

#1.

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

**§402. DEFINITIONS**

...

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

- A. The Legislature of Maine and its committees and subcommittees; [1975, c. 758, (NEW) .]
  - B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Community College System and any of its committees and subcommittees; [1989, c. 358, §1 (AMD); 1989, c. 443, §1 (AMD); 1989, c. 878, Pt. A, §1 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]
  - C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; [1991, c. 848, §1 (AMD) .]
  - D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1995, c. 608, §1 (AMD) .]
  - E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees; [2009, c. 334, §1 (AMD) .]
  - F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and [2009, c. 334, §2 (AMD) .]
  - G. The committee meetings, subcommittee meetings and full membership meetings of any association that:
    - (1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and
    - (2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.
- This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach. [2009, c. 334, §3 (NEW) .]

[ 2009, c. 334, §§1-3 (AMD) .]



**STATUTE:** 1 M.R.S. §402, Sub-§3, ¶C-1

**AGENCY:** Legislative Council, Executive Director

**CONTACT PERSON:** Grant Pennoyer

**CONTACT PERSON'S EMAIL ADDRESS:** Grant.Pennoyer@legislature.maine.gov

## QUESTIONS

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).

My experience in administering or applying this public records exception for certain constituent correspondence is very limited. I was able to seek some input from some partisan staff that have helped Legislators with constituent requests. They indicated that constituents often send confidential personal data or agency case files including this confidential data when seeking a Legislator's assistance with an issue before a state agency.

However, the staff also indicated that there were not aware of an instance when a Legislator applied this exception in denying a FOA request for a constituent request record. It seems highly unlikely that a constituent request would be captured in a FOA request unless it later became a public controversy. If that were the case and the press or someone requested a copy of the constituent's request, the confidential data could be redacted from the copy provided.

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

It makes sense to continue this public records exception given the high probability that future constituents requests will contain confidential data either intentional by the constituent or naively and unaware that most correspondence with Legislators is public 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?

I am not aware of problem with the application of this exception. The language is pretty straightforward in terms of what is covered by the exception.

4. Does your agency recommend changes to this exception?

I am not aware of recommended changes that would improve this exception or its application.

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

I reached out by an email to the Chiefs of Staff of the partisan offices as their staff would be most likely help a Legislator respond to a constituent request and potentially possess the file with the confidential information. I did not reach out or survey individual Legislators for their input as the direct stakeholders for this exception.

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

As I noted earlier, I have virtually no direct experience with constituent requests to Legislators. The generalizations provided above are all that I can provide.

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

**§402. DEFINITIONS**

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

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

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

[ 1991, c. 773, §1 (NEW) .]

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

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

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Community College System and any of its committees and subcommittees; [1989, c. 358, §1 (AMD); 1989, c. 443, §1 (AMD); 1989, c. 878, Pt. A, §1 (RPR); 2003, c. 20, Pt. 00, §2 (AMD); 2003, c. 20, Pt. 00, §4 (AFF) .]

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

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

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

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

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

(1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and

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

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

[ 2009, c. 334, §§1-3 (AMD) .]

**3. Public records.** The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

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

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

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

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

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

(a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(b) Credit or financial information;

(c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;

(d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or

(e) An individual's social security number; or

(2) Would be confidential if it were in the possession of another public agency or official; [2011, c. 264, §1 (NEW) .]

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

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B; [1989, c. 358, §4 (AMD); 1989, c. 443, §2 (AMD); 1989, c. 878, Pt. A, §2 (RPR); 2003, c. 20, Pt. 00, §2 (AMD); 2003, c. 20, Pt. 00, §4 (AFF) .]

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

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

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

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

J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization; [2001, c. 675, §1 (AMD) .]

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A; [2003, c. 392, §1 (AMD) .]

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

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure, systems and software. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure; [2011, c. 662, §2 (AMD) .]

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

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

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

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

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

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

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

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

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

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

U. Records provided by a railroad company describing hazardous materials transported by the railroad company in this State, the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes that are in the possession of a state or local emergency management entity or law enforcement agency, a fire department or other first responder. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5. [2015, c. 161, §3 (NEW) .]

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

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

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

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

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

[ 2013, c. 267, Pt. B, §1 (AMD) .]

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

[ 2009, c. 334, §4 (NEW) .]

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

[ 2011, c. 662, §3 (NEW) .]

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

[ 2011, c. 662, §3 (NEW) .]

#### SECTION HISTORY

1973, c. 433, §1 (AMD). 1975, c. 243, (RPR). 1975, c. 483, §2 (AMD). 1975, c. 758, (RPR). 1977, c. 164, §§1,2 (AMD). 1977, c. 696, §9 (AMD). 1985, c. 695, §§1,2 (AMD). 1985, c. 779, §§1,2 (AMD). 1987, c. 20, §1 (AMD). 1987, c. 402, §A1 (AMD). 1987, c. 477, §1 (AMD). 1989, c. 358, §§1-4 (AMD). 1989, c. 443, §§1,2 (AMD). 1989, c. 878, §§A1,2 (AMD). 1991, c. 448, §§1,2 (AMD). 1991, c. 773, §§1,2 (AMD). 1991, c. 848, §1 (AMD). 1995, c. 608, §§1-5 (AMD). 1997, c. 714, §1 (AMD). 1999, c. 96, §§1-3 (AMD). 2001, c. 477, §1 (AMD). 2001, c. 675, §§1-3 (AMD). 2003, c. 20, §002 (AMD). 2003, c. 20, §004 (AFF). 2003, c. 392, §§1-3 (AMD). 2003, c. 614, §§1-3 (AMD). 2005, c. 381, §§1-3 (AMD). 2007, c. 597, §1 (AMD). RR 2009, c. 1, §§1-3 (COR). 2009, c. 176, §§1-3 (AMD). 2009, c. 334, §§1-4 (AMD). 2009, c. 339, §§1-3 (AMD). 2011, c. 149, §§1-3 (AMD). 2011, c. 264, §1 (AMD). 2011, c. 320, Pt. E, §1 (AMD). 2011, c. 662, §§2, 3 (AMD). 2013, c. 267, Pt. B, §1 (AMD). 2013, c. 339, §§1-3 (AMD). 2013, c. 518, §§1-3 (AMD). 2015, c. 161, §§1-3 (AMD). 2015, c. 335, §1 (AMD).

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STATUTE: 17-A M.R.S. § 1176, sub-§ 1

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

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

## QUESTIONS

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

- The agency administers/applies this exception on a routine basis, and denial of access to the records/data covered by the exception can occur in the context of FOAA requests, administrative proceedings, criminal prosecutions, and private civil litigation.
- The records (or, more accurately, data) to which the exception applies are those described in the exception.

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

- The agency supports the continuation of the exception so as to ensure for the safety and well-being of victims of crimes, as well as their family members, when applicable.

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

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

4. Does your agency recommend changes to this exception?

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

**STATUTE:** 17-A MRSA § 1176, sub-§5

**AGENCY:** Dept. of Corrections

**CONTACT PERSON:** Jody Breton

**CONTACT PERSON'S EMAIL ADDRESS:** jody.l.breton@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).

Answer: The records covered are the requests of a victim to be notified when the prisoner who offended against him or her is released into the community. These requests are kept strictly confidential and even within the DOC are only accessible to employees who work directly with crime victims. The exception is rarely cited in denying a request for production of records as it seems to be widely understood that these records are and should be confidential.

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

Answer: DOC supports continuation of this exception as it protects the crime victim who is fearful enough for his or her safety to request notification of the offender's release and prevents the offender from learning this and from learning the victim's contact 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?

Answer: There have been no problems as this exception is very clear.

4. Does your agency recommend changes to this exception?

Answer: No.

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

Answer: Groups that promote the rights of victims.

Maine Coalition Against Sexual Assault  
Maine Coalition to End Domestic Violence  
Domestic Violence & Sexual Assault Commissions  
DOC's Victims Advisory Board  
Homicide Review Panel  
Parents of Murdered Children  
Criminal Law Advisory Commission

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

**Maine Revised Statutes**  
**Title 17-A: MAINE CRIMINAL CODE**

**Chapter 48: VICTIMS' RIGHTS HEADING: PL 1995, c. 680, §5 (new)**

**§1176. CONFIDENTIALITY OF VICTIM RECORDS**

**1. General rule of confidentiality.** Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined must be kept confidential, subject to disclosure only as authorized in this section.

[ 2007, c. 475, §13 (NEW) .]

**2. Disclosure to law enforcement or victim services agencies.** Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined may be disclosed only to:

A. A state agency if necessary to carry out the statutory duties of that agency; [2007, c. 475, §13 (NEW) .]

B. A criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile justice; [2007, c. 475, §13 (NEW) .]

C. A victims' service agency with a written agreement with a criminal justice agency to provide services as a victim advocate; or [2007, c. 475, §13 (NEW) .]

D. A person or agency upon request of the victim. [2007, c. 475, §13 (NEW) .]

[ 2007, c. 475, §13 (NEW) .]

**3. Limited disclosure as part of court order or bail condition.** A bail commissioner, judge, justice, court clerk, law enforcement officer or attorney for the State may disclose a victim's current address or location to the defendant or accused person, or the attorney or authorized agent of the defendant or accused person, as part of a bail condition or court order restricting contact with the victim, only when it is clear that the defendant already knows the victim's current address or location, or when the victim requests that such bail condition or court order be issued and the victim requests that the current address or location be specified.

[ 2007, c. 475, §13 (NEW) .]

**4. Limited disclosure pursuant to discovery.** Notwithstanding the provisions of the Maine Rules of Criminal Procedure, Rule 16, an attorney for the State may withhold the current address or location of a victim from a defendant, or the attorney or authorized agent of the defendant, if the attorney for the State has a good faith belief that such disclosure may compromise the safety of the victim.

[ 2007, c. 475, §13 (NEW) .]

**5. Disclosure of victim's request for notice prohibited.** In no case may a victim's request for notice of release of a defendant be disclosed except to those employees of the agency to which the defendant is committed and the office of the attorney for the State with which the request was filed in order for those employees to perform their official duties.

[ 2007, c. 475, §13 (NEW) .]

SECTION HISTORY

2005, c. 389, §1 (NEW). 2007, c. 475, §13 (RPR) .

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Ref # 43

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STATE OF MAINE  
ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE  
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS

March 1, 2016

Sen. David C. Burns, Chair  
Right to Know Advisory Committee  
127th Maine Legislature  
Second Regular Session

**RE: Review of Public Records Exception Affecting the Department of Education**

Dear Sen. Burns:

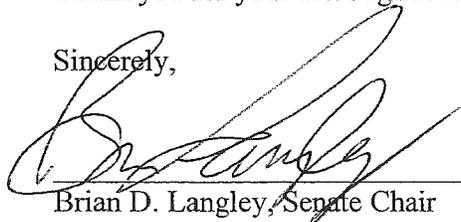
By letter dated January 6, 2016, the Right to Know Advisory Committee requested that the Education and Cultural Affairs Committee review a public records exception affecting the ability of the Department of Education to share certain education certification information with other states. We reviewed the exception at 20-A MRSA §13004(2-A)(A)&(B), and determined that no amendment to statute is necessary at this time.

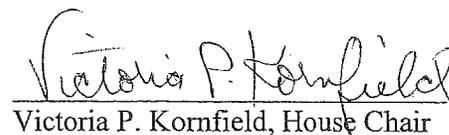
We agree with the Right to Know Advisory Committee that section 13004 does prohibit the disclosure of information that is designated confidential under Title 20-A, sections 6101 and 6103. However, when the Department of Education provided further information regarding the interstate exchange in which it participates, we concluded that the prohibitions in section 13004 are not currently affecting the Department's ability to participate in that exchange. The exchange – the National Association of State Directors of Teacher Education and Certification – relies on information derived from final determinations in certification actions (i.e. certification denial, revocation or suspension). In Maine, this information is within the definition of a “public record” under Title 20-A, section 6101(2)(C) and section 13004(2-A)(D), and can therefore be shared freely.

The Department has indicated that it may seek an amendment to section 13004 to clarify its language, and we welcome a proposal in the future.

Thank you for your thorough review and for bringing this potential issue to our attention.

Sincerely,

  
Brian D. Langley, Senate Chair

  
Victoria P. Kornfield, House Chair

cc: Members, Joint Standing Committee on Education and Cultural Affairs



#50

**Maine Revised Statutes**  
**Title 22: HEALTH AND WELFARE**  
**Chapter 401: GENERAL PROVISIONS**

**§1711-C. CONFIDENTIALITY OF HEALTH CARE INFORMATION**

...

**18. Participation in a state-designated statewide health information exchange.** The following provisions apply to participation in a state-designated statewide health information exchange.

A. A health care practitioner may not deny a patient health care treatment and a health insurer may not deny a patient a health insurance benefit based solely on the provider's or patient's decision not to participate in a state-designated statewide health information exchange. Except when otherwise required by federal law, a payor of health care benefits may not require participation in a state-designated statewide health information exchange as a condition of participating in the payor's provider network. [2011, c. 691, Pt. A, §20 (RPR).]

B. Recovery for professional negligence is not allowed against any health care practitioner or health care facility on the grounds of a health care practitioner's or a health care facility's nonparticipation in a state-designated statewide health information exchange arising out of or in connection with the provision of or failure to provide health care services. In any civil action for professional negligence or in any proceeding related to such a civil action or in any arbitration, proof of a health care practitioner's, a health care facility's or a patient's participation or nonparticipation in a state-designated statewide health information exchange is inadmissible as evidence of liability or nonliability arising out of or in connection with the provision of or failure to provide health care services. This paragraph does not prohibit recovery or the admission of evidence of reliance on information in a state-designated statewide electronic health information exchange when there was participation by both the patient and the patient's health care practitioner. [2011, c. 691, Pt. A, §20 (RPR).]

C. A state-designated statewide health information exchange to which health care information is disclosed under this section shall provide an individual protection mechanism by which an individual may opt out from participation to prohibit the state-designated statewide health information exchange from disclosing the individual's health care information to a health care practitioner or health care facility. [2011, c. 691, Pt. A, §20 (RPR).]

D. At point of initial contact, a health care practitioner, health care facility or other entity participating in a state-designated statewide health information exchange shall provide to each patient, on a separate form, at minimum:

- (1) Information about the state-designated statewide health information exchange, including a description of benefits and risks of participation in the state-designated statewide health information exchange;
- (2) A description of how and where to obtain more information about or contact the state-designated statewide health information exchange;
- (3) An opportunity for the patient to decline participation in the state-designated statewide health information exchange; and
- (4) A declaration that a health care practitioner, health care facility or other entity may not deny a patient health care treatment based solely on the provider's or patient's decision not to participate in a state-designated statewide health information exchange.

The state-designated statewide health information exchange shall develop the form for use under this paragraph, with input from consumers and providers. The form must be approved by the office of the

state coordinator for health information technology within the Governor's office of health policy and finance. [2011, c. 691, Pt. A, §20 (RPR).]

E. A health care practitioner, health care facility or other entity participating in a state-designated statewide health information exchange shall communicate to the exchange the decision of each patient who has declined participation and shall do so within a reasonable time frame, but not more than 2 business days following the receipt of a signed form, as described in paragraph D, from the patient, or shall establish a mechanism by which the patient may decline participation in the state-designated statewide health information exchange at no cost to the patient. [2011, c. 691, Pt. A, §20 (RPR).]

F. A state-designated statewide health information exchange shall process the request of a patient who has decided not to participate in the state-designated statewide health information exchange within 2 business days of receiving the patient's decision to decline, unless additional time is needed to verify the identity of the patient. A signed authorization from the patient is required before a patient is newly entered or reentered into the system if the patient chooses to begin participation at a later date.

Except as otherwise required by applicable law, regulation or rule or state or federal contract, or when the state-designated statewide health information exchange is acting as the agent of a health care practitioner, health care facility or other entity, the state-designated statewide health information exchange shall remove health information of individuals who have declined participation in the exchange. In no event may health information retained in the state-designated statewide health information exchange as set forth in this paragraph be made available to health care practitioners, health care facilities or other entities except as otherwise required by applicable law, regulation or rule or state or federal contract, or when the health care practitioner, health care facility or other entity is the originator of the information. [2011, c. 691, Pt. A, §20 (RPR).]

G. A state-designated statewide health information exchange shall establish a secure website accessible to patients. This website must:

- (1) Permit a patient to request a report of who has accessed that patient's records and when the access occurred. This report must be delivered to the patient within 2 business days upon verification of the patient's identity by the state-designated statewide health information exchange;
- (2) Provide a mechanism for a patient to decline participation in the state-designated statewide health information exchange; and
- (3) Provide a mechanism for the patient to consent to participation in the state-designated statewide health information exchange if the patient had previously declined participation. [2011, c. 691, Pt. A, §20 (RPR).]

H. A state-designated statewide health information exchange shall establish for patients an alternate procedure to that provided for in paragraph F that does not require Internet access. A health care practitioner, health care facility or other entity participating in the state-designated statewide health information exchange shall provide information about this alternate procedure to all patients. The information must be included on the form identified in paragraph D. [2011, c. 691, Pt. A, §20 (RPR).]

I. A state-designated statewide health information exchange shall maintain records regarding all disclosures of health care information by and through the state-designated statewide health information exchange, including the requesting party and the dates and times of the requests and disclosures. [2011, c. 691, Pt. A, §20 (RPR).]

J. A state-designated statewide health information exchange may not charge a patient or an authorized representative of a patient any fee for access or communication as provided in this subsection. [2011, c. 691, Pt. A, §20 (RPR).]

K. Notwithstanding any provision of this subsection to the contrary, a health care practitioner, health care facility or other entity shall provide the form and communication required by paragraphs D and F to all existing patients following the effective date of this subsection. [2011, c. 691, Pt. A, §20 (RPR).]

L. A state-designated statewide health information exchange shall meet or exceed all applicable federal laws and regulations pertaining to privacy, security and breach notification regarding personally identifiable protected health information, as defined in 45 Code of Federal Regulations, Part 160. If a breach occurs, the state-designated statewide health information exchange shall arrange with its participants for notification of each individual whose protected health information has been, or is reasonably believed by the exchange to have been, breached. For purposes of this paragraph, "breach" has the same meaning as in 45 Code of Federal Regulations, Part 164, as amended. [2011, c. 691, Pt. A, §20 (RPR).]

M. The state-designated statewide health information exchange shall develop a quality management plan, including auditing mechanisms, in consultation with the office of the state coordinator for health information technology within the department, who shall review the plan and results. [2011, c. 691, Pt. A, §20 (RPR).]

[ 2011, c. 691, Pt. A, §20 (RPR) .]

 **20. Exemption from freedom of access laws.** Except as provided in this section, the names and other identifying information of individuals in a state-designated statewide health information exchange are confidential and are exempt from the provisions of Title 1, chapter 13.

[ 2011, c. 373, §4 (NEW) .]

#### SECTION HISTORY

RR 1997, c. 2, §44 (COR). 1997, c. 793, §A8 (NEW). 1997, c. 793, §A10 (AFF). 1999, c. 3, §§1,2 (AMD). 1999, c. 3, §§3,5 (AFF). 1999, c. 512, §A5 (AMD). 1999, c. 512, §A6, 7 (AFF). 1999, c. 790, §§A58,60 (AFF). RR 2001, c. 1, §26 (COR). 2001, c. 346, §1 (AMD). 2009, c. 211, Pt. B, §17 (AMD). 2009, c. 292, §3 (AMD). 2009, c. 292, §6 (AFF). 2009, c. 387, §§1, 2 (AMD). 2011, c. 347, §§6-8 (AMD). 2011, c. 373, §§1-4 (AMD). 2011, c. 572, §1 (AMD). 2011, c. 691, Pt. A, §20 (AMD). 2013, c. 289, §§1, 2 (AMD). 2013, c. 326, §1 (AMD). 2013, c. 528, §1 (AMD). 2013, c. 528, §12 (AFF). RR 2015, c. 1, §17 (COR). 2015, c. 218, §1 (AMD). 2015, c. 370, §§4, 5 (AMD).

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STATUTE: 25 M.R.S. § 4202

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

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

## QUESTIONS

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

- Since the exception was enacted into law, the agency has not had occasion to administer or apply the exception.
- The records (or, more accurately, data) to which the exception applies are those described in the exception.

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

- The agency supports the continuation of the exception so as to ensure that law enforcement personnel who are involved in or respond to traumatic incidents can seek in confidence the emotional and mental-health support that critical incident stress management teams provide.

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

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

4. Does your agency recommend changes to this exception?

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

## Maine Revised Statutes

### Title 25: INTERNAL SECURITY AND PUBLIC SAFETY

#### Chapter 501: CRITICAL INCIDENT STRESS MANAGEMENT TEAMS

##### §4202. CRITICAL INCIDENT STRESS MANAGEMENT TEAMS

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

[ 2009, c. 289, §1 (NEW) . ]

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

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

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

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

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

[ 2009, c. 289, §1 (NEW) . ]

##### SECTION HISTORY

2009, c. 289, §1 (NEW) .

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STATUTE: 29-A MRSA § 2251, sub-§ 7-A

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

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

## QUESTIONS

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

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

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

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

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

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

4. Does your agency recommend changes to this exception?

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

Maine Revised Statutes

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

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

**§2251. ACCIDENT REPORTS**

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

[ 2007, c. 348, §23 (AMD) .]

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

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

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

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

[ 1995, c. 2, §71 (COR) .]

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

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

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

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

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

[ 2003, c. 688, Pt. A, §35 (AMD) .]

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

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

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

Every reported accident must be promptly investigated.

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

[ 2003, c. 688, Pt. A, §36 (AMD) .]

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

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

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

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

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

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

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

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

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

[ 2011, c. 662, §18 (AMD) .]

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

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

(1) "Data" means information existing in an electronic medium and contained in an accident report database.

(2) "Nonpersonally identifying accident report data" means any data in an accident report that are not personally identifying accident report data.

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

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

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

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

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

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

[ 2013, c. 267, Pt. B, §24 (AMD) .]

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

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

[ 2011, c. 654, §9 (AMD) .]

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

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

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

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

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

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

#### SECTION HISTORY

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

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**STATUTE:** 29-A MRSA § 2117-A, sub-§4

**AGENCY:** Dept. of Public Safety

**CONTACT PERSON:** Chris Parr

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

## QUESTIONS

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

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

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

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

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

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

4. Does your agency recommend changes to this exception?

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

Maine Revised Statutes

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

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

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

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

[ 2009, c. 605, §1 (NEW) .]

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

[ 2009, c. 605, §1 (NEW) .]

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

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

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

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

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

[ 2009, c. 605, §1 (NEW) .]

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

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

[ 2009, c. 605, §1 (NEW) .]

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

[ 2013, c. 267, Pt. B, §23 (AMD) .]

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

[ 2009, c. 605, §1 (NEW) .]

SECTION HISTORY

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

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STATUTE: 32 M.R.S. § 91-B, sub-§ 1

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

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

## QUESTIONS

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

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

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

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

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

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

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

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

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

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

## QUESTIONS

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

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

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

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

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

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

4. Does your agency recommend changes to this exception?

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

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

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

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

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

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

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

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

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

## QUESTIONS

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

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

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

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

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

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

4. Does your agency recommend changes to this exception?

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

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

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

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

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

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

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

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

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

## QUESTIONS

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

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

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

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

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

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

4. Does your agency recommend changes to this exception?

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

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

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

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

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

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

**AGENCY:** Dept. of Public Safety

**CONTACT PERSON:** Chris Parr

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

## QUESTIONS

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

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

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

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

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

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

4. Does your agency recommend changes to this exception?

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

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

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

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

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

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

## Maine Revised Statutes

### Title 32: PROFESSIONS AND OCCUPATIONS

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

##### §91-B. CONFIDENTIALITY EXCEPTIONS

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

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

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

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

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

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

[ 2011, c. 271, §19 (NEW) .]

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

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

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

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

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

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

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

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

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

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

[ 2015, c. 82, §8 (AMD) .]

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

[ 2011, c. 271, §19 (NEW) . ]

SECTION HISTORY

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

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STATUTE: 34-A MRSA § 11221, sub-§ 13

AGENCY: Dept. of Public Safety

CONTACT PERSON: Chris Parr

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

## QUESTIONS

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

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

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

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

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

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

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

**STATUTE:** 34-A MRSA § 11221, sub-§ 9-A

**AGENCY:** Dept. of Public Safety

**CONTACT PERSON:** Chris Parr

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

## QUESTIONS

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

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

**Maine Revised Statutes**  
**Title 34-A: CORRECTIONS**  
**Chapter 15: SEX OFFENDER REGISTRATION AND**  
**NOTIFICATION ACT OF 1999 HEADING: PL 1999, c. 437, §2 (new)**

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

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

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

[ 2005, c. 423, §9 (AMD) .]

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

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

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

[ 1999, c. 437, §2 (NEW) .]

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

[ 1999, c. 437, §2 (NEW) .]

**5. Sexually violent predator directory.**

[ 2003, c. 371, §5 (RP) .]

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

[ 2005, c. 423, §10 (AMD) .]

**7. Rules.**

[ 2005, c. 423, §11 (RP) .]

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

[ 2013, c. 267, Pt. B, §28 (AMD) .]

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

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

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

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

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

[ 2011, c. 307, §1 (AMD) .]

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

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

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

[ 2011, c. 299, §1 (NEW) .]

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

[ 2013, c. 267, Pt. B, §29 (AMD) .]

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

[ 2005, c. 545, §1 (AMD) .]

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

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

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

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

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

[ 2005, c. 545, §2 (NEW) .]

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

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

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

[ 2015, c. 299, §26 (AMD) .]

#### SECTION HISTORY

1999, c. 437, §2 (NEW). 2003, c. 371, §§4-7 (AMD). 2003, c. 711, §§17-20 (AMD). 2003, c. 711, §D2 (AFF). 2005, c. 423, §§9-13 (AMD). 2005, c. 545, §§1,2 (AMD). 2011, c. 299, §§1-3 (AMD). 2011, c. 307, §1 (AMD). 2013, c. 267, Pt. B, §§28, 29 (AMD). 2015, c. 299, §26 (AMD).

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Maine Revised Statutes

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

Chapter 1: GENERAL PROVISIONS

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

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

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

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

[ 2007, c. 609, §2 (NEW) .]

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

[ 2007, c. 609, §2 (NEW) .]

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

[ 2007, c. 609, §2 (NEW) .]

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

[ 2007, c. 609, §2 (NEW) .]

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

[ 2007, c. 609, §2 (NEW) .]

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

[ 2007, c. 609, §2 (NEW) .]

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

[ 2007, c. 609, §2 (NEW) .]

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

[ 2007, c. 609, §2 (NEW) .]

SECTION HISTORY

2007, c. 609, §2 (NEW) .

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**STATUTE:** 34-B MRSA § 3864, sub-§ 12

**AGENCY:** Dept. of Public Safety

**CONTACT PERSON:** Chris Parr

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

## QUESTIONS

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

- The agency is unaware of any occasion when it has administered or applied this exception.
- The records subject to the exception are described in the exception.

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

- The agency supports continuation of the exception, as it protects individuals' personal health information.

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

- The agency is unaware of any occasion when it has administered or applied this exception.
- The type of records to which the exception applies is understandable, and the language of the exception is sufficiently clear in describing the records covered.

4. Does your agency recommend changes to this exception?

- The agency does not recommend any changes to the exception at this time.

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

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

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

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

Maine Revised Statutes

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

Chapter 3: MENTAL HEALTH

§3864. JUDICIAL PROCEDURE AND COMMITMENT

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

- A. The emergency application under section 3863, subsection 1; [1983, c. 459, §7 (NEW) .]
- B. The accompanying certificate of the medical practitioner under section 3863, subsection 2; [2009, c. 651, §20 (AMD) .]
- C. The certificate of the physician or psychologist under section 3863, subsection 7; [2009, c. 651, §20 (AMD) .]
- D. A written statement, signed by the chief administrative officer of the psychiatric hospital, certifying that a copy of the application and the accompanying documents have been given personally to the patient and that the patient and the patient's guardian or next of kin, if any, have been notified of:
  - (1) The patient's right to retain an attorney or to have an attorney appointed;
  - (2) The patient's right to select or to have the patient's attorney select an independent examiner; and
  - (3) How to contact the District Court; and [2009, c. 651, §20 (AMD) .]
- E. A copy of the notice and instructions given to the patient. [1997, c. 422, §14 (NEW) .]

[ 2009, c. 651, §20 (AMD) .]

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

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

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

- A. The District Court orders release or discharge upon the request of the patient or the patient's guardian, parent, spouse or next of kin; [2007, c. 319, §10 (AMD) .]
- B. The District Court orders release or discharge upon the report of the applicant that the person may be discharged with safety; [1995, c. 496, §3 (AMD) .]
- C. A court orders release or discharge upon a writ of habeas corpus under section 3804; [2015, c. 309, §6 (AMD) .]
- D. Upon request of the commissioner, the District Court orders the transfer of a patient in need of more specialized treatment to another psychiatric hospital. In the event of a transfer, the court shall transfer its file to the District Court having territorial jurisdiction over the receiving psychiatric hospital; or [2015, c. 309, §7 (AMD) .]

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

[ 2015, c. 309, §§6-8 (AMD) .]

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

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

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

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

[ 1997, c. 422, §15 (AMD) .]

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

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

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

C. [2007, c. 319, §10 (RP) .]

D. [2007, c. 319, §10 (RP) .]

E. The examiner shall report to the court on:

- (1) Whether the person is a mentally ill person within the meaning of section 3801, subsection 5;
- (2) When the establishment of a progressive treatment plan under section 3873-A is at issue, whether a person is suffering from a severe and persistent mental illness within the meaning of section 3801, subsection 8-A;
- (3) Whether the person poses a likelihood of serious harm within the meaning of section 3801, subsection 4-A;
- (4) When involuntary treatment is at issue, whether the need for such treatment meets the criteria of subsection 7-A, paragraphs A and B;
- (5) Whether adequate community resources are available for care and treatment of the person's mental illness; and

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

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

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

[ 2009, c. 651, §21 (AMD) .]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[ 2009, c. 651, §22 (AMD) .]

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

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

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

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

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

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

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

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

[ 2009, c. 651, §23 (AMD) .]

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

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

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

[ 2009, c. 651, §24 (AMD) .]

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

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

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

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

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

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

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

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

[ 2009, c. 651, §§25, 26 (AMD) .]

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

[ 2007, c. 319, §10 (AMD) .]

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

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

[ 2007, c. 319, §10 (AMD) .]

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

[ 2007, c. 319, §10 (AMD) .]

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

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

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

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

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

[ 2007, c. 319, §10 (AMD) .]

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

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

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

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

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

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

[ 2007, c. 670, §19 (NEW) .]

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

[ 2007, c. 670, §20 (NEW) .]

#### SECTION HISTORY

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

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**Nale, Craig**

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

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

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

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

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

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

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

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

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

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

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

Please get in touch if you have any questions.

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

Best,

/Michael

**Michael D. Stoddard**

Executive Director

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

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

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

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

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

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

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

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

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

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

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

**SUMMARY**

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

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