RIGHT TO KNOW ADVISORY COMMITTEE

Monday, November 19, 2018
9:00 a.m.
State House Room 438

Meeting Agenda

1. Introductions

2. Reports of Subcommittees
   A. Public Records Exceptions Subcommittee
      Proposed recommendations
   B. Remedies Subcommittee

3. Discussion: issues identified for review
   A. School surveillance cameras
   B. Accessing public records in electronic databases
   C. Study on Remote Participation
   D. Joint Select Committee on government transparency and data privacy policy issues

4. Possible legislation proposals
   A. Proposed in report but not enacted by 128th Legislature
      (1) FOA training for appointed public officials
      (2) Remote participation
   B. Other

5. Establish future meeting dates

6. Adjourn
An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation

Reported by Representative MOONEN of Portland for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

ROBERT B. HUNT
Clerk
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §403-A is enacted to read:

§403-A. Remote participation in public proceedings

It is the intent of the Legislature that actions of bodies subject to this subchapter be taken openly and their deliberations be conducted openly. This section governs participation in a public proceeding of such a body by a member of that body when the member is not physically present. Remote participation, which means participation through telephonic, video, electronic or other similar means of communication may not be used to defeat the purposes of this subchapter as stated in section 401. The Legislature may not allow its members to participate remotely in public proceedings of the Legislature.

1. Remote participation; requirements. Except as provided in subsection 2, a body subject to this subchapter may not allow a member of the body to participate remotely in any of its public proceedings unless the participation is in accordance with this subchapter and:

A. After notice and public hearing, the body has adopted a written policy or rule that authorizes a member of the body who is not physically present to participate in a public proceeding of that body in a manner that allows all members to simultaneously hear and speak to each other during the public proceeding and allows members of the public attending the public proceeding at the location identified in the notice required by section 406 to hear all members of the body. If the policy allows remote participation in executive sessions, the policy must establish procedures and requirements that ensure the privacy of the executive session;

B. A quorum is physically present at the location identified in the notice required by section 406, unless immediate action is imperative and physical presence of a quorum is not reasonably practicable within the period of time in which action must be taken. The determination that a quorum is not required under this paragraph must be made by the presiding officer of the body and the facts supporting that determination must be included in the record of the meeting. A body may not consider matters other than those requiring immediate action in a public proceeding held pursuant to this subsection when a quorum is not physically present;

C. Each member of the body who is participating in the public proceeding remotely identifies for the record all persons present at the location from which the member is participating. The member shall note for the record when any person enters or leaves the location throughout the course of the public proceeding;

D. All votes taken during the public proceeding are taken by roll call;

E. A member of the body who is not physically present at the location identified in the notice required by section 406 does not participate and does not vote in an adjudicatory proceeding; and

F. Each member of the body who is participating in the public proceeding remotely receives any documents or other materials presented or discussed at the public proceeding.

Page 1 - 1281.R2890(01)-1
proceeding in advance or when made available at the public proceeding if the
transmission technology is available. Failure to comply with this subsection does not
invalidate an action of the body.

2. Exceptions. The following bodies are exempt from the provisions of this section
and a member of the following bodies may participate in a public proceeding of the body
when the member is not physically present:

A. The Finance Authority of Maine, as provided in Title 10, section 971;

B. The Commission on Governmental Ethics and Election Practices, as provided in
Title 21-A, section 1002, subsection 2;

C. The Maine Health and Higher Educational Facilities Authority, as provided in
Title 22, section 2054, subsection 4;

D. The Maine State Housing Authority, as provided in Title 30-A, section 4723,
subsection 2, paragraph B;

E. The Maine Municipal Bond Bank, as provided in Title 30-A, section 5951,
subsection 4;

F. The Emergency Medical Services' Board, as provided in Title 32, section 88,
subsection 1, paragraph D; and

G. The Workers' Compensation Board, as provided in Title 39-A, section 151,
subsection 5.

SUMMARY

This bill implements the recommendation of the Right To Know Advisory
Committee to clarify when members of public bodies may participate remotely in public
proceedings of those bodies. The bill prohibits a body subject to the Freedom of Access
Act from allowing its members to participate in its public proceedings through
telephonic, video, electronic or other similar means of communication unless the body
has adopted a written policy that authorizes remote participation in a manner that allows
all members to simultaneously hear and speak to each other during the public proceeding
and allows members of the public attending the public proceeding at the location
identified in the meeting notice to hear all members of the body. If the policy allows
remote participation in executive sessions, the policy must establish procedures and
requirements that ensure the privacy of the executive session. The bill requires a quorum
of the body to be physically present at the location identified in the meeting notice unless
immediate action is imperative and physical presence of a quorum is not reasonably
practicable within the period of time requiring action. The bill requires that each member
participating remotely identify all persons present at the remote location, that all votes be
taken by roll call and that members participating remotely receive documents or other
materials presented or discussed at the public proceeding in advance or when made
available at the meeting, if the technology is available. The bill prohibits members who
are not physically present at the meeting location from participating and voting in
adjudicatory proceedings.
The bill prohibits the Legislature from allowing its members to participate in its public proceedings through telephonic, video, electronic or other similar means of communication, but allows the Finance Authority of Maine, the Commission on Governmental Ethics and Election Practices, the Maine Health and Higher Educational Facilities Authority, the Maine State Housing Authority, the Maine Municipal Bond Bank, the Emergency Medical Services' Board and the Workers' Compensation Board to continue allowing remote participation at their public proceedings as currently authorized in law.
An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Freedom of Access Training for Public Officials

Reported by Representative MOONEN of Portland for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

ROBERT B. HUNT
Clerk
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §412, as amended by PL 2011, c. 662, §7, is further amended to read:

§412. Public records and proceedings training for certain officials and public access officers

1. Training required. A public access officer and an elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or public access officer shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official or the person is designated as a public access officer pursuant to section 413, subsection 1.

2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:

A. The general legal requirements of this chapter regarding public records and public proceedings;

B. Procedures and requirements regarding complying with a request for a public record under this chapter; and

C. Penalties and other consequences for failure to comply with this chapter.

An elected official or a public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official or public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected or appointed. A public access officer shall file the record with the agency or official that designated the public access officer.

4. Application. This section applies to a public access officer and the following elected and appointed officials:

A. The Governor;

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

C. Members of the Legislature elected after November 1, 2008;
E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

G. Officials of school administrative units; and

H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

SUMMARY

Current law requires officials elected to certain positions to complete training on the requirements of the Freedom of Access Act but does not require officials appointed to those positions to complete that training. This bill implements the recommendation of the Right To Know Advisory Committee that appointed officials also be required to complete the training.
Hi, Peggy.

I only occasionally get involved with support for “database” searches. My work is mostly for email and lesser so for documents.

Asking about database information is particularly difficult for the reasons you mention below (elements that may have PII or be non-relevant to the request). But it is also difficult because of the mechanics (and skill) for getting specifically what the requestor wants. Here are some points that come to mind:

1. **The requestor thinks you can just “Google it”**: The FOIA requestors (public or press) typically assume that because information is automated, that it’s as easy as “Googling it” to pull out what you want. Because of the 3 reasons below, it’s not that easy (or may not even be possible at all) to pull specific data out of pre-structured databases and systems. “Googling it” works well if it’s searching Internet sites. But not so with internal agency systems and databases.

2. **Is it creating a record?** FOIA does not require the agency to create a record. Databases typically have many data elements, and if the requestor only wants certain data, that’s an extract of the larger database. Is that then “creating a record”? Or is it a slice of the existing records, just assembled in a special way.

3. **Is the agency system designed to pull that data?** Database systems are designed to serve specific purposes — “governmental functions”… You can’t assume that the system can easily “slice and dice” data in ways that the system wasn’t designed to do. Typically, there is a menu of canned reports – Report A, B, C. If the FOIA request matches one of those canned reports, then it’s easy. Typically, it would not match, and so the system can’t produce it easily. Some agency systems cost up to millions of dollars. It’s no easy trick to customize reporting, and have it be verified for accuracy and completeness. For example, when I was at HUD, I was manager of an enterprise data warehouse. One day, the technicians were pulling data from one source, and combining with another source. The result was so “whacked” that it made no sense at all… They didn’t recognize how bad it was because they didn’t have sufficient subject matter expertise to know that they couldn’t combine the data elements in the way they had.

4. **Does the agency staff have the technical skill to pull specialized reports for the specific FOIA request?** Like #3 above, even if the system is designed to allow special data queries, the typical agency staff doesn’t have the skill to do so. They can pull Report A, B, C, but beyond that, it’s questionable.

5. **Security is another concern:** Data in agency systems is usually restricted to a small number of staff with a need to have access – for “governmental functions.” It’s few systems/databases that can be opened up to public access. This is because of the nature of data that often has personally identifiable information (PII) as part of the larger database. Each item of information is a “database element” that is like a column of an Excel spreadsheet, but structured differently. Pulling certain data means selecting those database elements. But if it’s not part of a canned report, it can be challenging, and require IT support. See #3 and 4.
I hope this helps. Beyond these 5 points, I don’t know what other sources I might point you to. Brenda may have some thoughts on this as well, since she deals with complaints, including local entities. I only deal with State agencies, and mostly email searches.

Eric.Stout@maine.gov, (207) 624-9981, cell 446-2438
IT Consultant
Roles: CIO staff support; FOAA/litigation e-discovery; contract administrator for www.maine.gov; OIT
Records Officer; Member of Right to Know Advisory Committee
51 Commerce Drive, 145 SHS, Augusta, Maine 04333-0145

From: Reinsch, Margaret [mailto:Margaret.Reinsch@legislature.maine.gov]
Sent: Wednesday, October 17, 2018 5:16 PM
To: Stout, Eric <Eric.Stout@maine.gov>
Subject: [EXTERNAL SENDER] RTKAC - electronic records, databases and public records requests

Hi, Eric —

I’m trying to build my own foundation of knowledge and background resources on how jurisdictions officially respond to requests for public records when the records being requesting are part (or all?) of a database maintained by the government. And what if the database also contains confidential or proprietary information. I have found a couple of state laws on the topic but I am wondering if you can point me in the direction of more comprehensive resources. And, although I don’t want to tie up your time, any thoughts you would care to share I would appreciate hearing!

I’m actually out of the office for the next few days, but I will try to check my email daily.

Thanks for any help you can provide.

Peggy

Margaret J. Reinsch, Esq., Legislative Analyst
Joint Standing Committee on Judiciary
State of Maine, Augusta
Office of Policy and Legal Analysis
Room 210, Cross State Office Building
13 State House Station
Augusta, Maine 04333
(207) 287-1670 (office number)
(207) 287-1673 (direct and voice mail)
(207) 287-1375 (fax)
margaret.reinsch@legislature.maine.gov
### Electronic database access

If a public records contains disclosable and nondisclosable information, the public agency must separate the material that may be disclosable and make it available. Many states do not allow the agency to charge for separating the public information from the nondisclosable information.

<table>
<thead>
<tr>
<th>State</th>
<th>Code Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indiana</td>
<td>5-14-3-6</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>19.36 (6)</td>
</tr>
<tr>
<td>North Dakota</td>
<td>44-04-18(3)</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>91-A:4</td>
</tr>
<tr>
<td>Connecticut</td>
<td>1-211</td>
</tr>
<tr>
<td>Arkansas</td>
<td>29-19-105</td>
</tr>
<tr>
<td>Florida</td>
<td>119.01</td>
</tr>
<tr>
<td>Minnesota</td>
<td>13.03</td>
</tr>
<tr>
<td>Utah</td>
<td>63G-2-201</td>
</tr>
<tr>
<td>Virginia</td>
<td>2.2-3704</td>
</tr>
</tbody>
</table>

Format of open record. Any record made open to the public pursuant to this chapter shall be maintained in its original format or in any searchable and reproducible electronic or other format. This chapter does not mandate that any record or document be kept in a particular format nor does it require that a record be provided to the public in any format or media other than that in which it is stored.

<table>
<thead>
<tr>
<th>State</th>
<th>Code Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Dakota</td>
<td>1-27-4</td>
</tr>
</tbody>
</table>

(h) Nothing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.

<table>
<thead>
<tr>
<th>State</th>
<th>Code Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rhode Island</td>
<td>38-2-3</td>
</tr>
</tbody>
</table>

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

<table>
<thead>
<tr>
<th>State</th>
<th>Code Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>Gov Code 6253.9</td>
</tr>
</tbody>
</table>
### Electronic database access

2. A government body may provide, restrict, or prohibit access to data processing software developed by the government body, regardless of whether the data processing software is separated or combined with a public record. A government body shall establish policies and procedures to provide access to public records which are combined with its data processing software. A public record shall not be withheld from the public because it is combined with data processing software.

<table>
<thead>
<tr>
<th>State</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iowa</td>
<td>22.3A</td>
</tr>
</tbody>
</table>

(a) Databases purchased, leased, created, or otherwise acquired by every public agency containing public records shall be designed and maintained in a manner that does not impair or impede the public agency's ability to permit the public inspection and examination of public records and provides a means of obtaining copies of such records. Nothing in this subsection shall be construed to require the retention by the public agency of obsolete hardware or software.

<table>
<thead>
<tr>
<th>State</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Carolina</td>
<td>132-6.1</td>
</tr>
</tbody>
</table>

C. The state agency that has inserted data in a database may authorize a copy to be made of a computer tape or other medium containing a computerized database of a public record for any person if the person agrees:

1. not to make unauthorized copies of the database;
2. not to use the database for any political or commercial purpose unless the purpose and use is approved in writing by the state agency that created the database;
3. not to use the database for solicitation or advertisement when the database contains the name, address or telephone number of any person unless such use is otherwise specifically authorized by law;
4. not to allow access to the database by any other person unless the use is approved in writing by the state agency that created the database; and
5. to pay a royalty or other consideration to the state as may be agreed upon by the state agency that created the database.

<table>
<thead>
<tr>
<th>State</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Mexico</td>
<td>14-3-15.1</td>
</tr>
</tbody>
</table>
Electronic database access

<table>
<thead>
<tr>
<th>(3) If, in response to a specific request, the state or any of its agencies, institutions, or political subdivisions has performed a manipulation of data so as to generate a record in a form not used by the state or by said agency, institution, or political subdivision, a reasonable fee may be charged to the person making the request. Such fee shall not exceed the actual cost of manipulating the said data and generating the said record in accordance with the request. Persons making subsequent requests for the same or similar records may be charged a fee not in excess of the original fee.</th>
<th>Colorado 24-72-205</th>
</tr>
</thead>
<tbody>
<tr>
<td>(4) If the public record is a result of computer output other than word processing, the fee for a copy, printout, or photograph thereof may be based on recovery of the actual incremental costs of providing the electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system. Such fee may be reduced or waived by the custodian if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated.</td>
<td></td>
</tr>
</tbody>
</table>
§402. Definitions

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:

§408-A. Public records available for inspection and copying

7. Electronically stored public records. An agency or official having custody or control of a public record subject to a request under this section shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

A. If in order to provide access to an electronically stored public record the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the agency or official may charge a fee to cover the cost of conversion as provided in subsection 8.

B. This subsection does not require an agency or official to provide a requester with access to a computer terminal.

§414. Public records; information technology

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

1. Maximize public access. Maximize public access to public records; and

2. Maximize exportability; protect confidential information. Maximize the exportability of public records while protecting confidential information that may be part of public records.
TITLE 1
GENERAL PROVISIONS
CHAPTER 14
ELECTRONIC ACCESS TO PUBLIC INFORMATION

§533. InforME established; purposes

Information Resource of Maine, referred to as "InforME," is established with the following purposes:

1. **Electronic gateway.** To serve as a self-supporting and cost-effective electronic gateway to provide and enhance access to the State's public information for individuals, businesses and other entities and to provide electronic services;

2. **Rational, standardized, comprehensive services.** To provide rational, standardized and comprehensive services by enabling universal continuous access to accurate, current public information that may be searched to suit the user's own purposes. These services include, at a minimum, providing standardized access to customized databases, data custodians' databases and links to other information sources;

3. **Electronic transactions.** To conduct electronic transactions;

4. **Electronic dissemination of public information.** To assist state agencies in electronically disseminating public information in their custody;

5. **Constantly improve access and utility.** To constantly improve access to and the utility of the public information available through InforME by exploring and, where appropriate, implementing ways to:
   A. Expand the amount and kind of public information available free of charge;
   B. Increase the utility of the public information provided and the form in which it is provided;
   C. Expand the base of users who access the public information; and
   D. Improve individual and business access to public information through improvements in technology;

6. **Accuracy of information.** To provide opportunities for individuals, businesses and other entities to review public information for accuracy and to indicate to the data custodian when corrections may be appropriate;

7. **Information conduit.** To provide a mechanism for the authorized transfer of nonpublic information;

8. **Private-public partnerships and interagency cooperation.** To promote opportunities for private-public partnerships and interagency cooperation;

9. **Innovative uses of information.** To provide opportunities for innovative uses of public information; and

10. **Collection of funds.** To collect funds for information and electronic services provided and transactions conducted electronically. State funds must be either directly deposited into an account of the Treasurer of State or transferred in a timely manner to a state deposit account as mutually agreed upon by the Treasurer of State and InforME.
Nothing in this Act may be construed to affect the rights of persons to inspect or copy public records under chapter 13, subchapter I or the duty of data custodians to provide for public inspection and copying of those records.

§536. Network manager and data custodian responsibilities

1. Voluntary cooperation. All data custodians may voluntarily cooperate with the network manager in providing public information, access to public information and assistance as may be requested for achieving InforME's purposes.

2. Duplication of fee services. Executive branch and semiautonomous state agencies may not provide services that duplicate fee services offered by InforME except as authorized by the board.

3. Service level agreements. Services provided by the network manager and information to be provided by a data custodian are governed by service level agreements between the network manager and the data custodian. A service level agreement may include a provision for the network manager to receive a portion of the agency fee for information or services in return for electronically providing that information or service.

4. Data custodian responsibilities. Data custodians are responsible for:
   A. Ensuring that the public information is accurate, complete and current;
   B. Updating the source data bases following verification of suggested corrections that users send to InforME;
   C. Identifying how and from whom the information was acquired by the data custodian; and
   D. Providing reasonable safeguards to protect confidentiality to the level required by law.

5. InforME network manager responsibilities. The network manager is responsible for:
   A. Transmitting or providing access to public information;
   B. Providing reasonable safeguards to protect confidentiality to the level required by law; and
   C. Providing notices and disclaimers that include at least the following:
      (1) How to address concerns if the public information appears to be inaccurate; and
      (2) That InforME assumes no role for monitoring the information content to determine if it is accurate, complete or current.

6. Redacting data. When developing new systems, a data custodian shall consult with the network manager regarding current practices for efficiently redacting data.

7. Disclaimer. If the network manager provides public information that is stored, gathered or generated by the legislative branch, the network manager shall include the following disclaimer: "This data was compiled from information made public by the legislative branch."

The disclaimer is not required if the information is prepared pursuant to a contract between the network manager and the Legislative Council.
§538. Copyrights, licensing restrictions and confidentiality

1. Information. The information developed by the network manager for InforME and public information made available through InforME is owned by the public, and copyright or licensing restrictions may not be fixed to this information by the board, the network manager or data custodians.

2. Custody of network manager. The fact that information is in the custody of the network manager does not by itself make that information a public record.

3. User records. Information in records of the network manager or collected by InforME relating to the identity of or use by users of electronic services is confidential and may be released only with the express permission of the user or pursuant to court order. This subsection does not affect the public record status of any records of data custodians regarding users.

Accessible databases

TITLE 10
COMMERCE AND TRADE

CHAPTER 301-A
THE REGISTRATION AND PROTECTION OF MARKS

§1527-C. Access to Secretary of State's database

The Secretary of State may provide public access to the database of the Department of the Secretary of State through a dial-in modem, public terminals and electronic duplicates of the database. If access to the database is provided to the public, the Secretary of State may promulgate rules in accordance with the Maine Administrative Procedure Act to establish a fee schedule and governing procedures.

TITLE 31
PARTNERSHIPS AND ASSOCIATIONS

CHAPTER 15
LIMITED LIABILITY PARTNERSHIPS

§814. Access to database

The Secretary of State may provide public access to the database through a dial-in modem, through public terminals and through electronic duplicates of the database. If access to the database is provided to the public, the Secretary of State may adopt rules in accordance with the Maine Administrative Procedure Act to establish a fee schedule and governing procedures.

CHAPTER 17
UNIFORM PARTNERSHIP ACT

§1016. Access to Secretary of State's database

The Secretary of State may provide public access to the database of the Department of
the Secretary of State through a dial-in modem, public terminals and electronic duplicates of the database. If access to the database is provided to the public, the Secretary of State may adopt rules to establish a fee schedule and governing procedures. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

CHAPTER 21
LIMITED LIABILITY COMPANIES

§1670. Access to database

The Secretary of State may provide public access to the database through a medium approved by the Secretary of State, through public terminals and through electronic duplicates of the database. If access to the database is provided to the public, the Secretary of State may adopt rules in accordance with the Maine Administrative Procedure Act to establish a fee schedule and governing procedures.

TITLE 12
CONSERVATION

CHAPTER 201-A
GEOLOGY AND NATURAL RESOURCES

§544. Natural Areas Program

1. Establishment. The Natural Areas Program is established within the Department of Agriculture, Conservation and Forestry and is administered by the commissioner.

2. Definitions. As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commissioner" means the Commissioner of Agriculture, Conservation and Forestry.
B. "Critical area" means any natural area documented by the Natural Areas Program that is conserved or protected in its natural condition through voluntary action.
C. "Endangered plant" means any native plant species that is in danger of extinction throughout all or a significant portion of its range within the State or any species determined to be an endangered species pursuant to the United States Endangered Species Act of 1973, Public Law 93-205, as amended.
D. "Natural area" means any area of land or water, or both land and water, whether publicly or privately owned, that retains or has reestablished its natural character, though it need not be completely natural and undisturbed, and that supports, harbors or otherwise contains endangered, threatened or rare plants, animals and native ecological systems, or rare or unique geological, hydrological, natural historical, scenic or other similar features of scientific and educational value benefiting the citizens of the State.
E. "Register of critical areas" means the official listing of critical areas.
F. "Species" means any recognized taxonomic category of the biota including species, subspecies or variety.
G. "Threatened plant" means any species of native plant likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range in the State or any species of plant determined to be a threatened species pursuant to the
Selected Current Maine Database Laws


3. Functions of the Natural Areas Program. The Natural Areas Program shall perform the following functions.

A. The Natural Areas Program shall conduct an ongoing, statewide inventory of the State’s natural areas, including, but not limited to, rare plants, animals, natural communities and ecosystems or other geological, hydrological, natural historical, scenic or other similar features, and may conduct investigations related to the population, habitat needs, limiting factors and other biological and ecological data to support the mandates of the Natural Areas Program or other cooperating agencies.

B. The Natural Areas Program shall maintain a biological and conservation database that must contain data from inventories and other data sources and other relevant biological, ecological or other information about natural features described in paragraph A and about ecologically significant sites that harbor these features. Information contained in the biological and conservation database may be made available as necessary or appropriate for conservation and land use planning, environmental review, scientific research and inquiry, education or other appropriate use. For the purpose of this paragraph, an appropriate use is one that will not jeopardize sensitive species or habitats.

C. The Natural Areas Program may coordinate inventory and data management and planning activities with other appropriate state agencies or entities to maximize efficiency and increase communication among agencies and to provide appropriate data interpretation and technical services to support the mandates and programs of those agencies.

D. The Natural Areas Program may levy appropriate charges to those using, for commercial gain, the inventory and information services provided by the Natural Areas Program to recover the costs of providing the services and a reasonable portion of the costs associated with building and maintaining the biological and conservation database. Charges must be fixed in a schedule prepared and revised as necessary by the Natural Areas Program and supported and explained by accompanying information.

E. The Natural Areas Program may enter into cooperative agreements with federal or state agencies, political subdivisions of this State or private persons or organizations to receive or disburse funds for the purposes of this subchapter.

F. The Natural Areas Program shall maintain a database of areas designated as ecological reserves as defined in section 1801, subsection 4-A and other public lands designated and managed for equivalent purposes and shall provide scientific review of areas on state land proposed as ecological reserves.

G. The Natural Areas Program shall provide staff assistance to support the Land for Maine’s Future Board established under Title 5, chapter 353.

Driver’s records and motor vehicles

TITLE 29-A
MOTOR VEHICLES AND TRAFFIC

CHAPTER 3
SECRETARY OF STATE

Office of Policy and Legal Analysis draft
§251. Records and databases related to driver's licenses and motor vehicles

1. Records required to be kept. The Secretary of State shall keep a record of applications for driver's licenses, motor vehicle registrations and certificates of title and of issued driver's licenses, learner's permits, motor vehicle registrations and certificates of title.

2. Public access to records. Records of the Secretary of State pertaining to the applications, registrations and certifications of vehicles and to driver's licenses must be open to public inspection during office hours. The Secretary of State shall provide a copy of a record pertaining to the applications, registrations and certifications of vehicles or to driver's licenses for a fee of $5 each.

2-A. Databases. The Secretary of State may provide databases of records pertaining to applications, registrations and certifications of vehicles and to driver's licenses to individuals, businesses and other entities. The Secretary of State shall adopt rules to establish a fee schedule and governing procedures.

3. Complaints confidential. Written complaints and certain control numbers used in the titling of motor vehicles may be kept confidential.

4. Confidentiality of e-mail addresses. If a person submits an e-mail address as part of the application process for a license or registration under this Title, the e-mail address is confidential and may not be disclosed to anyone outside the Department of the Secretary of State except for law enforcement officers or for purposes of court proceedings.

§252. Driver history records and databases

1. Reports furnished. The Secretary of State shall provide a copy of a record pertaining to convictions, adjudications, accidents, suspensions and revocations of a driver's license for a fee of $5 each for a driving record covering 3 years and $10 each for a driving record covering more than 3 years. Certified copies are an additional $1. A person receiving a report by electronic transmittal shall pay the fee associated with that transmittal. The Secretary of State shall adopt rules to establish a fee schedule and procedures governing electronic transmittal of a record.

1-A. Databases. The Secretary of State may provide databases of records pertaining to convictions, adjudications, accidents, suspensions and revocations to individuals, businesses and other entities. The Secretary of State shall adopt rules to establish a fee schedule and governing procedures under this subsection.

2. Fee waived for official requests. There is no fee for requests from other motor vehicle departments, state, county and federal agencies and law enforcement agencies.

§253. Confidentiality of nongovernment vehicle records

Upon receiving a written request by an appropriate criminal justice official and showing cause that it is in the best interest of public safety, the Secretary of State may determine that records of a nongovernment vehicle may be held confidential for a specific period of time, which may not exceed the expiration of the current registration.
§254. Rented vehicles; records

1. Owner of vehicle to keep record. A person engaged in the business of renting motor vehicles with or without a driver, other than as a transaction involving the sale of the vehicle, shall maintain a record of the identity of the person to whom the vehicle is rented, including a record of the driver's license of the person to whom the vehicle is rented and the exact time the vehicle is subject to that rental or in the person's possession. A person who violates this subsection commits a Class E crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

2. Records open to inspection. A person required to maintain records pursuant to subsection 1 shall allow inspection of those records by any law enforcement officer. A person who violates this subsection commits a Class E crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

3. Offense.

4. Form. If the Secretary of State prescribes a form for the keeping of the record required in subsection 1, the owner shall use that form. The form must be carried in the vehicle during the period of lease or hire.

§255. Confidentiality for public safety

1. Confidential records. Notwithstanding any other provision of law, the Secretary of State or a designee of the Secretary of State may hold records relating to a person's motor vehicle registration and driver's license confidential for a specified period of time when the following conditions are met:

   A. The Secretary of State has received a written request along with a copy of a protection order that has been issued under Title 5, section 4654 or 4655; Title 15, section 321; Title 19, section 765 or 766; or Title 22, chapter 1071 to protect the requestor from harassment or abuse; or

   B. The Secretary of State or a designee of the Secretary of State has:

      (1) Received a written request showing cause that a person is in danger of serious bodily injury or death by another person and that the endangered person is relocating for the specific purpose of avoiding harm;

      (2) Consulted with the Commissioner of Public Safety or a designee of the commissioner and the Attorney General or a designee of the Attorney General; and

      (3) Determined that holding the endangered person's driver's license and motor vehicle registration records as confidential is in the best interest of public safety.

2. Release of records. The Secretary of State may release information held in confidence pursuant to subsection 1 to law enforcement officers, insurance companies and municipal, county, state or federal agencies that demonstrate a necessity for the information. The Secretary of State shall prescribe the conditions under which the information may be used and the person receiving the information may only use the information as prescribed.

3. Liability for release. Neither failure of the Secretary of State or an employee of the Secretary of State to perform the requirements of this section nor compliance with it subjects the Secretary of State or employees of the Secretary of State to liability in a civil action.

4. Rules. The Secretary of State may, in consultation with the Commissioner of Public Safety and the Attorney General, adopt rules necessary for the implementation of this section.
Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

§256. Federal Driver's Privacy Protection Act of 1994

The Secretary of State shall adopt routine technical rules to implement the provisions of 18 United States Code, Chapter 123 in disclosing records.

Accident reports

TITLE 29-A
MOTOR VEHICLES AND TRAFFIC

CHAPTER 19
OPERATION

SUBCHAPTER 3
ACCIDENT AND THEFT REPORTS

§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.

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;
B. A person acting for the operator; or
C. If the operator is unknown, the owner of an involved vehicle having knowledge of the accident.

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;
B. Shall receive, tabulate and analyze accident reports;
B-1. Shall send all accident reports to the Secretary of State; and
C. May publish statistical information on the number, cause and location of accidents.

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

A. Interview participants and witnesses; and
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. 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.

5. Forty-eight-hour report.

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.

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.

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;
Selected Current Maine Database Laws

(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.

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.

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.

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.

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;
   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;
   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
   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.

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.

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.

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.
§701. Short title

This chapter may be known and cited as "the Criminal History Record Information Act."

§702. Scope; application

This chapter governs the dissemination of criminal history record information by a Maine criminal justice agency. This chapter establishes 2 distinct categories of criminal history record information and provides for the dissemination of each:

1. Public criminal history record information. Public criminal history record information, the dissemination of which is governed by section 704; and

2. Confidential criminal history record information. Confidential criminal history record information, the dissemination of which is governed by section 705.

§703. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Administration of criminal justice. "Administration of criminal justice" means activities relating to the apprehension or summoning, detention, pretrial release, post-trial release, prosecution, adjudication, sentencing, correctional custody and supervision or rehabilitation of accused persons or convicted criminal offenders. "Administration of criminal justice" includes the collection, storage and dissemination of criminal history record information.

2. Confidential criminal history record information. "Confidential criminal history record information" means criminal history record information of the following types:

A. Unless the person remains a fugitive from justice, summons and arrest information without disposition if an interval of more than one year has elapsed since the date the person was summoned or arrested and no active prosecution of a criminal charge stemming from the summons or arrest is pending;

B. Information disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor;

C. Information disclosing that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings;

D. Information disclosing that a grand jury has determined that there is insufficient evidence to warrant the return of a formal charge;

E. Information disclosing that a criminal proceeding has been postponed for a period of more than one year or dismissed because the person charged is found by the court to be mentally incompetent to stand trial or to be sentenced;

F. Information disclosing that a criminal charge has been filed, if more than one year has elapsed since the date of the filing;

G. Information disclosing that a criminal charge has been dismissed by a court with
Maine Criminal History Record Information Act
Maine Intelligence and Investigative Information Act

prejudice or dismissed with finality by a prosecutor other than as part of a plea agreement;

H. Information disclosing that a person has been acquitted of a criminal charge. A verdict or accepted plea of not criminally responsible by reason of insanity, or its equivalent, is not an acquittal of the criminal charge;

I. Information disclosing that a criminal proceeding has terminated in a mistrial with prejudice;

J. Information disclosing that a criminal proceeding has terminated based on lack of subject matter jurisdiction;

K. Information disclosing that a criminal proceeding has been terminated because the court lacked jurisdiction over the defendant; and

L. Information disclosing that a person has petitioned for and been granted a full and free pardon.

3. Criminal history record information. "Criminal history record information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency or kept in the custody of a criminal justice agency that connects a specific identifiable person, including a juvenile treated by statute as an adult for criminal prosecution purposes, with formal involvement in the criminal justice system either as an accused or as a convicted criminal offender. "Criminal history record information" includes, but is not limited to, identifiable descriptions or notations of: summonses and arrests; detention; bail; formal criminal charges such as complaints, informations and indictments; any disposition stemming from such charges; post-plea or post-adjudication sentencing; involuntary commitment; execution of and completion of any sentencing alternatives imposed; release and discharge from involuntary commitment; any related pretrial and post-trial appeals, collateral attacks and petitions; and petitions for and warrants of pardons, commutations, reprieves and amnesties. "Criminal history record information" does not include: identification information such as fingerprints, palmprints, footprints or photographic records to the extent that the information does not indicate formal involvement of the specific individual in the criminal justice system; information of record of civil proceedings, including traffic infractions and other civil violations; intelligence and investigative record information as defined in section 803; or information of record of juvenile crime proceedings or their equivalent. Specific information regarding a juvenile crime proceeding is not criminal history record information notwithstanding that a juvenile has been bound over and treated as an adult or that by statute specific information regarding a juvenile crime proceeding is usable in a subsequent adult criminal proceeding. "Formal involvement in the criminal justice system either as an accused or as a convicted criminal offender" means being within the jurisdiction of the criminal justice system commencing with arrest, summons or initiation of formal criminal charges and concluding with the completion of every sentencing alternative imposed as punishment or final discharge from an involuntary commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent.

4. Criminal justice agency. "Criminal justice agency" means a federal, state or State of Maine government agency or any subunit of a government agency at any governmental level that performs the administration of criminal justice pursuant to a statute or executive order. "Criminal justice agency" includes federal courts, Maine courts, courts in any other state, the Department of the Attorney General, district attorneys' offices and the equivalent departments or offices in any federal or state jurisdiction. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government and the government of any federally recognized Indian tribe.
5. Disposition. "Disposition" means information of record disclosing that a criminal proceeding has been concluded, although not necessarily finalized, and the specific nature of the concluding event. "Disposition" includes, but is not limited to: an acquittal; a dismissal, with or without prejudice; the filing of a charge by agreement of the parties or by a court; the determination that a defendant is currently a fugitive from justice; a conviction, including the acceptance by a court of a plea of guilty or nolo contendere; a deferred disposition; a proceeding indefinitely continued or dismissed due to a defendant's incompetence; a finding of not criminally responsible by reason of insanity or its equivalent; a mistrial, with or without prejudice; a new trial ordered; an arrest of judgment; a sentence imposition; a resentencing ordered; an execution of and completion of any sentence alternatives imposed, including but not limited to fines, restitution, correctional custody and supervision, and administrative release; a release or discharge from a commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent; the death of the defendant; any related pretrial and post-trial appeals, collateral attacks and petitions; a pardon, commutation, reprieve or amnesty; and extradition. "Disposition" also includes information of record disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor, that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings or that a grand jury has determined that there is insufficient evidence to warrant the return of a formal charge.

6. Dissemination. "Dissemination" means the transmission of information by any means, including but not limited to orally, in writing or electronically, by or to anyone outside the criminal justice agency that maintains the information.

7. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access.

8. Public criminal history record information. "Public criminal history record information" means criminal history record information that is not confidential criminal history record information, including information recorded pursuant to section 706.

9. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam and American Samoa. "State" also includes the federal government of Canada and any provincial government of Canada and the government of any federally recognized Indian tribe.

10. Statute. "Statute" means an Act of Congress or an act of a state legislature or a provision of the Constitution of the United States or the constitution of a state.

§704. Dissemination of public criminal history record information

1. Generally. Public criminal history record information is public for purposes of Title 1, chapter 13. Public criminal history record information may be disseminated by a Maine criminal justice agency to any person or public or private entity for any purpose. Public criminal history record information is public whether it relates to a crime for which a person is currently within the jurisdiction of the criminal justice system or it relates to a crime for which a person is no longer within that jurisdiction. There is no time limitation on dissemination of public criminal history record information.

2. Required inquiry to State Bureau of Identification. A Maine criminal justice agency, other than a court, shall query the Department of Public Safety, State Bureau of Identification before disseminating any public criminal history record information for a
noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. "Noncriminal justice purpose" means a purpose other than for the administration of criminal justice or criminal justice agency employment.

§705. Dissemination of confidential criminal history record information

1. Generally. A Maine criminal justice agency, whether directly or through any intermediary, may disseminate confidential criminal history record information only to:

   A. Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;
   B. Any person for any purpose when expressly authorized by a statute, executive order, court rule, court decision or court order containing language specifically referring to confidential criminal history record information or one or more of the types of confidential criminal history record information;
   C. Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement must specifically authorize access to data, limit the use of the data to purposes for which given, ensure security and confidentiality of the data consistent with this chapter and provide sanctions for any violations;
   D. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement must specifically authorize access to confidential criminal history record information, limit the use of the information to research, evaluation or statistical purposes, ensure the confidentiality and security of the information consistent with this chapter and provide sanctions for any violations;
   E. Any person who makes a specific inquiry to the criminal justice agency as to whether a named individual was summoned, arrested or detained or had formal criminal charges initiated on a specific date;
   F. The public for the purpose of announcing the fact of a specific disposition that is confidential criminal history record information, other than that described in section 703, subsection 2, paragraph A, within 30 days of the date of occurrence of that disposition or at any point in time if the person to whom the disposition relates specifically authorizes that it be made public; and
   G. A public entity for purposes of international travel, such as issuing visas and granting of citizenship.

2. Confirming existence or nonexistence of information. A Maine criminal justice agency may not confirm the existence or nonexistence of confidential criminal history record information to any person or public or private entity that would not be eligible to receive the information itself.

3. Required inquiry to State Bureau of Identification. A Maine criminal justice agency, other than a court, shall query the Department of Public Safety, State Bureau of Identification before disseminating any confidential criminal history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. "Noncriminal justice purpose" means a purpose other than for the administration of criminal justice or criminal justice agency employment.
§706. Public information about persons detained following arrest

1. Requirement of record. A Maine criminal justice agency that maintains a holding facility, as defined in Title 34-A, section 1001, subsection 9, or other facility for pretrial detention shall record the following information concerning each person delivered to it for pretrial detention for any period of time:

A. The identity of the arrested person, including the person's name, year of birth, residence and occupation, if any;
B. The statutory or customary description of the crime or crimes for which the person was arrested including the date and geographic location where the crime is alleged to have occurred;
C. The date, time and place of the arrest; and
D. The circumstances of the arrest including, when applicable, the physical force used in making the arrest, the resistance made to the arrest, what weapons were involved, the arrested person's refusal to submit and the pursuit by the arresting officers.

2. Time and method of recording. A Maine criminal justice agency shall record the information under subsection 1 immediately upon delivery of an arrested person to the criminal justice agency for detention. The criminal justice agency shall record and maintain the information in chronological order and keep the information in a suitable, permanent record. The information required by this section may be combined by a sheriff with the record required by Title 30-A, section 1505.

3. Information public. The information required to be recorded and maintained by this section is public criminal history record information.

§707. Unlawful dissemination of confidential criminal history record information

1. Offense. A person is guilty of unlawful dissemination of confidential criminal history record information if the person intentionally disseminates confidential criminal history record information knowing it to be in violation of any of the provisions of this chapter or if the person intentionally disseminates criminal history record information relating to a criminal conviction in violation of Title 15, section 2255 knowing it to be in violation.

2. Classification. Unlawful dissemination of confidential criminal history record information is a Class E crime.

§708. Inapplicability of this chapter to criminal history record information contained in certain records

This chapter does not apply to criminal history record information contained in:

1. Posters, announcements, lists. Posters, announcements or lists used for identifying or apprehending fugitives from justice or wanted persons;

2. Records of entry. Records of entry, such as calls for service, formerly known as "police blotters," that are maintained by criminal justice agencies, that are compiled and organized chronologically and that are required by law or long-standing custom to be made public;

3. Records of public judicial proceedings. Records of public judicial proceedings:

A. Retained at or by the District Court, Superior Court or Supreme Judicial Court. Public access to and dissemination of such records for inspection and copying are as
Maine Criminal History Record Information Act
Maine Intelligence and Investigative Information Act

provided by rule or administrative order of the Supreme Judicial Court; and
B. From federal courts and courts of other states;

4. Published opinions. Published court or administrative opinions not impounded or otherwise declared confidential;

5. Records of public proceedings. Records of public administrative or legislative proceedings;

6. Records of traffic crimes. Records of traffic crimes maintained by the Secretary of State or by a state department of transportation or motor vehicles or the equivalent thereof for the purposes of regulating the issuance, suspension, revocation or renewal of a driver's, pilot's or other operator's license; and

7. Pardons, other than full and free pardons, commutations, reprieves and amnesties. Petitions for and warrants of pardons, commutations, reprieves and amnesties other than warrants of full and free pardons and their respective petitions.

§709. Right to access and review

1. Inspection. If a Maine criminal justice agency maintains criminal history record information about a person, the person or the person's attorney may inspect the criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary to ensure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The criminal justice agency shall supply the person or the person's attorney with a copy of the criminal history record information pertaining to the person on request and payment of a reasonable fee.

2. Review. A person or the person's attorney may request amendment or correction of criminal history record information concerning the person by addressing, either in person or in writing, the request to the criminal justice agency in which the information is maintained. The request must indicate the particular record involved, the nature of the amendment or correction sought and the justification for the amendment or correction. On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned criminal history record information is accurate and complete. If investigation reveals that the questioned criminal history record information is inaccurate or incomplete, the criminal justice agency shall immediately correct the error or deficiency.

Not later than 15 days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the criminal justice agency shall notify the requesting person in writing either that the criminal justice agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal must include the reasons for the refusal, the procedure established by the criminal justice agency for requesting a review by the head of the criminal justice agency of that refusal and the name and business address of that official.

3. Administrative appeal. If there is a request for review, the head of the criminal justice agency shall, not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the review and either make the requested amendment or correction or refuse to do so. If the head of the criminal justice agency refuses to make the requested amendment or correction, the head of the criminal justice agency shall permit the requesting person to file with the criminal justice agency a concise statement
setting forth the reasons for the disagreement with the refusal. The head of the criminal justice agency shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4.

Disputed criminal history record information disseminated by the criminal justice agency with which the requesting person has filed a statement of disagreement must clearly reflect notice of the dispute after the filing of such a statement. A copy of the statement must be included, along with, if the criminal justice agency determines it appropriate, a copy of a concise statement of the criminal justice agency's reasons for not making the amendment or correction requested.

4. Judicial review. If an administrative appeal brought pursuant to subsection 3 is denied by the head of the criminal justice agency, that decision is final agency action subject to appeal to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

5. Notification. When a criminal justice agency has amended or corrected a person's criminal history record information in response to a written request as provided in subsection 2 or a court order, the criminal justice agency shall, within 30 days thereof, advise all prior recipients who have received that information within the year prior to the amendment or correction that the amendment or correction has been made. The criminal justice agency shall also notify the person who is the subject of the amended or corrected criminal history record information of compliance with this subsection and the prior recipients notified.

6. Right of access and review of court records. This section does not apply to the right of access and review by a person or the person's attorney of criminal history record information about that person retained at or by the District Court, Superior Court or Supreme Judicial Court. Access and review of court records retained by the District Court, Superior Court or Supreme Judicial Court are as provided by rule or administrative order of the Supreme Judicial Court.

§710. Application to prior Maine criminal history record information

The provisions of this chapter apply to criminal history record information in existence before July 29, 1976, including that which has been previously expunged under any other provision of Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter.

CHAPTER 9
INTELLIGENCE AND INVESTIGATIVE RECORD INFORMATION ACT

§801. Short title

This chapter may be known and cited as "the Intelligence and Investigative Record Information Act."

§802. Application

This chapter applies to a record that is or contains intelligence and investigative record information and that is collected by or prepared at the direction of or kept in the custody of any Maine criminal justice agency.
§803. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Administration of civil justice. "Administration of civil justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known, suspected or possible civil violations and prospective and pending civil actions. It includes the collection, storage and dissemination of intelligence and investigative record information relating to the administration of civil justice. "Administration of civil justice" does not include known, suspected or possible traffic infractions.

2. Administration of criminal justice. "Administration of criminal justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known, suspected or possible crimes. It includes the collection, storage and dissemination of intelligence and investigative record information relating to the administration of criminal justice.

3. Administration of juvenile justice. "Administration of juvenile justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known, suspected or possible juvenile crimes. "Administration of juvenile justice" includes the collection, storage and dissemination of intelligence and investigative information relating to the administration of juvenile justice.

4. Criminal justice agency. "Criminal justice agency" means a federal, state or State of Maine government agency or any subunit of a government agency at any governmental level that performs the administration of criminal justice pursuant to a statute or executive order. "Criminal justice agency" includes the Department of the Attorney General, district attorneys' offices and the equivalent departments or offices in any federal or state jurisdiction. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government and the government of any federally recognized Indian tribe.

5. Dissemination. "Dissemination" means the transmission of information by any means, including but not limited to orally, in writing or electronically, by or to anyone outside the criminal justice agency that maintains the information.

6. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access.

7. Intelligence and investigative record information. "Intelligence and investigative record information" means information of record collected by or prepared by or at the direction of a criminal justice agency or kept in the custody of a criminal justice agency while performing the administration of criminal justice or, exclusively for the Department of the Attorney General and district attorneys' offices, the administration of civil justice. "Intelligence and investigative record information" includes information of record concerning investigative techniques and procedures and security plans and procedures prepared or collected by a criminal justice agency or other agency. "Intelligence and investigative record information" does not include criminal history record information as defined in section 703, subsection 3 and does not include information of record collected or kept while performing the administration of juvenile justice.

8. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the
United States Virgin Islands, Guam and American Samoa. "State" also includes the federal
government of Canada and any provincial government of Canada and the government of any
federally recognized Indian tribe.

9. Statute. "Statute" means an Act of Congress or an act of a state legislature or a
provision of the Constitution of the United States or the constitution of a state.

§804. Limitation on dissemination of intelligence and investigative record information

Except as provided in sections 805 and 806, a record that is or contains intelligence and
investigative record information is confidential and may not be disseminated by a Maine
criminal justice agency to any person or public or private entity if there is a reasonable
possibility that public release or inspection of the record would:

1. Interfere with criminal law enforcement proceedings. Interfere with law
enforcement proceedings relating to crimes;

2. Result in dissemination of prejudicial information. Result in public dissemination
of prejudicial information concerning an accused person or concerning the prosecution's
evidence that will interfere with the ability of a court to impanel an impartial jury;

3. Constitute an invasion of privacy. Constitute an unwarranted invasion of personal
privacy;

4. Disclose confidential source. Disclose the identity of a confidential source;

5. Disclose confidential information. Disclose confidential information furnished only
by a confidential source;

6. Disclose trade secrets or other confidential commercial or financial information.
Disclose trade secrets or other confidential commercial or financial information designated as
such by the owner or source of the information, by the Department of the Attorney General or
by a district attorney's office;

7. Disclose investigative techniques or security plans. Disclose investigative
techniques and procedures or security plans and procedures not known by the general public;

8. Endanger law enforcement or others. Endanger the life or physical safety of any
individual, including law enforcement personnel;

9. Disclose statutorily designated confidential information. Disclose information
designated confidential by statute;

10. Interfere with civil proceedings. Interfere with proceedings relating to civil
violations, civil enforcement proceedings and other civil proceedings conducted by the
Department of the Attorney General or by a district attorney's office;

11. Disclose arbitration or mediation information. Disclose conduct of or statements
made or documents submitted by any person in the course of any mediation or arbitration
conducted under the auspices of the Department of the Attorney General; or

12. Identify source of consumer or antitrust complaints. Identify the source of a
complaint made to the Department of the Attorney General regarding a violation of consumer
or antitrust laws.

§805. Exceptions

This chapter does not preclude dissemination of intelligence and investigative record
Maine Criminal History Record Information Act
Maine Intelligence and Investigative Information Act

information that is confidential under section 804 by a Maine criminal justice agency to:

1. **Another criminal justice agency.** Another criminal justice agency;

2. **A person or entity for purposes of intelligence gathering or ongoing investigation.** A person or public or private entity as part of the criminal justice agency's administration of criminal justice or the administration of civil justice by the Department of the Attorney General or a district attorney's office;

3. **An accused person or that person's agent or attorney.** A person accused of a crime or that person's agent or attorney for trial and sentencing purposes if authorized by:
   A. The responsible prosecutorial office or prosecutor; or
   B. A court rule, court order or court decision of this State or of the United States.

As used in this subsection, "agent" means a licensed professional investigator, an expert witness or a parent, foster parent or guardian if the accused person has not attained 18 years of age;

4. **Court.** A federal court, the District Court, Superior Court or Supreme Judicial Court or an equivalent court in another state;

5. **An authorized person or entity.** A person or public or private entity expressly authorized to receive the intelligence and investigative record information by statute, executive order, court rule, court decision or court order. "Express authorization" means language in the statute, executive order, court rule, court decision or court order that specifically speaks of intelligence and investigative record information or specifically refers to a type of intelligence or investigative record; or

6. **Secretary of State.** The Secretary of State for use in the determination and issuance of a driver's license suspension.

§806. Exceptions subject to reasonable limitations

Subject to reasonable limitations imposed by a Maine criminal justice agency to protect against the harms described in section 804, this chapter does not preclude dissemination of intelligence and investigative record information confidential under section 804 by a Maine criminal justice agency to:

1. **A government agency responsible for investigating child or adult abuse, neglect or exploitation or regulating facilities and programs providing care to children or adults.** A government agency or submit of a government agency in this State or another state that pursuant to statute is responsible for investigating abuse, neglect or exploitation of children or incapacitated or dependent adults or for licensing or regulating the programs or facilities that provide care to children or incapacitated or dependent adults if the intelligence and investigative record information concerns the investigation of suspected abuse, neglect or exploitation;

2. **A crime victim or that victim's agent or attorney.** A crime victim or that victim's agent or attorney. As used in this subsection, "agent" means a licensed professional investigator, an insurer or an immediate family member, foster parent or guardian if due to death, age or physical or mental disease, disorder or defect the victim cannot realistically act on the victim's own behalf; or

3. **A counselor or advocate.**

4. **A counselor or advocate.** A sexual assault counselor, as defined in section 53-A,
subsection 1, paragraph B, or an advocate, as defined in section 53-B, subsection 1, paragraph
A. A person to whom intelligence and investigative record information is disclosed pursuant
to this subsection:

A. May use the information only for planning for the safety of the victim of a sexual
assault or domestic or family violence incident to which the information relates;
B. May not further disseminate the information;
C. Shall ensure that physical copies of the information are securely stored and remain
confidential;
D. Shall destroy all physical copies of the information within 30 days after their receipt;
E. Shall permit criminal justice agencies providing such information to perform
reasonable and appropriate audits to ensure that all physical copies of information
obtained pursuant to this subsection are maintained in accordance with this subsection;
and
F. Shall indemnify and hold harmless criminal justice agencies providing information
pursuant to this subsection with respect to any litigation that may result from the
provision of the information to the person.

§807. Confirming existence or nonexistence of confidential intelligence and investigative
record information

A Maine criminal justice agency may not confirm the existence or nonexistence of
intelligence and investigative record information confidential under section 804 to any person
or public or private entity that is not eligible to receive the information itself.

§808. No right to access or review

A person who is the subject of intelligence and investigative record information
maintained by a criminal justice agency has no right to inspect or review that information for
accuracy or completeness.

§809. Unlawful dissemination of confidential intelligence and investigative record
information

1. Offense. A person is guilty of unlawful dissemination of confidential intelligence and
investigative record information if the person intentionally disseminates intelligence and
investigative record information confidential under section 804 knowing it to be in violation
of any of the provisions of this chapter.

2. Classification. Unlawful dissemination of confidential intelligence and investigative
record information is a Class E crime.
Dear Ms Reinsch,

Thank you for sending notice of the Right To Know committee meeting. I would like to submit this testimony of my own experience of how Freedom Of Access currently works and how the law can help to improve it.

I have observed that the Maine Legislative Library is excellent in providing information in the most usable form which is digital, searchable, and it is possible to copy specific information relevant to one's project. It is also sent in digital format free of charge.

The Maine Department of Corporations provides much information which can be downloaded for a reasonable $3.00 fee.

However, when I request information from other government agencies from the town to the state, I usually receive it in a form in which is impossible to search with database tools, either because it is not in digital form or because it is in a PDF which has blocked searching and copying functions. I believe this is an intentional choice as is reflected in the response I received in 2014 from the Maine Ombudsman, Brenda Kielty.

1. Information made available on an agency website but not in a searchable database format may not provide the research and investigative tool needed by the public. The Freedom of Access Act does not require that public information be posted online in any particular format, just that public records be made available. While there is a strong argument for increasing the accessibility and usefulness of information, there is no current requirement that the technology in place achieve that objective.

2. The collection of data and reports generated from that data may be public records but the agency is not required under the law to create a new record or report in response to a FOAA request. If the dataset you request does not exist, the agency may choose to produce it for any number of reasons but not because they are legally required to take such an action. I appreciate your comments on this topic and I will continue to bring attention to the need for accessible, useful public data.

Brenda Kielty

Transparency is best served by a searchable online database but if that is not an option the public should be granted the right to request the information in digital form, which is searchable with functioning copying capability. It seems that the government will only allow the public to request information in the most usable form if there is a law mandating the government to do so- and so there should be.

To take this even further. Since the seventies, we have a public-private government in Maine in which much of its activity is concealed from public transparency by privacy laws specific to the private sector. The public-private government can use its public identity to access public funds for its own use and use the private side of
the partnership to conceal information from the public. Given that the public-private government is deeply entrenched, the rules of privacy and transparency could be rewritten to better serve public transparency.

Sincerely

Mackenzie Andersen

Preserving the American Political Philosophy

On 9/10/2018 3:01 PM, Reinsch, Margaret wrote:

The Right to Know Advisory Committee will hold its first meeting of 2018 on Thursday, September 13th at 4:00 p.m. (we’re trying to accommodate the House and Senate Sessions that day) in Room 438 of the State House.

We apologize for the short notice. The meeting is open to the public and the audio will be streamed live over the Internet: http://legislature.maine.gov/Audio/#438

The plan is to post the agenda tomorrow: https://www.maine.gov/legis/opla/righttoknow.htm

Please let me know if you have any questions.

Thanks

Peggy

Margaret J. Reinsch, Esq., Legislative Analyst

Joint Standing Committee on Judiciary

Maine State Legislature

Office of Policy and Legal Analysis

Room 215, Cross State Office Building

13 State House Station

Augusta, Maine 04333

(207) 287-1670 (office number)

(207) 287-1673 (direct and voice mail)

(207) 287-1275 (fax)

margaret.reinsch@legislature.maine.gov

================================================================================================

About This E-Mail List

================================================================================================

Archives of this list: http://https://lists.legislature.maine.gov/sympa/arc/right.to.know-ip
Senator Lisa Keim, Chair
Right to Know Advisory Committee
Committee Members

Re: Criminal History Record Information Database – Bulk Information Requests

Dear Right to Know Advisory Committee Members:

During the Second Regular Session of the 128th Legislature, the Judiciary Committee heard and worked LD 1658, An Act To Make Criminal History Record Information Maintained in a Database Confidential. The bill as originally drafted designated as confidential criminal history record information contained in a database maintained by the Department of Public Safety’s State Bureau of Identification (SBI), except to the extent necessary to disclose criminal history record information to persons who are authorized by law to receive the information and who submit a request for that information.

Matthew Ruel, Director of the SBI, explained at the public hearing that LD 1658’s purpose was to protect the state criminal history repository maintained by SBI from bulk data requests, which the SBI anticipates may be made in the future by private companies that wish to create on-line searchable criminal history databases for commercial purposes. These types of requests have been made in other states in the past; similarly, bulk requests for data from the Sex Offender Registry have been made in Maine. Bulk requests will not only create administrative burdens for the SBI—requiring the Bureau to segregate confidential criminal history information from the public data contained in its database—but more importantly will create a risk that inaccurate, incomplete and potentially confidential criminal history information will be publicly available on commercial websites. Although the information requested through a bulk data request may be complete and non-confidential on the date that the information is disseminated by the SBI in response to a bulk request, over time the information will become out-of-date and inaccurate. Moreover, criminal history information that is public on one day may, over time, become confidential; for example, pursuant to 16 M.R.S. §703(2)-(F), information that a criminal charge has been filed becomes confidential once a year has elapsed since the day of the filing.

Matthew Ruel nevertheless agreed that both the title and the content of LD 1658 were misleading, and he proffered a proposed amendment to the bill in an attempt to clarify that while the databases maintained by the SBI would be protected under the bill, any public criminal...
history information contained within those databases “may be disseminated ... in response to a request for an individual’s criminal history record information ... in accordance with Title 25, section 1541, subsection 6.” In addition, the proposed amendment would re-title the bill: “An Act To Prohibit the Dissemination of Criminal History Record Information Databases Maintained by or for the State Bureau of Identification.”

Judith Meyer, of the Maine Freedom of Information Coalition, strongly opposed LD 1658 at the public hearing because it would make otherwise public criminal history information confidential solely because the information is stored electronically in database form. She explained:

Criminal history record information includes, among other things, summonses, arrests, bail, criminal charges, indictments, dispositions of criminal cases and information on post-trial appeals. That information is undeniably public. What the Department of Public Safety is asking is to classify these non-confidential records as confidential by virtue of their being stored in a database, which is in sharp contrast with the spirit of the Freedom of Access Act. In fact, FOAA was amended in 2011 specifically to note that public records stored electronically must be as accessible as records drafted on paper “or in the medium in which the record is stored, at the requester’s option,” whether records are requested singly or by entire database. (Emphasis by Ms. Meyer.)

Limiting bulk requests, she explained, would limit the ability of members of the public, the legislature, the media and others from conducting research involving criminal history record information. She noted, by example, that a legislator might not be permitted to access compiled criminal history information from the SBI database in an attempt to study the crime rate or recidivism rates in his or her legislative district under either LD 1658 or the proposed amendment presented to the bill. Ms. Meyer further noted that neither the Right to Know Advisory Committee nor the Criminal Law Advisory Commission has been asked to review the SBI’s concerns regarding bulk data requests for public criminal history record information.

The Judiciary Committee ended up voting Ought Not to Pass on LD 1658, with the understanding that we would ask the Right to Know Advisory Committee to collaborate with the Criminal Law Advisory Commission to examine the issues raised by the bill and make recommendations back to the Judiciary Committee in January next year.

The Judiciary Committee will be happy to share all files and correspondence on this bill. Please feel free to contact us or our committee analyst if you have any questions.

Thank you.

Sincerely,

Senator Lisa Keim
Senator Chair

Representative Matthew W. Moonen
House Chair

Attachments: LD 1658 (original bill)
Department of Public Safety proposed amendment to LD 1658

cc: Matthew Ruel, Director, State Bureau of Identification
Members, Maine Criminal Law Advisory Commission
128th MAINE LEGISLATURE

SECOND REGULAR SESSION-2018

Legislative Document

H.P. 1143

No. 1658

House of Representatives, November 29, 2017

An Act To Make Criminal History Record Information Maintained in a Database Confidential

Submitted by the Department of Public Safety pursuant to Joint Rule 203.
Received by the Clerk of the House on November 27, 2017. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

[Signature]
ROBERT B. HUNT
Clerk

Presented by Representative COREY of Windham.
Cosponsored by Senator DIAMOND of Cumberland and
Representatives: GERRISH of Lebanon, HICKMAN of Winthrop, LONGSTAFF of
Waterville, MAREAN of Hollis, NADEAU of Winslow, RECKITT of South Portland,
WARREN of Hallowell, Senator: CYRWAY of Kennebec.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 16 MRSA §711 is enacted to read:

§711. Criminal history record information in database confidential

Notwithstanding any other provision of law to the contrary, criminal history record information contained in a database maintained or caused to be maintained by the Department of Public Safety, State Bureau of Identification is confidential and not a public record for the purposes of Title 1, chapter 13 and may not be disseminated in whole or part, except to the extent necessary to generate and disclose an individual's criminal history record information to persons requesting and authorized by law to receive an individual's criminal history record information from the State Bureau of Identification.

SUMMARY

This bill makes criminal history record information contained in a database maintained or caused to be maintained by the Department of Public Safety, State Bureau of Identification confidential.
STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY
MAINE STATE POLICE

PAUL R. LePAGE
GOVERNOR

JOHN E. MORRIS
COMMISSIONER

COL. ROBERT A. WILLIAMS
CHIEF

LT. COL. JOHN E. COTE
DEPUTY CHIEF

TESTIMONY OF MATTHEW RUEL
DIRECTOR, STATE BUREAU OF IDENTIFICATION

In Support of
An Act To Make Criminal History Record Information Maintained in a Database
Confidential

Senator and Representative, Members of the Committee:

My name is Matt Ruel, and I am the Director of the State Bureau of Identification at the
Maine Department of Public Safety. I present this testimony on behalf of the
Administration in support of LD 1658.

The purpose of this bill is simply to protect the state criminal history repository from
bulk data requests, or having to provide access to repository data in ways that are not
already defined in state statute. Our intent is not to change or prohibit public access that
is already provided by state statute. Yearly, we receive roughly half a million public
requests for individual criminal history and that process will continue unchanged.

I am looking to ensure that the record remains as accurate, timely, and complete as
possible and as the only agency responsible for receiving all segments of the criminal
history no other entity can meet that requirement. Supporting this LD will protect
consumers and the subjects with criminal history by making it difficult for privately
maintained criminal history websites from maintaining and disseminating information
that could become inaccurate, or that shouldn’t be disseminated because of state statute.

For these reasons, the Administration is in support of LD 1658, and asks the Committee
to report the bill out as “Ought to Pass.”

Thank you. I would be happy to try to answer any questions you might have and be
available for the work session.
LD 1568, An Act To Make Criminal History Record Information Maintained in a Database Confidential

*** AGENCY AMENDMENT ***

Sec. 1. Amend the bill title by striking the current title and replacing it with the following title:

'An Act to Prohibit the Dissemination of Criminal History Record Information Databases Maintained by or for the State Bureau of Identification'

Sec. 2. Amend Section 1 of the bill by striking the current text of the proposed bill and replacing it with the following text:

'S711. Dissemination of Criminal History Record Information Databases Prohibited

Databases that contain criminal history record information and are maintained by or for the Bureau of State Police, State Bureau of Identification are not public records, either in whole or in part, for the purposes of Title 1, chapter 13.

'Public criminal history record information may be disseminated by the State Bureau of Identification in response to a request for an individual's criminal history record that includes the individual's name and date of birth, in accordance with Title 25, Section 1541, subsection 6.'

AMENDMENT SUMMARY

The amendment replaces the bill. The amendment –

1. Replaces the bill title to better reflect the intent of the original bill and the proposed bill amendment;
2. Clarifies that the bill prohibits the public dissemination, in whole or part, of criminal history databases maintained by or for the Bureau of State Police, State Bureau of Identification; and

3. Provides a cross-reference to the statutory provision that currently authorizes dissemination of public criminal history record information based on name and date of birth requests.
Are School Surveillance Videos Public Records?
General Overview

Right to Know Advisory Committee
November 19, 2018

Under Maine law, a public record is:

... 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 ...

1 MRSA § 402(3). No exceptions to that definition directly apply to school surveillance videos.

Under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), a student’s education records cannot be disclosed without prior written consent of the student’s parent. Education records are defined as all records, regardless of medium, that are maintained by a school and contain information directly related to a student, with certain limited exceptions.

The US Department of Education has developed some guidance on whether photos and videos are education records protected by FERPA, which requires a determination of whether the photo or video is (1) maintained by a school and (2) directly related to a student.

A photo or video is maintained by the school when the school is the custodian of the photo or video. A photo of a student that is taken by a parent, for example, is not protected by FERPA unless the school obtains a copy and maintains that photo in a particular student’s records.

The US DOE further advises that whether a photo or video is directly related to a student is often context-specific, but factors that may help determine if a photo or video is directly related to a student are:

a. Whether the school uses the photo or video for disciplinary action involving the student;

b. Whether the photo or video contains a depiction of an activity that resulted in the school’s use of the photo or video for disciplinary action, shows the student in violation of a law or shows the student getting injured, attacked, ill or having a health emergency;

c. Whether the person taking the photo or video intends to make a specific student the subject of the photo or video; and

d. Whether the photo or video otherwise contains personally identifiable information.
A photo or video is probably not directly related to a student if the student’s image is incidental or captured as part of the background, or if the student is shown participating in school activities that are open to the public and the image does not focus on a particular student.

In *Easton Area School District v. Miller*, 191 A.3d 75 (Pa. Commw. Ct. 2018), a surveillance video recorded on a school bus that captured a teacher disciplining a student was not an education record under FERPA because the video was directly relevant to the teacher’s performance but was not directly relevant to the students captured in the video. Although the video was maintained by the school, it was subject to public disclosure because it did not meet the FERPA requirement that it also be directly related to any of the students in the video.

Similarly, the surveillance video in *Rome City School Dist. v. Grifasi*, 806 N.Y.S.2d 381 (Sup. Ct. 2005), which recorded a fight among several students and included other students in the vicinity, was not an education record eligible for FERPA protection when it was “recorded to maintain the physical security and safety of the school building and which [did] not pertain to the educational performance of the students captured” on the tape, even when it identified the students and was maintained by the school. The court observed that, like the video in *Easton Area School District v. Miller*, this video was not directly related to the students depicted in any educational sense.

In contrast, in *Bryner v. Canyons School Dist.*, 351 P.3d 852 (Utah Ct. App. 2015), a surveillance video recorded in an elementary school that showed an altercation among students was not subject to public disclosure when the video clearly identified the students involved in the altercation and the video was maintained by the school. Because the students were identifiable in the video the video was directly related to those students. Although the video was a protected education record for each of the students in it, each student’s parents were only permitted to view it with the other students’ identifying features blurred or otherwise redacted. The court did not cite the *Grifasi* case to distinguish it, but did observe that “Congress made no content-based judgments with regard to its ‘education records’ definition.”