 days after the person who is the subject of the examination was notified by the psychiatric hospital of the proceedings and of that person's right to retain counsel or to select an examiner, the court shall cause the person to be examined by a medical practitioner. If the application includes a request for an order for involuntary treatment under subsection 7-A, the practitioner must be a medical practitioner who is qualified to prescribe medication relevant to the patient's care. If the person under examination or the counsel for that person selects a qualified examiner who is reasonably available, the court shall give preference to choosing that examiner. [2009, c. 651, §21 (AMD) .]

B. The examination must be held at a psychiatric hospital or at any other suitable place not likely to have a harmful effect on the mental health of the person. [2009, c. 651, §21 (AMD) .]

C. [2007, c. 319, §10 (RP) .]

D. [2007, c. 319, §10 (RP) .]

E. The examiner shall report to the court on:

(1) Whether the person is a mentally ill person within the meaning of section 3801, subsection 5;

(2) When the establishment of a progressive treatment plan under section 3873-A is at issue, whether a person is suffering from a severe and persistent mental illness within the meaning of section 3801, subsection 8-A;

(3) Whether the person poses a likelihood of serious harm within the meaning of section 3801, subsection 4-A;

(4) When involuntary treatment is at issue, whether the need for such treatment meets the criteria of subsection 7-A, paragraphs A and B;

(5) Whether adequate community resources are available for care and treatment of the person's mental illness; and

(6) Whether the person's clinical needs may be met by an order under section 3873-A to participate in a progressive treatment program. [2009, c. 651, §21 (AMD).]

F. [2007, c. 446, §7 (AFF); 2007, c. 446, §3 (RP).]

G. Opinions of the examiner may be based on personal observation or on history and information from other sources considered reliable by the examiner. [2009, c. 651, §21 (NEW).]

[ 2009, c. 651, §21 (AMD) .]

**5. Hearing.** Hearings under this section are governed as follows.

A. The District Court shall hold a hearing on the application not later than 14 days from the date of the application. The District Court may separate the hearing on commitment from the hearing on involuntary treatment.

(1) For good cause shown, on a motion by any party or by the court on its own motion, the hearing on commitment or on involuntary treatment may be continued for a period not to exceed 21 additional days.

(2) If the hearing on commitment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application and order the person discharged forthwith.

(2-A) If the hearing on involuntary treatment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application for involuntary treatment.

(3) In computing the time periods set forth in this paragraph, the Maine Rules of Civil Procedure apply. [2009, c. 651, §22 (AMD).]

A-1. Prior to the commencement of the hearing, the court shall inform the person that if an order of involuntary commitment is entered, that person is a prohibited person and may not own, possess or have under that person's control a firearm pursuant to Title 15, section 393, subsection 1. [2007, c. 670, §18 (NEW).]

B. The hearing must be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have harmful effect on the mental health of the person. If the setting is outside the psychiatric hospital to which the patient is currently admitted, the Department of Health and Human Services shall bear the responsibility and expense of transporting the patient to and from the hearing. If the patient is to be admitted to a psychiatric hospital following the hearing, then the hospital from which the patient came shall transport the patient to the admitting psychiatric hospital. If the patient is to be released following the hearing, then the hospital from which the patient came shall return the patient to that hospital or, at the patient's request, return the patient to the patient's place of residence. [2007, c. 319, §10 (AMD).]

C. The court shall receive all relevant and material evidence that may be offered in accordance with accepted rules of evidence and accepted judicial dispositions.

(1) The person, the applicant and all other persons to whom notice is required to be sent must be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses.

(2) The court may, in its discretion, receive the testimony of any other person and may subpoena any witness. [2007, c. 319, §10 (AMD).]

D. The person must be afforded an opportunity to be represented by counsel, and, if neither the person nor others provide counsel, the court shall appoint counsel for the person. [2007, c. 319, §10 (AMD) .]

E. In addition to proving that the patient is a mentally ill individual, the applicant must show:

(1) By evidence of the patient's recent actions and behavior, that due to the patient's mental illness the patient poses a likelihood of serious harm; and

(2) That, after full consideration of less restrictive treatment settings and modalities, inpatient hospitalization is the best available means for the treatment of the person. [2005, c. 519, Pt. BBBB, §10 (AMD); 2005, c. 519, Pt. BBBB, §20 (AFF).]

F. In each case, the applicant shall submit to the court, at the time of the hearing, testimony, including expert psychiatric testimony, indicating the individual treatment plan to be followed by the psychiatric hospital staff, if the person is committed under this section, and shall bear any expense for witnesses for this purpose. [2007, c. 319, §10 (AMD).]

G. A stenographic or electronic record must be made of the proceedings in all judicial hospitalization hearings.

(1) The record and all notes, exhibits and other evidence are confidential.

(2) The record and all notes, exhibits and other evidence must be retained as part of the District Court records for a period of 2 years from the date of the hearing. [2007, c. 319, §10 (AMD).]

H. The hearing is confidential and a report of the proceedings may not be released to the public or press, except by permission of the person or the person's counsel and with approval of the presiding District Court Judge, except that the court may order a public hearing on the request of the person or the person's counsel. [2007, c. 319, §10 (AMD).]

[ 2009, c. 651, §22 (AMD) .]

**6. Court findings.** Procedures dealing with the District Court's findings under this section are as follows.

A. The District Court shall so state in the record, if it finds upon completion of the hearing and consideration of the record:

(1) Clear and convincing evidence that the person is mentally ill and that the person's recent actions and behavior demonstrate that the person's illness poses a likelihood of serious harm;

(1-A) That adequate community resources for care and treatment of the person's mental illness are unavailable;

(2) That inpatient hospitalization is the best available means for treatment of the patient; and

(3) That it is satisfied with the individual treatment plan offered by the psychiatric hospital to which the applicant seeks the patient's involuntary commitment. [2009, c. 651, §23 (AMD).]

B. If the District Court makes the findings in paragraph A, subparagraphs (1), (1-A) and (2), but is not satisfied with the individual treatment plan as offered, it may continue the case for not longer than 10 days, pending reconsideration and resubmission of an individual treatment plan by the psychiatric hospital. [2009, c. 651, §23 (AMD).]

C. If the District Court makes the findings in section 3873-A, subsection 1, the court may issue an order under section 3873-A requiring the person to participate in a progressive treatment program. [2009, c. 651, §23 (NEW).]

[ 2009, c. 651, §23 (AMD) .]

**7. Commitment.** Upon making the findings described in subsection 6, paragraph A, the court may order commitment to a psychiatric hospital for a period not to exceed 4 months in the first instance and not to exceed one year after the first and all subsequent hearings.

A. The court may issue an order of commitment immediately after the completion of the hearing, or it may take the matter under advisement and issue an order within 24 hours of the hearing. [1983, c. 459, §7 (NEW) .]

B. If the court does not issue an order of commitment within 24 hours of the completion of the hearing, it shall dismiss the application and order the patient discharged immediately. [1995, c. 496, §6 (AMD) .]

[ 2009, c. 651, §24 (AMD) .]

**7-A. Involuntary treatment.** This subsection governs involuntary treatment.

A. The court may grant a psychiatric hospital power to implement a recommended treatment plan without a person's consent for up to 120 days or until the end of the commitment, whichever is sooner, if upon application the court finds:

- (1) That the person lacks the capacity to make an informed decision regarding treatment;
- (2) That the person is unable or unwilling to comply with recommended treatment;
- (3) That the need for the treatment outweighs the risks and side effects; and
- (4) That the recommended treatment is the least intrusive appropriate treatment option.

Alternatively, the court may appoint a surrogate to make treatment decisions on the person's behalf for the duration of the commitment if the court is satisfied that the surrogate is suitable, willing and reasonably available to act in the person's best interests. [2007, c. 446, §4 (NEW); 2007, c. 446, §7 (AFF) .]

B. The need for involuntary treatment under paragraph A may be based on findings that include, but are not limited to, the following:

- (1) That a failure to treat the illness is likely to produce lasting or irreparable harm to the person; or
- (2) That without the recommended treatment the person's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the person to pose a likelihood of serious harm. [2007, c. 446, §4 (NEW); 2007, c. 446, §7 (AFF) .]

C. The parties may agree to change, terminate or extend the treatment plan during the time period of an order for involuntary treatment. [2009, c. 651, §25 (AMD) .]

D. For good cause shown, any party may apply to the court to change or terminate the treatment plan. [2009, c. 651, §26 (AMD) .]

[ 2009, c. 651, §§25, 26 (AMD) .]

**8. Continued involuntary hospitalization.** If the chief administrative officer of the psychiatric hospital to which a person has been committed involuntarily by the District Court recommends that continued involuntary hospitalization is necessary for that person, the chief administrative officer shall notify the commissioner. The commissioner may then, not later than 21 days prior to the expiration of a period of commitment ordered by the court, make application in accordance with this section to the District Court that has territorial jurisdiction over the psychiatric hospital designated for treatment in the application by the commissioner for a hearing to be held under this section.

[ 2007, c. 319, §10 (AMD) .]

**9. Transportation.** Except for transportation expenses paid by the District Court pursuant to subsection 10, a continued involuntary hospitalization hearing that requires transportation of the patient to and from any psychiatric hospital to a court that has committed the person must be provided at the expense of the

Department of Health and Human Services. Transportation of an individual to a psychiatric hospital under these circumstances must involve the least restrictive form of transportation available that meets the clinical needs of that individual and be in compliance with departmental regulations.

[ 2007, c. 319, §10 (AMD) .]

**10. Expenses.** With the exception of expenses incurred by the applicant pursuant to subsection 5, paragraph F, the District Court is responsible for any expenses incurred under this section, including fees of appointed counsel, witness and notice fees and expenses of transportation for the person.

[ 2007, c. 319, §10 (AMD) .]

**11. Appeals.** A person ordered by the District Court to be committed to a psychiatric hospital may appeal from that order to the Superior Court.

A. The appeal is on questions of law only. [1983, c. 459, §7 (NEW) .]

B. Any findings of fact of the District Court may not be set aside unless clearly erroneous. [1983, c. 459, §7 (NEW) .]

C. The order of the District Court remains in effect pending the appeal. [2007, c. 319, §10 (AMD) .]

D. The District Court Civil Rules and the Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection. [1983, c. 459, §7 (NEW) .]

[ 2007, c. 319, §10 (AMD) .]

**12. Transmission of abstract of court ruling to the State Bureau of Identification.** Notwithstanding any other provision of this section or section 1207, a court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract of any order for involuntary commitment issued by the court pursuant to this section. The abstract must include:

A. The name, date of birth and gender of the person who is the subject of the order for involuntary commitment; [2007, c. 670, §19 (NEW) .]

B. The court's ruling that the person has been involuntarily committed; and [2007, c. 670, §19 (NEW) .]

C. A notation that the person has been notified by the court in accordance with subsection 5, paragraph A-1 and subsection 13. [2007, c. 670, §19 (NEW) .]

The abstract required in this subsection is confidential and is not a "public record" as defined in Title 1, chapter 13; however, a copy of the abstract may be provided by the State Bureau of Identification to a criminal justice agency for legitimate law enforcement purposes, to the Federal Bureau of Investigation, National Instant Criminal Background Check System or to an issuing authority for the purpose of processing concealed firearm permit applications.

For the purposes of this subsection, "criminal justice agency" means a federal, state, tribal, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.

[ 2007, c. 670, §19 (NEW) .]

**13. Firearms possession prohibition notification.** A court that orders a person to be committed involuntarily pursuant to this section shall inform the person that possession, ownership or control of a firearm by that person is prohibited pursuant to Title 15, section 393, subsection 1. As used in this subsection, "firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

[ 2007, c. 670, §20 (NEW) .]

SECTION HISTORY

1983, c. 459, §7 (NEW). 1995, c. 496, §§3-6 (AMD). 1997, c. 422, §§13-19 (AMD). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 519, §§BBBB9,10 (AMD). 2005, c. 519, §BBBB20 (AFF). 2007, c. 319, §10 (AMD). 2007, c. 446, §§2-4 (AMD). 2007, c. 446, §7 (AFF). 2007, c. 472, §1 (AMD). 2007, c. 670, §§18-20 (AMD). 2009, c. 281, §3 (AMD). 2009, c. 651, §§20-26 (AMD). 2015, c. 309, §§6-8 (AMD).

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**STATUTE:** 35-A MRSA § 10106

**AGENCY:** Efficiency Maine

**CONTACT PERSON:** Karen Bickerman

**CONTACT PERSON'S EMAIL ADDRESS:** karen.bickerman@maine.gov

## 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).

RESPONSE: The Efficiency Maine Trust has not encountered problems administering this exception. The records most commonly subject to the exception are the personally identifiable information of utility customers, including their contact information and data about their energy usage, which are provided by the utilities to the Trust upon request. We are unaware of any occasions on which the Trust has cited the exception in response to a FOA request, as we have not in five years had any FOA requests for utility customer data.

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

RESPONSE: The Efficiency Maine Trust strongly supports continuation of this exception. It is critical for the effective and efficient administration of the Trust's statutory purpose that it have access to utility's customer's address, contact information and energy usage. This enables the Trust to efficiently communicate with customers about their eligibility for efficiency program benefits, and to identify the types and sizes of efficiency projects that would be most suitable for those customers. It is also essential for the Trust in preparing its three-year strategic plan. The Trust has arranged appropriate procedures and arrangements with the utilities to maintain confidentiality of this information.

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

RESPONSE: The Trust feels that the language is not sufficiently clear and could be improved.

4. Does your agency recommend changes to this exception?

RESPONSE: We believe there are some minor drafting errors that create some lack of clarity about what is required for a record to be considered confidential. Sub-section (1)(A)(3) of 35-A §10106 should replace the word “and” with the word “or.” (I know, ironic, right?)

Also, generally, the section should be more clear about the need to protect utility customer’s data consistent with PUC rules and protective orders that relate to such data. The language of the Trust’s exceptions would be improved if it clearly tracked or matched what the PUC rules say about protecting utility data and in a way that obviated the need for the Trust to seek a protective order from the PUC in each case. This is unnecessarily time consuming and resource intensive and creates inefficiencies in program administration and planning.

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

RESPONSE: Office of the Public Advocate. Public Utilities Commission. Utilities.

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

**Nale, Craig**

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**From:** Nale, Craig  
**Sent:** Tuesday, July 19, 2016 4:58 PM  
**To:** Nale, Craig  
**Subject:** FW: FOAA Questionnaire for Right to Know Advisory Committee  
**Attachments:** Ref69 Draft bill to implement Efficiency Maine Trust recommendations (4).docx

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**From:** Michael Stoddard [<mailto:michael.stoddard@efficiencymaine.com>]  
**Sent:** Tuesday, July 19, 2016 2:55 PM  
**To:** Nale, Craig  
**Cc:** Fouts, Henry  
**Subject:** RE: FOAA Questionnaire for Right to Know Advisory Committee

Craig, thanks for the opportunity to discuss this. I have attached a cleaned up version per our discussion.

I have indicated the proposed changes in the Word version that you sent me earlier in the spring. Let me briefly explain the reasoning:

1. In Sec. 1(A)(2) – I have a two-part request.

The first is to switch the authorized party to make the “business sensitive” determination from the “board” to the “director.” It is just not realistic to think that with the volume of transactional activity we undertake at Efficiency Maine we can get the Board to vote on every instance in which it is appropriate to designate information as “confidential.” It seems unreasonably cumbersome to insist that both the record must be requested to be treated as confidential AND the Board must approve it as such. Our Board only meets once per month, and our members only make decisions through publicly noticed Board meetings that are held in person. These volunteer Board members hail from all corners of the state. There are far too many instances in which a decision to treat something as confidential needs to be made within hours or at most days, which can only occur in the ordinary course of business as managed by the director. (And even if the Board met more frequently, I don’t think they are not in a better position that the Trust Staff to understand whether particular information is “business sensitive.”)

The second is to incorporate this provision into sub-sub-(1), as an additional criteria explaining the process by which a request for designation gets approved, which will then allow the following two sub-sub-sections to read as standalone criteria, any one of which would, *de facto*, satisfy the test of whether a record should be treated as confidential.

2. In Sec. 1(A)(3) and (4), update the numbering and end the penultimate sub-sub-section with “or” to effectuate the point I made just above. If a record contains energy usage data or a social security data, it should be *de facto* confidential ; it shouldn’t need an additional affirmative determination by the director (or the Board) or anyone else. To avoid confusion, I respectfully request that the statute be amended to say “or.”

3. I also have proposed a new Section 2, which aims to amend sub-3 of 35-A MRSA Sec. 10106. The sole purpose of the proposed modification in this sub-section is to effectuate the same approach, for the same reasons, as indicated in point # 1, above. It does not seem reasonable or fair or desirable for any of the Trust’s stakeholders to force them to wait for a review and decision by our Board to approve and provide certain data/information of the type contemplated in the situations that are contemplated in the statute. These situations – such as referring a loan default to a credit reporting service, or reporting info to a federal or state agency pertaining to financial assistance, or when required to do so

through a litigation order – are basic, day-to-day business operations that are more appropriately within the director's duties to implement than the Board.

4. I didn't review or make any changes to the Summary. I leave it to you to figure out what is best there.

Please get in touch if you have any questions.

Thanks for considering these modest improvements, as they would really help us protect confidential info more securely while transacting business more efficiently and smoothly.

Best,

/Michael

**Michael D. Stoddard**

Executive Director

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[www.efficiencymaine.com](http://www.efficiencymaine.com)

**Right to Know Advisory Committee**  
**Subcommittee on Review of Existing Public Records Exceptions**  
**DRAFT Proposed Bill to Implement the Recommendation of the Efficiency Maine Trust**

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

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

**Sec. 1. 35-A MRS §10106, sub-§1, ¶A is amended to read:**

A. A record obtained or developed by the trust that:

(1) A person, including the trust, to whom the record belongs or pertains has requested be designated confidential and that;

(2) ~~T the board~~ the director has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains;

(3~~2~~) Contains information about the energy usage profile of an identifiable customer of a transmission and distribution utility in the State or an identifiable customer of a distributor of heating fuel or other energy source; and or,

(4~~3~~) Contains the social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the trust; and

**Sec. 2. 35-A MRS §10106, sub-3 is amended to read:**

**3. Disclosure prohibited; further exceptions.** The director or a trustee, officer, employee, agent, other representative of the trust or other person may not knowingly divulge or disclose records designated confidential by this section, except that the ~~board~~ director, in ~~its~~ their discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1-A, may make or authorize any disclosure of information of the following types or under the following circumstances:

**SUMMARY**

This bill changes the criteria for designation of records of the Efficiency Maine Trust as confidential from requiring that each of four criteria be met to instead require that one of three

criteria be met, including: that a person to whom the record belongs has requested it be designated confidential and the director of the Efficiency Maine Trust has determined the record contains proprietary information, access to which would result in some competitive disadvantage to any person to whom the record belongs or pertains; that the record contains information about the energy usage profile of an identifiable individual; or that the record contains the social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the Efficiency Maine Trust. This bill also provides that the director of the Efficiency Maine Trust, instead of the Board of the Efficiency Maine Trust, may disclose or authorize disclosure of otherwise confidential in certain enumerated circumstance.