

**RIGHT TO KNOW ADVISORY COMMITTEE
SUBCOMMITTEE MEETING**

PROPOSED AGENDA
Tuesday, October 6, 2015 at 9:30 a.m.
Room 438, State House, Augusta

Convene

1. Welcome and introduction of subcommittee members and selection of subcommittee chair
2. Subcommittee public records exception review discussion

Adjourn

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

§432. EXCEPTIONS TO PUBLIC RECORDS; REVIEW

1. Recommendations. During the second regular session of each Legislature, the review committee may report out legislation containing its recommendations concerning the repeal, modification and continuation of public records exceptions and any recommendations concerning the exception review process and the accessibility of public records. Before reporting out legislation, the review committee shall notify the appropriate committees of jurisdiction concerning public hearings and work sessions and shall allow members of the appropriate committees of jurisdiction to participate in work sessions.

[2011, c. 320, Pt. D, §1 (AMD) .]

2. Process of evaluation. According to the schedule in section 433, the advisory committee shall evaluate each public records exception that is scheduled for review that biennium. This section does not prohibit the evaluation of a public record exception by either the advisory committee or the review committee at a time other than that listed in section 433. The following criteria apply in determining whether each exception scheduled for review should be repealed, modified or remain unchanged:

A. Whether a record protected by the exception still needs to be collected and maintained; [2003, c. 709, §3 (NEW) .]

B. The value to the agency or official or to the public in maintaining a record protected by the exception; [2003, c. 709, §3 (NEW) .]

C. Whether federal law requires a record to be confidential; [2003, c. 709, §3 (NEW) .]

D. Whether the exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records; [2003, c. 709, §3 (NEW) .]

E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records; [2003, c. 709, §3 (NEW) .]

F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records; [2003, c. 709, §3 (NEW) .]

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records; [2003, c. 709, §3 (NEW) .]

H. Whether the exception is as narrowly tailored as possible; and [2003, c. 709, §3 (NEW) .]

I. Any other criteria that assist the review committee in determining the value of the exception as compared to the public's interest in the record protected by the exception. [2003, c. 709, §3 (NEW) .]

[2005, c. 631, §3 (AMD) .]

2-A. Accountability review of agency or official. In evaluating each public records exception, the advisory committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

[2005, c. 631, §3 (NEW) .]

2-B. Recommendations to review committee. The advisory committee shall report its recommendations under this section to the review committee no later than the convening of the second regular session of each Legislature.

[2005, c. 631, §3 (NEW) .]

2-C. Accessibility of public records. The advisory committee may include in its evaluation of public records statutes the consideration of any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

[2011, c. 320, Pt. D, §2 (NEW) .]

3. Assistance from committees of jurisdiction. The advisory committee may seek assistance in evaluating public records exceptions from the joint standing committees of the Legislature having jurisdiction over the subject matter related to the exceptions being reviewed. The advisory committee may hold public hearings after notice to the appropriate committees of jurisdiction.

[2005, c. 631, §3 (AMD) .]

SECTION HISTORY

2003, c. 709, §3 (NEW). 2005, c. 631, §3 (AMD). 2011, c. 320, Pt. D, §§1, 2 (AMD).

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PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE

Maine Freedom of Access Act - public records exceptions

Enacted 2005 - 2012

(Revised 10/2/2015 5:00pm)

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
1	1	402	2	Title 1, section 402, subsection 2, paragraph G, relating to committee meetings pertaining to interscholastic sports	Maine Principals Association - Interscholastic Management Committee		
2	1	402	3	Title 1, section 402, subsection 3, paragraph C-1, relating to legislative working papers	Legislative Council, Executive Director		
3	1	402	3	Title 1, section 402, subsection 3, paragraph N, relating to Social Security Numbers	Department of Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive Director; Administrative Office of the Courts		
4	1	402	3	Title 1, section 402, subsection 3, paragraph O, relating to personal contact information concerning public employees other than elected officials	Department of Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive Director; Administrative Office of the Courts		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
5	1	402	3	Title 1, section 402, subsection 3, paragraph P, relating to geographic information regarding recreational trails on private land	Department of Inland Fisheries and Wildlife; Department of Agriculture, Conservation and Forestry		
6	1	402	3	Title 1, section 402, subsection 3, paragraph Q, relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events for Department of Corrections or county jail	Department of Corrections		
7	1	402	3	Title 1, section 402, subsection 3, paragraph R, relating to Social Security numbers in possession of the Secretary of State	Secretary of State		
8	1	538	3	Title 1, section 538, subsection 3, relating to InformME subscriber information	Information Resources of Maine (InformME)		
9	1	1013	2	Title 1, section 1013, subsection 2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions	Commission on Governmental Ethics and Election Practices		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
10	1	1013	4	Title 1, section 1013, subsection 4, relating to Commission on Governmental Ethics and Election Practices records other than complaints	Commission on Governmental Ethics and Election Practices		
11	1	1013	3-A	Title 1, section 1013, subsection 3-A, relating to complaint alleging a violation of legislative ethics	Commission on Governmental Ethics and Election Practices		
12	4	1806		Title 4, section 1806, relating to certain information and records in the possession of the Maine Commission on Indigent Legal Services	Maine Commission on Indigent Legal Services		
13	5	1541	10-B	Title 5, section 1541, subsection 10-B, relating to internal audit working papers of the State Controller	Department of Administrative and Financial Services - Office of the State Controller		
14	5	17057	3	Title 5, section 17057, subsection 3, relating to home contact information of Maine Public Employees Retirement System members, benefit recipients and staff	Maine Public Employees Retirement System		
15	5	17057	4	Title 5, section 17057, subsection 4, relating to Maine Public Employees Retirement System private market investment activity	Maine Public Employees Retirement System		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
16	5	17057	5	Title 5, section 17057, subsection 3, relating to Maine Public Employees Retirement System employees personal and complaint and disciplinary information	Maine Public Employees Retirement System		
17	5	90-B	7	Title 5, section 90-B, subsection 7, relating to the Address Confidentiality Program	Secretary of State		
18	7	1052	2-A	Title 7, section 1052, subsection 2-A, relating to total potential acreage of genetically modified crops reported by individual manufacturers	Department of Agriculture, Conservation and Forestry		
19	7	2231	3	Title 7, section 2231, subsection 3, relating to criminal history records provided to the Commissioner of Agriculture, Conservation and Forestry as part of an application to grow industrial hemp for commercial purposes	Department of Agriculture, Conservation and Forestry		
20	8	1006	1	Title 8, section 1006, subsection 1, paragraph A, relating to information or records required by the Gambling Control Board for licensure: trade secrets and proprietary information	Department of Public Safety		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
21	8	1006	1	Title 8, section 1006, subsection 1, paragraph B, relating to information or records required by the Gambling Control Board for licensure: would be unwarranted invasion of privacy of key executive, gaming employee or another person	Department of Public Safety		
22	8	1006	1	Title 8, section 1006, subsection 1, paragraph C, relating to information or records required by the Gambling Control Board for licensure: key executive or gaming employee compensation	Department of Public Safety		
23	8	1006	1	Title 8, section 1006, subsection 1, paragraph D, relating to information or records required by the Gambling Control Board for licensure: financial, statistical and surveillance information related to the applicant	Department of Public Safety		
24	8	1006	1	Title 8, section 1006, subsection 1, paragraph E, relating to information or records required by the Gambling Control Board for licensure: creditworthiness, credit rating or financial condition of person or project	Department of Public Safety		

Ref #	M.R.S. TITLE	§	Sub §	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
25	8	1006	1	Title 8, section 1006, subsection 1, paragraph F, relating to information or records required by the Gambling Control Board for licensure: information from other jurisdictions conditioned on remaining confidential	Department of Public Safety		
26	8	1006	1	Title 8, section 1006, subsection 1, paragraph G, relating to information or records required by the Gambling Control Board for licensure: information designated confidential under federal law	Department of Public Safety		
27	8	1006	1	Title 8, section 1006, subsection 1, paragraph H, relating to information or records required by the Gambling Control Board for licensure: specific personal information, including Social Security number, of any individual	Department of Public Safety		
28	8	1006	3	Title 8, section 1006, subsection 3, relating to records and information developed as part of suitability requirement to select operator of central site monitoring system, held by Gambling Control Board and Dept. of Public Safety	Department of Public Safety		

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
29	8	1006	4	Title 8, section 1006, subsection 4, relating to financial, statistical and surveillance information from the central site monitoring system held by the Gambling Control Board and the Dept. of Public Safety	Department of Public Safety		
30	8	1007	2	Title 8, section 1007, subsection 2, relating to information or records received by the Gambling Control Board or Department of Public Safety from another agency pursuant to agreement	Department of Public Safety		
31	8	1008		Title 8, section 1008, relating to information or records used or produced by the Gambling Control Board or Department of Public Safety in connection with hearings, proceedings or appeals pursuant to Title 8, section 1052	Department of Public Safety		
32	8	1052		Title 8, section 1052, relating to reports, information or records compiled by the Gambling Control Board and Dept. of Public Safety concerning noncompliance with or violation of the chapter by an applicant, licensee, owner or key executive	Department of Public Safety		

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
33	8	270-A		Title 8, section 270-A, relating to records and information included in application or materials required for issuance of commercial track license	Department of Agriculture, Conservation and Forestry		
34	9-A	6-105-A		Title 9-A, section 6-105-A, last paragraph, relating to information concerning uniform multistate licensing system provided to Consumer Credit Protection by other jurisdictions	Department of Professional and Financial Regulation - Bureau of Consumer Credit Protection		
35	12	8005	1	Title 12, section 8005, subsection 1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	Department of Agriculture, Conservation and Forestry		
36	12	8005	2	Title 12, section 8005, subsection 2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs	Department of Agriculture, Conservation and Forestry		
37	12	8005	4	Title 12, section 8005, subsection 4, relating to forest management information designated confidential by agency furnishing the information	Department of Agriculture, Conservation and Forestry		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
38	12	10110		Title 12, section 10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license	Department of Inland Fisheries and Wildlife		
39	12	12551-A	10	Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch	Department of Inland Fisheries and Wildlife		
40	14	6321-A	4	Title 14, section 6321-A, subsection 4, relating to the financial information disclosed in the course of mediation under the foreclosure mediation program	Administrative Office of the Courts		
41	17-A	1176	1	Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims	Department of Public Safety		
42	17-A	1176	5	Title 17-A, section 1176, subsection 5, relating to request by crime victim for notice of release of defendant	Department of Corrections		
43	20-A	13004	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel	Department of Education		

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
44	21-A	1003	3-A	Title 21-A, section 1003, subsection 3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices	Maine Commission on Governmental Ethics and Election Practices		
45	21-A	1125	3	Title 21-A, section 1125, subsection 3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices		
46	21-A	1125	2-B	Title 21-A, section 1125, subsection 2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices		
47	21-A	196-A		Title 21-A, section 196-A, relating to information contained electronically in the central voter registration system	Secretary of State		
48	22	1494		Title 22, section 1494, relating to occupational disease reporting	Department of Health and Human Services		
49	22	2425	8	Title 22, section 2425, subsection 8, relating to medical marijuana registry identification cards	Department of Health and Human Services		

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
50	22	1711-C	20	Title 22, section 1711-C, subsection 20, relating to hospital records concerning health care information pertaining to an individual	HealthInfoNet		
51	22	2153-A		Title 22, section 2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law	Department of Health and Human Services		
52	22	4087-A	6	Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman	Child Welfare Ombudsman		
53	24-A	2736	2	Title 24-A, section 2736, subsection 2, relating to insurer rate filings on individual health insurance policies and supporting information, in regards to protected health information and descriptions of the amount and terms or conditions or reimbursement in a contract between an insurer and a 3rd party	Department of Professional and Financial Regulation - Bureau of Insurance		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
54	25	4202		Title 25, section 4202, relating to records and information connected in any way with the work of a critical incident stress management team for law enforcement personnel	Department of Public Safety		
55	29-A	1301	6-A	Title 29-A, section 1301, relating to the social security number of an applicant for a driver's license or nondriver identification card	Secretary of State		
56	29-A	2251	7-A	Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in an accident report database	Department of Public Safety		
57	29-A	2117-A	4	Title 29-A, section 2117-A, relating to data collected or retained through the use of an automated license plate recognition system	Department of Public Safety; Department of Transportation		
58	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	Department of Public Safety		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
59	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board	Department of Public Safety		
60	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to information about a person receiving emergency medical services as part of an application for credentialing by Emergency Medical Services Board	Department of Public Safety		
61	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 87-B	Department of Public Safety		
62	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board	Department of Public Safety		
63	30-A	4706	1	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities	Maine State Housing Authority (MaineHousing)		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
64	34-A	11221	13	Title 34-A, section 11221, subsection 13, relating to disclosure of certain sex offender registry information	Department of Public Safety		
65	34-A	11221	9-A	Title 34-A, section 11221, subsection 9-A, relating to certain sex offender registry information	Department of Public Safety		
66	34-B	1931	6	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board	Mental Health Homicide, Suicide, and Aggravated Assault Review Board (MHHS AARB)		
67	34-B	3864	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	Department of Public Safety		
68	35-A	122	1-B	Title 35-A, section 122, subsection 1-B, paragraph G, relating to information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use in the context of energy infrastructure corridors.	Interagency Review Panel (Governor's Energy Office)		

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
69	35-A	10106		Title 35-A, section 10106 relating to records of the Efficiency Maine Trust and its board.	Efficiency Maine		
70	36	6271	2	Title 36, section 6271, subsection 2, relating to an application, information submitted in support of an application and files and communications in relation to a municipal property tax deferral program for senior citizens	Maine Municipal Association		
71	38	1310-B	2	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	Department of Environmental Protection		
72	38	580-B	11	Title 38, section 580-B, subsection 11, relating to records held by the Department of Environmental Protection or its agents regarding individual auctions administered under the carbon dioxide cap-and-trade program	Department of Environmental Protection		

STATUTE: 8 MRSA § 1006, sub-§1, ¶¶ A – H

AGENCY: Dept. of Public Safety, Gambling Control Board

CONTACT PERSON: Christopher Parr

CONTACT PERSON'S EMAIL ADDRESS: chris.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).

RTKAC Ref#: 20, 21, 22, 23, 24, 25, 26, 27.

The records under 8 MRSA § 1006(1)(A) – (H) that may be subject to public records exceptions are defined as “information or records included in an application or materials required by the board for issuance of a license pursuant to [Chapter 31, i.e. 8 MRSA §§ 1001 – 1066], including records obtained or developed by the board or department related to an applicant or licensee” (herein referred to as “Licensing Information”). The specified circumstances pursuant to which Licensing Information is designated confidential and exempt from public disclosure are enunciated at paragraphs (A) through (H) (e.g., under certain circumstances, trade secret information; private personal information; financial, statistical, and surveillance information; etc.).

The Gambling Control Board has applied the exceptions four times since it became effective in March, 2005. Each time, the application of the exception(s) was in response to a FOA request.

The first two times concerned requests for access to Oxford Casino's license application. These requests triggered, in one form or another, essentially all of the exceptions under paragraphs (A) through (H). The Board applied the exceptions and released a publicly available document that summarized the confidential information in a manner that maximized to the greatest extent possible public access to the information.

The third time concerned two separate requests for slot machine payback percentages by denomination at each of the two Maine casinos. In this circumstance the Board applied the exception under paragraph (A), which exempts from public disclosure “trade secrets as defined in [Maine's Uniform Trade Secrets Act, 10 MRSA § 1542] and proprietary information that if released could be competitively harmful to the submitter of the

information.” Upon determining that release of the proprietary information could be competitively harmful, the Board denied the request for public access to the records.

The fourth time concerned a request related to the corporate restructuring of Penn National, the parent company of Hollywood Casino - Bangor. In this circumstance the Board applied the exceptions under paragraph (A), as described above, and paragraph (G), which exempts “information that is designated confidential under federal law.” The board granted in part and denied in part the request, thereby releasing some but not all of the records.

None of the above-listed applications and determinations on the records exceptions by the Board was contested, either via administrative adjudication or judicial litigation.

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

Generally speaking, the records subject to these exceptions are provided to the Gambling Control Board by third parties (i.e., applicants and licensees). In these circumstances, it is these third parties, and not the Board, who are the primary stakeholders concerning any exemptions to public access of their confidential information on file with the Board. See response to Question 5 identifying potential stakeholders. The Board, therefore, takes no position on the continuation of these exceptions for such third-party records.

Notably, however, the exception under paragraph (D), in so far as it applies to “surveillance information,” is of significant importance to the Board’s regulatory responsibilities and can be of a highly sensitive nature in connection with its investigative activities. See also Board response to RTKAC Ref#: 29. The Board strongly supports continuation of the exception provided under this portion of paragraph (D).

Further, the exception under paragraph (F) for information provided by other jurisdictions is of significant importance to the Board in maintaining a free flow of information sharing with other jurisdictions. See also Board response to RTKAC Ref#: 30.

Finally, section 1006(1) applies, among other matters, to records “developed by the board” related to an applicant or licensee. The Board further strongly supports continuation of statutory confidentiality protections for these types of board-developed records.

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 Gambling Control Board has not experienced any problems in applying these exceptions. It is clear that the described records are intended to be confidential under the FOA statutes, and the language of the exception is sufficiently clear in describing the records that are covered.

4. Does your agency recommend changes to this exception?

The Gambling Control Board does not recommend any changes to these exceptions.

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

Hollywood Casino – Bangor, 500 Main St. Bangor, Maine 04401, 877-779-7771; Oxford Casino, 777 Casino Way Oxford, Maine 04270, 207-539-6700; other casino related groups such as manufacturers and distributors of gaming products.

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

The Gambling Control Board does not offer any further information at this time. The Board's Executive Director is available to respond to any additional questions that the Advisory Committee may have as it performs its review.

STATUTE: 8 MRSA § 1006, sub-§3

AGENCY: Dept. of Public Safety, Gambling Control Board

CONTACT PERSON: Christopher Parr

CONTACT PERSON'S EMAIL ADDRESS: chris.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 records under 8 MRSA § 1006(3) subject to the exception are "records and information obtained or developed by the board or the department as part of a suitability requirement for selecting a 3rd party to operate the central site monitoring system pursuant to section 1004," except that such records may be disclosed with the written consent of the person applying as the central site monitoring system operator.

The Gambling Control Board has not had any experience in applying this exception since it became effective in March, 2005.

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

The records subject to this exception are provided to the Gambling Control Board by third parties (i.e., applicants and licensees). In these circumstances, it is these third parties, and not the Board, who are the primary stakeholders concerning any exemption to public access of their information on file with the Board. See response to Question 5 identifying potential stakeholders. The Board, therefore, takes no position on the continuation of this exception for such third-party records.

Additionally, this exception applies, among other matters, to records "developed by the board" as part of its suitability review. The Board strongly supports continuation of statutory confidentiality protections for this type of board-developed records.

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 Gambling Control Board has not had occasion to apply this exception. It is clear that the described records are intended to be confidential under the FOA statutes, and the language of the exception is sufficiently clear in describing the records that are covered.

4. Does your agency recommend changes to this exception?

The Gambling Control Board does not recommend any changes to this exception.

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

Hollywood Casino – Bangor, 500 Main St. Bangor, Maine 04401, 877-779-7771; Oxford Casino, 777 Casino Way Oxford, Maine 04270, 207-539-6700; other casino related groups such as manufacturers and distributors of gaming products.

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

The Gambling Control Board does not offer any further information at this time. The Board's Executive Director is available to respond to any additional questions that the Advisory Committee may have as it performs its review.

STATUTE: 8 MRSA § 1006, sub-§4

AGENCY: Dept. of Public Safety, Gambling Control Board

CONTACT PERSON: Christopher Parr

CONTACT PERSON'S EMAIL ADDRESS: chris.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 records under 8 MRSA § 1006(4) subject to the exception are "financial, statistical and surveillance information obtained by the board or department from the central site monitoring system or surveillance devices."

The Gambling Control Board has not had any experience in applying this exception since it became effective in March, 2005.

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

Concerning that portion of the exception for "surveillance information" obtained from surveillance devices, the Gambling Control Board strongly supports continuation of this exception in furtherance of its law enforcement and public safety oversight obligations. This information, protected from public disclosure, is of significant importance to the Board's regulatory responsibilities and can be of a highly sensitive nature in connection with its investigative activities.

As to those portions of the exception regarding records provided to the Board by third parties (i.e., licensees), it is these third parties, and not the Board, who are the primary stakeholders concerning any exemptions to public access of their information on file with the Board. See response to Question 5 identifying potential stakeholders. The Board, therefore, takes no position on the continuation of the portions of the exception for such third-party records (i.e., third party financial and statistical 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 Gambling Control Board has not had occasion to apply this exception. It is clear that the described records are intended to be confidential under the FOA statutes, and the language of the exception is sufficiently clear in describing the records that are covered.

4. Does your agency recommend changes to this exception?

The Gambling Control Board does not recommend any changes to this exception.

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

Hollywood Casino – Bangor, 500 Main St. Bangor, Maine 04401, 877-779-7771; Oxford Casino, 777 Casino Way Oxford, Maine 04270, 207-539-6700; other casino related groups such as manufacturers and distributors of gaming products.

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

The Gambling Control Board does not offer any further information at this time. The Board's Executive Director is available to respond to any additional questions that the Advisory Committee may have as it performs its review.

Maine Revised Statutes
Title 8: AMUSEMENTS AND SPORTS
Chapter 31: GAMBLING CONTROL BOARD

§1006. CONFIDENTIALITY OF RECORDS AND INFORMATION

1. Application and licensing records and information. This subsection applies to information or records included in an application or materials required by the board for issuance of a license pursuant to this chapter, including records obtained or developed by the board or department related to an applicant or licensee. For the purposes of Title 1, section 402, subsection 3, the following records and information are designated as confidential and may not be disclosed except as provided:

A. Trade secrets as defined in Title 10, section 1542 and proprietary information that if released could be competitively harmful to the submitter of the information; [2005, c. 11, §1 (NEW) .]

B. Information that if released would constitute an unwarranted invasion of personal privacy of a key executive, gaming employee or any other individual included in application materials, as determined by the board. Upon request, the board shall release a summary of information confidential under this paragraph describing the basis for the board's action in granting, denying, renewing, suspending, revoking or failing to grant or renew a license issued under this chapter. In preparing a summary, the board shall maximize public access to that information while taking reasonable measures to protect the confidentiality of that information; [2005, c. 11, §1 (NEW) .]

C. Key executive or gaming employee compensation, except that:

(1) Executive compensation required to be filed with the federal Securities and Exchange Commission or, with respect to applicants or licensees that are not publicly traded corporations, executive compensation that would be required to be filed with the federal Securities and Exchange Commission were the applicant or licensee a publicly traded corporation or controlled by a publicly traded corporation is not confidential; and

(2) Compensation of the officers of the business entity that is organized or authorized to do business in this State who are responsible for the management of gaming operations, as determined by the board, is not confidential; [2005, c. 11, §1 (NEW) .]

D. Financial, statistical and surveillance information related to the applicant or licensee that is obtained by the board or department from the central site monitoring system or surveillance devices; [2005, c. 11, §1 (NEW) .]

E. Records that contain an assessment by a person who is not employed by the board or the department of the creditworthiness, credit rating or financial condition of any person or project, including reports that detail specific information for presentation to the board or department. Persons retained by the board or department to provide such an assessment shall prepare reports that indicate their conclusions and summarize information reviewed by them in a way that maximizes public access to that information; [2005, c. 11, §1 (NEW) .]

F. Information obtained from other jurisdictions designated as confidential by the jurisdiction from which it is obtained and that must remain confidential as a condition of receipt. The board and the department may use information designated as confidential by the jurisdiction from which it is obtained but shall first make reasonable efforts to use information that is known to be publicly available from another source; [2005, c. 11, §1 (NEW) .]

G. Information that is designated confidential under federal law whether obtained from federal authorities or provided to the board or department by an applicant, licensee or key executive; and [2005, c. 11, §1 (NEW) .]

H. Birth dates, social security numbers, home addresses and telephone numbers, passport numbers, driver's license numbers, fingerprints, marital status, family relationships and support information, health status, personal financial records and tax returns of any individuals. [2005, c. 11, §1 (NEW) .]

[2005, c. 11, §1 (NEW) .]

2. Disclosure to applicant or licensee; written consent. Records from an applicant or licensee may be disclosed to the applicant or licensee upon written request or to another person with the written consent of the applicant or licensee who provided the record.

[2005, c. 11, §1 (NEW) .]

3. Central site monitoring system operator. Records and information obtained or developed by the board or the department as part of a suitability requirement for selecting a 3rd party to operate the central site monitoring system pursuant to section 1004 are confidential for the purposes of Title 1, section 402, subsection 3, except that such records or information may be disclosed with the written consent of the person applying as the central site monitoring system operator.

[2005, c. 11, §1 (NEW) .]

4. Monitoring and surveillance records and information. Financial, statistical and surveillance information obtained by the board or department from the central site monitoring system or surveillance devices is confidential and may not be disclosed. The board shall prepare and make publicly available monthly and annual reports on the results of slot machine and table game operations using the information described in this subsection pursuant to section 1003, subsection 2, paragraphs Q and R, as long as the board takes appropriate measures to protect the confidentiality of specific information designated as confidential by this section.

[2009, c. 2, §28 (AMD) .]

5. Application. This section applies to all records and information in the possession of the board or the department on the effective date of this section, and the confidentiality of such information is governed by this section, not by the law in effect when the board or the department obtained the records or information. Disclosure of the records or information is governed by this section.

[2005, c. 11, §1 (NEW) .]

6. Publicly available records. Except for the information described in subsection 1, paragraph H, nothing in this section may be construed as designating confidential any records or information that are otherwise publicly available, and the board and the department are not required to treat those records or that information as confidential.

[2005, c. 11, §1 (NEW) .]

7. Report on operations. When financial and operating information, business records, business plans and marketing plans that are confidential under this section are submitted, the board and the applicant or licensee shall prepare a publicly available document that summarizes the confidential information in a manner that maximizes public access to that information.

[2005, c. 11, §1 (NEW) .]

8. Voluntary exclusion. Notwithstanding Title 1, section 401, records and information obtained or developed by the board as part of establishing and administering the list of persons who voluntarily request exclusion from any slot machine facility or casino under section 1003, subsection 3, paragraph I are confidential except that information may be released with the written consent of the person requesting

voluntary exclusion and as is necessary to inform the slot machine facility or casino licensee and enforce the voluntary exclusion. Statistical data and general information that do not allow for a person on the voluntary exclusion list to be personally identified are not confidential.

[2013, c. 212, §12 (NEW) .]

SECTION HISTORY

2005, c. 11, §1 (NEW). IB 2009, c. 2, §28 (AMD). 2013, c. 212, §12 (AMD) .

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Maine Revised Statutes
Title 10: COMMERCE AND TRADE
Chapter 302: UNIFORM TRADE SECRETS ACT

§1542. DEFINITIONS

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 143, (NEW) .]

1. Improper means. "Improper means" means theft, bribery, misrepresentation, breach or inducement of a breach of duty to maintain secrecy or espionage through electronic or other means.

[1987, c. 143, (NEW) .]

2. Misappropriation. "Misappropriation" means:

A. Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or [1987, c. 143, (NEW) .]

B. Disclosure or use of a trade secret of another without express or implied consent by a person who:

(1) Used improper means to acquire knowledge of the trade secret;

(2) At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

(i) Derived from or through a person who had utilized improper means to acquire it;

(ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use;
or

(iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(3) Before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake. [1987, c. 143, (NEW) .]

3. Person. "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency or any other legal or commercial entity.

[1987, c. 143, (NEW) .]

4. Trade secret. "Trade secret" means information, including, but not limited to, a formula, pattern, compilation, program, device, method, technique or process, that:

A. Derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and [1987, c. 143, (NEW) .]

B. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. [1987, c. 143, (NEW) .]

[1987, c. 143, (NEW) .]

SECTION HISTORY

1987, c. 143, (NEW). 1987, c. 143, (NEW).

Maine Revised Statutes
Title 8: AMUSEMENTS AND SPORTS
Chapter 11: HARNESS RACING

§270-A. CONFIDENTIALITY OF RECORDS AND INFORMATION

For the purposes of Title 1, section 402, subsection 3, the types of records and information listed in section 1006, subsection 1 when collected by or provided to the commission are designated as confidential and may not be disclosed except as provided in section 1006, subsection 2. This section applies to information or records included in an application or materials required by the commission for issuance of a commercial track license, including records obtained or developed by the commission related to an applicant or licensee. [2007, c. 483, §1 (NEW).]

SECTION HISTORY

2007, c. 483, §1 (NEW).

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Maine Revised Statutes
Title 8: AMUSEMENTS AND SPORTS
Chapter 31: GAMBLING CONTROL BOARD

§1006. CONFIDENTIALITY OF RECORDS AND INFORMATION

1. Application and licensing records and information. This subsection applies to information or records included in an application or materials required by the board for issuance of a license pursuant to this chapter, including records obtained or developed by the board or department related to an applicant or licensee. For the purposes of Title 1, section 402, subsection 3, the following records and information are designated as confidential and may not be disclosed except as provided:

- A. Trade secrets as defined in Title 10, section 1542 and proprietary information that if released could be competitively harmful to the submitter of the information; [2005, c. 11, §1 (NEW).]
- B. Information that if released would constitute an unwarranted invasion of personal privacy of a key executive, gaming employee or any other individual included in application materials, as determined by the board. Upon request, the board shall release a summary of information confidential under this paragraph describing the basis for the board's action in granting, denying, renewing, suspending, revoking or failing to grant or renew a license issued under this chapter. In preparing a summary, the board shall maximize public access to that information while taking reasonable measures to protect the confidentiality of that information; [2005, c. 11, §1 (NEW).]
- C. Key executive or gaming employee compensation, except that:
 - (1) Executive compensation required to be filed with the federal Securities and Exchange Commission or, with respect to applicants or licensees that are not publicly traded corporations, executive compensation that would be required to be filed with the federal Securities and Exchange Commission were the applicant or licensee a publicly traded corporation or controlled by a publicly traded corporation is not confidential; and
 - (2) Compensation of the officers of the business entity that is organized or authorized to do business in this State who are responsible for the management of gaming operations, as determined by the board, is not confidential; [2005, c. 11, §1 (NEW).]
- D. Financial, statistical and surveillance information related to the applicant or licensee that is obtained by the board or department from the central site monitoring system or surveillance devices; [2005, c. 11, §1 (NEW).]
- E. Records that contain an assessment by a person who is not employed by the board or the department of the creditworthiness, credit rating or financial condition of any person or project, including reports that detail specific information for presentation to the board or department. Persons retained by the board or department to provide such an assessment shall prepare reports that indicate their conclusions and summarize information reviewed by them in a way that maximizes public access to that information; [2005, c. 11, §1 (NEW).]
- F. Information obtained from other jurisdictions designated as confidential by the jurisdiction from which it is obtained and that must remain confidential as a condition of receipt. The board and the department may use information designated as confidential by the jurisdiction from which it is obtained but shall first make reasonable efforts to use information that is known to be publicly available from another source; [2005, c. 11, §1 (NEW).]
- G. Information that is designated confidential under federal law whether obtained from federal authorities or provided to the board or department by an applicant, licensee or key executive; and [2005, c. 11, §1 (NEW).]

H. Birth dates, social security numbers, home addresses and telephone numbers, passport numbers, driver's license numbers, fingerprints, marital status, family relationships and support information, health status, personal financial records and tax returns of any individuals. [2005, c. 11, §1 (NEW) .]

[2005, c. 11, §1 (NEW) .]

2. Disclosure to applicant or licensee; written consent. Records from an applicant or licensee may be disclosed to the applicant or licensee upon written request or to another person with the written consent of the applicant or licensee who provided the record.

[2005, c. 11, §1 (NEW) .]

3. Central site monitoring system operator. Records and information obtained or developed by the board or the department as part of a suitability requirement for selecting a 3rd party to operate the central site monitoring system pursuant to section 1004 are confidential for the purposes of Title 1, section 402, subsection 3, except that such records or information may be disclosed with the written consent of the person applying as the central site monitoring system operator.

[2005, c. 11, §1 (NEW) .]

4. Monitoring and surveillance records and information. Financial, statistical and surveillance information obtained by the board or department from the central site monitoring system or surveillance devices is confidential and may not be disclosed. The board shall prepare and make publicly available monthly and annual reports on the results of slot machine and table game operations using the information described in this subsection pursuant to section 1003, subsection 2, paragraphs Q and R, as long as the board takes appropriate measures to protect the confidentiality of specific information designated as confidential by this section.

[2009, c. 2, §28 (AMD) .]

5. Application. This section applies to all records and information in the possession of the board or the department on the effective date of this section, and the confidentiality of such information is governed by this section, not by the law in effect when the board or the department obtained the records or information. Disclosure of the records or information is governed by this section.

[2005, c. 11, §1 (NEW) .]

6. Publicly available records. Except for the information described in subsection 1, paragraph H, nothing in this section may be construed as designating confidential any records or information that are otherwise publicly available, and the board and the department are not required to treat those records or that information as confidential.

[2005, c. 11, §1 (NEW) .]

7. Report on operations. When financial and operating information, business records, business plans and marketing plans that are confidential under this section are submitted, the board and the applicant or licensee shall prepare a publicly available document that summarizes the confidential information in a manner that maximizes public access to that information.

[2005, c. 11, §1 (NEW) .]

8. Voluntary exclusion. Notwithstanding Title 1, section 401, records and information obtained or developed by the board as part of establishing and administering the list of persons who voluntarily request exclusion from any slot machine facility or casino under section 1003, subsection 3, paragraph I are confidential except that information may be released with the written consent of the person requesting

STATUTE: 8 MRSA § 1007, sub-§2

AGENCY: Dept. of Public Safety, Gambling Control Board

CONTACT PERSON: Christopher Parr

CONTACT PERSON'S EMAIL ADDRESS: chris.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 records under 8 MRSA § 1007(2) subject to the exception are "information or records in the possession of the board or the department received pursuant to an intelligence sharing, reciprocal use or restricted use agreement entered into by the board or the department with a federal department or agency or a law enforcement agency or gaming enforcement or regulatory agency of any jurisdiction," and may be disseminated only with the permission of the person or agency providing the records.

The Gambling Control Board has not had any experience in applying this exception since it became effective in March, 2005.

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

The Gambling Control Board strongly supports continuation of this exception in furtherance of its law enforcement and public safety oversight obligations. This information, protected from public disclosure, is of significant importance to the Board's regulatory responsibilities and can be of a highly sensitive nature in connection with its investigative activities. If the Board were unable to ensure the continued confidentiality of this shared information received from other jurisdictions, it is highly likely that such shared information would not be made available to the Board by these other jurisdictions.

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 Gambling Control Board has not had occasion to apply this exception. It is clear that the described records are intended to be confidential under the FOA statutes, and the language of the exception is sufficiently clear in describing the records that are covered.

4. Does your agency recommend changes to this exception?

The Gambling Control Board does not recommend changes to this exception.

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

Hollywood Casino – Bangor, 500 Main St. Bangor, Maine 04401, 877-779-7771; Oxford Casino, 777 Casino Way Oxford, Maine 04270, 207-539-6700; other casino related groups such as manufacturers and distributors of gaming products.

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

The Gambling Control Board does not offer any further information at this time. The Board's Executive Director is available to respond to any additional questions that the Advisory Committee may have as it performs its review.

Maine Revised Statutes
Title 8: AMUSEMENTS AND SPORTS
Chapter 31: GAMBLING CONTROL BOARD

§1007. INTELLIGENCE SHARING, RECIPROCAL USE AND RESTRICTED USE AGREEMENTS

1. Agreement. The board or the department may enter into intelligence sharing, reciprocal use or restricted use agreements with a department or agency of the Federal Government and law enforcement agencies and gaming enforcement or regulatory agencies of other jurisdictions. The board or the department may provide information or records designated as confidential under section 1006 only after obtaining a signed authorization to release the information or records from the applicant, licensee, owner, key executive or gaming employee to which the information or records relate, pertain or belong. This authorization requirement does not apply to the sharing of information permitted under subsections 2 and 3.

[2005, c. 11, §1 (NEW) .]

2. Reports from other jurisdictions. Information or records in the possession of the board or the department received pursuant to an intelligence sharing, reciprocal use or restricted use agreement entered into by the board or the department with a federal department or agency or a law enforcement agency or gaming enforcement or regulatory agency of any jurisdiction are considered records or information within the meaning of section 1006, subsection 1 and may be disseminated only with the permission of the person or agency providing the information or records.

[2005, c. 11, §1 (NEW) .]

3. Investigation of violations. Records received by the board or the department as application materials or as part of an investigation related to an applicant or licensee may be disclosed to state or federal law enforcement entities when the Attorney General or the department determines that the information contains evidence of a possible violation of laws, rules or regulations enforced by those entities.

[2005, c. 11, §1 (NEW) .]

SECTION HISTORY

2005, c. 11, §1 (NEW) .

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STATUTE: 8 MRSA §§ 1008, 1052

AGENCY: Dept. of Public Safety, Gambling Control Board

CONTACT PERSON: Christopher Parr

CONTACT PERSON'S EMAIL ADDRESS: chris.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).

RTKAC Ref#: 31 & 32.

The records under 8 MRSA § 1008 subject to the exception, by virtue of 8 MRSA § 1052, are "records and information used or produced in connection with hearings, proceedings or appeals under [8 MRSA §§ 1051 – 1055, enforcement and penalties] regarding noncompliance with or violation of [Chapter 31, i.e. 8 MRSA §§ 1001 – 1066].

Pursuant to 8 MRSA § 1052, "all reports, information or records compiled by the board or department pursuant to [8 MRSA §§ 1051 – 1055, enforcement and penalties] regarding noncompliance with or violation of [Chapter 31, i.e. 8 MRSA §§ 1001 – 1066] by an applicant, licensee, owner or key executive are confidential," except that the Board may disclose any confidential information as provided by subsections (1) through (4).

The Gambling Control Board has not had any experience in applying these exceptions since they became effective in March, 2005.

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

The Gambling Control Board strongly supports the continuation of the exception under § 1052. In particular, the Board emphasizes the importance of § 1052(3), which provides confidentiality for records during the pendency of an investigation, because the premature discovery of investigative materials could compromise an investigation by the state. It is noted that § 1052(4) provides exceptions to the confidentiality provided under § 1052(3), and the Board supports the continuation of those exceptions.

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 Gambling Control Board has not had occasion to apply these exceptions. It is clear that the described records are intended to be confidential under the FOA statutes, and the language of the exceptions is sufficiently clear in describing the records that are covered.

4. Does your agency recommend changes to this exception?

The Gambling Control Board does not recommend changes to these exceptions.

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

Hollywood Casino – Bangor, 500 Main St. Bangor, Maine 04401, 877-779-7771; Oxford Casino, 777 Casino Way Oxford, Maine 04270, 207-539-6700; other casino related groups such as manufacturers and distributors of gaming products.

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

The Gambling Control Board does not offer any further information at this time. The Board's Executive Director is available to respond to any additional questions that the Advisory Committee may have as it performs its review.

Maine Revised Statutes
Title 8: AMUSEMENTS AND SPORTS
Chapter 31: GAMBLING CONTROL BOARD

§1008. HEARINGS AND PROCEEDINGS

Notwithstanding section 1006, the confidentiality of records and information used or produced in connection with hearings, proceedings or appeals under subchapter 5 regarding noncompliance with or violation of this chapter are governed by the provisions of section 1052. [2005, c. 11, §1 (NEW) .]

SECTION HISTORY

2005, c. 11, §1 (NEW) .

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Maine Revised Statutes
Title 8: AMUSEMENTS AND SPORTS
Chapter 31: GAMBLING CONTROL BOARD

§1052. CONFIDENTIALITY

All reports, information or records compiled by the board or the department pursuant to this subchapter regarding noncompliance with or violation of this chapter by an applicant, licensee, owner or key executive are confidential, except that the board may disclose any confidential information as follows. [2005, c. 11, §2 (AMD) .]

1. Hearings or proceedings. Confidential information may be released in an adjudicatory hearing or informal conference before the board or in any subsequent formal proceeding to which the information is relevant.

[2003, c. 687, Pt. A, §5 (NEW); 2003, c. 687, Pt. B, §11 (AFF) .]

2. Consent agreements or settlements. Confidential information may be released in a consent agreement or other written settlement when the information constitutes or pertains to the basis of board action.

[2003, c. 687, Pt. A, §5 (NEW); 2003, c. 687, Pt. B, §11 (AFF) .]

3. During investigation. All complaints and investigative records of the board are confidential during the pendency of an investigation. Notwithstanding section 1006, the complaints and records become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this subsection, an investigation is concluded when:

A. A notice of an adjudicatory hearing as defined under Title 5, chapter 375, subchapter 1 has been issued; [2003, c. 687, Pt. A, §5 (NEW); 2003, c. 687, Pt. B, §11 (AFF) .]

B. A consent agreement has been executed; or [2003, c. 687, Pt. A, §5 (NEW); 2003, c. 687, Pt. B, §11 (AFF) .]

C. A letter of dismissal has been issued or the investigation has otherwise been closed. [2003, c. 687, Pt. A, §5 (NEW); 2003, c. 687, Pt. B, §11 (AFF) .]

[2005, c. 11, §3 (AMD) .]

4. Exceptions. Notwithstanding subsection 3, during the pendency of an investigation, a complaint or investigative record may be disclosed:

A. To the department; [2003, c. 687, Pt. A, §5 (NEW); 2003, c. 687, Pt. B, §11 (AFF) .]

B. To other state or federal agencies when the record contains evidence of possible violations of laws, rules or regulations enforced by those agencies or as the board or the board's designee considers appropriate; [2003, c. 687, Pt. A, §5 (NEW); 2003, c. 687, Pt. B, §11 (AFF) .]

C. When and to the extent considered necessary by the director to avoid imminent and serious harm. The authority of the director to make such a disclosure may not be delegated; [2003, c. 687, Pt. A, §5 (NEW); 2003, c. 687, Pt. B, §11 (AFF) .]

D. Pursuant to rules adopted by the board, when it is determined 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 [2003, c. 687, Pt. A, §5 (NEW); 2003, c. 687, Pt. B, §11 (AFF).]

E. To the person investigated on request of that person. The director may refuse to disclose part or all of any investigative information, including the existence of an investigation if the director determines that disclosure would prejudice the investigation. The authority of the director to make such a determination may not be delegated. [2003, c. 687, Pt. A, §5 (NEW); 2003, c. 687, Pt. B, §11 (AFF).]

[2003, c. 687, Pt. A, §5 (NEW); 2003, c. 687, Pt. B, §11 (AFF) .]

SECTION HISTORY

2003, c. 687, §A5 (NEW). 2003, c. 687, §B11 (AFF). 2005, c. 11, §2,3 (AMD) .

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--

Nale, Craig

From: Ayotte, Shannon <Shannon.Ayotte@maine.gov>
Sent: Thursday, October 01, 2015 12:23 PM
To: Nale, Craig
Cc: Wells, Mari; Mansius, Donald J.; Hamilton, Bill; Denico, Doug
Subject: Response to Right to Know Advisory Committee Request
Attachments: DACF MFS Ref35.docx; DACF MFS Ref36.docx; DACF MFS Ref37.docx

Sending on behalf of Mari Wells-Eagar,

Craig,

The responses are attached. But we also have an additional comment below that we would like taken into consideration.

Regarding 12 MRSA § 8005, keeping certain landowner information confidential as it applies to forest management plans, tree growth, FONS and other state/federal agency provided information, the committee may cover this as a broader law enforcement category. Two of the three instances we found over the past year in FOAA requests deal with Forest Protection cases. Some of the same information, as described in sub-section 1 and 2, becomes part of civil and criminal investigation reports. We generally deny a request for information while the case is active or send the request to the appropriate District Attorney. In some situations (Saco railroad fire investigation report comes to mind) we have provided the information with redacted names and addresses. We get requests for information regarding investigations frequently and notify our FOAA officer if it appears to be anything close to a FOAA. Under sub-section 4 we receive information from state and federal criminal data bases which is confidential.

Thank you,

Shannon Ayotte

Office of the Commissioner
Dept. of Agriculture, Conservation and Forestry
State House Station #22
Augusta, ME 04333-0022
(207) 287-5976
shannon.ayotte@maine.gov

From: Nale, Craig <Craig.Nale@legislature.maine.gov>
Sent: Wednesday, September 16, 2015 9:31 AM
To: Wells, Mari
Subject: Right to Know Advisory Committee review

Hi Mari,

I staff the Right to Know Advisory Committee, which is undertaking its statutory review of existing public records exceptions, including three within DACF. I've attached three forms that will help the committee review these exceptions and make determinations about whether any changes to them are recommended. If you can complete these forms and return them to me by October 2 it would greatly help the committee. Email or another form of delivery is fine.

Please let me know if you have any questions at all. Thanks very much for your help.

Craig

STATUTE: 12 MRSA § 8005, sub-§1

AGENCY: Dept. of Agriculture, Conservation & Forestry

CONTACT PERSON: Mari Wells-Eagar

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).

This exception has existed since 2005 and was established to protect landowner privacy. The records subject to the exception are social security numbers, addresses, telephone numbers, and electronic mail addresses of landowners owning less than 1,000 acres statewide and collected by the Maine Forest Service (MFS) for fulfilling its statutory responsibilities. Subsection 3 of this law provides reasons for disclosure to governmental entities and nonprofits that provide educational services to forest landowners. To the best of our knowledge, there have been no requests for this information that fall outside of the disclosure options identified in subsection 3.

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

MFS supports continuation of the exception to protect landowner privacy.

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?

MFS believes the language of subsection 1 is sufficiently clear. No problems have occurred in the application of this subsection.

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

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

Maine Forest Products Council, Patrick Strauch, 622-9288; pstrauch@maineforest.org

Small Woodland Owners Association of Maine, Tom Doak, 626-0005, tom@swoam.org; or Bill Williams, 626-0005; bill@swoam.org.

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

MFS is available to assist the committee in its deliberations.

23 September 2015

STATUTE: 12 MRSA § 8005, sub-§2

AGENCY: Dept. of Agriculture, Conservation & Forestry

CONTACT PERSON: Mari Wells-Eagar

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).

This exception has existed since 2005 and was established to protect landowner privacy and business-related information held by the Maine Forest Service (MFS). The records subject to the exception are social security numbers, forest management plans, and supporting documentation of forest management activities on private lands. Subsection 3 of this law provides reasons for disclosure to governmental entities and nonprofits that provide educational services to forest landowners. Operationally, subsection 3 allows disclosure only to governmental entities. The MFS has denied one FOA request for certain protected information. The request was very broad. Nearly all information requested was provided, and only a very small amount of information (landowner management plan) was withheld.

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

MFS supports continuation of the exception to protect landowner privacy and business 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?

MFS believes the language of subsection 1 is sufficiently clear. No problems have occurred in the application of this subsection by the bureau; however, MFS is aware anecdotally that some municipalities have released confidential landowner information that they received from MFS. MFS has advised municipalities that this information is confidential and may not be further disclosed without authorization by MFS.

4. Does your agency recommend changes to this exception? No.
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Maine Forest Products Council, Patrick Strauch, 622-9288; pstrauch@maineforest.org

Small Woodland Owners Association of Maine, Tom Doak, 626-0005, tom@swoam.org; or Bill Williams, 626-0005; bill@swoam.org

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

MFS is available to assist the committee in its deliberations.

23 September 2015

STATUTE: 12 MRSA § 8005, sub-§4

AGENCY: Dept. of Agriculture, Conservation & Forestry

CONTACT PERSON: Mari Wells-Eagar

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).

This exception has existed since 2005 and was established to protect information received by the Maine Forest Service (MFS) which is already designated as confidential by other provisions of state or federal law. To the best of our knowledge, there have been no requests for this type of information.

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

MFS supports continuation of the exception to protect information already designated as confidential under state or federal law.

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?

MFS believes the language of subsection 1 is sufficiently clear. No problems have occurred in the application of this subsection.

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

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

Maine Forest Products Council, Patrick Strauch, 622-9288; pstrauch@maineforest.org

Small Woodland Owners Association of Maine, Tom Doak, 626-0005, tom@swoam.org; or Bill Williams, 626-0005; bill@swoam.org

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

MFS is available to assist the committee in its deliberations.

Maine Revised Statutes
Title 12: CONSERVATION
Chapter 801: BUREAU OF FORESTRY

§8005. CERTAIN INFORMATION CONFIDENTIAL

1. Contact information. Social security numbers, addresses, telephone numbers and electronic mail addresses of landowners owning less than 1,000 acres of forest land statewide and collected by the bureau for the purposes of contacting landowners under section 8611, or received by the bureau in notifications filed under section 8883-B, or in reports received under Title 36, section 581-G are confidential and may be disclosed only in accordance with this section.

[2005, c. 358, §1 (NEW); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

2. Forest management plan and information. Social security numbers, forest management plans and supporting documentation of forest management activities on private forest land and held by the bureau for the purposes of administering landowner assistance programs authorized under this chapter and chapter 805 are confidential and may be disclosed only in accordance with this section.

[2005, c. 358, §1 (NEW); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

3. Disclosure. Except as provided in subsection 4, the director may disclose confidential information in accordance with this subsection. Confidential information disclosed pursuant to this subsection remains the property of the bureau. Recipients of the confidential information may not disclose this information or use this information except as authorized by the director.

A. The director may disclose information designated as confidential under this section to a governmental entity that, in the opinion of the director, requires this information. [2005, c. 358, §1 (NEW) .]

B. The director shall provide names, addresses and electronic mail addresses upon request to a nonprofit corporation that provides educational services to forest landowners regarding sound forest management as long as the information disclosed is used to provide information about forest management. [2005, c. 358, §1 (NEW) .]

[2005, c. 358, §1 (NEW); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

4. Information designated as confidential by state or federal agency. The director may not disclose information furnished to the director that has been designated as confidential by a state or federal agency furnishing the information unless disclosure is authorized by the furnishing agency.

[2005, c. 358, §1 (NEW) .]

5. Penalty. A person who receives confidential information pursuant to subsection 3, paragraph B and uses that information for a purpose other than that authorized by the director commits a civil violation punishable by a fine of not more than \$1,000.

[2005, c. 358, §1 (NEW) .]

SECTION HISTORY

2005, c. 358, §1 (NEW). 2011, c. 657, Pt. W, §7 (REV). 2013, c. 405, Pt. A, §23 (REV).

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Maine Revised Statutes
Title 12: CONSERVATION
Chapter 805: COOPERATIVE FORESTRY MANAGEMENT

§8611. BUREAU OF FORESTRY ADVISORY PROGRAMS

The bureau shall undertake the following programs to provide information and educational services for forest management in this State. [1989, c. 555, §8 (NEW); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §23 (REV).]

1. Forest management information. The bureau shall provide a forest management information clearinghouse service with a statewide toll-free number. The information and referral service must include, but is not limited to:

- A. Reporting, notification and management requirements pursuant to this chapter; [1989, c. 555, §8 (NEW).]
- B. Timber and forest management options; [1989, c. 555, §8 (NEW).]
- C. Soil conservation practices; [1989, c. 555, §8 (NEW).]
- D. Insect and disease management practices; [1989, c. 555, §8 (NEW).]
- E. Recreation management options; and [1989, c. 555, §8 (NEW).]
- F. Wildlife management options. [1989, c. 555, §8 (NEW).]

Addresses, telephone numbers and electronic mail addresses collected by the bureau for the purpose of contacting forest landowners owning less than 1,000 acres statewide to provide them with forest management information are confidential and may be disclosed only in accordance with section 8005. The bureau shall provide copies of forest management information sent to landowners to the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters.

[2005, c. 358, §2 (AMD); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

2. Natural resource educator. The director shall employ a natural resource educator to develop and coordinate natural resource education, workshops and training opportunities for school-age children, forest landowners, forest products harvesters and forest managers.

- A. [2005, c. 133, §1 (RP).]
- B. [2005, c. 133, §1 (RP).]

[2005, c. 133, §1 (AMD) .]

SECTION HISTORY

1989, c. 555, §8 (NEW). 1989, c. 700, §A40 (AMD). 2003, c. 346, §1 (AMD). 2005, c. 133, §1 (AMD). 2005, c. 358, §2 (AMD). 2011, c. 657, Pt. W, §7 (REV). 2013, c. 405, Pt. A, §23 (REV).

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Maine Revised Statutes
Title 12: CONSERVATION
Chapter 805: COOPERATIVE FORESTRY MANAGEMENT

§8883-B. NOTIFICATION

1. Notification required prior to harvest. Unless exempted under subsection 6 or by rule, a landowner or designated agent shall notify the bureau prior to beginning timber harvesting.

A. [2011, c. 532, §4 (RP).]

B. [2011, c. 532, §4 (RP).]

When the timber harvesting is occurring within a municipality, the bureau shall send a copy of the notification form to the municipal clerk.

[2011, c. 532, §4 (AMD); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

2. Notification form. Unless an alternate form or method of reporting is provided in rule, notification must be on forms supplied by the bureau and must include the following information:

A. The name, address and phone number of the landowner, any designated agent and, if known, any harvester or harvesters; [2003, c. 452, Pt. F, §44 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. The name and address of any licensed professional forester consulting the landowner on forest management or harvesting practices; [2003, c. 452, Pt. F, §44 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. The municipality or township and county of harvest; [2003, c. 452, Pt. F, §44 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

D. The name of the nearest public or private all-weather road; [2003, c. 452, Pt. F, §44 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

E. The approximate dates the harvest will begin and finish; [2003, c. 452, Pt. F, §44 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

F. The anticipated acreage to be harvested; [2003, c. 452, Pt. F, §44 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

G. An indication whether the land being harvested is taxed under the Maine Tree Growth Tax Law; [2011, c. 532, §5 (AMD).]

H. Whether the land is being harvested to convert to another use within 2 years and, if so, what that use is to be; [2011, c. 532, §6 (AMD).]

I. The signatures of the harvester when listed on the form in accordance with paragraph A and the licensed professional forester when listed on the form in accordance with paragraph B; [2003, c. 452, Pt. F, §44 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

J. The signature of the landowner and the signature of the designated agent when a designated agent is listed in accordance with paragraph A. If the designated agent is a licensed professional forester who has a fiduciary responsibility to the landowner, the signature of the landowner is not required; [2003, c. 452, Pt. F, §44 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

K. A map locating the harvest site in relation to known or easily identifiable terrain features such as a road junction or a stream and road junction. The map must be a copy of a 7.5 or 15 minute series topographical map produced by the United States Geological Survey or a map of equivalent or superior detail in the location of roads; and [2003, c. 452, Pt. F, §44 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

L. The date of notification. [2003, c. 452, Pt. F, §44 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2011, c. 532, §§5, 6 (AMD); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

3. Harvest reporting forms. Upon receipt by the bureau of the form required under subsection 2, the bureau shall mail forms to the landowner or designated agent for reporting harvest information pursuant to this subchapter.

[2003, c. 452, Pt. F, §44 (NEW); 2003, c. 452, Pt. X, §2 (AFF); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

4. Notification form on file; posted. The landowner or designated agent shall retain a copy of the notification form and produce it upon request of agents as specified in section 8888. The landowner or designated agent shall post the notification number at the harvest site in a clearly visible location.

[2003, c. 452, Pt. F, §44 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

5. Duration. A notification shall remain valid for 2 years from the date of issue or upon completion of the harvest, whichever occurs first. If the harvest extends beyond 2 years, a new notice under this section must be filed.

[2003, c. 452, Pt. F, §44 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

6. Notification exemption. The following activities are exempt from the notification requirement under this section:

A. Activities when forest products are harvested for an owner's own use and are not sold or offered for sale or used in the owner's primary wood-using plants; [2011, c. 532, §7 (AMD) .]

B. Precommercial silvicultural forestry activities; and [2003, c. 452, Pt. F, §44 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

C. Harvesting performed by the landowner within a 12-month period when the total area harvested on land owned by that landowner does not exceed 2 acres. [2011, c. 532, §7 (AMD) .]

[2011, c. 532, §7 (AMD) .]

6-A. Alternative notifications. The bureau may develop alternative notification forms and methods for reporting:

A. A timber harvesting operation 10 acres or less in area; and [2011, c. 532, §8 (NEW) .]

B. Timber harvesting for the purpose of converting the land to another use when a person certified in erosion control practices by the Department of Environmental Protection is responsible for management of erosion and sedimentation control at the harvest site. [2011, c. 532, §8 (NEW) .]

[2011, c. 532, §8 (NEW) .]

7. Penalties. The following penalties apply to the failure to notify the bureau pursuant to this section. Each day of failure to notify is a separate offense.

A. [2011, c. 532, §9 (RP).]

B. [2011, c. 532, §9 (RP).]

C. Failure to notify the bureau of a timber harvesting operation constitutes a civil violation for which a fine not to exceed \$1,000 for each occurrence may be adjudged and for which immediate cessation of the operation may be ordered by the court. Continued operation after receiving an order to cease operation constitutes a civil violation for which a fine not to exceed \$1,000 for each day the operation continues may be adjudged. [2011, c. 532, §9 (AMD); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §23 (REV).]

D. Providing inaccurate information on a notification form for a timber harvesting operation is a civil violation for which a fine of not more than \$1,000 for each occurrence may be adjudged. [2011, c. 532, §9 (AMD).]

[2011, c. 532, §9 (AMD); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

8. Confidentiality. The addresses, telephone numbers and electronic mail addresses of forest landowners owning less than 1,000 acres statewide contained in notifications filed under this section are confidential and may be disclosed only in accordance with section 8005.

[2005, c. 358, §3 (NEW) .]

9. Rulemaking. No later than November 1, 2012, the bureau shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 532, §10 (NEW) .]

SECTION HISTORY

2003, c. 452, §F44 (NEW). 2003, c. 452, §X2 (AFF). 2005, c. 358, §3 (AMD). 2011, c. 532, §§4-10 (AMD). 2011, c. 657, Pt. W, §7 (REV). 2013, c. 405, Pt. A, §23 (REV).

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Maine Revised Statutes
Title 36: TAXATION
Chapter 105: CITIES AND TOWNS

§581-G. REPORT TO BUREAU OF FORESTRY

1. Municipal report. The municipal assessor or chief assessor of a primary assessing area shall report annually to the Department of Agriculture, Conservation and Forestry, Bureau of Forestry by November 1st or 30 days following the tax commitment date, whichever is sooner, the following information relating to land taxed according to this subchapter:

- A. The names and addresses of forest landowners; [2005, c. 358, §5 (NEW) .]
- B. The total number of acres taxed pursuant to this subchapter, including a breakdown of forest type, by softwood, mixed wood and hardwood; [2005, c. 358, §5 (NEW) .]
- C. The year each parcel was first accepted for taxation under this subchapter; [2005, c. 358, §5 (NEW) .]
- D. The year of the most recent recertification of each parcel; and [2005, c. 358, §5 (NEW) .]
- E. The tax map number, plan number and lot number for each parcel listed. [2005, c. 358, §5 (NEW) .]

[2005, c. 358, §5 (NEW); 2011, c. 657, Pt. W, §§5, 7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

2. Forms. The Department of Agriculture, Conservation and Forestry, Bureau of Forestry shall annually provide municipalities with forms for submitting the information required under subsection 1. To the extent that the Bureau of Forestry has the required information, the Bureau of Forestry shall include that information on the forms.

[2005, c. 358, §5 (NEW); 2011, c. 657, Pt. W, §§5, 7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

3. Confidentiality. Addresses, telephone numbers and electronic mail addresses of forest landowners owning less than 1,000 acres statewide contained in reports filed under this section are confidential when in possession of the Department of Agriculture, Conservation and Forestry, Bureau of Forestry and may be disclosed only in accordance with Title 12, section 8005.

[2005, c. 358, §5 (NEW); 2011, c. 657, Pt. W, §§5, 7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

SECTION HISTORY

2005, c. 358, §5 (NEW). 2011, c. 657, Pt. W, §§5, 7 (REV). 2013, c. 405, Pt. A, §23 (REV) .

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STATUTE: 12 MRSA § 10110

AGENCY: Dept. of Inland Fisheries and Wildlife

CONTACT PERSON: Christl Theriault

CONTACT PERSON'S EMAIL ADDRESS: christl.f.theriault @maine.gov

§10110. HUNTING AND FISHING LICENSE; CONFIDENTIAL

1. Indication of confidentiality. The commissioner shall allow an applicant for a hunting or fishing license to indicate that the applicant's e-mail address is confidential. 2. Confidential information. If a person indicates that the person's e-mail address submitted as part of the application process for a hunting or fishing license is confidential as provided in subsection 1, that information is confidential. [2011, c. 185, §1 (NEW) .] 3. Exception. E-mails designated as confidential under this section are not confidential to department personnel or law enforcement officers or for purposes of court proceedings.

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).

Prior to this becoming confidential many people or organizations asked for a list of emails from IFW's license buyers to utilize for marketing. This caused our license buyers to be very disgruntled. We also redact this information if a license buyer's email is used in an investigation because often the person's name is part of their email address so it becomes personally identifying information.

Once it became confidential there were fewer requests for the list of emails but there are still several requests per a month. The Department explains that this information is confidential in nature.

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

The Department supports this exception. More hunting, fishing and trapping license buyers are willing provide their email address knowing that it is kept confidential from the public. Being able to have access to a person's email allows IFW to reach a customer faster or more conveniently and if IFW is conducting a survey to improve the experience for our customers, contacting them via email is the most effective approach.

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?

There haven't been any issues in applying the exception. The statute language is clear.

4. Does your agency recommend changes to this exception?

No

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

There are thousands of stakeholders, from all of IFW's customers to Maine guides, to business that cater to the sporting public.

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

N/A

Maine Revised Statutes

Title 12: CONSERVATION

Chapter 903: DEPARTMENT OF INLAND FISHERIES AND WILDLIFE
HEADING: PL 2003, c. 414, Pt. A, §2 (new); Pt. D, §7 (aff); c. 614, §9 (aff)

§10110. HUNTING AND FISHING LICENSE; CONFIDENTIAL

1. Indication of confidentiality. The commissioner shall allow an applicant for a hunting or fishing license to indicate that the applicant's e-mail address is confidential.

[2011, c. 185, §1 (NEW) .]

2. Confidential information. If a person indicates that the person's e-mail address submitted as part of the application process for a hunting or fishing license is confidential as provided in subsection 1, that information is confidential.

[2011, c. 185, §1 (NEW) .]

3. Exception. E-mails designated as confidential under this section are not confidential to department personnel or law enforcement officers or for purposes of court proceedings.

[2011, c. 185, §1 (NEW) .]

SECTION HISTORY

2011, c. 185, §1 (NEW) .

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STATUTE: 12 MRSA § 12551-A, sub-§10

AGENCY: Dept. of Inland Fisheries and Wildlife

CONTACT PERSON: Christl Theriault

CONTACT PERSON'S EMAIL ADDRESS: christl.f.theriault @maine.gov

Title 12 Section 12551-A subsection 10. Reports required.

A person licensed under this section must submit a report on forms provided by the department with the following information: name and location, including the town and county of waters fished; date fished; total catch; gear type; and number of nets used. The report must be submitted by May 31st of each year. A person who has not submitted this report may be prohibited from obtaining a license under this section. A person who is prohibited from obtaining a license under this section may submit an appeal to the commissioner. All data submitted as part of the report are for scientific purposes only and are confidential and not a public record within the meaning of Title 1, chapter 13, subchapter 1, except that the commissioner may disclose data collected under this subsection if that data are released in a form that is statistical or general in nature.

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 a FOA request or in administrative or other litigation).

The Department of Inland Fisheries and Wildlife invokes this exemption several times per year when requests are received to release records pertaining to the commercial harvest of rainbow smelts. These requests for information come mainly from the public and some commercial bait harvesters. The Department requires by law that the holders of a commercial smelt fishing license report the date, gear type, location fished and number of smelts harvested for each day the license holder fishes. There are approximately 120 individual harvest reports received by the Department each year, though that number varies annually from 113 – 153. We have not issued any formal denials in response to FOA requests or other litigation. Most often we are able to provide an explanation to the party requesting information so they understand that legally the report data cannot be released. These requests are most often made from the public or legislators requesting information to address constituent inquiries.

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

The Department supports the continuation of this exemption. The individual harvest reports, if released to the public, would provide an economic advantage to competing commercial smelt fishermen or those new to the business looking to harvest smelts. This will lead to increased incidents of false information reported to the Department and in turn the Department has less scientific data to work with. The Department remains diligent in protecting this information so commercial smelt harvesters are comfortable reporting this sensitive trade and industry data to the Department.

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 only issue that has occurred is related to the level of data aggregation that must occur before any of the data is release to the public in a report. Our goal is to collate the data so individual fisherman, areas fished and incomes cannot be extracted from the report. The language in the statute is clear that the records are intended to be confidential under the FOA law and it specifies which records are to be kept confidential.

4. Does your agency recommend changes to this exception?

No

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

We can provide contact information for individual smelt harvesters that would be willing to participate if requested to do so.

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

Maine Revised Statutes

Title 12: CONSERVATION

Chapter 923: FISH: FISHING SEASONS AND RESTRICTIONS

HEADING: PL 2003, c. 414, Pt. A, §2 (new); Pt. D, §7 (aff); c. 614, §9 (aff)

§12551-A. DEALING IN LIVE SMELTS AND BAITFISH

1. Definition. For purposes of this section, "business facility" means a fixed place of business and does not include a motor vehicle or trailer. Live smelts or baitfish that are held in or on a motor vehicle or trailer by a person licensed under this section are considered in transport even if the motor vehicle or trailer may be temporarily placed at a specific location by the licensee, or the licensee's designee, for the purpose of selling live smelts or baitfish to anglers.

[2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

2. License required. A person may not:

A. Possess for resale, sell or offer to sell live smelts, *Osmerus mordax*, or live baitfish, as defined in section 10001, subsection 6, without an appropriate and valid license issued under subsection 3; [2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

B. Engage in taking or assist in taking live baitfish for resale from inland waters without a valid baitfish wholesaler's license; [2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

C. Engage in taking or assist in taking live smelts for resale from inland waters without a smelt wholesaler's license; or [2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

D. Sell live smelts or baitfish from more than one facility without an appropriate and valid license for each facility. [2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

Each day a person violates this subsection, that person commits a Class E crime for which a minimum fine of \$50 and an amount equal to twice the applicable license fee must be imposed.

[2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

3. Issuance; eligibility. The commissioner may issue to a resident or nonresident upon payment of the appropriate fee:

A. A live bait retailer's license that permits a person to possess for resale, sell or offer to sell live smelts and baitfish; [2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

B. A baitfish wholesaler's license that permits a person to take and possess for resale, sell or offer to sell live baitfish; and [2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

C. A smelt wholesaler's license that permits a person to take and possess for resale, sell or offer to sell live smelts. [2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

[2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

4. Schedule of fees. The fees for licenses under this section are:

- A. For a live bait retailer's license, \$16; [2005, c. 12, Pt. III, §29 (AMD) .]
- B. For a baitfish wholesaler's license, \$26; and [2005, c. 12, Pt. III, §29 (AMD) .]
- C. For a smelt wholesaler's license, \$71. [2005, c. 12, Pt. III, §29 (AMD) .]

[2005, c. 12, Pt. III, §29 (AMD) .]

5. Live bait retailer's license authorizations and restrictions. The provisions of this subsection apply to the selling of live smelts and baitfish under a live bait retailer's license.

A. The holder of a live bait retailer's license may:

- (1) Sell live baitfish or smelts acquired from a person licensed under this section to deal in live baitfish or smelts;
- (2) Designate others to assist in selling live smelts and baitfish at the license holder's business facility;
- (3) Transport live smelts and baitfish or designate another to transport live smelts and baitfish on the license holder's behalf; and
- (4) Possess more than the daily bag limit of smelts, provided that the smelts were acquired from a person licensed under this section to deal in live smelts. [2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

B. The holder of a live bait retailer's license:

- (1) May not take or possess for the purposes of retail sale live baitfish or smelts from the inland waters of the State or private ponds;
- (2) Shall present a receipted invoice, bill of lading, bill of sale or other satisfactory evidence of the lawful possession of live baitfish or smelts for retail sale to any agent of the commissioner upon request; or
- (3) May not possess at that person's place of business any species of fish that may not legally be sold as bait.

Each day a person violates this paragraph that person commits a class E crime. [2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

[2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

6. Baitfish wholesaler's license authorizations and restrictions. The provisions of this subsection apply to the taking and selling of baitfish under the baitfish wholesaler's license.

A. The holder of a baitfish wholesaler's license may:

- (1) Take for the purpose of sale live baitfish from the inland waters of the State or from private ponds;
- (2) Use particles of food for the purpose of luring baitfish to a baitfish trap, a dip net, a drop net, a lift net or a bag net;
- (3) Designate others to assist the holder in selling live baitfish at the holder's business facility; and
- (4) Transport live baitfish or designate another to transport live baitfish on the license holder's behalf. [2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

B. The holder of a baitfish wholesaler's license may not:

- (1) When engaged in taking, or assisting in taking, live baitfish for resale from inland waters, fail to exhibit a baitfish wholesaler's license to any agent of the commissioner upon request;

- (2) Take baitfish other than by use of a seine as defined in section 10001, subsection 55; a baitfish trap as defined in section 10001, subsection 7; a dip net, a drop net, a lift net or a bag net; or by hook and line;
- (3) Attempt to take live bait for resale from the inland waters of the State by fishing through the ice using drop nets unless the holder marks all holes made in the ice by the holder for that purpose. The holes must be marked by suspending at least one strand of fluorescent biodegradable tape at least 3 feet above the ice around the entire perimeter of the hole so that the tape is visible from all sides;
- (4) Take eels;
- (5) Take or sell suckers, Genus *Catostomus*, greater than 10 inches in length between April 1st and September 30th of each year; or
- (6) Possess at that person's place of business any species of fish that may not legally be sold as bait.

Each day a person violates this paragraph that person commits a class E crime. [2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF).]

[2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

7. Smelt wholesaler's license authorizations and restrictions. The provisions of this subsection apply to the taking and selling of live smelts under the smelt wholesaler's license.

A. The holder of a smelt wholesale dealer's license may:

- (1) Take live smelts for resale from inland waters or private ponds. The taking of live smelts from inland waters must be in accordance with general rules adopted by the commissioner in regard to the taking of smelts. Except as provided in paragraph B, the holder of a smelt wholesaler's license shall comply with the same daily bag limit and the same tackle restrictions that apply to all other anglers and is subject to the same penalties for violations of those limits and restrictions. This subparagraph does not apply to a holder of a fish cultivator license as provided under section 12507;
- (2) Use a drop net, a lift net or hook and line to take up to 8 quarts of smelts through man-made openings in the ice while fishing on the ice from specific inland waters designated by the commissioner. A dip net may be used in conjunction with the above methods to assist with the handling and transporting of smelts. A licensee may keep the daily bag limit alive. The daily bag limit established under this subparagraph is for a 24-hour period, beginning at noon on a given day and ending at 11:59 a.m. the following day;
- (2-A) In waters naturally free of ice, take smelts from noon to 2:00 a.m. by the use of a dip net in the usual and ordinary way. The commissioner may establish the daily bag limit by rule and a licensee may keep the daily bag limit of smelts alive. The daily bag limit established under this subparagraph is for a 24-hour period, beginning at noon on a given day and ending at 11:59 a.m. the following day. The commissioner may shorten the noon to 2:00 a.m. smelt fishing timeframe by rule for enforcement or conservation purposes;
- (3) Use artificial light for the purpose of luring smelts to a drop net or a lift net;
- (4) Transport or possess at the holder's business facility more than the daily bag limit of smelts provided that the smelts were taken by the license holder in accordance with this section or acquired from a person licensed under this section to deal in live smelts;
- (5) Designate others to assist in selling live smelts at the holder's business facility; and
- (6) Transport or designate others to transport on the license holder's behalf live smelts in accordance with this subsection. [2009, c. 340, §16 (AMD).]

B. The holder of a smelt wholesale dealer's license may not:

- (1) When engaged in taking, or assisting in taking, live smelts for resale from inland waters, fail to exhibit the license to any agent of the commissioner upon request;

- (2) Take multiple bag limits from waters governed by general rules regulating the taking of smelts in order to attain the 8-quart limit of smelts described in paragraph A, subparagraph (2);
- (3) Use a seine to take smelts;
- (4) Transport or possess at the holder's business facility more than the daily bag limit of smelts at any time unless the smelts were acquired in accordance with paragraph A, subparagraph (4). If the smelts were purchased from another person, the license holder must present a receipted invoice, bill of lading or bill of sale to any agent of the commissioner upon request;
- (5) Transport from an inland water source to the licensee's place of business more than 8 quarts of live smelts;
- (6) Permit any person to transport live smelts on the license holder's behalf directly from an inland water source;
- (7) Attempt to take from the inland waters of the State live smelts for resale using drop nets through the ice unless the license holder marks all holes made in the ice by that license holder for that purpose. The holes must be marked either by evergreen boughs placed around the hole or by suspending at least one strand of fluorescent biodegradable tape at least 3 feet above the ice around the entire perimeter of the hole so that the tape is visible from all sides;
- (8) Take smelts unless the holder uses an operable commercially manufactured number 14 fish grader to sort smelts by size during the taking of smelts. The holder shall liberate immediately all undersized smelts alive into the waters from which they were taken. For the purpose of this subparagraph, a commercially manufactured number 14 grader is a grader having a minimum grate size of 14/64 inches and that allows smelts to pass through at least 2 sides and the bottom of the grader. The commissioner may adopt rules to amend the grate size restrictions under this subparagraph if the commissioner determines such rules are necessary for conservation or enforcement purposes;
- (9) Possess at that person's place of business any species of fish that may not legally be sold as bait;
- (10) Use particles of food or any other type of bait or lure except light to lure smelts to a drop net or a lift net; or
- (11) Use a dip net to take smelts unless that dip net meets the requirements under section 10001, subsection 12-A.

Each day a person violates this paragraph that person commits a Class E crime. [2005, c. 237, §3 (AMD) .]

For purposes of this subsection, live smelts are considered in possession of the licensee once the smelts have been removed from the inland waters and placed in a container.

[2009, c. 340, §16 (AMD) .]

8. Effect of revoked or suspended license. A person whose license to deal in live smelts and baitfish has been revoked or suspended pursuant to section 10902 may not assist another dealer in selling or transporting live smelts and baitfish.

A person who violates this subsection commits a class E crime.

[2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

9. Inspection of live smelts and baitfish. A person licensed under this section who possesses live smelts or baitfish at a fixed place of business shall make those fish available for inspection by a warden or a department fisheries biologist during normal business hours. A person licensed under this section who possesses live smelts or baitfish at a location other than the licensee's fixed place of business shall make those fish available for inspection by a warden or a department fisheries biologist at any time, upon request.

[2003, c. 655, Pt. B, §259 (NEW); 2003, c. 655, Pt. B, §422 (AFF) .]

9-A. Record inspection. Records retained as required in this section must be open for inspection by the commissioner or the commissioner's agent.

[2011, c. 253, §30 (NEW) .]

10. Reports required. A person licensed under this section must submit a report on forms provided by the department with the following information: name and location, including the town and county of waters fished; date fished; total catch; gear type; and number of nets used. The report must be submitted by May 31st of each year. A person who has not submitted this report may be prohibited from obtaining a license under this section. A person who is prohibited from obtaining a license under this section may submit an appeal to the commissioner.

All data submitted as part of the report are for scientific purposes only and are confidential and not a public record within the meaning of Title 1, chapter 13, subchapter 1, except that the commissioner may disclose data collected under this subsection if that data are released in a form that is statistical or general in nature.

[2005, c. 237, §4 (NEW) .]

SECTION HISTORY

2003, c. 655, §259 (NEW). 2003, c. 655, §422 (AFF). 2005, c. 12, §1129 (AMD). 2005, c. 237, §§3,4 (AMD). 2009, c. 340, §16 (AMD). 2011, c. 253, §30 (AMD).

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