RIGHT TO KNOW ADVISORY COMMITTEE

Monday, December 3, 2018
1:00 p.m.
State House Room 438

Meeting Agenda

1. Introductions

2. Report of Public Records Exceptions Subcommittee
   A. Proposed recommendations of the Subcommittee
   B. Advisory Committee action

3. Review draft Thirteenth Annual Report of the Right to Know Advisory Committee
   A. Government employee training
      o Recommended legislation
   B. Proposed remote participation study
   C. Public records exceptions in Titles 1 through 7-A
      o Recommended legislation
   D. Remedies
      o Recommended legislation
   E. Electronic databases
   F. School surveillance
   G. Proposed joint select committee on government transparency and data privacy

4. Adjourn
Thirteenth Annual Report
of the
Right to Know Advisory Committee

December 2018

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Members:
Sen. Lisa Keim, Chair
Rep. Christopher W. Babbidge
Amy Beveridge
Elaine Clark
James Campbell
Suzanne Goucher
Stephanie Grinnell
Richard LaHaye
Mary-Anne LaMarre
Judy Meyer
Paul Nicklas
Christopher Parr
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# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Summary</td>
<td>i</td>
</tr>
<tr>
<td>I. Introduction</td>
<td>1</td>
</tr>
<tr>
<td>II. Committee Duties</td>
<td>2</td>
</tr>
<tr>
<td>III. Recent Court Decisions Related to Freedom of Access Issues</td>
<td>3</td>
</tr>
<tr>
<td>IV. Right to Know Advisory Committee Subcommittee</td>
<td>4</td>
</tr>
<tr>
<td>V. Committee Process</td>
<td>5</td>
</tr>
<tr>
<td>VI. Actions Related to Recommendations Contained in Twelfth Annual Report</td>
<td>10</td>
</tr>
<tr>
<td>VII. Recommendations</td>
<td>12</td>
</tr>
<tr>
<td>VIII. Future Plans</td>
<td>17</td>
</tr>
</tbody>
</table>

## Appendices
- Authorizing legislation: 1 MRSA §411
- Membership list
- Recommended legislation to require municipal officials to complete Freedom of Access Act training when appointed to offices for which training is required if elected to those offices
- Recommended legislation to amend certain provisions of law in Titles 1 through 7-A relating to previously-enacted public records exceptions
EXECUTIVE SUMMARY

This is the thirteenth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine’s freedom of access laws. The members are appointed by the Governor, the Chief Justice of the Supreme Judicial Court, the Attorney General, the President of the Senate and the Speaker of the House of Representatives.

As in previous annual reports, this report includes a brief summary of the legislative actions taken in response to the Advisory Committee’s January 2018 recommendations and a summary of relevant Maine court decisions from 2018 on the freedom of access laws. This report also summarizes several topics discussed by the Advisory Committee that did not result in a recommendation or further action.

For its thirteenth annual report, the Advisory Committee makes the following unanimous recommendations:

☐ Enact legislation to require municipal officials to complete Freedom of Access Act training when appointed to offices for which training is required if elected to those offices;

☐ Amend certain provisions of law in Titles 1 through 7-A relating to previously-enacted public records exceptions;

☐ Establish a legislative study on remote participation;

☐

☐

In 2019, the Right to Know Advisory Committee will continue to discuss the unresolved issues identified in this report, including its discussion of the establishment of a joint select committee of the Legislature on government transparency and data privacy policy issues and the public availability of information contained in electronic databases. The Advisory Committee will also continue to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access. The FOAA Remedies Subcommittee will meet with the expectation to make recommendations concerning alternatives to enforcement of the FOAA through the court process to the Advisory Committee. The Advisory Committee looks forward to another year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations included in this report.
I. INTRODUCTION

This is the twelfth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine’s freedom of access laws. The Advisory Committee’s authorizing legislation, located at Title 1, section 411, is included in Appendix A.

More information on the Advisory Committee, including meeting agendas, meeting materials and summaries of meetings and its previous annual reports can be found on the Advisory Committee’s webpage at http://legislature.maine.gov/legis/opla/righttoknow.htm. The Office of Policy and Legal Analysis provides staffing to the Advisory Committee.

The Right to Know Advisory Committee has 17 members. The chair of the Advisory Committee is elected annually by the members. Current Advisory Committee members are:

Senator Lisa Keim  
Chair  
Senate member of Judiciary Committee, appointed by the President of the Senate

Representative Christopher Babbidge  
House member of Judiciary Committee, appointed by the Speaker of the House

James Campbell  
Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House

Suzanne Goucher  
Representing broadcasting interests, appointed by the Speaker of the House

Stephanie Grinnell  
Representing newspaper and other press interests, appointed by the President of the Senate

Amy Beveridge  
Representing broadcasting interests, appointed by the President of the Senate

Richard LaHaye  
Representing law enforcement interests, appointed by the President of the Senate

Mary-Anne LaMarre  
Representing school interests, appointed by the Governor

Elaine Clark  
Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court

Judy Meyer  
Representing newspaper publishers, appointed by the Speaker of the House

Paul Nicklas  
Representing municipal interests, appointed by the
Governor

Christopher Parr  
*Representing state government interests, appointed by the Governor*

Linda Pistner  
*Attorney General’s designee*

Luke Rossignol  
*Representing the public, appointed by the President of the Senate*

William Shorey  
*Representing county or regional interests, appointed by the President of the Senate*

Eric Stout  
*A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor*

Vacant  
*Representing the public, appointed by the Speaker of the House*

The complete membership list of the Advisory Committee, including contact information, is included in Appendix B.

By law, the Advisory Committee must meet at least four times per year. During 2018, the Advisory Committee met four times: on September 13, October 2, November 19 and December 3. Each meeting was open to the public and was also accessible through the audio link on the Legislature’s webpage.

II. COMMITTEE DUTIES

The Right to Know Advisory Committee was created to serve as a resource and advisor about Maine’s freedom of access laws. The Advisory Committee’s specific duties include:

- Providing guidance in ensuring access to public records and public proceedings;
- Serving as the central source and coordinator of information about Maine’s freedom of access laws and the people’s right to know;
- Supporting the provision of information about public access to records and proceedings via the Internet;
- Serving as a resource to support training and education about Maine’s freedom of access laws;
Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the state of Maine's freedom of access laws and the public's access to public proceedings and records;

Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;

Examining inconsistencies in statutory language and proposing clarifying standard language; and

Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

In carrying out these duties, the Advisory Committee may conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss and consider solutions to problems concerning access to public proceedings and records.

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws. The Advisory Committee is pleased to work with the Public Access Ombudsman, Brenda Kielty. Ms. Kielty is a valuable resource to the public and public officials and agencies.

III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES

Dubois v. Office of the Attorney General, 2018 ME 67: The Maine Supreme Judicial Court upheld the Superior Court decision finding that drafts of a letter sent by the Maine Department of Agriculture, Conservation and Forestry to Dubois Livestock, Inc. were not subject to disclosure pursuant to the Freedom of Access Act because they were created in anticipation of litigation. Rule 26(b)(3) of the Maine Rules of Civil Procedure protects from discovery records created in anticipation of litigation because they contain attorneys' mental impressions, conclusions, opinions or legal theories concerning the prospective litigation. The Freedom of Access Act, Title 1, §402, sub-§3, ¶B provides an exception from the definition of public records for records that would be within the scope of a privilege against discovery.

In the same case, the Supreme Judicial Court reversed the Superior Court's decision to provide access to a series of emails that involved planning for a strategy meeting. The Law Court found these also fell within the work product privilege.

In a companion case, Dubois v. Department of Agriculture, Conservation and Forestry, 2018 ME 68, the Supreme Judicial Court upheld the privilege exception (Title 1, section 402,
subsection 3, paragraph B) for those portions of records containing the names of people who had complained to the DACF about odors from the Dubois composting facility. The “informant identity privilege” of Rule 509(a)(1) of the Maine Rules of Evidence provides that a State agency has a privilege to refuse to disclose the identity of an informant.

IV. RIGHT TO KNOW ADVISORY COMMITTEE SUBCOMMITTEES

Public Records Exception Subcommittee

(To be completed after meetings on December 3rd)

Remedies Subcommittee, formerly Penalties and Enforcement Subcommittee

The Right to Know Advisory Committee in 2017 created a Penalties and Enforcement Subcommittee, subsequently known as the Remedies Subcommittee, to the review the penalty and enforcement provisions in the Freedom of Access Act. The Advisory Committee named Judy Meyer chair of the Subcommittee; Representative Babbiage. Eric Stout, Chris Parr, Linda Pistner and Luke Rossignol were named as members of the subcommittee.

The Remedies Subcommittee met twice during the legislative session and was staffed by Adam Bohanan, the Maine School of Law extern for the Public Access Ombudsman. The Subcommittee looked at the existing penalties and the enforcement process included in the Freedom of Access Act in Title 1, sections 409 and 410. The Subcommittee reviewed extensive materials on penalties, attorney’s fees and processes in other states. The Subcommittee recommended that the full Advisory Committee consider adopting changes, including:

- Increasing the fine, which is currently $500, maybe as a tiered schedule;
- Requiring the individual public actor to be responsible for paying the fine, rather than the employing governmental agency;
- Directing that the fine go to the person aggrieved, not the General Fund;
- Removing the “bad faith” standard for attorney’s fees, and requiring the court to award reasonable attorney’s fees and litigation expenses to the party who substantially prevails;
- Providing an alternative dispute resolution (ADR) option before filing a court action to enforce the law; and
- Aligning the language concerning the protection of public access to public records and public proceedings.

The Advisory Committee agreed to look at changing the penalties; it focused on increasing the amount of the fine for subsequent violations. Current law provides for a fine of up to $500 to be paid by the state government agency or the local government entity when an officer or employee willfully violates the Freedom of Access Act. The Advisory Committee considered maintaining the $500 fine for the first willful violation, but establishing a fine of up to $1,000 for the second
willful violation within a four-year period and a fine of up to $2,000 for a third or subsequent willful violation within the four-year period.

Public Access Ombudsman Brenda Kiely reminded the Advisory Committee that the FOAA is remedial, not punitive, and that her role is generally to help figure out what the process is for individual situations and help the parties sort out what the law requires. Putting more emphasis on the penalty will push the statute to being focused more on punishment.

Members expressed interest in developing an alternative dispute option as a remedy before filing an action in court, noting that different entities have an appeals or fair hearing process in effect now. Court litigation is long and complicated and can be prohibitively expensive. The parties may want an opportunity to be heard by another group or person, rather than the formal court-based ADR. Ms. Kiely pointed out that when the Legislature created the Public Access Ombudsman position, it intentionally put resources toward preventing and facilitating the resolution of disputes by focusing on communication and education, rather than on enforcement and punitive measures. Ms. Kiely works with agencies to determine what can and should be released, which is prior to a denial; it becomes much more difficult for the ombudsman once a denial of a public record request has occurred. Establishing a hearing step would formalize what is now an informal process undertaken by the ombudsman, but would seem to require the ombudsman to exercise more powers than actually exist in that position. Once there is a violation and the court clock is ticking, it is not a good spot for the Ombudsman; the Ombudsman cannot stop the clock. Plus, the ADR process should not slow down the resolution of the request. Sometimes agencies do not know how to efficiently extract information, resulting in an expensive estimate, which is a constructive denial.

Recognizing that there was no consensus, the Advisory Committee agreed to extending the life of the Subcommittee and changing its direction to focus more on examining whether an administrative appeal process or other alternative dispute resolution method would be feasible to implement before the requestor files an action in court.

The Subcommittee did not meet before the final meeting of the Advisory Committee, but will convene as soon as possible in 2019.

V. COMMITTEE PROCESS

The Right to Know Advisory Committee did not schedule meetings until the final day of the Second Special Session of the 128th Legislature, leaving very little time to meet and make recommendations before the new 129th Legislature convened on December 5, 2018. The Advisory Committee was able to squeeze in four meetings and the Public Records Exceptions Subcommittee met XX times, rescheduling the final meeting due to weather. The Advisory Committee engaged in robust discussions about several topics, and the members agreed to add a few of the areas to the agenda for 2019 because of the lack of time to thoroughly research and vet the issues involved.

FOAA training for public officials
Under current law, 1 MRSA §412 requires officials elected to certain public offices to complete training on the Freedom of Access Act. The law requires public access officers and the following elected officials to be trained: the Governor; the Attorney General, Secretary of State, Treasurer of State and State Auditor; members of the Legislature elected after November 1, 2008; commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments; municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments; officials of school administrative units; and officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers.

Brenda Kielty, the Public Access Ombudsman, noted in her 2017 update to the Advisory Committee that section 412’s application to only elected officials in the listed positions may create some disparity among trained officials simply because some officials are elected to those positions while others are appointed. By unanimous vote, the Advisory Committee recommended in its Twelfth Annual Report that section 412 be amended to require that officials appointed to the same elected positions listed also be required to complete the training.

The Joint Standing Committee on Judiciary directed that a bill be printed to carry out the recommendations: LD 1821, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Freedom of Access Training for Public Officials. Because the bill was interpreted as requiring a local unit of government to expand or modify that unit’s activity so as to necessitate additional expenditures from that unit’s local revenues, the bill was identified as imposing a local government mandate under the Constitution of Maine, Article IX, Section 21. To avoid having to provide funding for what was determined to be an “insignificant” cost, a majority of the Judiciary Committee included a mandate preamble in the Committee Amendment to exempt the bill from the funding requirement. Legislation that includes a mandate preamble requires a two-thirds vote of the elected members of the House and Senate. Although a majority of the House voted in favor of the bill as amended, the affirmative votes did not reach the two-thirds threshold and the bill was not enacted. (Ten members of the Judiciary Committee voted Ought to Pass as Amended while three members voted Ought Not to Pass; the Senate enacted the bill with a two-thirds majority; the House failed to enact with the required two-thirds vote, with 80 voting in favor and 68 against.)

The Right to Know Advisory Committee continues to unanimously support the requirement that the specified municipal officials receive FOAA training, regardless of whether they are elected or appointed, and therefore once again recommends the enactment of legislation to implement that requirement.

**Remote participation**

The question of whether it is legal or appropriate for a member of a public body to participate and vote in proceedings of that public body when not physically in attendance has been explored in depth by the Advisory Committee over the past several years. The Attorney General’s Office advises state agencies that remote participation is not permitted under current law unless specifically authorized (there are several examples in the law that specifically authorize
participation in public proceedings by telephone or other electronic communication). However, it has been widely acknowledged that because FOAA is silent with regard to remote participation generally, there is ambiguity because there has been no litigation or court decision to provide other legal guidance.

In its Twelfth Annual Report, the Advisory Committee recommended legislation to prohibit remote participation in public proceedings by a member of a public body unless the body has established a policy for remote participation that meets certain requirements. Although the Judiciary Committee directed that the Advisory Committee’s recommendations be printed as a bill (LD 1832, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation), a majority of the Judiciary Committee ended up opposing the legislation, and separate proposed legislation focused on remote participation similarly failed passage in the Legislature (LD 70, An Act To Allow Municipal Governing Boards of 3 Members To Perform Official Duties via Technology; and LD 1831, An Act Concerning Remote Participation in Public Proceedings).

The Advisory Committee discussed the failure of the Legislature over the course of several years to grasp the significance of the absence of statutory directives on remote participation, that transparency and accountability are potentially put in jeopardy by the unfettered participation in meetings by members who are not physically in attendance. The Advisory Committee concluded that the best way to ensure the shaping of a statutory framework for remote participation is to develop a process that includes more legislators. Before legislation can move forward, the Advisory Committee believes that a broad cross-section of legislators needs to understand the dangers of the status quo, and be part of the crafting of an appropriate structure that supports governmental transparency and public participation.

With that in mind, the Advisory Committee recommends that the Legislature create a legislative study commission on remote participation. The study commission will have the benefit of years of the Advisory Committee’s research, deliberations and legislative options on remote participation, as well as all the detailed input of agencies and interested parties. The Advisory Committee suggests that a good starting place for the study is the legislation introduced in 2018, LD 1832.

Public records exceptions review

(To be completed after meetings on December 3rd)

Remedies

The Advisory Committee discussed the recommendations of the Penalties and Enforcement Subcommittee. There was significant interest in revising the penalties section of the FOAA to provide for tiered schedule of fines to increase the sanction for willfully violating the law repeatedly. Among the variables to consider are whether the individual officer or employee should be personally liable for the fine, what is the appropriate time period in which to sanction repeated willful violations and should be the agency or entity be subject to the tiered fine schedule only if it is the same officer or employee who is violating the law.
The Advisory Committee agreed to continue the work of the Penalties and Enforcement Subcommittee to focus on exploring one or more processes to provide an alternative or at least an intervening step before a person files an action in court against a public entity to enforce the FOAA. The newly-names Remedies Subcommittee is chaired by Judy Meyer, with initial volunteers of Representative Babidge, Amy Beveridge, Chris Parr, Luke Rossignol and Eric Stout, although participation may change when the subcommittee convenes in 2019.

Electronic databases

Public access to government databases was raised as a topic for the Advisory Committee by two different sources. The Joint Standing Committee on Judiciary requested the Advisory Committee to consider the issues and underlying concerns raised by LD 1658, An Act To Make Criminal History Record Information Maintained in a Database Confidential, introduced by the State Bureau of Identification (SBI) in the Second Regular Session of the 128th Legislature. Also during 2018, the Advisory Committee received an email from a member of the public requesting assistance in making available the public information that is contained in databases maintained by governmental entities.

LD 1658 was introduced partly in anticipation of requests, already received by similar agencies in other states, for all the content of the criminal history database. Current law directs the SBI to provide public criminal history record information about a specific person upon receiving a request identifying that person's name and date of birth and for a small fee. The bill would have prohibited the bulk transfer of the public data in the database. Supporters of the bill were concerned that certain information in the database loses its public nature and becomes confidential after the passage of time. A one-time transfer of data that is then sold or posted online will not be accurate, and could harm those whose information is then permanently released. The Judiciary Committee did not pass the bill, but requested that the Advisory Committee review the concerns and make recommendations back to the Judiciary Committee.

Approaching from the opposite direction, an email asked the Advisory Committee to address the difficulty that members of the public face when requesting information that is maintained in a government database that also contains personally-identifying information or other confidential information, such as proprietary information or programming directions. Because the Freedom of Access Act does not require a public entity to create a new record in response to a public records request (1 MRSA §408-A, subsection 6), and many public entities have difficulty extracting the public information in the database, requests for such information are often denied.

The Freedom of Access Act requires agencies to consider, in the purchase of and contracting for computer software and other information technology resources, the extent to which the software or technology will maximize public access to public records, and maximize the exportability of public records while protecting confidential information that may be part of public records. (1 MRSA §413) Some states have adopted statutory language to specifically provide for the extraction of public information.
The Advisory Committee discussed the difficulties in responding to public records requests seeking the public elements of government databases. John Pelletier, Chair of the Criminal Law Advisory Commission (CLAC), shared CLAC’s discussion about the concerns leading to the introduction of LD 1658. CLAC reached no consensus and thus is making no recommendations to the Judiciary Committee; the members understand the dangers of releasing information whose accuracy will wane over time, as well as the fact that very little information cannot be discovered through diligent searching on the Internet.

Members of the Advisory Committee were uncomfortable with making records that are public individually not public when they are in bulk. Concerns were raised that it is not appropriate to make money off the taxpayer’s investment in building the databases, and that care should be taken to ensure that data is accurate and not stale. Part of the stewardship of a government agency is to ensure the accuracy and validity of records; the rights of the individual must be balanced with the rights of the public and the First Amendment. The Advisory Committee did not make specific recommendations concerning databases due to time constraints, although there was interest in making progress on the issue. The Advisory Committee recognized the tension between protecting personally-identifiable information while still retaining statistically useful data. The Advisory Committee agreed to further investigation in 2019.

School surveillance records

Ms. LaMarre brought a recently decided case from Pennsylvania regarding public access to school surveillance videos to the Advisory Committee’s attention. In that case, a school surveillance video was determined to be a public record because it was not protected by the federal Family Educational Rights and Privacy Act of 1974 (“FERPA”). The Advisory Committee discussed its concerns with allowing video of schoolchildren to become public, as well as the countervailing public interest in ensuring the accountability of school staff and the safety of children by allowing at least some access to those videos.

The Advisory Committee considered the protections afforded by FERPA, which provides that “educational records” are not accessible by the public; whether a record – or surveillance video – is considered an “educational record,” however, depends upon whether the record is (1) maintained by a school and (2) directly related to a student. The cases that have interpreted FERPA in the context of surveillance videos have produced unpredictable results and minimal guidance. There is not currently a Maine law that would affect the availability of school surveillance videos to the public.

The Advisory Committee further discussed the safety and privacy issues associated with school surveillance videos, including its value to members of the public with bad motives toward the children depicted and its personal nature, as well as the potential value to the public in ensuring that schools do not overreach in their surveillance or keep damaging footage from public scrutiny. Mr. Campbell expressed his desire to regulate video and other, non-video, types of information collected by schools about children that could be disseminated in innumerable ways.
Ultimately the Advisory Committee felt that the issue required more consideration than its time would allow, but advises that this is an important topic for consideration and is available to assist the Judiciary Committee in whatever capacity necessary during the 129th Legislature.

**Joint select committee on government transparency and data privacy policy issues**

The Advisory Committee discussed the proposal, offered by Mr. Parr, to suggest to the Legislative Council that a joint select committee on government transparency and data privacy policy issues be created. Creating such a committee, which perhaps might work at times with the Advisory Committee, would ensure that more legislators are able to directly work on, more thoroughly discuss and more fully appreciate the very often complex public policy issues about which the Advisory Committee frequently deliberates in its work. One idea is that the joint select committee could investigate privacy concerns while the Right to Know Advisory Committee focuses more on access to government information. There was a concern that such a joint select committee would look like an end-run around the Judiciary Committee, but a benefit would be that it could work during the legislative session. The Advisory Committee members agreed that the idea was worthy of further discussion and agreed to add it to the Advisory Committee’s 2019 agenda.

**VI. ACTIONS RELATED TO COMMITTEE RECOMMENDATIONS CONTAINED IN ELEVENTH ANNUAL REPORT**

The Right to Know Advisory Committee made the following recommendations in its Twelfth Annual Report. The legislative actions taken in 2018 as a result of those recommendations are summarized below.

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<th>Recommendation:</th>
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| Enact legislation to prohibit remote participation in public proceedings by a member of a public body unless the body establishes a policy for remote participation that meets certain requirements | The Joint Standing Committee on Judiciary directed that two bills be printed, one to carry out the recommendation of the Right to Know Advisory Committee (LD 1832, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation) and the other (LD 1831, An Act Concerning Remote Participation in Public Proceedings) to prohibit remote participating and phase out authorization of remote participation by the seven specific bodies that are currently statutorily authorized to conduct proceedings with one or more members participating from a remote location. LD 1832 was reported out of committee with a majority Ought Not To Pass report, and a minority report of Ought To Pass As Amended. The amendment included the prohibition on executive sessions being conducted with remote participation, giving public bodies of three or fewer members more flexibility and requiring the approval of a remote participation policy by the constituents of...
Enact legislation to amend 1 MRSA §412 to require municipal officials to complete Freedom of Access Act training when appointed to offices for which training is required if elected to those offices

LD 1831 was reported out of committee with a majority Ought Not To Pass report, and a minority report of Ought To Pass. The Senate and the House of Representatives accepted the Ought Not To Pass report.

The Judiciary Committee directed that a bill be printed to carry out the recommendations of the Right to Know Advisory Committee. LD 1821, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Freedom of Access Training for Public Officials, was reported out with a majority Ought To Pass As Amended report. The amendment adding a Mandate Preamble to exempt the requirement that the State fund a local government mandate, identified for this bill as “insignificant costs” on a statewide basis. The minority report was Ought Not To Pass. Although the Senate voted to accept the majority report by at least a two-thirds vote, required for bills containing a mandate preamble, the majority report was not approved by the required two-thirds in the House of Representatives and LD 1821 was not enacted.

Establish a subcommittee to review the penalty and enforcement provisions in the Freedom of Access Act.

The Right to Know Advisory Committee established a Penalties and Enforcement Subcommittee, chaired by Judy Meyer and including Representative Chris Babbidge, Chris Parr, Linda Pisters, Luke Rossignol and Eric Stout. The Subcommittee was staffed by Adam Bohannon, the Maine Law School extern working with Public Access Ombudsman Brenda Kiely. The Subcommittee met twice and presented recommendations to the Right to Know Advisory Committee at the September 13, 2018 meeting.

VII. RECOMMENDATIONS

The Advisory Committee makes the following recommendations.

☐ Enact legislation to require municipal officials to complete Freedom of Access Act training when appointed to offices for which training is required if elected to those offices

The Advisory Committee continues to support requiring municipal officials receive FOAA training regardless of whether they are appointed or elected. Current law applies to only elected
officials, which creates disparity from town to town and within municipal governments. The distinction does not make much sense with regard to who is responsible for responding to public records requests and requests for access to public proceedings. Although 1821 failed passage in the 128th Legislature, the Advisory Committee believes that a training requirement is important and is worth pursuing.

*See recommended legislation in Appendix ??.*

☐ Amend . . . .

*See recommended legislation in Appendix ??*

☐ Adoption of . . . .

**VIII. FUTURE PLANS**

In 2019, the Right to Know Advisory Committee will continue to discuss the unresolved issues identified in this report, including its discussion of the establishment of a joint select committee of the Legislature on government transparency and data privacy policy issues and the public availability of information contained in electronic databases. The Advisory Committee will also continue to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access. The FOAA Remedies Subcommittee will meet with the expectation to make recommendations concerning alternatives to enforcement of the FOAA through the court process to the Advisory Committee. The Advisory Committee looks forward to another year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations included in this report.
CURRENT LAW

§410. Violations

For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than $500 may be adjudged.

§410. Violations

1. Civil violation. An officer or employee of a state government agency or local government entity who willfully violates this subchapter commits a civil violation.

2. Penalties. A state government agency or local government entity whose officer or employee commits a civil violation described in subsection 1 is subject to:

A. A fine of not more than $500;

B. A fine of not more than $1,000 for a civil violation described in subsection 1 that was committed not more than 4 years after a previous adjudication of a civil violation described in subsection 1 by the same officer or employee of the state government agency or local government agency; or

C. A fine of not more than $2,000 for a civil violation described in subsection 1 that was committed not more than 4 years after 2 or more previous adjudications of a civil violation described in subsection 1 by the same officer or employee of the state government agency or local government agency.

Questions:

1. Who is liable for the fine – agency/entity or officer/employee?
2. Do tiered penalties apply only if is the same officer/employee who willfully violates the law each time?
3. Time limit to include subsequent violations?
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §412 is amended to read:

§412. Public records and proceedings training for certain elected 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;

D.

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 public officials elected to certain positions to complete a training on the requirements of the Freedom of Access Act. This bill implements the recommendation of the Right to Know Advisory Committee that officials appointed to those same positions also be required to complete the training.
### Existing Public Records Exceptions
***For Review by Legislative Subcommittee***

**Titles 1 through 7**

<table>
<thead>
<tr>
<th>REF. NO.</th>
<th>TITLE</th>
<th>SECTION</th>
<th>SUB-§, ¶</th>
<th>DESCRIPTION</th>
<th>RESPONDING DEPARTMENT/AGENCY</th>
<th>PROPOSED ACTION</th>
<th>SUBCOMMITTEE ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>402</td>
<td>3, ¶ A</td>
<td>Title 1, section 402, subsection 3, paragraph A: Records that have been designated confidential by statute</td>
<td></td>
<td>No change</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>1</td>
<td>402</td>
<td>3, ¶ B</td>
<td>Title 1, section 402, subsection 3, paragraph B: Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding</td>
<td></td>
<td>No change</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>402</td>
<td>3, ¶ C</td>
<td>Title 1, section 402, subsection 3, paragraph C: Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over</td>
<td>Legislative offices</td>
<td>No change</td>
<td></td>
</tr>
</tbody>
</table>

Prepared for the Right to Know Advisory Committee
Page 1
# Existing Public Records Exceptions

*For Review by Legislative Subcommittee*

*Titles 1 through 7*

<table>
<thead>
<tr>
<th>REF. NO.</th>
<th>TITLE</th>
<th>SECTION</th>
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<th>RESPONDING DEPARTMENT/AGENCY</th>
<th>PROPOSED ACTION</th>
<th>SUBCOMMITTEE ACTION</th>
</tr>
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<tbody>
<tr>
<td>4</td>
<td>1</td>
<td>402</td>
<td>3, ¶ C-1</td>
<td><em>Title 1, section 402, subsection 3, paragraph C-1:</em> Information contained in a communication between a constituent and an elected official if the information is of a personal nature as specified in the paragraph, is an individual's social security number, or would be confidential if it were in the possession of a public agency or official</td>
<td>Legislative offices</td>
<td>Remove SSNs because paragraph N excepts all SSNs</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>1</td>
<td>402</td>
<td>3, ¶ D</td>
<td><em>Title 1, section 402, subsection 3, paragraph D:</em> Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives</td>
<td>DAFS Bureau of Human Resources</td>
<td>No change</td>
<td>No change</td>
</tr>
<tr>
<td>6</td>
<td>1</td>
<td>402</td>
<td>3, ¶ E</td>
<td><em>Title 1, section 402, subsection 3, paragraph E,</em> relating to records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System</td>
<td>Maine Maritime Academy; Maine Community College System; University of Maine System</td>
<td>No change</td>
<td>Follow up: could exception be more narrowly tailored?</td>
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</tbody>
</table>

Prepared for the Right to Know Advisory Committee
Page 2
<table>
<thead>
<tr>
<th>REF. NO.</th>
<th>TITLE</th>
<th>SECTION</th>
<th>SUB-§</th>
<th>DESCRIPTION</th>
<th>RESPONDING DEPARTMENT/AGENCY</th>
<th>PROPOSED ACTION</th>
<th>SUBCOMMITTEE ACTION</th>
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<tr>
<td>7</td>
<td>1</td>
<td>402</td>
<td>3, ¶F</td>
<td>Title 1, section 402, subsection 3, paragraph F, relating to records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions and are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities</td>
<td>Maine Municipal Association</td>
<td>No change</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>1</td>
<td>402</td>
<td>3, ¶G</td>
<td>Title 1, section 402, subsection 3, paragraph G, relating to materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities</td>
<td>Maine Municipal Association</td>
<td>No change</td>
<td></td>
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<tr>
<td>9</td>
<td>1</td>
<td>402</td>
<td>3, ¶H</td>
<td>Title 1, section 402, subsection 3, paragraph H, relating to medical records and reports of municipal ambulance and rescue units and other emergency medical service units</td>
<td>Maine Municipal Association</td>
<td>No change</td>
<td></td>
</tr>
<tr>
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<td>PROPOSED ACTION</td>
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<tr>
<td>10</td>
<td>1</td>
<td>402</td>
<td>3, ¶ I</td>
<td>Title 1, section 402, subsection 3, paragraph I, relating to juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter</td>
<td>Maine Municipal Association</td>
<td>No change</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>1</td>
<td>402</td>
<td>3, ¶ J</td>
<td>Title 1, section 402, subsection 3, paragraph J, relating to working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization</td>
<td></td>
<td>Follow up: Too broad? What are these boards/commissions? Conflict of interest considerations?</td>
<td></td>
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<tr>
<td>12</td>
<td>1</td>
<td>402</td>
<td>3, ¶ K</td>
<td>Title 1, section 402, subsection 3, paragraph K, relating to personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure</td>
<td>Maine Municipal Association</td>
<td>Strike municipal ordinance language</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>1</td>
<td>402</td>
<td>3, ¶ L</td>
<td>Title 1, section 402, subsection 3, paragraph L, relating to records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism</td>
<td>Department of Defense, Veterans and Emergency Management</td>
<td>No change</td>
<td>No change</td>
</tr>
</tbody>
</table>

Prepared for the Right to Know Advisory Committee
Page 4
<table>
<thead>
<tr>
<th>REF. NO.</th>
<th>TITLE</th>
<th>SECTION</th>
<th>SUB-§, ¶</th>
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<th>PROPOSED ACTION</th>
<th>SUBCOMMITTEE ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>1</td>
<td>402</td>
<td>3, ¶ M</td>
<td>Title 1, section 402, subsection 3, paragraph M, relating to architecture, design, access authentication, encryption and security of information technology infrastructure and systems</td>
<td>DAFS Office of Information Technology</td>
<td>Add business continuity and disaster recovery documentation</td>
<td>Add business continuity and disaster recovery documentation</td>
</tr>
<tr>
<td>15</td>
<td>1</td>
<td>402</td>
<td>3, ¶ N</td>
<td>Title 1, section 402, subsection 3, paragraph N, relating to social security numbers in possession of the Department of Inland Fisheries and Wildlife</td>
<td></td>
<td>No change</td>
<td>No change</td>
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<tr>
<td>16</td>
<td>1</td>
<td>402</td>
<td>3, ¶ O</td>
<td>Title 1, section 402, subsection 3, paragraph O relating to personal contact information concerning public employees other than elected officials</td>
<td>DAFS Bureau of Human Resources</td>
<td>Expand to include social media accounts</td>
<td>No change</td>
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<tr>
<td>17</td>
<td>1</td>
<td>402</td>
<td>3, ¶ P</td>
<td>Title 1, section 402, subsection 3, paragraph P relating to geographic information regarding recreational trails that are located on private land</td>
<td>Department of Inland Fisheries and Wildlife</td>
<td>No change</td>
<td>No change</td>
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<tr>
<td>18</td>
<td>1</td>
<td>402</td>
<td>3, ¶ Q</td>
<td>Title 1, section 402, subsection 3, paragraph Q relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail</td>
<td>Department of Corrections</td>
<td>No change</td>
<td>No change</td>
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<tr>
<td>19</td>
<td>1</td>
<td>402</td>
<td>3, ¶ R</td>
<td>Repealed by PL 2017, ch. 163</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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</tbody>
</table>

Prepared for the Right to Know Advisory Committee

Page 5
## Existing Public Records Exceptions

**For Review by Legislative Subcommittee**

**Titles 1 through 7**

<table>
<thead>
<tr>
<th>REF. NO.</th>
<th>TITLE</th>
<th>SECTION</th>
<th>SUB-§, ¶</th>
<th>DESCRIPTION</th>
<th>RESPONDING DEPARTMENT/AGENCY</th>
<th>PROPOSED ACTION</th>
<th>SUBCOMMITTEE ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>I</td>
<td>402</td>
<td>3, ¶ S</td>
<td><strong>Title 1, section 402, subsection 3, paragraph S</strong> relating to e-mail addresses obtained by a political subdivision of the State for the sole purpose of disseminating noninteractive notifications, updates and cancellations that are issued from the political subdivision or its elected officers to an individual or individuals that request or regularly accept these noninteractive communications</td>
<td>Maine Municipal Association</td>
<td>No change</td>
<td>No change</td>
</tr>
<tr>
<td>21</td>
<td></td>
<td>[Duplicate]</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
<td></td>
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<tr>
<td>22</td>
<td>I</td>
<td>402</td>
<td>3, ¶ T</td>
<td><strong>Title 1, section 402, subsection 3, paragraph T</strong> relating to records describing research for the development of processing techniques for fisheries, aquaculture and seafood processing or the design and operation of a depuration plant in the possession of the Department of Marine Resources</td>
<td>Department of Marine Resources</td>
<td>No change</td>
<td>No change</td>
</tr>
<tr>
<td>23</td>
<td>I</td>
<td>402</td>
<td>3, ¶ U</td>
<td><strong>Title 1, section 402, subsection 3, paragraph U</strong> relating to records provided by a railroad company describing hazardous materials transported by the railroad company in this State</td>
<td>Department of Public Safety; Department of Defense, Veterans and Emergency Management</td>
<td>No change</td>
<td>No change</td>
</tr>
<tr>
<td>23-4</td>
<td>I</td>
<td>402</td>
<td>3, ¶ V</td>
<td><strong>Title 1, section 402, subsection 3, paragraph V</strong> relating to participant application materials and other personal information obtained or maintained by a municipality or other public entity in administering a community well-being check program</td>
<td>Town of Hancock (doesn’t collect this data)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Prepared for the Right to Know Advisory Committee

Page 6
<table>
<thead>
<tr>
<th>REF. NO.</th>
<th>TITLE</th>
<th>SECTION</th>
<th>SUB-§, ¶</th>
<th>DESCRIPTION</th>
<th>RESPONDING DEPARTMENT/AGENCY</th>
<th>PROPOSED ACTION</th>
<th>SUBCOMMITTEE ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>23-B</td>
<td>1</td>
<td>402</td>
<td>3-A, ¶A</td>
<td>Title 1, section 402, subsection 3-A, paragraph A relating to prisoner furloughs to the extent they pertain to a prisoner's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of furlough and dates of furlough</td>
<td>Dept. of Corrections</td>
<td>No change</td>
<td></td>
</tr>
<tr>
<td>23-C</td>
<td>1</td>
<td>402</td>
<td>3-A, ¶B</td>
<td>Title 1, section 402, subsection 3-A, paragraph B relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of residence and dates of supervision</td>
<td>Dept. of Corrections</td>
<td>No change</td>
<td></td>
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<tr>
<td>23-D</td>
<td>1</td>
<td>402</td>
<td>3-A, ¶C</td>
<td>Title 1, section 402, subsection 3-A, paragraph C relating to a prisoner's, adult probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information</td>
<td>Dept. of Corrections</td>
<td>No change</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>1</td>
<td>538</td>
<td>3</td>
<td>Title 1, section 538, subsection 3, relating to InforME subscriber information</td>
<td>InforME; DAFS Office of Information Technology</td>
<td></td>
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</tr>
<tr>
<td>25</td>
<td>1</td>
<td>1013</td>
<td>2</td>
<td>[Not a public records exception]</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>26</td>
<td>1</td>
<td>1013</td>
<td>4, ¶A</td>
<td>Title 1, section 1013, subsection 4, relating to investigative records relating to complaints that the Commission on Governmental Ethics and Election Practices has voted to pursue</td>
<td>Maine Commission on Governmental Ethics and Election Practices</td>
<td>No change</td>
<td>No change</td>
</tr>
</tbody>
</table>

Prepared for the Right to Know Advisory Committee
Page 7
### Existing Public Records Exceptions
For Review by Legislative Subcommittee
Titles 1 through 7

<table>
<thead>
<tr>
<th>REF. NO.</th>
<th>TITLE</th>
<th>SECTION</th>
<th>SUB-, ¶</th>
<th>DESCRIPTION</th>
<th>RESPONDING DEPARTMENT/AGENCY</th>
<th>PROPOSED ACTION</th>
<th>SUBCOMMITTEE ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>27</td>
<td>1</td>
<td>1013</td>
<td>3-A</td>
<td><strong>Title 1, section 1013, subsection 3-A, relating to a complaint alleging a violation of legislative ethics</strong></td>
<td>Maine Commission on Governmental Ethics and Election Practices</td>
<td>No change</td>
<td>No change, pending inquiry to full Advisory Committee re: whether complaints should be confidential if not pursued</td>
</tr>
<tr>
<td>28</td>
<td>3</td>
<td>156</td>
<td></td>
<td><strong>Title 3, section 156, relating to prehearing conference materials for legislative confirmations of gubernatorial appointments</strong></td>
<td>Legislature</td>
<td>No change</td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>3</td>
<td>159</td>
<td></td>
<td><strong>Title 3, section 159, relating to prehearing conference materials for legislative confirmations of gubernatorial appointments</strong></td>
<td>Legislature</td>
<td>No change</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>3</td>
<td>997</td>
<td>1</td>
<td><strong>Title 3, section 997, subsection 1, relating to program evaluation reports transmitted by OPEGA to the GOC prior to the report's formal presentation</strong></td>
<td>OPEGA</td>
<td>Changes proposed by OPEGA</td>
<td>Strike “prior to” language in hanging paragraph</td>
</tr>
<tr>
<td>31</td>
<td>3</td>
<td>997</td>
<td>3</td>
<td><strong>Title 3, section 997, subsection 3, relating to papers, physical and electronic records and correspondence and other supporting materials comprising the working papers in the possession of OPEGA or other entity charged with the preparation of a program evaluation report</strong></td>
<td>OPEGA</td>
<td>Changes proposed by OPEGA</td>
<td>Clarify that working papers are confidential per yellow OPLA draft; follow up re: including language</td>
</tr>
</tbody>
</table>

Prepared for the Right to Know Advisory Committee
Page 8
<table>
<thead>
<tr>
<th>REF. NO.</th>
<th>TITLE</th>
<th>SECTION</th>
<th>SUB-§, ¶</th>
<th>DESCRIPTION</th>
<th>RESPONDING DEPARTMENT/AGENCY</th>
<th>PROPOSED ACTION</th>
<th>SUBCOMMITTEE ACTION</th>
</tr>
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<tbody>
<tr>
<td>32</td>
<td>3</td>
<td>997</td>
<td>4</td>
<td>Title 3, section 997, subsection 4, relating to documentary or other information obtained by OPEGA during the course of a program evaluation is privileged or confidential in the possession of the state agency or other entity providing the information</td>
<td>OPEGA</td>
<td>Changes proposed by OPEGA</td>
<td>No change</td>
</tr>
<tr>
<td>33</td>
<td>3</td>
<td>997</td>
<td>5</td>
<td>Title 3, section 997, subsection 5, relating to working papers of OPEGA</td>
<td>OPEGA</td>
<td>Changes proposed by OPEGA</td>
<td>Amend headnote to “Disclosure to evaluated agency”</td>
</tr>
<tr>
<td>34</td>
<td>3</td>
<td>997</td>
<td>6</td>
<td>Title 3, section 997, subsection 6, relating to data supplied by an individual are needed to initiate, continue or complete a program evaluation</td>
<td>OPEGA</td>
<td>Changes proposed by OPEGA</td>
<td>No change</td>
</tr>
<tr>
<td>35</td>
<td>4</td>
<td>17</td>
<td>3</td>
<td>Title 4, section 17, subsection 3, relating to State Court Administrator complaints and investigative files</td>
<td>Judicial Branch</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>36</td>
<td>4</td>
<td>1701</td>
<td>7</td>
<td>Repealed by PL 2017, ch. 242</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>37</td>
<td>4</td>
<td>1806</td>
<td>2</td>
<td>Title 4, section 1806, subsection 2, relating to records in the possession of the Maine Commission on Indigent Legal Services, including: individual client information; information subject to the lawyer-client privilege; personal contact information of a commission-rostered attorney; personal contact information of a member of the commission or a commission staff member; a request for funds for expert or investigative assistance that is submitted by an indigent party; any information obtained or gathered by the commission when performing an evaluation or investigation of an attorney</td>
<td>MCILS</td>
<td>No change</td>
<td>No change</td>
</tr>
<tr>
<td>38</td>
<td>5</td>
<td>95</td>
<td>11</td>
<td>Title 5, section 95, subsection 11, relating to state records maintained by the state archivist that contain information related to the identity of an archives patron relative to the patron's use of materials at the archives are confidential</td>
<td>Secretary of State, State Archivist</td>
<td>No change</td>
<td>No change</td>
</tr>
<tr>
<td>39</td>
<td>5</td>
<td>191</td>
<td>4, ¶K</td>
<td>Error – Not a public records exception</td>
<td>N/A</td>
<td>N/A</td>
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Prepared for the Right to Know Advisory Committee
Page 10
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<thead>
<tr>
<th>REF. NO.</th>
<th>TITLE</th>
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<th>PROPOSED ACTION</th>
<th>SUBCOMMITTEE ACTION</th>
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<tr>
<td>40</td>
<td>5</td>
<td>211</td>
<td>4</td>
<td>Title 5, section 211, subsection 4 relating to nondisclosure of information produced in connection with an investigation under the Attorney General’s Unfair Trade Practices authority</td>
<td>Attorney General</td>
<td>Not necessary, but could be amended to allow AG’s Office to share documents with other state and federal agencies that pursue civil unfair and deceptive trade practices</td>
<td>No change; include note re: AG’s proposed action</td>
</tr>
<tr>
<td>41</td>
<td>5</td>
<td>791</td>
<td></td>
<td>Title 5, section 791, relating to certain records and correspondence utilized by state agencies in the certification of minority business enterprises, women’s business enterprises and disadvantaged business enterprises</td>
<td>DAFS Bureau of Human resources; DAFS Bureau of General Services</td>
<td>No change</td>
<td>No change</td>
</tr>
<tr>
<td>42</td>
<td>5</td>
<td>957</td>
<td>5</td>
<td>Title 5, section 957, subsection 5, relating to State Employee Assistance Program client records</td>
<td>DAFS Bureau of Human Resources</td>
<td>No change</td>
<td>No change</td>
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<tr>
<td>43</td>
<td>5</td>
<td>1541</td>
<td>10-B</td>
<td>Title 5, section 1541, subsection 10-B, relating to internal audit working papers of the State Auditor</td>
<td>DAFS Office of State Auditor</td>
<td>No change</td>
<td>No change</td>
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<td>44</td>
<td>5</td>
<td>1545</td>
<td></td>
<td>Title 5, section 1545, relating to outstanding unpaid checks issued by the State</td>
<td>Treasurer of State; DAFS Office of State Controller</td>
<td>No change</td>
<td>No change</td>
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<tr>
<td>45</td>
<td>5</td>
<td>1743</td>
<td>5, ¶A</td>
<td>Title 5, section 1743, subsection 5, paragraph A, relating to public improvements construction contracts concerning evaluations of proposals</td>
<td>DAFS Bureau of General Services</td>
<td>No change</td>
<td>No change</td>
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</table>
### Existing Public Records Exceptions

For Review by Legislative Subcommittee

**Titles 1 through 7**

<table>
<thead>
<tr>
<th>REF. NO.</th>
<th>TITLE</th>
<th>SECTION</th>
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<th>PROPOSED ACTION</th>
<th>SUBCOMMITTEE ACTION</th>
</tr>
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<tr>
<td>46</td>
<td>5</td>
<td>1747</td>
<td>3</td>
<td>Title 5, section 1747, subsection 3, relating to public improvement contracts concerning prebid qualifications</td>
<td>DAFS Bureau of General Services</td>
<td>No change</td>
<td>No change</td>
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<tr>
<td>47</td>
<td>5</td>
<td>1976</td>
<td>1</td>
<td>Title 5, section 1976, subsection 1, relating to the State Government computer system</td>
<td>DAFS Office of Information Technology</td>
<td>No change</td>
<td>No change</td>
</tr>
</tbody>
</table>
| 48       | 5     | 4572    | 2        | Title 5, section 4572, subsection 2, relating to medical information or history of an applicant in an employment discrimination complaint | Maine Human Rights Commission | - Amend “medical condition or history” to “medical and disability information and history” for job applicants  
- Add employee “wellness” programs  
- Apply exception for inquiries about performing job-related functions to applicants as well as employees | |
<p>| 49       | 5     | 4573    | 2        | Title 5, section 4573, subsection 2, relating to records of mental or physical disability | Maine Human Rights Commission | Clarify “features of” language as indicated in response | |</p>
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<th>PROPOSED ACTION</th>
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</tr>
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<tr>
<td>50</td>
<td>5</td>
<td>4612</td>
<td>1, ¶B</td>
<td>Title 5, section 4612, subsection 1, paragraph B related to information possessed by the Maine Human Rights Commission relating to an investigation</td>
<td>Maine Human Rights Commission</td>
<td>No change</td>
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<tr>
<td>50-A</td>
<td>5</td>
<td>4612</td>
<td>1, ¶A</td>
<td>Title 5, section 4612, subsection 1, paragraph A related to evidence of conduct or statements made in compromise settlement negotiations, offers of settlement and any final agreement</td>
<td>Maine Human Rights Commission</td>
<td>No change</td>
<td></td>
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<tr>
<td>50-B</td>
<td>5</td>
<td>4612</td>
<td>3</td>
<td>Title 5, section 4612, subsection 3, relating to anything said or done as part of an endeavor to eliminate discrimination in response to a complaint</td>
<td>Maine Human Rights Commission</td>
<td>No change</td>
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<tr>
<td>51</td>
<td>5</td>
<td>4612</td>
<td>5</td>
<td>Title 5, section 4612, subsection 5, relating to data reflecting the identity of a party to a complaint</td>
<td>Maine Human Rights Commission</td>
<td>No change</td>
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<td>52</td>
<td>5</td>
<td>7070</td>
<td>1</td>
<td>Title 5, section 7070, subsection 1, relating to state employee applicants</td>
<td>DAFS Bureaus of Human Resources and Employee Relations</td>
<td>No change</td>
<td>No change</td>
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<tr>
<td>53</td>
<td>5</td>
<td>7070</td>
<td>2</td>
<td>Title 5, section 7070, subsection 2, relating to state employees' personal information</td>
<td>DAFS Bureau of Human Resources and Employee Relations</td>
<td>Expand to include social media accounts</td>
<td>No change</td>
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<tr>
<td>54</td>
<td>5</td>
<td>7070</td>
<td>4</td>
<td>Title 5, section 7070, subsection 4, relating to state employees' personal information</td>
<td>DAFS Bureau of Human Resources and Employee Relations</td>
<td>No change</td>
<td>No change</td>
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<tr>
<td>55</td>
<td>5</td>
<td>15322</td>
<td>3</td>
<td>Title 5, section 15322, subsection 3, relating to certain records of technology centers</td>
<td>DECD, Maine Technology Centers</td>
<td>No change</td>
<td>No change</td>
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<tr>
<td>56</td>
<td>5</td>
<td>17037</td>
<td>1</td>
<td>Title 5, section 17037, subsection 1, relating to medical information held by MePERS</td>
<td>Maine Public Employees Retirement System</td>
<td>No change</td>
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<tr>
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<td>17057</td>
<td>2</td>
<td>Title 5, section 17057, subsection 2, relating to private financial and personal information of members, beneficiaries or participants in any of the programs of MePERS</td>
<td>Maine Public Employees Retirement System</td>
<td>No change</td>
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<td>58</td>
<td>5</td>
<td>17057</td>
<td>3</td>
<td>Title 5, section 17057, subsection 3, relating to home contact information of Maine State Retirement System members, benefit recipients and staff</td>
<td>Maine Public Employees Retirement System</td>
<td>No change</td>
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<tr>
<td>59</td>
<td>5</td>
<td>17057</td>
<td>4</td>
<td>Title 5, section 17057, subsection 4, relating to certain investment activity information</td>
<td>Maine Public Employees Retirement System</td>
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<tr>
<td>60</td>
<td>5</td>
<td>17057</td>
<td>5</td>
<td>Title 5, section 17057, subsection 5, relating to home contact information of Maine State Retirement System members, benefit recipients and staff</td>
<td>Maine Public Employees Retirement System</td>
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<tr>
<td>61</td>
<td>5</td>
<td>19203</td>
<td></td>
<td>Title 5, section 19203, relating to the disclosure of the results of an HIV test.</td>
<td>DHHS</td>
<td>No change</td>
<td>No change</td>
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<tr>
<td>62</td>
<td>5</td>
<td>19507</td>
<td></td>
<td>Title 5, section 19507, relating to the disclosure of information, materials and records of the DHHS Office of Advocacy</td>
<td>DHHS</td>
<td>No change</td>
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<tr>
<td>63</td>
<td>5</td>
<td>20047</td>
<td>1</td>
<td>Title 5, section 20047, subsection 1, relating to Department of Health and Human Services, Office of Substance Abuse records concerning patients</td>
<td>DHHS</td>
<td>No change</td>
<td>No change</td>
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<tr>
<td>64</td>
<td>5</td>
<td>13119-A</td>
<td></td>
<td>Title 5, section 13119-A, relating to economic and community development activities of the Department of Economic and Community Development and municipalities</td>
<td>DECD</td>
<td>No change</td>
<td>No change</td>
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</table>

Prepared for the Right to Know Advisory Committee
Page 14
# Existing Public Records Exceptions
For Review by Legislative Subcommittee
Titles 1 through 7

<table>
<thead>
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<th>REF. NO.</th>
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<tr>
<td>65</td>
<td>5</td>
<td>13120-M</td>
<td>2</td>
<td>Title 5, section 13120-M, subsection 2, relating to Maine Rural Development Authority activities</td>
<td>DECD, Maine Rural Development Authority</td>
<td>No change</td>
<td>No change</td>
</tr>
<tr>
<td>66</td>
<td>5</td>
<td>15302-A</td>
<td>2</td>
<td>Title 5, section 15302-A, subsection 2, relating to Maine Technology Institute activities</td>
<td>Maine Technology Institute</td>
<td>Consult with industry before any changes are made</td>
<td>No change</td>
</tr>
<tr>
<td>67</td>
<td>5</td>
<td>19203-D</td>
<td>1</td>
<td>Title 5, section 19203-D, subsection 1, relating to the disclosure of medical records containing information regarding a person’s HIV status.</td>
<td>DHHS</td>
<td>No change</td>
<td>No change</td>
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<td>68</td>
<td>5</td>
<td>19203-D</td>
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<td>Title 5, section 19203-D, subsection 2, relating to the disclosure of medical records containing information regarding a person’s HIV status.</td>
<td>DHHS</td>
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<td>No change</td>
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<td>69</td>
<td>5</td>
<td>200-H</td>
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<td>Title 5, section 200-H, relating to the Office of the Attorney General, Maine Elder Death Analysis Review Team</td>
<td>Attorney General, Maine Elder Death Analysis Review Team</td>
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<td>70</td>
<td>5</td>
<td>244-C</td>
<td>2</td>
<td>Title 5, section 244-C, subsection 2, relating to the Department of Audit activities and working papers</td>
<td>Office of the State Auditor</td>
<td>No change</td>
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<td>244-C</td>
<td>3</td>
<td>Title 5, section 244-C, subsection 3, relating to the Department of Audit activities and working papers</td>
<td>Office of the State Auditor</td>
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<td>72</td>
<td>5</td>
<td>244-E</td>
<td>1</td>
<td>Title 5, section 244-E, subsection 1, relating to the identity of a person making a complaint alleging fraud, waste, inefficiency or abuse</td>
<td>Office of the State Auditor</td>
<td>No change</td>
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</table>

Prepared for the Right to Know Advisory Committee
Page 15
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<tr>
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<th>PROPOSED ACTION</th>
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<tr>
<td>73</td>
<td>5</td>
<td>244-E</td>
<td>2</td>
<td>Title 5, section 244-E, subsection 2, relating to the contents of a complaint alleging fraud, waste, inefficiency or abuse</td>
<td>Office of the State Auditor</td>
<td>Amend to allow Auditor to forward complaints to other agencies that are expected to follow up on the complaint</td>
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<tr>
<td>74</td>
<td>5</td>
<td>3305-B</td>
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<td>Repealed by PL 2011, ch. 655</td>
<td>N/A</td>
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<td>75</td>
<td>5</td>
<td>3360-D</td>
<td>4</td>
<td>Title 5, section 3360-D, subsection 4, relating to the Victims' Compensation Fund concerning applications and awards</td>
<td>Attorney General, Victims' Compensation Board</td>
<td>No change</td>
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</tr>
<tr>
<td>76</td>
<td>5</td>
<td>90-B</td>
<td>7</td>
<td>Title 7, section 90-B, subsection 7, relating to a State Address Confidentiality Program participant's application, supporting materials and the program's state e-mail account</td>
<td>Secretary of State, Address Confidentiality Program</td>
<td>No change</td>
<td></td>
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<tr>
<td>77</td>
<td>7</td>
<td>20</td>
<td>1</td>
<td>Title 7, section 20, subsection 1, relating to information reported to the Department of Agriculture, Food and Rural Resources</td>
<td>Department of Agriculture</td>
<td>No change</td>
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<tr>
<td>78</td>
<td>7</td>
<td>607</td>
<td>5-A</td>
<td>Title 7, section 607, subsection 5-A, relating to pesticide data determined confidential by the US EPA administrator</td>
<td>Department of Agriculture</td>
<td>No change</td>
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<tr>
<td>79</td>
<td>7</td>
<td>1052</td>
<td>2</td>
<td>Title 7, section 1052, subsection 2, relating to growers of genetically engineered plants and seeds</td>
<td>Department of Agriculture</td>
<td>No change</td>
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<tr>
<td>80</td>
<td>7</td>
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<td>81</td>
<td>7</td>
<td>1052</td>
<td>2-A</td>
<td>Title 7, section 1052, subsection 2-A, relating to planting density of genetically modified crops</td>
<td>Department of Agriculture</td>
<td>No change</td>
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</table>

Prepared for the Right to Know Advisory Committee
Page 16
<table>
<thead>
<tr>
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<th>SUB-§, ¶</th>
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<th>PROPOSED ACTION</th>
<th>SUBCOMMITTEE ACTION</th>
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<td>82</td>
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<td>2226</td>
<td>1</td>
<td>Title 7, section 2226, subsection 1, relating to ginseng license applications, licensees and locations of ginseng plantings</td>
<td>Department of Agriculture</td>
<td>No change</td>
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<td>83</td>
<td>7</td>
<td>2231</td>
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<td>Repealed by PL 2015, ch. 202</td>
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<td>84</td>
<td>7</td>
<td>3909</td>
<td>6</td>
<td>Title 7, section 3909, subsection 6, relating to the names of and other identifying information about persons providing information pertaining to criminal or civil cruelty to animals to the department</td>
<td>Department of Agriculture</td>
<td>No change</td>
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<td>85</td>
<td>7</td>
<td>4204</td>
<td>10</td>
<td>Title 7, section 4204, subsection 10, relating to nutrient management plans</td>
<td>Department of Agriculture</td>
<td>No change</td>
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<tr>
<td>86</td>
<td>7</td>
<td>4205</td>
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<td>Title 7, section 4205, subsection 2, relating to livestock operation permits and nutrient management plans</td>
<td>Department of Agriculture</td>
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<td>87</td>
<td>7</td>
<td>2103-A</td>
<td>4</td>
<td>Title 7, section 2103-A, subsection 4, relating to patented and nonreleased potato varieties</td>
<td>Department of Agriculture</td>
<td>No change</td>
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<td>88</td>
<td>7</td>
<td>2992-A</td>
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<td>Title 7, subsection 2992-A, subsection 1, paragraph C, subparagraph (2), relating to records and meetings of Maine Dairy Promotion Board which may be closed to public when disclosure would adversely affect competitive position of milk industry</td>
<td>Maine Dairy Promotion Board</td>
<td>No change</td>
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<td>89</td>
<td>7</td>
<td>2998-B</td>
<td>1</td>
<td>Title 7, section 2998-B, subsection 1, paragraph C, subparagraph (2), relating to records and meetings of Maine Dairy and Nutrition Council which may be closed to public when disclosure would adversely affect competitive position of milk industry</td>
<td>Maine Dairy and Nutrition Council</td>
<td>No change</td>
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<td>90</td>
<td>7</td>
<td>306-A</td>
<td>3</td>
<td>Title 7, section 306-A, subsection 3, relating to agricultural development grant program, market research or development activities</td>
<td>Department of Agriculture</td>
<td>No change</td>
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</tbody>
</table>
## Existing Public Records Exceptions

**For Review by Legislative Subcommittee**

**Titles 1 through 7**

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<th>PROPOSED ACTION</th>
<th>SUBCOMMITTEE ACTION</th>
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<td>92</td>
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<td>951-A</td>
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<td>Title 7, section 951-A, relating to minimum standards for planting potatoes</td>
<td>Department of Agriculture, Food and Rural Resources</td>
<td>No change</td>
<td></td>
</tr>
</tbody>
</table>

Prepared for the Right to Know Advisory Committee

Page 18
Right to Know Advisory Committee  
December 3, 2018  

Proposed Legislation Based Upon Public Records Exceptions Review  
Titles 1 - 7-A  

---

**REF #4**

**Sec. X. 1 MRSA §402, sub-§3, ¶C-1** is amended as follows:

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

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

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

   (b) Credit or financial information;

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

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

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

(2) Would be confidential if it were in the possession of another public agency or official;

---

**REF #12**

**Sec. X. 1 MRSA §402, sub-§3, ¶K** is amended to read:

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A;
Sec. X. 1 MRSA §402, sub-§3, ¶M is amended to read:

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure, systems and software, including records or information maintained to ensure business continuity and enable disaster recovery. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;

Sec. X. 3 MRSA §997 is amended to read:

The director and the office shall adhere to the following provisions relative to conducting and issuing program evaluation reports under this chapter.

1. Review and response. Prior to the presentation of a program evaluation under this chapter to the committee by the office, the director of the evaluated state agency or other entity must have an opportunity to review a draft of the program evaluation report. Within 15 calendar days of receipt of the draft report, the director of the evaluated state agency or other entity may provide to the office comments on the draft report. If provided to the office by the comment deadline, the comments must be included in the final report when it is presented to the committee. Failure by the director of an evaluated agency or other entity to submit its comments on the draft report by the comment deadline may not delay the submission of a report to the committee or its release to the public.

All documents, writings, drafts, electronic communications and information transmitted pursuant to this subsection are confidential and may not be released to the public prior to the time the office issues its program evaluation report pursuant to subsection 3. A person violating the provisions of this subsection regarding confidentiality is guilty of a Class E crime.

2. Submission of final report to committee. The director shall notify the committee when each final program evaluation report under this chapter is completed. The report must then be placed on the agenda for a future committee meeting. At the meeting where a report appears on the agenda for the first time, the director will release that report to the committee and to the public simultaneously. The committee, at its discretion, may vote to endorse, to endorse in part or to decline to endorse the report submitted by the director. If the committee determines it is necessary, the committee may report out to the Legislature legislation to implement the findings and recommendations of any program evaluation report presented to it by the office.
3. Confidentiality. The director shall issue program evaluation reports, favorable or unfavorable, of any state agency or other entity, and these reports are public records, except that, prior to the release of a program evaluation report pursuant to subsection 2 or the point at which a program evaluation is no longer being actively pursued, all papers, physical and electronic records and correspondence and other supporting materials comprising the working papers in the possession of the director, or other another entity charged with the preparation of a program evaluation report or a private individual or entity with which the director has contracted for the conduct of program evaluations pursuant to section 995, subsection 2 are confidential and exempt from disclosure pursuant to Title 1, chapter 13, including to the Legislative Council or an agent or representative of the Legislative Council. All other records or materials in the possession of the director, or other another entity charged with the preparation of a program evaluation report under this chapter, or a private individual or entity with which the director has contracted for the conduct of program evaluations pursuant to section 995, subsection 2 that would otherwise be confidential or exempt from disclosure are exempt from disclosure pursuant to the provisions of Title 1, chapter 13. Prior to the release of a program evaluation report pursuant to subsection 2 or the point at which a program evaluation is no longer being actively pursued, all papers, physical and electronic records and correspondence and other supporting materials comprising the working papers in the possession of the director or other entity charged with the preparation of a program evaluation report are confidential and may not be released or disclosed by the director to the Legislative Council or an agent or representative of the Legislative Council. This subsection may not be construed to prohibit or prevent public access to the records of a state agency or other entity in the possession of the director that would otherwise be subject to disclosure pursuant to the provisions of Title 1, chapter 13. The director shall refer requests for access to those records directly to the state agency or other entity that is the official custodian of the requested records, which shall respond to the request for public records.

4. Information available to office. Upon request of the office and consistent with the conditions and procedures set forth in this section, state agencies or other entities subject to program evaluation must provide the office access to information that is privileged or confidential as defined by Title 1, chapter 13, which governs public records and proceedings.

A. Before beginning a program evaluation under this chapter that may require access to records containing confidential or privileged information, the office shall furnish a written statement of its determination that it is necessary for the office to access such records and consult with representatives of the state agency or other entity to discuss methods of identifying and protecting privileged or confidential information in those records. During that consultation, the state agency or other entity shall inform the office of all standards and procedures set forth in its policies or agreements to protect information considered to be confidential or privileged. The office shall limit its access to information that is privileged or confidential by appropriate methods, which may include examining records without copying or removing them from the source.

B. Documentary or other information obtained by the office during the course of a program evaluation under this chapter is privileged or confidential to the same extent under law that that information would be privileged or confidential in the possession of the state agency or other entity providing the information. Any privilege or statutory
provision, including penalties, concerning the confidentiality or obligation not to disclose information in the possession of a state agency or other entity or its officers or employees applies equally to the office. Privileged or confidential information obtained by the office during the course of a program evaluation may be disclosed only as provided by law and with the agreement of the state agency or other entity subject to the program evaluation that provided the information.

C. If the office accesses information classified as privileged or confidential pursuant to state agency or other entity policy or procedures or by agreement, the office shall comply with the state agency's or other entity's standards or procedures for handling that information. The office may include in its working papers the excerpts from information classified as confidential or privileged as may be necessary to complete the program evaluation under this chapter, as long as the use does not infringe on department policies or procedures applicable to the original provision of information.

5. Disclosure to evaluated agency. Except as provided in this subsection, working papers are confidential and may not be disclosed to any person. Prior to the release of the final program evaluation report, the director has sole discretion to disclose working papers to the state agency or other entity subject to the program evaluation when disclosure will not prejudice the program evaluation. After release of the final program evaluation report, working papers may be released as necessary to the state agency or other entity that was subject to the program evaluation under this chapter.

6. Confidential sources. If data supplied by an individual are needed to initiate, continue or complete a program evaluation under this chapter, the director may, by written memorandum to the file, provide that the individual's identity will remain confidential and exempt from disclosure under Title 1, chapter 13, and this written memorandum protects the identity of the person from disclosure under Title 1, chapter 13, notwithstanding any other provision of law to the contrary.

7. Disposition of final report. A final copy of a program evaluation report under subsection 2, including recommendations and the evaluated state agency's or other entity's comments, must be submitted to the commissioner or director of the state agency or other entity examined at least one day prior to the report's public release, and must be made available to each member of the Legislature no later than one day following the report's receipt by the committee. The office may satisfy the requirement to provide each Legislator a copy of the report by furnishing the report directly by electronic means or by providing notice to each Legislator of the availability of the report on the office's publicly accessible site on the Internet.

REF #48 (not reviewed)

Sec. X. 5 MRSA §4572, sub-§2, ¶C, sub-¶(2) is amended to read:

(2) Information obtained regarding the medical condition or disability information and history of the applicant is collected and maintained on separate
forms and in separate medical files and is treated as a confidential medical record, except that:

**Sec. X. 5 MRSA §4572, sub-2, ¶E is amended to read:**

E. A covered entity may conduct voluntary medical examinations, including voluntary medical and disability information and history histories, that are part of an employee health or wellness program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions. Information obtained under this paragraph regarding the medical condition or history of an employee is subject to the requirements of paragraph C, subparagraphs (2) and (3).

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**REF #49 (not reviewed)**

**Sec. X. 5 MRSA §4573, sub-§2** is amended to read:

2. **Records.** After employment or admission to membership, to make a record of such features of an individual as are needed in good faith for the purpose of identifying them, provided the record is intended and used in good faith solely for identification, and not for the purpose of discrimination in violation of this Act. Records of features regarding physical or mental disability that are collected must be collected and maintained on separate forms and in separate files and be treated as confidential records;

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**REF #73 (not reviewed)**

**Sec. X. 5 MRSA §244-E, sub-§2** is amended to read:

[Pending recommendation]
Thanks for the check-in, Craig.

The language we'd collectively propose for the advisory committee's consideration is underscored below.

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System when the subject matter is confidential or otherwise protected from disclosure by statute, other law or legal precedent, or evidentiary privilege.

On Fri, Nov 30, 2018 at 11:21 AM Nale, Craig <Craig.Nale@legislature.maine.gov> wrote:

Hi all,

I just wanted to check in again before the Right to Know Advisory Committee meets again on Monday, December 3. If you have anything else for their consideration please forward it to me before Monday.

Thanks again,

Craig

Hi Craig, you asked for a response by today. We do intend to respond and are working on some narrowing language to propose to you. We may not be able to get back to you until at least later tomorrow sometime, however.
Dear Freedom of Access Act Contact Person:

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 1 through 7-A before 2019; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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

   a. ANSWER: The records coming within this provision are: “Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of furlough and dates of furlough”. These records are made public by this provision. Because this is not a public records exception, it is not cited as a reason for denying a request for production of records.

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

   a. ANSWER: The department does not oppose this provision as there have been no issues to date.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

   a. **ANSWER:** This provision is clear.

4. Does your agency recommend changes to this exception?

   a. **ANSWER:** No

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

   a. **ANSWER:** The department does not have this information.

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

   a. **ANSWER:** There is nothing further.
Dear Freedom of Access Act Contact Person:

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 1 through 7-A before 2019; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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

   a. ANSWER: The records coming within this provision are: “Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of residence and dates of supervision”. These records are made public by this provision. Because this is not a public records exception, it is not cited as a reason for denying a request for production of records.

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

   a. ANSWER: The department does not oppose this provision as there have been no issues to date.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

   a. **ANSWER:** This provision is clear.

4. Does your agency recommend changes to this exception?

   a. **ANSWER:** No

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

   a. **ANSWER:** The department does not have this information.

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

   a. **ANSWER:** There is nothing further.
STATUTE: 1 MRSA §402, sub-§3-A, ¶C

AGENCY: Dept. of Corrections

CONTACT PERSON: Joseph Fitzpatrick

Dear Freedom of Access Act Contact Person:

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 1 through 7-A before 2019; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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

a. ANSWER: The records coming within this provision are: “Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information”. These records are made public by this provision, with one exception. The exception is cited once in a while.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

   a. **ANSWER:** The department does not oppose the public records part of this provision as there have been no issues to date. The exception provides sufficient protection for those cases in which it would be detrimental to disclose the information. The exception is necessary for those cases in which the location of a prisoner or address of a probationer/parolee needs to be kept confidential for that person’s safety.

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

   a. **ANSWER:** This provision is clear.

4. Does your agency recommend changes to this exception?

   a. **ANSWER:** No

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

   a. **ANSWER:** The department does not have this information.

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

   a. **ANSWER:** There is nothing further.