Right to Know Advisory Committee
Membership List
September 5, 2017

Appointments by the Governor

Christopher Parr  
Department of Public Safety  
104 State House Station  
Augusta, ME 04333  
Representing state government interests

Mary-Anne LaMarre  
406 East Side Trail  
Oakland, ME 04963  
Representing school interests

Paul Nicklas  
67 Pine Street, Apt. 2  
Bangor, ME 04401  
Representing municipal interests

Eric Stout  
State of Maine OIT  
145 State House Station  
Augusta, ME 04333  
A member with broad experience in information technology

Appointments by the President of the Senate

Senator Lisa Keim  
1505 Main Street  
Dixfield, ME 04244  
Senate member of the Judiciary Committee

Richard LaHaye  
Chief, Searsport Police Department  
3 Union Street  
Searsport, ME 04974  
Representing law enforcement interests

Luke Rossignol  
Bemis & Rossignol  
1019 State Road  
Mapleton, ME 04757  
Representing the public

William D. Shorey  
Board of Waldo County Commissioners  
39-B Spring Street  
Belfast, ME 04915  
Representing county or regional interests

A. J. Higgins  
State House Bureau Chief  
Maine Public Broadcasting  
18 West Street  
Manchester, ME 04351  
Representing broadcasting interests
Right to Know Advisory Committee
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September 5, 2017

Stephanie Grinnell
The Republican Journal
156 High Street
Belfast, ME 04915
Representing newspaper and other press interests

Appointments by the Speaker of the House

Representative Christopher W. Babbidge
84 Stratford Place
Kennebunk, ME 04043
House member of the Judiciary Committee

Suzanne Goucher
Maine Association of Broadcasters
69 Sewall Street, Suite 2
Augusta, ME 04330
Representing broadcasting interests

Judy Meyer
Lewiston Sun Journal
104 Park Street
Lewiston, ME 04243-4400
Representing newspaper publishers

James Campbell
Maine Freedom of Information Coalition
48 Monroe Road
Searsport, ME 04974
Representing a statewide coalition of advocates of freedom of access

Attorney General’s Designee

Linda Pistner
Chief Deputy Attorney General
6 State House Station
Augusta, ME 04333-0006
Designee of the Attorney General

Chief Justice of the Supreme Judicial Court’s Designee

Mary Ann Lynch
Government and Media Counsel
Administrative Office of the Courts
Maine Judicial Branch
P.O. Box 4820
Portland, ME 04112-4820
Member of the Judicial Branch

Staff:
Craig Nale
Colleen McCarthy Reid
Meeting Agenda

1. Introductions

2. Election of Chair

3. Review and discussion of the Eleventh Annual Report of the Right to Know Advisory Committee (Jan. 2017) and actions related to those recommendations

4. Review and discussion of bills affecting freedom of access carried over in the Judiciary Committee
   a. LD 1267, An Act To Protect Licensing Information of Medical Professionals
   b. LD 1541, An Act To Protect Certain Administrative Licensing Files

5. Review and discussion of bill affecting freedom of access to local government information
   a. LD 146, An Act To Protect the Confidentiality of Local Government Employees' Private Information (veto sustained)

6. Introduction of Brenda Kielty, Public Access Ombudsman

7. Presentation from Adam Fisher, Maine State Library, on collection and digitization of public records

8. Discussion of formation of subcommittees
   a. Technology subcommittee
   b. Subcommittee to review existing public records exceptions

9. Establish future meeting dates
CHAPTER 13
PUBLIC RECORDS AND PROCEEDINGS

SUBCHAPTER 1
FREEDOM OF ACCESS

§400. Short title

This subchapter may be known and cited as "the Freedom of Access Act." [PL 2011, c. 662, §1 (NEW).]

Section History:
[PL 2011, c. 662, §1 (NEW).]

§401. Declaration of public policy; rules of construction

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter. [PL 1975, c. 758 (RPR).]

This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter. [PL 2011, c. 320, Pt. B, §1 (NEW).]

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent. [PL 1975, c. 758 (RPR).]

Section History:

§402. Definitions

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.
[PL 1975, c. 758 (NEW).]
1-A. Legislative subcommittee. "Legislative subcommittee" means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.

[PL 1991, c. 773, §1 (NEW).]

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

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

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

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

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

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

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

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

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

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

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

[PL 2009, c. 334, §§1-3 (AMD).]

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

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

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

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

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

(1) Is of a personal nature, consisting of:
   (a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
   (b) Credit or financial information;
   (c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;
   (d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or
   (e) An individual's social security number; or

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

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

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

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

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

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

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

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

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

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

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

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

O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:
(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and

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

P. Geographic information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information;

(Paragraph P as enacted by PL 2009, c. 339, §3 is REALLOCATED TO TITLE 1, SECTION 402, SUBSECTION 3, PARAGRAPH Q) [PL 2011, c. 149, §1 (AMD).]

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

R. [PL 2017, c. 163, §1 (RP).]

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

T. Records describing research for the development of processing techniques for fisheries, aquaculture and seafood processing or the design and operation of a depuration plant in the possession of the Department of Marine Resources; [PL 2017, c. 118, §1 (AMD).]

U. Records provided by a railroad company describing hazardous materials transported by the railroad company in this State, the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes that are in the possession of a state or local emergency management entity or law enforcement agency, a fire department or other first responder. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5; and [PL 2017, c. 118, §2 (AMD).]

V. 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, except that a participant's personal information, including health information, may be made available to first responders only as necessary to implement the program. For the purposes of this paragraph, "community well-being check program" means a voluntary program that involves daily, or regular, contact with a participant and, when contact cannot be established, sends first responders to the participant's residence to check on the participant's well-being. [PL 2017, c. 118, §3 (NEW).]

[PL 2017, c. 118, §§1-3 (AMD).]; [PL 2017, c. 163, §1 (AMD).]

3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:
A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of furlough and dates of furlough; [PL 2013, c. 267, Pt. B, §1 (AMD).]

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

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

[PL 2013, c. 267, Pt. B, §1 (AMD).]

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

[PL 2009, c. 334, §4 (NEW).]

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

[PL 2011, c. 662, §3 (NEW).]

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

[PL 2011, c. 662, §3 (NEW).]

Section History:

§402-A. Public records defined

(REPEALED)
§403. Meetings to be open to public; record of meetings

1. Proceedings open to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.

[PL 2011, c. 320, Pt. C, §1 (NEW).]

2. Record of public proceedings. Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include:

A. The date, time and place of the public proceeding; [PL 2011, c. 320, Pt. C, §1 (NEW).]

B. The members of the body holding the public proceeding recorded as either present or absent; and [PL 2011, c. 320, Pt. C, §1 (NEW).]

C. All motions and votes taken, by individual member, if there is a roll call. [PL 2011, c. 320, Pt. C, §1 (NEW).]

[PL 2011, c. 320, Pt. C, §1 (NEW).]

3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.

[PL 2011, c. 320, Pt. C, §1 (NEW).]

4. Maintenance of record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.

[PL 2011, c. 320, Pt. C, §1 (NEW).]

5. Validity of action. The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.

[PL 2011, c. 320, Pt. C, §1 (NEW).]

6. Advisory bodies exempt from record requirements. Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.

[PL 2011, c. 320, Pt. C, §1 (NEW).]

§404. Recorded or live broadcasts authorized

In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The body or agency holding the public proceedings may make reasonable rules and regulations
governing these activities, so long as these rules or regulations do not defeat the purpose of this subchapter. [PL 1975, c. 758 (RPR).]

Section History:
[PL 1975, c. 422, §2 (RPR).]; [PL 1975, c. 483, §4 (AMD).]; [PL 1975, c. 758 (RPR).]

§404-A. Decisions
(REPEALED)

Section History:

§405. Executive sessions

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions. [PL 1975, c. 758 (NEW).]

1. Not to defeat purposes of subchapter. An executive session may not be used to defeat the purposes of this subchapter as stated in section 401. [PL 2009, c. 240, §2 (AMD).]

2. Final approval of certain items prohibited. An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at an executive session. [PL 2009, c. 240, §2 (AMD).]

3. Procedure for calling of executive session. An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies. [PL 2009, c. 240, §2 (AMD).]

4. Motion contents. A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent. [PL 2003, c. 709, §1 (AMD).]

5. Matters not contained in motion prohibited. Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session. [PL 2009, c. 240, §2 (AMD).]

6. Permitted deliberation. Deliberations on only the following matters may be conducted during an executive session:

A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:
(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the individual's reputation or the individual's right to privacy would be violated;

(2) Any person charged or investigated must be permitted to be present at an executive session if that person so desires;

(3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against that person be conducted in open session. A request, if made to the agency, must be honored; and

(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal; [PL 2009, c. 240, §2 (AMD).]

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:

(1) The student and legal counsel and, if the student is a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire; [PL 2009, c. 240, §2 (AMD).]

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency; [PL 1987, c. 477, §3 (AMD).]

D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions; [PL 1999, c. 144, §1 (RPR).]

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage; [PL 2009, c. 240, §2 (AMD).]

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute; [PL 1999, c. 180, §1 (AMD).]

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and [PL 1999, c. 180, §2 (AMD).]
H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter. [PL 1999, c. 180, §3 (NEW).]

[PL 2009, c. 240, §2 (AMD).]

Section History:
[PL 1975, c. 758 (RPR).]; [PL 1979, c. 541, §A3 (AMD).]; [PL 1987, c. 477, §§2,3 (AMD).];
[PL 1987, c. 769, §A1 (AMD).]; [PL 1999, c. 40, §§1,2 (AMD).]; [PL 1999, c. 144, §1 (AMD).];

§405-A. Recorded or live broadcasts authorized

(AMENDED)

Section History:
[PL 1975, c. 483, §5 (NEW).]; [PL 1975, c. 758 (RPR).]

§405-B. Appeals

(AMENDED)

Section History:
[PL 1975, c. 483, §5 (NEW).]; [PL 1975, c. 758 (RPR).]

§405-C. Appeals from actions

(AMENDED)

Section History:
[PL 1975, c. 483, §5 (NEW).]; [PL 1975, c. 758 (RPR).]

§406. Public notice

Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding. [PL 1987, c. 477, §4 (AMD).]

Section History:
[PL 1975, c. 483, §6 (AMD).]; [PL 1975, c. 758 (RPR).]; [PL 1987, c. 477, §4 (AMD).]
§407. Decisions

1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

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

2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof must be kept by the agency and made available to any interested member of the public who may wish to review it.

[PL 2009, c. 240, §3 (AMD).]

Section History:
[PL 1975, c. 758 (NEW).]; [PL 2009, c. 240, §3 (AMD).]

§408. Public records available for public inspection and copying

(Repealed)

Section History:

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

Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record. [PL 2011, c. 662, §5 (NEW).]

1. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee as provided in subsection 8.

[PL 2011, c. 662, §5 (NEW).]

2. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 8.

A. A request need not be made in person or in writing. [PL 2011, c. 662, §5 (NEW).]

B. The agency or official shall mail the copy upon request. [PL 2011, c. 662, §5 (NEW).]
3. Acknowledgment; clarification; time estimate; cost estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within 5 working days of receiving the request and may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, the agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request, as well as a cost estimate as provided in subsection 9. The agency or official shall make a good faith effort to fully respond to the request within the estimated time. For purposes of this subsection, the date a request is received is the date a sufficient description of the public record is received by the agency or official at the office responsible for maintaining the public record. An agency or official that receives a request for a public record that is maintained by that agency but is not maintained by the office that received the request shall forward the request to the office of the agency or official that maintains the record, without willful delay, and shall notify the requester that the request has been forwarded and that the office to which the request has been forwarded will acknowledge receipt within 5 working days of receiving the request.

4. Refusals; denials. If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide, within 5 working days of the receipt of the request for inspection or copying, written notice of the denial, stating the reason for the denial or the expectation that the request will be denied in full or in part following a review. A request for inspection or copying may be denied, in whole or in part, on the basis that the request is unduly burdensome or oppressive if the procedures established in subsection 4-A are followed. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

4-A. Action for protection. A body, an agency or an official may seek protection from a request for inspection or copying that is unduly burdensome or oppressive by filing an action for an order of protection in the Superior Court for the county where the request for records was made within 30 days of receipt of the request.

A. The following information must be included in the complaint if available or provided to the parties and filed with the court no more than 14 days from the filing of the complaint or such other period as the court may order:

(1) The terms of the request and any modifications agreed to by the requesting party;

(2) A statement of the facts that demonstrate the burdensome or oppressive nature of the request, with a good faith estimate of the time required to search for, retrieve, redact if necessary and compile the records responsive to the request and the resulting costs calculated in accordance with subsection 8;

(3) A description of the efforts made by the body, agency or official to inform the requesting party of the good faith estimate of costs and to discuss possible modifications of the request that would reduce the burden of production; and

(4) Proof that the body, agency or official has submitted a notice of intent to file an action under this subsection to the party requesting the records, dated at least 10 days prior to filing the complaint for an order of protection under this subsection. [PL 2015, c. 248, §2 (NEW).]
B. Any appeal that may be filed by the requesting party under section 409 may be consolidated with an action under this subsection. [PL 2015, c. 248, §2 (NEW).]

C. An action for protection may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require upon the request of any party. [PL 2015, c. 248, §2 (NEW).]

D. If the court finds that the body, agency or official has demonstrated good cause to limit or deny the request, the court shall enter an order making such findings and establishing the terms upon which production, if any, must be made. If the court finds that the body, agency or official has not demonstrated good cause to limit or deny the request, the court shall establish a date by which the records must be provided to the requesting party. [PL 2015, c. 248, §2 (NEW).]

[PL 2017, c. 288, Pt. A, §1 (AMD).]

5. Schedule. Inspection, conversion pursuant to subsection 7 and copying of a public record subject to a request under this section may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody or control of the public record requested. If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists. [PL 2011, c. 662, §5 (NEW).]

6. No requirement to create new record. An agency or official is not required to create a record that does not exist. [PL 2011, c. 662, §5 (NEW).]

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

A. If in order to provide access to an electronically stored public record the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the agency or official may charge a fee to cover the cost of conversion as provided in subsection 8. [PL 2011, c. 662, §5 (NEW).]

B. This subsection does not require an agency or official to provide a requester with access to a computer terminal. [PL 2011, c. 662, §5 (NEW).]

[PL 2011, c. 662, §5 (NEW).]

8. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying. [PL 2011, c. 662, §5 (NEW).]

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information. [PL 2011, c. 662, §5 (NEW).]
C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format. [PL 2011, c. 662, §5 (NEW).]

D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies. [PL 2011, c. 662, §5 (NEW).]

E. The agency or official may charge for the actual mailing costs to mail a copy of a record. [PL 2011, c. 662, §5 (NEW).]

F. An agency or official may require payment of all costs before the public record is provided to the requester. [PL 2017, c. 158, §1 (NEW).]

[PL 2017, c. 158, §1 (AMD).]

9. Estimate. The agency or official having custody or control of a public record subject to a request under this section shall provide to the requester an estimate of the time necessary to complete the request and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than $30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 10 applies.

[PL 2011, c. 662, §5 (NEW).]

10. Payment in advance. The agency or official having custody or control of a public record subject to a request under this section may require a requester to pay all or a portion of the estimated costs to complete the request prior to the search, retrieval, compiling, conversion and copying of the public record if:

A. The estimated total cost exceeds $100; or [PL 2011, c. 662, §5 (NEW).]

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner. [PL 2011, c. 662, §5 (NEW).]

[PL 2011, c. 662, §5 (NEW).]

11. Waivers. The agency or official having custody or control of a public record subject to a request under this section may waive part or all of the total fee charged pursuant to subsection 8 if:

A. The requester is indigent; or [PL 2011, c. 662, §5 (NEW).]

B. The agency or official considers release of the public record requested to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. [PL 2011, c. 662, §5 (NEW).]

[PL 2011, c. 662, §5 (NEW).]

Section History:

§409. Appeals

1. Records. Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may appeal the refusal,
denial or failure within 30 calendar days of the receipt of the written notice of refusal, denial or failure to the Superior Court within the State for the county where the person resides or the agency has its principal office. The agency or official shall file a statement of position explaining the basis for denial within 14 calendar days of service of the appeal. If a court, after a review, with taking of testimony and other evidence as determined necessary, determines such refusal, denial or failure was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[PL 2015, c. 249, §2 (AMD).]

2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[PL 2011, c. 559, Pt. A, §2 (AMD).]

3. Proceedings not exclusive. The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.

[PL 2009, c. 240, §6 (AMD).]

4. Attorney's fees. In an appeal under subsection 1 or 2, the court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney’s fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.

This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.

[PL 2009, c. 423, §1 (NEW).]

Section History:

§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. [PL 1987, c. 477, §6 (RPR).]

Section History:
[PL 1975, c. 758 (NEW).]; [PL 1987, c. 477, §6 (RPR).]
§411. Right To Know Advisory Committee

1. Advisory committee established. The Right To Know Advisory Committee, referred to in this chapter as “the advisory committee,” is established to serve as a resource for ensuring compliance with this chapter and upholding the integrity of the purposes underlying this chapter as it applies to all public entities in the conduct of the public's business.

[PL 2005, c. 631, §1 (NEW).]

2. Membership. The advisory committee consists of the following members:

A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

C. One representative of municipal interests, appointed by the Governor; [PL 2005, c. 631, §1 (NEW).]

D. One representative of county or regional interests, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

E. One representative of school interests, appointed by the Governor; [PL 2005, c. 631, §1 (NEW).]

F. One representative of law enforcement interests, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

G. One representative of the interests of State Government, appointed by the Governor; [PL 2005, c. 631, §1 (NEW).]

H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

I. One representative of newspaper and other press interests, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

J. One representative of newspaper publishers, appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; [PL 2015, c. 250, Pt. A, §1 (AMD).]

M. The Attorney General or the Attorney General's designee; and [PL 2015, c. 250, Pt. A, §1 (AMD).]

N. One member with broad experience in and understanding of issues and costs in multiple areas of information technology, including practical applications concerning creation, storage, retrieval and accessibility of electronic records; use of communication technologies to support meetings, including teleconferencing and Internet-based conferencing; databases for records management and reporting; and information technology system development and support, appointed by the Governor. [PL 2015, c. 250, Pt. A, §2 (NEW).]
The advisory committee shall invite the Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member of the committee.

[PL 2015, c. 250, Pt. A, §§1, 2 (AMD).]

3. **Terms of appointment.** The terms of appointment are as follows.

A. Except as provided in paragraph B, members are appointed for terms of 3 years. [PL 2005, c. 631, §1 (NEW).]

B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed. [PL 2005, c. 631, §1 (NEW).]

C. Members may serve beyond their designated terms until their successors are appointed. [PL 2005, c. 631, §1 (NEW).]

[PL 2005, c. 631, §1 (NEW).]

4. **First meeting; chair.** The Executive Director of the Legislative Council shall call the first meeting of the advisory committee as soon as funding permits. At the first meeting, the advisory committee shall select a chair from among its members and may select a new chair annually.

[PL 2005, c. 631, §1 (NEW).]

5. **Meetings.** The advisory committee may meet as often as necessary but not fewer than 4 times a year. A meeting may be called by the chair or by any 4 members.

[PL 2005, c. 631, §1 (NEW).]

6. **Duties and powers.** The advisory committee:

A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws; [PL 2005, c. 631, §1 (NEW).]

B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for agencies and public officials. The advisory committee shall also provide general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries; [RR 2005, c. 2, §1 (COR).]

C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as whom to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws; [RR 2005, c. 2, §1 (COR).]

D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section
412, subsection 3 and for making that information publicly available; [PL 2007, c. 576, §1 (AMD).]

E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation; [PL 2005, c. 631, §1 (NEW).]

F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released; [PL 2005, c. 631, §1 (NEW).]

G. May make recommendations for changes in the 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 regional 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 and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations; [PL 2005, c. 631, §1 (NEW).]

H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered; [PL 2005, c. 631, §1 (NEW).]

I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records; [PL 2005, c. 631, §1 (NEW).]

J. Shall review 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; and [PL 2005, c. 631, §1 (NEW).]

K. May undertake other activities consistent with its listed responsibilities. [PL 2005, c. 631, §1 (NEW).]

[PL 2007, c. 576, §1 (AMD).]

7. **Outside funding for advisory committee activities.** The advisory committee may seek outside funds to fund the cost of public hearings, conferences, workshops, other meetings, other activities of the advisory committee and educational and training materials. Contributions to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution shall certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the advisory committee's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory committee.

[PL 2005, c. 631, §1 (NEW).]

8. **Compensation.** Legislative members of the advisory committee are entitled to receive the legislative per diem, as defined in Title 3, section 2, and reimbursement for travel and other necessary expenses for their attendance at authorized meetings of the advisory committee. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive
reimbursement of necessary expenses and, upon a demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the advisory committee.

[PL 2005, c. 631, §1 (NEW).]

9. **Staffing.** The Legislative Council shall provide staff support for the operation of the advisory committee, except that the Legislative Council staff support is not authorized when the Legislature is in regular or special session. In addition, the advisory committee may contract for administrative, professional and clerical services if funding permits.

[PL 2005, c. 631, §1 (NEW).]

10. **Report.** By January 15, 2007 and at least annually thereafter, the advisory committee shall report to the Governor, the Legislative Council, the joint standing committee of the Legislature having jurisdiction over judiciary matters and the Chief Justice of the Supreme Judicial Court about the state of the freedom of access laws and the public's access to public proceedings and records.

[PL 2005, c. 631, §1 (NEW).]

Section History:

§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.

[PL 2011, c. 662, §7 (AMD).]

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; [PL 2007, c. 349, §1 (NEW).]

   B. Procedures and requirements regarding complying with a request for a public record under this chapter; and [PL 2007, c. 349, §1 (NEW).]

   C. Penalties and other consequences for failure to comply with this chapter. [PL 2007, c. 349, §1 (NEW).]

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. 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 officials:

A. The Governor; [PL 2007, c. 349, §1 (NEW).]

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor; [PL 2007, c. 349, §1 (NEW).]

C. Members of the Legislature elected after November 1, 2008; [PL 2007, c. 576, §2 (AMD).]

D. [PL 2007, c. 576, §2 (RP).]

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments; [PL 2007, c. 576, §2 (NEW).]

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments; [PL 2007, c. 576, §2 (NEW).]

G. Officials of school administrative units; and [PL 2011, c. 662, §7 (AMD).]

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. [PL 2007, c. 576, §2 (NEW).]

Section History:

§413. Public access officer

1. Designation; responsibility. Each agency, county, municipality, school administrative unit and regional or other political subdivision shall designate an existing employee as its public access officer to serve as the contact person for that agency, county, municipality, school administrative unit or regional or other political subdivision with regard to requests for public records under this subchapter. The public access officer is responsible for ensuring that each public record request is acknowledged within 5 working days of the receipt of the request by the office responsible for maintaining the public record requested and that a good faith estimate of when the response to the request will be complete is provided according to section 408-A. The public access officer shall serve as a resource within the agency, county, municipality, school administrative unit and regional or other political subdivision concerning freedom of access questions and compliance.
2. Acknowledgment and response required. An agency, county, municipality, school administrative unit and regional or other political subdivision that receives a request to inspect or copy a public record shall acknowledge and respond to the request regardless of whether the request was delivered to or directed to the public access officer.

[PL 2011, c. 662, §8 (NEW).]

3. No delay based on unavailability. The unavailability of a public access officer may not delay a response to a request.

[PL 2011, c. 662, §8 (NEW).]

4. Training. A public access officer shall complete a course of training on the requirements of this chapter relating to public records and proceedings as described in section 412.

[PL 2011, c. 662, §8 (NEW).]

Section History:
[PL 2011, c. 662, §8 (NEW).]; [PL 2015, c. 317, §2 (AMD).]

§414. Public records; information technology

An agency shall consider, in the purchase of and contracting for computer software and other information technology resources, the extent to which the software or technology will: [PL 2011, c. 662, §8 (NEW).]

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

[PL 2011, c. 662, §8 (NEW).]

2. Maximize exportability; protect confidential information. Maximize the exportability of public records while protecting confidential information that may be part of public records.

[PL 2011, c. 662, §8 (NEW).]

Section History:
[PL 2011, c. 662, §8 (NEW).]

SUBCHAPTER 1-A

PUBLIC RECORDS EXCEPTIONS AND ACCESSIBILITY

§431. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2003, c. 709, §3 (NEW).]

1. Public records exception. "Public records exception" or "exception" means a provision in a statute or a proposed statute that declares a record or a category of records to be confidential or otherwise not a public record for purposes of subchapter 1.

[PL 2003, c. 709, §3 (NEW).]
2. Review committee. "Review committee" means the joint standing committee of the Legislature having jurisdiction over judiciary matters.

[PL 2003, c. 709, §3 (NEW).]

3. Advisory committee. "Advisory committee" means the Right To Know Advisory Committee established in Title 5, section 12004-J, subsection 14 and described in section 411.

[PL 2005, c. 631, §2 (NEW).]

Section History:
[PL 2003, c. 709, §3 (NEW).]; [PL 2005, c. 631, §2 (AMD).]

§432. Exceptions to public records; review

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

[PL 2011, c. 320, Pt. D, §1 (AMD).]

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

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

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

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

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

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

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

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records; [PL 2003, c. 709, §3 (NEW).]
H. Whether the exception is as narrowly tailored as possible; and [PL 2003, c. 709, §3 (NEW).]
I. Any other criteria that assist the review committee in determining the value of the exception as compared to the public's interest in the record protected by the exception. [PL 2003, c. 709, §3 (NEW).]

[PL 2005, c. 631, §3 (AMD).]

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

[PL 2005, c. 631, §3 (NEW).]

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

[PL 2005, c. 631, §3 (NEW).]

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

[PL 2011, c. 320, Pt. D, §2 (NEW).]

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

[PL 2005, c. 631, §3 (AMD).]

Section History:
[PL 2003, c. 709, §3 (NEW).]; [PL 2005, c. 631, §3 (AMD).]; [PL 2011, c. 320, Pt. D, §§1, 2 (AMD).]

§433. Schedule for review of exceptions to public records

1. Scheduling guidelines.

[PL 2005, c. 631, §4 (RP).]

2. Scheduling guidelines.

[PL 2015, c. 250, Pt. D, §1 (RP).]

2-A. Scheduling guidelines. The advisory committee shall use the following list as a guideline for scheduling reviews of public records exceptions and reporting its recommendations to the review committee:

A. Exceptions enacted after 2004 and before 2013 are scheduled to be reviewed by the review committee no later than 2017; [PL 2015, c. 250, Pt. D, §2 (NEW).]
B. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2019:

(1) Title 1;
(2) Title 2;
(3) Title 3;
(4) Title 4;
(5) Title 5;
(6) Title 6;
(7) Title 7; and
(8) Title 7-A; [PL 2015, c. 250, Pt. D, §2 (NEW).]

C. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2021:

(1) Title 8;
(2) Title 9-A;
(3) Title 9-B;
(4) Title 10;
(5) Title 11; and
(6) Title 12; [PL 2015, c. 250, Pt. D, §2 (NEW).]

D. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2023:

(1) Title 13;
(2) Title 13-B;
(3) Title 13-C;
(4) Title 14;
(5) Title 15;
(6) Title 16;
(7) Title 17;
(8) Title 17-A;
(9) Title 18-A;
(10) Title 18-B;
(11) Title 19-A;
(12) Title 20-A; and
(13) Title 21-A; [PL 2015, c. 250, Pt. D, §2 (NEW).]

E. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2025:
(1) Title 22;
(2) Title 22-A;
(3) Title 23;
(4) Title 24; and
(5) Title 24-A; [PL 2015, c. 250, Pt. D, §2 (NEW)].

F. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2027:

(1) Title 25;
(2) Title 26;
(3) Title 27;
(4) Title 28-A;
(5) Title 29-A;
(6) Title 30;
(7) Title 30-A;
(8) Title 31; and
(9) Title 32; and [PL 2015, c. 250, Pt. D, §2 (NEW)].

G. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2029:

(1) Title 33;
(2) Title 34-A;
(3) Title 34-B;
(4) Title 35-A;
(5) Title 36;
(6) Title 37-B;
(7) Title 38; and

[PL 2015, c. 250, Pt. D, §2 (NEW)].

3. Scheduling changes. The advisory committee may make adjustments to the scheduling guidelines provided in subsection 2-A as it determines appropriate and shall notify the review committee of such adjustments.

[PL 2015, c. 250, Pt. D, §3 (AMD)].

Section History:
§434. Review of proposed exceptions to public records; accessibility of public records

1. Procedures before legislative committees. Whenever a legislative measure containing a new public records exception is proposed or a change that affects the accessibility of a public record is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed exception or proposed change that affects the accessibility of a public record may not be enacted into law unless review and evaluation pursuant to subsections 2 and 2-B have been completed.

[PL 2011, c. 320, Pt. D, §3 (AMD).]

2. Review and evaluation. Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed exception should be enacted:

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

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

C. Whether federal law requires a record covered by the proposed exception to be confidential; [PL 2003, c. 709, §3 (NEW).]

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

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

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

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

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

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

[PL 2003, c. 709, §3 (NEW).]

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

[PL 2005, c. 631, §6 (NEW).]

2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

[PL 2011, c. 320, Pt. D, §3 (NEW).]

3. Report. The review committee shall report its findings and recommendations on whether the proposed exception or proposed limitation on accessibility should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.

[PL 2011, c. 320, Pt. D, §3 (AMD).]

Section History:

SUBCHAPTER 2

DESTRUCTION OR MISUSE OF RECORDS

§451. Lawful destruction of records

(REPEALED)

Section History:
[PL 1965, c. 441, §2 (RP).]

§452. Removal, secretion, mutilation or refusal to return state documents

Whoever intentionally removes any book, record, document or instrument belonging to or kept in any state office, except books and documents kept and deposited in the State Library, or intentionally secretes, alters, mutilates, defaces or destroys any such book, record, document or instrument, or, having any such book, record, document or instrument in his possession, or under his control, intentionally fails or refuses to return the same to that state office, or to deliver the same to the person in lawful charge of the office where the same was kept or deposited, shall be guilty of a Class D crime. [PL 1977, c. 696, §10 (RPR).]

Section History:
[PL 1969, c. 318, §1 (RPR).]; [PL 1977, c. 696, §10 (RPR).]

SUBCHAPTER 3
§501. State agency defined

As used in this subchapter, the word "agency" shall mean a state department, agency, office, board, commission; or quasi-independent agency, board, commission, authority or institution. [PL 1975, c. 436, §1 (RPR).]

Section History:
[PL 1975, c. 436, §1 (RPR).]

§501-A. Publications of state agencies

1. Definitions. As used in this section, the term "publications" includes periodicals; newsletters; bulletins; pamphlets; leaflets; directories; bibliographies; statistical reports; brochures; plan drafts; planning documents; reports; special reports; committee and commission minutes; informational handouts; and rules and compilations of rules, regardless of number of pages, number of copies ordered, physical size, publication medium or intended audience inside or outside the agency.

[PL 1997, c. 299, §1 (NEW).]

2. Production and distribution. The publications of all agencies, the University of Maine System and the Maine Maritime Academy may be printed, bound and distributed, subject to Title 5, sections 43 to 46. The State Purchasing Agent may determine the style in which publications may be printed and bound, with the approval of the Governor.

[PL 1997, c. 299, §1 (NEW).]

3. Annual or biennial reports. Immediately upon receipt of any annual or biennial report that is not included in the Maine State Government Annual Report provided for in Title 5, sections 43 to 46, the State Purchasing Agent shall deliver at least 55 copies of that annual or biennial report to the State Librarian for exchange and library use. The State Purchasing Agent shall deliver the balance of the number of each such report to the agency that prepared the report.

[PL 1997, c. 299, §1 (NEW).]

4. State agency and legislative committee publications. Except as provided in subsection 5, any agency or legislative committee issuing publications, including publications in an electronic format, shall deliver 18 copies of the publications in the published format to the State Librarian. These copies must be furnished at the expense of the issuing agency. Publications not furnished upon request will be reproduced at the expense of the issuing agency. The agency or committee preparing a publication may determine the date on which a publication may be released, except as otherwise provided by law.

[PL 1997, c. 299, §1 (NEW).]

5. Electronic publishing. An agency or committee that electronically publishes information to the public is only required to provide the State Librarian with one printed copy of an electronically published publication. An electronically published publication is not required to be provided to the State Librarian if the publication is also published in print or in an electronic format and is provided to the State Librarian in compliance with subsection 4 or the publication is:
A. Designed to provide the public with current information and is subject to frequent additions and deletions, such as current lists of certified professionals, daily updates of weather conditions or fire hazards; or [PL 1997, c. 299, §1 (NEW)].

B. Designed to promote the agency's services or assist citizens in use of the agency's services, such as job advertisements, application forms, advertising brochures, letters and memos. [PL 1997, c. 299, §1 (NEW)].

[PL 1997, c. 299, §1 (NEW)].

6. **Forwarding of requisitions.** The State Purchasing Agent, Central Printing and all other printing operations within State Government shall forward to the State Librarian upon receipt one copy of all requisitions for publications to be printed.

[PL 1997, c. 299, §1 (NEW)].

Section History:

§502. Property of State

All Maine reports, digests, statutes, codes and laws, printed or purchased by the State and previously distributed by law to the several towns and plantations within the State, shall be and remain the property of the State and shall be held in trust by such towns or plantations for the sole use of the inhabitants thereof.

§503. Delivery to successor in office

All revisions of the statutes, and supplements thereto, the session laws and the Maine Reports sold or furnished to any state, county or municipal officer, shall be held in trust by said officer for the sole use of his office; and at the expiration of his term of office or on his removal therefrom by death, resignation or other cause, such officer, or if he is dead, his legal representatives, shall turn them over to his successor in office. If there is no successor to his office, such officer, or his legal representatives, shall turn over all of said publications to the State, county or municipal unit which purchased the same. [PL 1981, c. 48, §1 (AMD).]

Section History:
[PL 1965, c. 425, §2 (RPR).]; [PL 1981, c. 48, §1 (AMD).]

§504. Source of authority to be shown

All publications printed or published by the State as a requirement of law shall set forth the authority for the same at an appropriate place on each copy printed or published. Publications printed or published by the State which are not required by law shall set forth the source of funds by which the publication is printed or published at an appropriate place on each copy. This section shall not apply to publications paid for out of the legislative appropriation.

§505. Mailing lists

All addressees on mailing lists used for the distribution of all matters printed or distributed at state expense by dedicated or undedicated revenues shall at least once in every 12-month period be
contacted in writing to inquire if continuance of delivery to said addressees is desired. Failure of the addressee to affirmatively reply within 30 days of the written inquiry shall cause such addressees to be removed from said mailing list. However, nothing in this section shall prevent any printed matter being distributed where otherwise required by law. [PL 1973, c. 331 (NEW).]

Section History:
[PL 1973, c. 331 (NEW).]

SUBCHAPTER 4

EXECUTIVE ORDERS

§521. Executive orders

1. Available to public. The Governor shall maintain in his office a file containing a copy of every executive order issued by him or by previous governors, which is currently in effect. This file shall be open to public inspection at reasonable hours.

[PL 1975, c. 360 (NEW).]

2. Dissemination. A copy of every executive order must be filed with the Legislative Council and the Law and Legislative Reference Library, and the executive order must be posted in a conspicuous location on the State's publicly accessible website, within one week after the Governor has issued that order.

[PL 2011, c. 380, Pt. III, §1 (AMD).]

Section History:
STATE OF MAINE
RIGHT TO KNOW ADVISORY COMMITTEE

TO: Members, Right to Know Advisory Committee

FROM: Craig Nale and Colleen McCarthy Reid, Staff, Right to Know Advisory Committee

DATE: Wednesday, September 6, 2017

RE: I. Recommendations contained in the January 2017 Right to Know Advisory Committee Report; and
II. Requests of the Judiciary Committee of the 128th Legislature

I. Recommendations contained in the January 2017 Right to Know Advisory Committee Report

The Eleventh Annual Report of the Right to Know Advisory Committee was issued in January, 2017. The Report included the following recommendations; below each recommendation is the result of that recommendation.

1. Communicate the Advisory Committee’s interpretation of 1 MRSA §402, sub-§3, ¶U, which relates to hazardous materials transported by rail, to the Joint Standing Committee on Judiciary and recommend that the Judiciary Committee draft a bill and hold a public hearing on that bill to elicit public input on public access concerns associated with passage of PL 2015, ch. 161, §3.

Result:

The Advisory Committee sent a letter to the Judiciary Committee expressing the Advisory Committee’s belief that the exception “is not intended to prevent public access to summary or aggregate information about the transportation of hazardous materials by rail in the State ... or to prohibit disclosure of information about spills or discharges of hazardous materials.” The Advisory Committee also recommended that the Judiciary Committee consider submitting a committee bill to allow additional
input from stakeholders and further expressed concerns about the scope of the exception.

The Judiciary Committee considered the Advisory Committee's recommendation and felt a bill would be a good vehicle for raising potential issues with the law, but, after seeking input through its committee analyst, ultimately did not feel stakeholders could express concerns that would be helpful in drafting proposed legislation.

2. Communicate to the Joint Standing Committee on Judiciary guidelines for considering proposed legislation relating to the confidentiality of personal information about professional and occupational licensees and applicants.

Result:

The Advisory Committee sent a letter to the Judiciary Committee expressing the Advisory Committee's determination that a uniform policy on the confidentiality of licensed professionals' contact information must balance the professionals' privacy and safety interests with the public's interest in determining a professional's training and competency. The Advisory Committee recommended focusing on keeping categories of information confidential, such as a personal contact information, unless personal contact information is the other way to identify the professional or when the professional affirmatively opts to allow the information to be disclosed.

In response, the Judiciary Committee considered two bills (LD 1267 and LD 1541) related to the confidentiality of professional licensing information. The Judiciary Committee has carried those bills over to any special or regular session of the 128th Legislature and has asked that the Advisory Committee provide input on resolution of the issues presented in those bills.

3. Communicate to the Joint Standing Committee on Health and Human Services potential concerns that the proposed rule of the Maine Center for Disease Control and Prevention appears to limit the scope of information available to the public about threats to public health, including communicable diseases.

Result:

The Advisory Committee sent a letter to the Health and Human Services Committee about the Department of Health and Human Services proposed Data Release Rule, 10-144 CMR, ch. 175, which would have affected the release of certain data held by the Maine Center for Disease Control and Prevention. The Advisory Committee expressed concerns about the proposed rule's limitation on the release of records.

The Department of Health and Human Services rescinded the proposed rule.

4. Enact legislation to clarify that government entities may require advance payment before providing a public record to a requestor.
Result:

The Legislature accepted the recommendation of the Advisory Committee and passed Public Law 2017, chapter 158, which enacted Title 1, section 408-A, subsection 8, paragraph F, and allows an agency or official having custody of a public record to require payment of all costs before the public record is provided to the requestor.

5. Continue without modification, amend or repeal certain existing public records exceptions enacted after 2004 and before 2013.

Result:

The Legislature accepted most of the recommendation of the Advisory Committee and passed Public Law 2017, chapter 163, which amended Title 35-A, section 10106, subsection 1 to change the criteria for designation of records of the Efficiency Maine Trust as confidential, except that the Legislature did not accept the recommendation that the director of the Efficiency Maine Trust be allowed to determine which records contain information that would give a user a competitive advantage and instead kept that authority in the Efficiency Maine Trust Board.

The Legislature accepted the recommendation of the Advisory Committee that a redundant public records exception for social security numbers be repealed.

6. Communicate with the Joint Standing Committee on Health and Human Services about potential repeal of the Mental Health Homicide, Suicide and Aggravated Assault Review Board.

Result:

The Advisory Committee sent a letter to the Health and Human Services Committee notifying it of the apparent dormancy of the Mental Health Homicide, Suicide and Aggravated Assault Review Board, but asked the Committee to consider whether the Board should be revived or if the provision of law establishing the Board should be repealed.

The Health and Human Services Committee drafted a bill to repeal this board and, after holding a public hearing on the bill, voted to repeal the Mental Health Homicide, Suicide and Aggravated Assault Review Board. The Legislature repealed the board and its associated public records exceptions in Public Law 2017, chapter 93.

7. Establish a Technology Subcommittee of the Right to Know Advisory Committee.

8. Continue discussion of proposals related to the confidentiality of personally-identifiable information under FOAA.
The Advisory Committee included in its 2017 report that it “plans to discuss proposals related to enacting a universal definition and public records exception in FOAA for personally identifiable information, and also consider creating a general disclaimer to put the public on notice that its communications with elected and other public officials may become public records under FOAA.”

II. Requests of the Judiciary Committee of the 128th Legislature

During the First Regular Session of the 128th Legislature, a majority of the members of the Judiciary Committee voted to carry over two bills to a special or regular session of the 128th Legislature in order to solicit feedback from the Right to Know Advisory Committee during the interim.

1. LD 1267, An Act To Protect Licensing Information of Medical Professionals. This bill provides that information concerning the application for and granting of licenses issued by the State Board of Nursing, the Board of Osteopathic Licensure and the Board of Licensure in Medicine is confidential, except that each board is required to allow inspection of certain information (the applicant’s name, business contact information, educational and occupational background, orders and findings that result from formal disciplinary actions, evidence provided to meet financial responsibility requirements for licensure, for example).

2. LD 1541, An Act To Protect Certain Administrative Licensing Files. This bill makes polygraph examiner and professional investigator administrative licensing files confidential by law, except the final written decision of whether a license is issued or denied, or of whether, in response to a complaint, adverse action is taken against a licensee’s license, is publicly accessible and records may be disclosed for criminal justice purposes or to a government licensing agency of this State or another state. In the case of the issuance or denial of a license, the final written decision must state the basis for which a license is issued or denied, and, in the case of a complaint against a licensee’s license, the final written decision must state the basis for which adverse action was or was not taken against the license. The Private Security Guards Act also is amended to ensure consistency with the changes made to the Polygraph Examiners Act and Professional Investigators Act.
I. Bills Carried Over by Judiciary Committee Relating to Freedom of Access Issues

- LD 1267, An Act To Protect Licensing Information of Medical Professionals (p. 1)
- LD 1541, An Act To Protect Certain Administrative Licensing Files (p. 19)

II. Bill Proposed for Introduction by Judiciary Committee but Indefinitely Postponed

- LD 1633, An Act Concerning Private Personal Information of Public Employees and Licensed Individuals (p. 29)

III. RTKAC Letter to Judiciary Committee relating to treatment of personal contact information for professions and occupations regulated by the State, Sept. 15, 2016 (p. 31)
An Act To Protect Licensing Information of Medical Professionals

Reference to the Committee on Judiciary suggested and ordered printed.

Presented by Senator KATZ of Kennebec.
Cosponsored by Representative TUELL of East Machias and Senators: MAKER of Washington, ROSEN of Hancock.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA §2109, as enacted by PL 2003, c. 64, §1, is repealed.

Sec. 2. 32 MRSA §2109-A is enacted to read:

§2109-A. Confidential licensing information

1. Confidential information. Information concerning the application for and granting of a license issued by the board under this chapter is confidential and may not be disclosed except as provided in this section.

2. Required disclosures. The board shall allow inspection of the following information concerning the application for and granting of a license issued by the board:

   A. The name of the applicant or licensee;
   B. The business address of the applicant or licensee or, if the business address is not available, the home address of the applicant or licensee after the board redacts any information that identifies the location as the home address of an individual with a disability;
   C. The business telephone number of the applicant or licensee;
   D. The educational and occupational background of the applicant or licensee;
   E. The professional qualifications of the applicant or licensee;
   F. Any orders and findings that result from formal disciplinary actions against the licensee; and
   G. Any evidence that has been provided to the board to meet the requirements of any financial responsibility requirement for licensure.

3. Authorized disclosures. The board may allow inspection of information not designated in subsection 2 if the board finds a compelling public purpose and the rules of the board allow the inspection.

4. Disclosure to applicant or licensee. Unless otherwise provided by law, the board shall allow inspection of the information in subsection 1 by the applicant or licensee.

5. Sale of licensee names. If the board sells lists of licensees, the board shall omit from the lists the name of a licensee on written request of that licensee.

Sec. 3. 32 MRSA §2600-A, as enacted by PL 2001, c. 214, §1, is repealed.

Sec. 4. 32 MRSA §2600-D is enacted to read:

§2600-D. Confidential licensing information

1. Confidential information. Information concerning the application for and granting of a license issued by the board under this chapter is confidential and may not be disclosed except as provided in this section.
2. **Required disclosures.** The board shall allow inspection of the following information concerning the application for and granting of a license issued by the board:

A. The name of the applicant or licensee;

B. The business address of the applicant or licensee or, if the business address is not available, the home address of the applicant or licensee after the board redacts any information that identifies the location as the home address of an individual with a disability;

C. The business telephone number of the applicant or licensee;

D. The educational and occupational background of the applicant or licensee;

E. The professional qualifications of the applicant or licensee;

F. Any orders and findings that result from formal disciplinary actions against the licensee; and

G. Any evidence that has been provided to the board to meet the requirements of any financial responsibility requirement for licensure.

3. **Authorized disclosures.** The board may allow inspection of information not designated in subsection 2 if the board finds a compelling public purpose and the rules of the board allow the inspection.

4. **Disclosure to applicant or licensee.** Unless otherwise provided by law, the board shall allow inspection of the information in subsection 1 by the applicant or licensee.

5. **Sale of licensee names.** If the board sells lists of licensees, the board shall omit from the lists the name of a licensee on written request of that licensee.

**Sec. 5.** 32 MRSA §3300-A, as enacted by PL 2001, c. 214, §2, is repealed.

**Sec. 6.** 32 MRSA §3300-G is enacted to read:

§3300-G. **Confidential licensing information**

1. **Confidential information.** Information concerning the application for and granting of a license issued by the board under this chapter is confidential and may not be disclosed except as provided in this section.

2. **Required disclosures.** The board shall allow inspection of the following information concerning the application for and granting of a license issued by the board:

A. The name of the applicant or licensee;

B. The business address of the applicant or licensee or, if the business address is not available, the home address of the applicant or licensee after the board redacts any information that identifies the location as the home address of an individual with a disability;

C. The business telephone number of the applicant or licensee;

D. The educational and occupational background of the applicant or licensee;
E. The professional qualifications of the applicant or licensee;

F. Any orders and findings that result from formal disciplinary actions against the licensee; and

G. Any evidence that has been provided to the board to meet the requirements of any financial responsibility requirement for licensure.

3. Authorized disclosures. The board may allow inspection of information not designated in subsection 2 if the board finds a compelling public purpose and the rules of the board allow the inspection.

4. Disclosure to applicant or licensee. Unless otherwise provided by law, the board shall allow inspection of the information in subsection 1 by the applicant or licensee.

5. Sale of licensee names. If the board sells lists of licensees, the board shall omit from the lists the name of a licensee on written request of that licensee.

SUMMARY

This bill provides that information concerning the application for and granting of licenses issued by the State Board of Nursing, the Board of Osteopathic Licensure and the Board of Licensure in Medicine is confidential, except that each board is required to allow inspection of certain information.
Testimony of Senator Roger Katz In Support of

LD 1267 "An Act to Protect Licensing Information of Medical Professionals"

Before the Judiciary Committee

April 25, 2017

Senator Keim, Representative Moonen and members of the Judiciary Committee, I am Senator Roger Katz and I am pleased to submit LD 1267 for your consideration.

LD 1267 will create a clear approach to public record requests of licensing information for medical practitioners. The proposal, which is modeled after the State of Maryland’s laws, provides appropriate protections of personal information while balancing the rights of the public to access information.

Currently, Maine’s public record laws allow for the release of a wide array of personal information that applicants must provide to the licensing boards of Medicine, Nursing and Osteopathy to secure a license to practice. Only personal addresses and phone numbers are protected from being released.

Doctors, physician assistants and nurse practitioners provide a wide range of services in complex environments including private practice, schools, hospitals, homeless shelters, nursing homes, prisons and any number of public and private agencies. They provide high quality care from general practice to behavioral and mental health to substance abuse. Unfortunately, safety is a concern in many of these settings.

Freedom of Access Act laws (FOAA) are designed to ensure the public has access to public information; they are not intended to serve as a tool to aid in the harassment and intimidation of medical practitioners. However, as currently applied, any licensed medical professional could find themselves a victim of harassment or worse as a result of the information released through these types of requests.

LD 1267 would improve the safety and privacy of medical practitioners who hold a license in the state by clearly stating what information is available to the public, which would include the following:
• Name of applicant,
• Business address,
• Business telephone number,
• Educational background,
• Professional qualifications, and
• Any disciplinary actions

This bill would treat all other information, including home address, social security number, photos, Drug Enforcement Agency licenses to prescribe certain drugs, and other personal documents confidential unless the overseeing board finds a compelling public purpose to allow access.

The goal of this legislation is to minimize the likelihood of medical practitioners being exposed to harassment or violence. Unfortunately through the fulfillment of these types of FOAA requests, some practitioners have already found themselves victim of harassment, intimidation, and experienced a loss of privacy. Tragically in some states, this information has been used to threaten and harm people. Suppressing personal information would help keep medical practitioners safe.

Recognizing the need for safety precautions in other occupations, the legislature has enacted laws similar to LD 1267 and provided added privacy protections for certain licensed professionals including private investigators, social workers and members of the Maine Gaming Board. State courts have also weighed in on this issue most recently in New Hampshire, Maryland and Washington, where the courts determined that the risks were great enough to protect this personal information.

There is a public interest in keeping our medical providers safe and I submit this legislation as a practical approach to keeping personal information private. I look forward to your work on this bill and encourage you to vote "ought to pass.”

Thank you.
Hello Senator Keim, Representative Moonen, and Members of the Joint Standing Committee on Judiciary:

My name is Regina Rooney, I live in Hope, Maine, and I am speaking today on behalf of the Maine Coalition to End Domestic Violence (MCEDV) in support of L.D. 1267, An Act to Protect Licensing Information of Medical Professionals.

In 2016, the Domestic Violence Resource Centers that comprise MCEDV provided services for more than 12,000 adult victims of domestic abuse and violence, sheltering 428 adults and 314 children, providing legal services for more than 3600 people, and providing specialized support for more than 2,000 families in the child welfare system. Through 24-hour helplines, outreach offices, shelters, and transitional housing sites, advocates help Maine’s victims of domestic abuse and violence move from circumstances of terror and hopelessness to circumstances of possibility with plans to increase their safety, protect and nurture their children, and establish economically sustainable and stable lives.

Our support for this bill is grounded in our concern for the safety and privacy of survivors of domestic abuse and stalking. We live in an increasingly interconnected world, in which information, once available, spreads rapidly. For survivors of abuse, this reality presents particular challenges. The process of survivors going into hiding in order to find safety has never been as simple as popular discourse would have us believe, but now it is even less so. What does a person do when so much information is easily available online—but they are trying to keep their location secret from a former partner who has stalked them relentlessly? How does one network, find a job, establish community, without leaving a trace online that can be found by a determined abuser? These are challenges that face survivors and their support systems in the 21st Century.

Here is one example of the vulnerabilities for survivors under Maine’s current law: Knowing that their former partner is a nurse somewhere in the state, an abusive person could file FOAA requests until they obtain their partner’s record, which may very well include highly sensitive information, such as the survivor’s home address and/or their social security number. With this, an abusive person can cause serious harm. We are obviously concerned with physical safety, with what happens to the survivor and the children if their home address becomes known. We are also concerned with what happens when a controlling abuser gets access to the survivor’s
social security number, with which they can wreak havoc through credit manipulation and identity theft. Economic abuse is a major tactic used by abusive people, and our current system provides one more opportunity to derail a survivor’s efforts at economic stability.

At the same time, we appreciate the purpose of maintaining publically available licensing records. While the vulnerabilities for survivors are real, we understand that some sharing of these materials is fitting and important, from a provider accountability and patient safety perspective.

We believe that LD 1267 achieves an appropriate balance in establishing a uniform set of shareable information across medical disciplines. It keeps a licensee’s most personal data private, while providing the public with the relevant information it is suitable they have. We would like to see this model shared by more of Maine’s licensed professions, since the same privacy vulnerabilities exist there.

In closing, I would remind us that survivors are in all walks of life, and often do not share their experiences of violence widely. Privacy is key to safety for many people, whether they make their needs and risks known or not. Gender-based violence takes many forms, and MCEDV condemns all acts of threats, coercion and violence which cause people to live in fear. The belief that anyone has the right to control and terrorize another human being is antithetical to the world we seek to create by ending domestic abuse.

For all of these reasons, we respectfully ask that you vote LD 1267 “ought to pass.”
April 25, 2017

To: Senator Keim, Representative Moonen
   Judiciary Committee Members

From: Pamela Cahill, Executive Director
   Maine Nurse Practitioner Association

RE: Testimony in Support of LD 1267 An Act To Protect Licensing Information of Medical Professionals

Senator Keim, Representative Moonen and Committee Members,

My name is Pam Cahill. I live in Woolwich and am here today testifying in support of LD 1267. Currently there are more than 300 nurse practitioners licensed in Maine. NPs provide healthcare services in primary care and other specialty areas throughout Maine. They work in hospitals, independent practices, medical practices, FQHC’s, schools and colleges, clinics, prisons and mental health and behavioral health settings.

The subject of this legislation has been a matter of concern for NPs for several years. As we become more and more of a technically savvy world, the security of private information becomes imperative. While we are understand that the public has rights to certain information, increasingly, healthcare professionals and their families become victims of threats, bullying and harassment.

Currently Maine licensing boards are required to release personal information, other than a licensee’s home address and phone number, if requested through a Freedom of Access ACT (FOAA) request as provided in Maine law. We do not believe that the FOAA was intended to provide tools for the public to harass and intimidate healthcare providers. In one recent case, the social security number of a MNPA member was mistakenly provided to a person making a FOAA request.

LD 1287 is a definite improvement over the current law. It makes clear what specific information may be released and gives licensing boards more leeway to determine if the release of additional information is warranted.

We believe this legislation keeps the public’s “right to know” intact, but also protects the safety of healthcare professionals and their families.

MNPA urges you to support LD 1267.

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Testimony of the Maine Osteopathic Association
Before the Judiciary Committee

LD 1267, An Act To Protect Licensing Information of Medical Professionals
Public Hearing: Tuesday, April 25, 2017 at 2:30 pm, Room 438, State House

Senator Keim, Representative Moonen and distinguished members of the Judiciary Committee,

The Maine Osteopathic Association is pleased to submit written testimony neither for nor against LD 1267, An Act To Protect Licensing Information of Medical Professionals.

The Maine Osteopathic Association is a professional organization representing approximately 400 osteopathic physicians and an additional 500 residents and students. Our mission is to “serve the Osteopathic profession of the State of Maine through a coordinated effort of professional education, professional advocacy and member services in order to ensure the availability of quality osteopathic health care to the people of this State.”

This bill provides that information concerning the application for and granting of licenses issued by the State Board of Nursing, the Board of Osteopathic Licensure and the Board of Licensure in Medicine is confidential, except that each board is required to allow inspection of certain information. We fully support keeping licensee information confidential. However, we are concerned about the section of the bill regarding the “Sale of licensee names, which states if the board sells lists of licensees, the board shall omit from the lists the name of a licensee on written request of that licensee.”

First of all, we object to the licensing boards selling lists with contact information. Physicians’ privacy should be respected and selling lists often leads to spam and needless marketing. Physicians are already targeted for spam mailings, faxes and phone calls and adding to that only detracts from patient care. Furthermore, the requirement that a physician must opt out in writing in not clear—it is a onetime request and the physician will be excluded indefinitely or will it need to be done annually, every two years at renewal? It’s not clear as written.

Thank you for the opportunity to provide these comments and please do not hesitate to contact us at info@mainedo.org if you have questions. Thank you.
TESTIMONY OF KIM ESQUIBEL

EXECUTIVE DIRECTOR

MAINE STATE BOARD OF NURSING

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

NF/NA

“AN ACT to Protect Licensing Information of Medical Professionals”

Presented by Senator Katz

Before the Joint Standing Committee on Judiciary

April 25, 2017 at 2:30 p.m.

Senator Keim, Representative Moonen, and members of the Committee,

My name is Kim Esquivel. I am the Executive Director of the Maine State Board of Nursing. I appreciate the opportunity to address you today regarding L.D. 1267.

The current Law Regulating the Practice of Nursing (M.R.S.A, Ch. 31.) includes a subsection (§2109) on Confidentiality of personal information of applicant or licensee: The language states: “For applications for licensure and for renewal of licensure submitted on or after July 1, 2004, an applicant or licensee shall provide the board with a current professional address and telephone number, which is the public contact address, and a personal residence address and telephone number. An applicant’s or licensee’s personal residence address and telephone number, and e-mail address if provided by the applicant, are confidential information and may not be disclosed except as permitted by this section or as required by law unless the personal residence address, telephone number and e-mail address have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted or required by law. [2003, c. 64, §1 (NEW).]
The Board has several questions about the intent and interpretations of the provisions in L.D 1267:

Under Section. 2. 32 MRSA §2109-A **Required disclosures:**

B. What is the meaning of “an individual with a disability?” How would the Board know an individual has a disability?

C. What if the applicant or licensee does not provide a business telephone number?

D. What is meant by “educational and occupational background?”

E. What is meant by “professional qualifications?” If licensed, does this mean the “licensing file?”

F. What is the interpretation of “any financial responsibility requirement for licensure?”

Under Section. 3. 32 MRSA §2109-A **Authorized disclosures.**

Does this language mean that the Board would be required to adopt rules in order to make a finding of “a compelling public purpose?”

Given the above the Board cannot form a position on L.D. 1267 without having clearer information about each of these sections.

Thank you for the opportunity to comment on this bill. I would be happy to answer any questions you may have now or at the work session.
TESTIMONY OF DENNIS E. SMITH
EXECUTIVE DIRECTOR
BOARD OF LICENSURE IN MEDICINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
Neither for nor against of L.D. 1267

"An Act To Protect Licensing Information of Medical Professionals"

Presented by Senator Katz
Before the Joint Standing Committee on Judiciary
April 25, 2017 at 2:30 p.m.

Senator Keim, Representative Moonen, and members of the Committee:

I am Dennis E. Smith, the Executive Director for the Board of Licensure in Medicine. I appreciate the opportunity to address you today and to convey the Board’s position regarding L.D. 1267.

The purpose of the Board of Licensure in Medicine ("Board") is to protect the public. It carries out this purpose in part by investigating and correcting the medical practices of physicians and physician assistants who practice unprofessionally or incompetently. It also carries out this mission by ensuring that the physicians and physician assistants who apply for licenses are appropriately qualified, competent and ethical. The Board is made up of six physicians and one physician assistant with many years of medical knowledge and experience, and three public members who provide a "lay person’s" perspective to all issues that come before the Board.
With regard to L.D. 1267 the Board supports the concept that certain information within its possession should be subject to additional confidentiality protections. In addition, the Board offers the following comments and questions regarding L.D. 1267:

First, L.D. 1267 would make all information “concerning the application for and granting of a license... confidential.” It would then identify specific exemptions to that confidentiality. In contrast, at present, like many other State agencies, the records in possession of the Board – including records related to applications for licensure - are “public” unless specifically designated confidential by law. The Board’s statute currently makes certain information submitted to the Board confidential. Title 32 M.R.S. § 3300-A provides:

An applicant or licensee shall provide the board with a current professional address and telephone number, which will be their public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number is confidential information and may not be disclosed except as permitted by this section or as required by law, unless the personal residence address and telephone number have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted by this section or as required by law. The personal health information and personal residence address and telephone number may be provided to other governmental licensing or disciplinary authorities or to any health care providers located within or outside this State that are concerned with granting, limiting or denying a physician's employment or privileges.

Thus, under its current statute, the following information submitted by a licensee in an application is confidential:

- Personal residence
• Personal telephone number
• Personal health information

All other information submitted to the Board, unless made specifically confidential under other laws, is publicly available information and must be provided pursuant to a request under the Freedom of Access Act. An example of information that would be confidential under other laws is a licensee’s social security number.

Second, there is information that could be currently publicly available under existing law that could be problematical if publicly disseminated. That information could include:

• Personal email addresses
• Birth dates
• Passport information
• Birth certificates
• Educational transcripts
• Reference letters
• Documents containing licensees’ signatures
• Federal DEA registration numbers

This type of information could be used for illegitimate or illegal purposes, such as identity theft and drug diversion (e.g. through the forgery of the signature and use of the federal DEA registration number). Thus, there is a need to make additional information in the possession of the Board confidential so that it is not subject to public dissemination.

Third, L.D. 1267 appears to limit the information that would be confidential to that information “concerning application for and granting of a license.” Some of
the information in the Board’s possession, such as personal email addresses and federal DEA registration numbers, does not come into its possession solely through the initial license application or license renewal application process. For example, licensees are required to provide the Board with notifications that update their contact information, which could include personal email addresses.

Fourth, L.D. 1267 exempts from confidentiality the “educational and occupational background” and the “professional qualifications” of the licensees. These terms are very general, which generates the following questions:

- Would this information include college and medical school transcripts?
- Would this information include the USMLE score results?
- Would this information include letters of reference and letters from the medical school regarding the licensee’s performance?

Fifth, L.D. 1267 provides that the Board could release the “home address of the applicant or licensee after the Board redacts any information that identifies the location of the home address of an individual with a disability.” The intent of this language is not clear. In addition, it is not clear how the Board would determine if the individual applicant or licensee has a disability. Applications for licensure ask if the applicant has “a mental or physical condition that currently impairs [his/her] ability to safely and competently practice medicine” – not whether the applicant has a disability.

Finally, section 5 of L.D. 1267 entitled “Sale of licensee names” provides that “If the board sells lists of licensees, the board shall omit from the lists the name of a licensee on written request of that licensee.” The fact that a board may or may not sell a list of its licensees should not affect whether or not the information contained in the list is confidential. The information in the list is either confidential or it is not confidential. In addition, it is concerning that this
language gives broad authority to a licensee to prohibit the Board from providing what would otherwise be publicly available information if it was provided free of charge. Do any other State statutes give authority to anyone other than the State agency in possession of the information the ability to deny the release of publicly available information?

Thank you. I would be glad to answer any questions now or at the work session.
An Act To Protect Certain Administrative Licensing Files

Submitted by the Department of Public Safety pursuant to Joint Rule 204. Reference to the Committee on Judiciary suggested and ordered printed.

ROBERT B. HUNT
Clerk

Presented by Representative GERRISH of Lebanon.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA §7391 is enacted to read:

§7391.  Confidentiality of application, information and other specified records collected by the commissioner

Notwithstanding Title 1, chapter 13, subchapter 1, and except as otherwise provided in this section, all applications for a license to be a polygraph examiner; any records made a part of the application, refusals and any information of record collected by the commissioner during the process of ascertaining whether an applicant meets the requirements of sections 7382 and 7388; and all records collected by the commissioner during the course of administrative licensing investigations conducted in response to a complaint made against a licensee are confidential and may not be made available for public inspection or copying, except that the final written decision of whether a license is issued or denied, or of whether, in response to a complaint, adverse action is taken against a licensee's license, is publicly accessible. In the case of the issuance or denial of a license, the final written decision must state the basis for which a license is issued or denied, and, in the case of a complaint against a licensee's license, the final written decision must state the basis for which adverse action was or was not taken against the license. The applicant may waive this confidentiality by written notice to the commissioner. All proceedings relating to the issuance of a license to be a polygraph examiner are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant. This section does not limit disclosure for criminal justice purposes or to a government licensing agency of this State or another state of records made confidential under this section.

The commissioner shall make a permanent record of each license to be a polygraph examiner in a suitable file kept for that purpose. The record must include a copy of the information included on issued licenses and must be available for public inspection.

Sec. 2. 32 MRSA §8124, as enacted by PL 2015, c. 295, §1, is repealed.

Sec. 3. 32 MRSA §8124-A is enacted to read:

§8124-A.  Confidentiality of application, information and other specified records collected by the chief

Notwithstanding Title 1, chapter 13, subchapter 1, and except as otherwise provided in this section, all applications for a license to be a professional investigator; any records made a part of the application, refusals and any information of record collected by the chief during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 8105 and 8113; and all records collected by the chief during the course of administrative licensing investigations conducted in response to a complaint made against a licensee are confidential and may not be made available for public inspection or copying, except that the final written decision of whether a license is issued or denied, or of whether, in response to a complaint, adverse action is taken against a licensee's license, is publicly accessible. In the case of the issuance or denial of a license, the final written decision must state the
basis for which a license is issued or denied, and, in the case of a complaint against a licensee's license, the final written decision must state the basis for which adverse action was or was not taken against the license. The applicant may waive this confidentiality by written notice to the chief. All proceedings relating to the issuance of a license to be a professional investigator are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant. This section does not limit disclosure for criminal justice purposes or to a government licensing agency of this State or another state of records made confidential under this section.

The chief shall make a permanent record of each license to be a professional investigator in a suitable file kept for that purpose. The record must include a copy of the information included on issued licenses and must be available for public inspection.

Sec. 4. 32 MRSA §9418, as amended by PL 2011, c. 662, §20, is further amended to read:

§9418. Confidentiality of application and information collected by the commissioner

Notwithstanding Title 1, chapter 13, subchapter 1, all applications for a license to be a contract security company and any documents made a part of the application, refusals and any information of record collected by the commissioner during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 9405 and 9411-A, and all information of record collected by the commissioner during the process of ascertaining whether a natural person meets the requirements of section 9410-A, are confidential and may not be made available for public inspection or copying, except that the final written decision of whether a license is issued or denied, or of whether, in response to a complaint, adverse action is taken against a licensee's license, is publicly accessible. In the case of the issuance or denial of a license, the final written decision must state the basis for which a license is issued or denied, and, in the case of a complaint against a licensee's license, the final written decision must state the basis for which adverse action was or was not taken against the license. The applicant or natural person may waive this confidentiality by written notice to the commissioner. All proceedings relating to the issuance of a license to be a contract security company are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant. This section does not limit disclosure for criminal justice purposes or to a government licensing agency of this State or another state of records made confidential under this section.

The commissioner or his designee shall make a permanent record of each license to be a contract security company in a suitable book or file kept for that purpose. The record shall must include a copy of the license and shall must be available for public inspection. Upon a specific request, the commissioner or his the commissioner's designee shall provide a list of names and current addresses of security guards employed by licensed contract security companies.
SUMMARY

This bill makes polygraph examiner and professional investigator administrative licensing files confidential by law, except the final written decision of whether a license is issued or denied, or of whether, in response to a complaint, adverse action is taken against a licensee's license, is publicly accessible and records may be disclosed for criminal justice purposes or to a government licensing agency of this State or another state. In the case of the issuance or denial of a license, the final written decision must state the basis for which a license is issued or denied, and, in the case of a complaint against a licensee's license, the final written decision must state the basis for which adverse action was or was not taken against the license. The Private Security Guards Act also is amended to ensure consistency with the changes made to the Polygraph Examiners Act and Professional Investigators Act.
Testimony on L.D. 1541,  
"An Act To Protect Certain Administrative Licensing Files"

Presented by  
Representative Karen A. Gerrish  
District 20

Judiciary Committee  
Tuesday, May 16, 2017

Good afternoon, Senator Keim, Representative Moonen, and distinguished members of the Joint Standing Committee on Judiciary:

I am State Representative Karen Gerrish, and I proudly serve the people of District 20, which consists of Lebanon, Acton, and a portion of Shapleigh. It is an honor to appear before you today for the purpose of introducing L.D. 1541, "An Act To Protect Certain Administrative Licensing Files."

The Maine State Police administers three professional licensing programs for the Department of Public Safety: the professional investigator licensing program, the polygraph examiner licensing program, and the contract security company licensing program.

As you might expect, in administering these programs, the agency uses application forms to amass information about license applicants. Related forms can include personal e-mail addresses, personal cellular telephone numbers, facts about places of birth, and physical description details, such as eye color, height, and weight, just to name a few of the data points collected. In addition, the Department collects various other types of information about applicants, including criminal history records, education and work experience, mental health-related information, legal status information, and disclosures regarding illicit drug use.

When incorporated into the administrative licensing files of polygraph examiner and professional investigator license applicants and holders, correlating information is publicly accessible, except if a type of information, such as Social

Over, please

District 20   Acton, Lebanon and Shapleigh (part)
Security numbers, or documentation, like a birth certificate, is confidential by law. Yet the licensing files maintained by the Department often likewise include many other types of documentation in addition to the standard forms and information just described.

If supplemental information is needed by the agency to better determine whether an applicant is qualified to be issued a polygraph examiner or professional investigator license, that information is routinely documented and incorporated into the applicant’s file. This can include that relating to an applicant’s health, family and personal friendships, romantic relationships, and past criminal conduct.

Under current law, all of this information is publicly accessible once included in the licensing files of professional investigators and polygraph examiners -- unless a legal exception applies. Additionally, when a complaint is made against a licensed polygraph examiner or professional investigator, the documentation and information collected by the Department to investigate the complaint can also be subject to public disclosure, if requested. Such documentation includes the written complaints themselves, which can entail very personal information about not only the person making the complaint (who might have submitted the complaint in presumed confidence), but also about the licensee who is the subject of the complaint and about other third parties, including minors.

Given the breadth of public access to such private information that current law allows, polygraph examiner and professional investigator applicants and licensees -- and, potentially, members of their families -- are vulnerable to the crimes of identity theft, harassment, and stalking. Of equal significance, however, is that the privacy and personal dignity of applicants and licensees, as well as of other persons whose personal information becomes incorporated into the Department’s administrative licensing files, is affronted and compromised.

As the Department’s representative will soon explain in his testimony, L.D. 1541 seeks to address these concerns while still ensuring a reasonable measure of transparency and accountability with regard to the Department’s licensing programs.

Thank you for your consideration. I am happy to make an effort at addressing any questions you may have at this time.
Christopher Parr, Staff Attorney

Testimony In Support Of

LD 1541, An Act to Protect Certain Administrative Licensing Files

Before the Joint Standing Committee on the Judiciary
Tuesday, 16 May 2017, Maine State House Room 438

Senator Keim, Representative Moonen, Members of the Joint Standing Committee on the Judiciary:

My name is Chris Parr, and I am the Staff Attorney for the Maine State Police. I am here to testify in support of LD 1541, An Act to Protect Certain Administrative Licensing Files, a bill proposed by the Department of Public Safety and Maine State Police.

As an initial matter, our agency wishes to thank Representative Gerrish for her willingness to sponsor and introduce this legislation for us.

As Rep. Gerrish just explained, the Maine State Police administers three professional licensing programs. Although protections presently exist for much (but not all) information contained in Contract Security Company administrative licensing files, no such protections are in place for documents and information contained in the Polygraph Examiner and Professional Investigator licensing files we maintain.

These files can contain a lot of personal information about license applicants and license holders. Some of that information is information collected in the normal course of processing and approving license applications: personal contact information and physical description information, for example, which, in the case of Professional Investigators, includes the photographs of licensees. Other information relates to the personal life of license applicants and holders - their education, their work history, and their military service.

That such information is publicly accessible should itself be cause for concern, given the potential that exists for the information to be accessed and used to commit such crimes.
as identity theft, fraud, and harassment. Yet the Polygraph Examiner and Professional Investigator licensing files also can include information that is highly personal – not only about a license applicant or license holder, but also about third parties whose private information can become incorporated into the licensing files as a result of administrative investigations.

Individuals filing complaints against a licensee, for example, might include very sensitive information in their complaints about themselves or other parties, with the erroneous assumption that the information will be able to be held by our agency in confidence. Unfortunately, current law generally does not allow our agency to be able provide such an assurance. As a result, the personal privacy and dignity of individuals is compromised when copies of the licensing files are requested or access to them is sought, pursuant to the Freedom of Access Act or otherwise.

LD 1541 will correct this problem by ensuring that the documents and information included in the licensing files of Polygraph Examiner and Professional Investigator license applicants and holders is protected by law. An exception to that protection, however, will be that the final written determination of our agency about whether to grant or deny a license to an applicant, or whether a complaint made against a license holder is sustained or not sustained, will be publicly accessible. Further, that final written decision will need to state the rationale for the agency’s determinations to grant or deny licenses, or to sustain or not sustain complaints made against licensees.

We think the approach the bill takes strikes a fair balance between the importance of ensuring transparency of our agency’s decisions, and the personal privacy interests of license applicants and holders, of complainants, and of third parties whose information – perhaps completely without their knowledge or consent – becomes included in our licensing files.

The bill also will amend the Private Security Guards Act to ensure that its existing confidentiality provision is consistent with the provisions we are proposing in Section 1 and Section 3 of the bill.

For the reasons I have discussed, and those that were stated by Representative Gerrish, I urge you to support this bill.

Thank you. I would be happy to try to answer any questions you might have.

Attachments: APPENDIX 1
APPENDIX 2
APPENDIX 1

Amend bill Section 4 to include the italicized language highlighted here:

Sec. 4. 32 MRSA §9418, as amended by PL 2011, c. 662, §20, is further amended to read:

§ 9418. Confidentiality of application and information collected by the commissioner

Notwithstanding Title 1, chapter 13, subchapter 1, all applications for a license to be a contract security company; and any documents made a part of the application, refusal and any information of record collected by the commissioner during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 9405 and 9411-A; and all information of record collected by the commissioner during the process of ascertaining whether a natural person meets the requirements of section 9410-A; and all records collected by the commissioner during the course of administrative licensing investigations conducted in response to a complaint made against a licensee are confidential and may not be made available for public inspection or copying, except that the final written decision of whether a license is issued or denied, or of whether, in response to a complaint, adverse action is taken against a licensee's license, is publicly accessible. In the case of the issuance or denial of a license, the final written decision must state the basis for which a license is issued or denied, and, in the case of a complaint against a licensee's license, the final written decision must state the basis for which adverse action was or was not taken against the license. The applicant or natural person may waive this confidentiality by written notice to the commissioner. All proceedings relating to the issuance of a license to be a contract security company are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant. This section does not limit disclosure for criminal justice purposes or to a government licensing agency of this State or another state of records made confidential under this section.

The commissioner or his designee shall make a permanent record of each license to be a contract security company in a suitable book or file kept for that purpose. The record shall include a copy of the license and shall be available for public inspection. Upon a specific request, the commissioner or his designee shall provide a list of names and current addresses of security guards employed by licensed contract security companies.
APPENDIX 2

Consider whether the provision of the Private Security Guards Act highlighted here should be modified so as to protect information pertaining to third parties:

§9418. Confidentiality of application and information collected by the commissioner

Notwithstanding Title 1, chapter 13, subchapter 1, all applications for a license to be a contract security company and any documents made a part of the application, refusals and any information of record collected by the commissioner during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 9405 and 9411-A, and all information of record collected by the commissioner during the process of ascertaining whether a natural person meets the requirements of section 9410-A, are confidential and may not be made available for public inspection or copying. The applicant or natural person may waive this confidentiality by written notice to the commissioner. All proceedings relating to the issuance of a license to be a contract security company are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant.

The commissioner or his designee shall make a permanent record of each license to be a contract security company in a suitable book or file kept for that purpose. The record shall include a copy of the license and shall be available for public inspection. Upon a specific request, the commissioner or his designee shall provide a list of names and current addresses of security guards employed by licensed contract security companies.
128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

H.P. 1126

No. 1633

House of Representatives, June 7, 2017

An Act Concerning Private Personal Information of Public Employees and Licensed Individuals

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

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

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

Sec. 1. 1 MRSA §434, sub-§4 is enacted to read:

4. Private personal information of public employees and licensed individuals. When the review committee reviews and evaluates a proposed public records exception concerning the private personal information of a public employee or a professional and occupational licensee or license applicant, the review committee shall balance the privacy and safety interests of the individual involved concerning the individual's personal information with the public's right to know regarding public employees and professional and occupational licensees and license applicants.

SUMMARY

This bill is based on a recommendation of the Right To Know Advisory Committee concerning the protection of private personal information that may be considered public records. The bill directs the joint standing committee of the Legislature having jurisdiction over judiciary matters to balance the public's right to know about public employees and professional and occupational licensees and license applicants with the privacy and safety interests of the individuals involved when a proposed public records exception concerns the private personal information of public employees and professional or occupational licensees or license applicants.
September 15, 2016

Sen. David C. Burns, Senate Chair
Rep. Barry J. Hobbins, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, Maine 04333-0100

Dear Sen. Burns and Rep. Hobbins,

The Right to Know Advisory Committee has had extensive discussions about your request that the Advisory Committee develop comprehensive recommendations for the treatment of personal contact information for professions and occupations regulated by the State. During the Second Regular Session, the Legislature enacted LD 1499, An Act to Increase the Safety of Social Workers", which created a new confidentiality provision for social worker licensees' and license applicants' addresses and telephone numbers. In response to suggestions to include other types of licensed professionals in the scope of the confidentiality exception, we understand you have asked for the Advisory Committee’s assistance in developing a uniform policy for all professions and occupations. Under current law, some licensing boards, e.g., nurses, physicians and osteopaths, make certain licensee information confidential already.

The Advisory Committee agreed that any uniform policy needs to balance the consumer interests of the public in having access to licensee information with the privacy interests of licensees and license applicants. The public has a legitimate need for access to licensing information to ensure that individuals employed in certain professions and occupations are adequately trained and competent, but licensed professionals also have an interest in privacy and personal safety.

The Advisory Committee recommends (by a vote of 11-2) an approach that focuses on what categories of personal information about licensees should not be accessible to the public, rather than specifying what licensing information should be public. The Advisory Committee supports the general principle that personal contact information should not be public, similar to the criteria at 1 MRSA §402, sub-§3, ¶O for protecting public employee personal information. Pursuant to 1 MRSA §402, sub-§3, ¶O, the home addresses, home phone and fax numbers, personal cellphone numbers and home email addresses are confidential. The Advisory Committee recognizes that, in cases in which the licensee or license applicant has only provided a personal address and not a public business address to a licensing board, the personal address should not be kept confidential.
The Advisory Committee also discussed the merits of providing licensees and license applicants an approach that would permit individuals to opt-in or affirmatively approve the disclosure of personal contact information or developing a form for use by the licensing entity that would make public certain information, but would exclude personal information about the individual from being disclosed to the public.

We are hopeful that we've provided enough guidance to assist you in evaluating proposed legislation regarding the confidentiality of personal contact information for professional and occupational licensees and applicants for those licenses. Please feel free to contact us or our committee staff if you have any questions or would like additional input.

Thank you for your consideration.

Sincerely,

[Signature]

Sen. David C. Burns, Chair
Right to Know Advisory Committee

cc: Members, Right to Know Advisory Committee
    Members, Joint Standing Committee on Judiciary
    Margaret Reinsch, Office of Policy and Legal Analysis.
23 May 2017

The 128th Legislature of the State of Maine
State House
Augusta, ME

Dear Honorable Members of the 128th Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 146 “An Act To Protect the Confidentiality of State and Local Government Employees' Private Information.”

This bill would exempt from public view certain information about public servants. I do think there is an important balance between the public’s right to know and the privacy interests of public servants. Unfortunately, this bill strikes the wrong balance. I also believe that this bill, if passed, would have unintended consequences. While I support making social security numbers confidential, the public should have a right to know about those who make decisions on behalf of the public while serving in government.

For this reason, I return LD 146 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,

Paul R. LePage
Governor
128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

H.P. 104
House of Representatives, January 19, 2017

An Act To Protect the Confidentiality of Local Government Employees' Private Information

Reference to the Committee on Judiciary suggested and ordered printed.

ROBERT B. HUNT
Clerk

Presented by Representative McCREIGHT of Harpswell.
Cosponsored by Senator CARSON of Cumberland and
Representatives: BABBIDGE of Kennebunk, BATTLE of South Portland, BEEBE-CENTER of Rockland, COREY of Windham, MONAGHAN of Cape Elizabeth, PIERCE of Dresden,
SIMMONS of Waldoboro, Senator: VITELLI of Sagadahoc.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §2702, sub-$1, as amended by PL 1997, c. 770, §3, is further amended to read:

1. Confidential records. The following records are confidential and not open to public inspection. They are not "public records" as defined in Title 1, section 402, subsection 3. These records include:

   A. Except as provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the municipality for use in the examination or evaluation of applicants for positions as municipal employees.

   (1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

   (2) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

   (3) This paragraph does not preclude union representatives from access to personnel records which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall must remain confidential and are not open to public inspection;

B. Municipal records pertaining to an identifiable employee and containing the following:

   (1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

   (2) Performance evaluations and personal references submitted in confidence;

   (3) Information pertaining to the creditworthiness of a named employee;

   (4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and

   (5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the
employee whose name was deleted from the final written decision discloses that
the employee is the person who is the subject of the final written decision, the
entire final written report, with regard to that employee, is public.

For purposes of this subparagraph, "final written decision" means:

(a) The final written administrative decision that is not appealed pursuant to
a grievance arbitration procedure; or

(b) If the final written administrative decision is appealed to arbitration, the
final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer
confidential 120 days after a written request for the decision is made to the
employer if the final written decision of the neutral arbitrator is not issued and
released before the expiration of the 120 days; and

(6) Personal information, including that which pertains to the employee’s:

(a) Age;

(b) Ancestry, ethnicity, genetic information, national origin, race or skin
color;

(c) Marital status;

(d) Mental or physical disabilities;

(e) Personal contact information, as described in Title 1, section 402,
subsection 3, paragraph 0;

(f) Personal employment choices pertaining to elected payroll deductions,
deferred compensation, saving plans, pension plans, health insurance and life
insurance;

(g) Religion;

(h) Sex or sexual orientation; or

(i) Social security; and

C. Other information to which access by the general public is prohibited by law.

SUMMARY

This bill clarifies that certain personal information of municipal employees is
confidential and the record or the portion of the record containing that information in the
possession of a municipal government is not a public record. The types of information
protected include that which pertains to age, ancestry, ethnicity, genetics, national origin,
race, skin color, marital status, mental or physical disabilities, personal contact
information, religion, sex, sexual orientation, social security and personal employment
choices pertaining to elected payroll deductions, deferred compensation, savings plans,
pension plans, health insurance and life insurance.
Amend the bill by striking out the title and substituting the following:

‘Act To Protect the Confidentiality of State and Local Government Employees' Private Information’

Amend the bill by inserting after the enacting clause and before section 1 the following:

‘Sec. 1. 5 MRSA §7070, sub-$2, ¶D-1, as amended by PL 2007, c. 597, §6, is further amended to read:

D-1. Personal information pertaining to the employee's race, color, religion, sex, sexual orientation as defined in section 4553, subsection 9-C, national origin, ancestry, genetic information, age, physical disability, mental disability and marital status; social security number; personal contact information as provided in Title 1, section 402, subsection 3, paragraph O; and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance. When there is a work requirement for public access to personal information under this paragraph that is not otherwise protected by law, that information may be made public. The Director of the Bureau of Human Resources, upon the request of the employing agency, shall make the determination that the release of certain personal information not otherwise protected by law is allowed; and

Sec. 2. 30-A MRSA §503, sub-$1, ¶B, as amended by PL 1997, c. 770, §2, is further amended to read:

B. County records containing the following:

(1) Medical information of any kind, including information pertaining to the diagnosis or treatment of mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the creditworthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the
final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this subparagraph, "final written decision" means:

(a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

(b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and

(6) Personal information, including that which pertains to the employee's:

(a) Age;

(b) Ancestry, ethnicity, genetic information, national origin, race or skin color;

(c) Marital status;

(d) Mental or physical disabilities;

(e) Personal contact information, as described in Title 1, section 402, subsection 3, paragraph O;

(f) Personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance;

(g) Religion;

(h) Sex or sexual orientation as defined in Title 5, section 4553, subsection 9-C; or

(i) Social security number; and
Amend the bill in section 1 in subsection 1 in paragraph B in subparagraph (6) in division (h) in the first line (page 2, line 25 in L.D.) by inserting after the following: "orientation" the following: 'as defined in Title 5, section 4553, subsection 9-C'.

Amend the bill in section 1 in subsection 1 in paragraph B in subparagraph (6) in division (i) in the first line (page 2, line 26 in L.D.) by inserting after the following: "security" the following: 'number'.

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

**SUMMARY**

The bill amends the law governing the confidentiality of personal information of municipal employees to parallel the same protections for state employees, with the addition of keeping as confidential any genetic information and information about the sexual orientation of the employee if contained in the records of the municipality. This amendment amends the state employee personnel records provisions to include confidentiality of genetic information and sexual orientation and amends the laws governing county employee personnel records to match. This amendment includes cross-references to the Maine Human Rights Act for the definition of "sexual orientation." It also correctly provides for the confidentiality of a municipal employee's social security number.
Testimony of Rep. Jay McCleight
Before the Joint Standing Committee on Judiciary
In Support Of LD 146
An Act To Protect the Confidentiality of Local Government Employees’ Private Information

Senator Keim, Representative Moonen and distinguished members of the Judiciary Committee, I am Representative Jay McCleight and I am here to present testimony as the sponsor of LD 146, An Act To Protect the Confidentiality of Local Government Employees’ Private Information. This bill was requested by the Maine Municipal Association (MMA), on behalf of municipalities statewide, in their role as employers subject to Freedom of Access requests.

For the past decade, employees of state government have had available a category of governmental record confidentiality that has been unavailable to employees of Maine’s municipalities. LD 146 extends this category of confidentiality to those local government employees as well. In the municipal experience, the types of information described below have been requested both in “swiping” Freedom of Access Act requests that search for relatively unrestricted amounts of information, as well as in specific requests pertaining to an employee’s benefit elections.

Title 5, section 7070 subsection 2 contains six categories which exempt certain types of personal information pertaining to state employees from public inspection. The first three of these six exemptions were enacted in 1985, and two more were enacted in 1997. These five freedom of access exemption subsections are all replicated in current law for municipal officials in Title 30-A, section 2702.

The most recent update to the state employee exemptions in Title 5 was adopted by the Legislature in 2007, and is found in section 7070(2)(D-1). This subsection exempts the following fourteen types of state employee personal information from public inspection: race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability, marital status, social security number, personal contact information, and personal employment benefit elections.

LD 146 provides municipal employees with these same exemptions as state employees, with one addition. This addition also affords municipal employees protection against public disclosure of
their sexual orientation, believing that it is just as important to afford municipal employees privacy with respect to the very personal matter of sexual orientation as it is to protect their marital status and the other types of information listed here.

The Legal Department of the MMA recommended this legislation and the 70-member Legislative Policy Committee of MMA reviewed it and voted unanimously to support this in its entirety.

Thank you for your attention and I’m happy to answer any questions.
Testimony of the Maine Municipal Association

In Support Of LD 146
An Act To Protect the Confidentiality of Local Government Employees' Private Information

March 7, 2017

Senator Keim, Representative Moonen and members of the Judiciary Committee, my name is Garrett Corbin and I am providing testimony in support of LD 146 on behalf of the Maine Municipal Association (MMA), at the direction of MMA’s 70-member Legislative Policy Committee (LPC).

LD 146 extends a category of governmental record confidentiality that has been available to employees of state government for the past decade to employees of local government as well. In practice, the types of information described below have been requested both in “sweeping” Freedom of Access Act requests that search for relatively unrestricted amounts of information, as well as in specific requests pertaining to an employee’s benefit elections.

As the sponsor’s testimony explains, the most recent update to the state employee exemptions in Title 5, found in section 7070(2)(D-1), was adopted by the Legislature in 2007. This subsection exempts the following fourteen types of state employee personal information from public inspection: race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability, marital status, social security number, personal contact information, and personal employment benefit elections.

LD 146 provides municipal employees with these same exemptions as state employees, with one addition. This addition also affords municipal employees protection against public disclosure of their sexual orientation. The municipal officials who reviewed and voted to support this legislation, as well as several municipal attorneys, believe it is just as important to afford municipal employees privacy with respect to the very personal matter of sexual orientation as it is to protect their marital status and the other types of information listed herein.
To: Senator Keim, Representative Moonen, and Members of the Judiciary Committee  
From: Kirsten Hebert, Director Maine Rural Water Association  
Date: March 7, 2017  
Re: Testimony in Support of LD 146 An Act to Protect the Confidentiality of Local Government Employee’s Private Information

Senator Keim, Representative Moonen, and Members of the Committee, my name is Kirsten Hebert, Director of the Maine Rural Water Association and I am offering testimony in Support of LD 146 An Act to Protect the Confidentiality of Local Government Employee’s Private Information.

The Maine Rural Water Association and the Maine Water Utilities Association are two of Maine’s trade associations representing water and wastewater systems across the State. We provide training and technical assistance with the purpose of improving the operational, managerial and financial capacity of our members. We have a joint Legislative Policy Committee responsible for setting our legislative platform and during our February 27th meeting, the Committee voted to support this bill.

One of the training courses that we offer to our members is the applicability of the Freedom of Access Act. The proper determination of public records is of key importance in today’s society as transparency and customer service is of great significance.

The vast majority of our collective membership is comprised of quasi municipal districts, organized by Private and Special Legislation. These districts are units of government for which LD 146’s proposed additional protections would apply. We strongly support the inclusion of the personal information identified in LD 146.

Often employees of water districts /departments are required to shut off a customer’s water for failure to pay a water bill, or in instances in which the utility is responsible for water and sewer, shut off a customer’s water for failure to pay a sewer bill. While we all realize that the utility staff are just doing their jobs as directed, they are put in a difficult situation for which the customer may associate the staffer with their frustration of being shut off. We urge the committee to pass LD 146 to protect the employee’s personal information.

Thank you for the opportunity to provide testimony. Please do not hesitate to contact me should you have any questions 207 841 8920 or kirstenh@mainerwa.org.
Thanks for your message. I would love the opportunity to talk with the committee next week. I’ve outlined the key points below.

**Maine State Library Role in Collecting and Providing Public Access to Published Reports of State Government**

State law requires agencies to send the library copies of their public reports/publications/etc for permanent access in our paper collection. We’ve never received everything from every agency. Some agencies do a much better job than others in sending in their reports. We do periodic outreach to agencies to remind them of their obligation to send us content, but we’ve had mixed results in follow-through. The law does not have any specific penalties for institutions that ignore our requests for information.

**Launch of a Digital Repository**

Since 2013, the Maine State Library has managed a digital repository to collect agency content and make it available online. We know that there is a lot of content that is being created and distributed in digital-only format and the repository provides a place for it. We also know that agency websites are frequently updated and older publications and reports are cycled out and not all new content created by agencies ever makes it online.

We allow any agency to upload content directly to the repository. Although the licensing/storage costs of the system run us about $20,000 a year, we provide the service to agencies at no charge. Earlier this year we partnered with Maine Geological Survey to make thousands of maps and publications available online through the service. We have also recently worked with the Maine Arts Commission, Maine Department of Inland Fisheries and Wildlife and the Maine Department of Labor to digitize and make available thousands of historical documents and images related to their agency’s history. In the case of IF&W, they specifically targeted the digitization of older materials that were subject to access requests in the past.

We have also started to use the repository to build collections of municipal documents. State law requires all municipalities to send us copies of their town reports and the library has an enormous collection of these historical documents that date back to the very beginning of many Maine towns.

The Town of Cumberland, for example, is using the system to store an archive of meeting minutes from over 300 town meetings and over 500 municipal planning maps. Other towns have used our digitization equipment to image some of their oldest vital records and town documents to ensure the information is preserved in the event of a fire or flood at the town office.

We’ve worked closely with the Maine State Archives in developing this system and this partnership has helped the repository to grow to over 66,000 digital items in the last four years.

**Our Concerns About the Shift in How Government Documents are Created**

While digital documents provide much more accessibility in terms of ease of distribution and availability online, the content is at much higher risk of permanent loss in the years ahead.

- Agency websites are frequently updated and most online content will eventually disappear. Content is even more apt to change when there is a turnover in administration. The system used by some agencies to provide
direct access to their reports online is not fully indexed by search engines and content saved in this system cannot be retrieved through tools like the wayback machine.

- It will be harder for Maine State Library to catch up on reports and publications that may not have made their way here - while printed publications may sit in someone's desk or file cabinet for decades, a digital file has a much shorter shelf life when buried in an email inbox or stored on a computer hard drive.
- Even under the best conditions, digital content is at risk for loss due to format obsolescence, hardware failure, or file corruption from bit rot. The Maine State Library has government documents dating back to before Maine was even a state and those files shed light on the important policy considerations of the time. On the other end of the spectrum we have encountered digital files that are fewer than 20 years old that are completely inaccessible to us today because the files became corrupt or inaccessible due to technology changes.
- Changes in how the state does its printing has also put an end to an important tool at our disposal to identify documents that agencies are creating that should be sent to the Maine State Library. When Central Printing closed we stopped receiving copies of all of their requisition forms that provided us with information on the types of things that agencies were printing.

-Adam

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From: Nale, Craig [mailto:Craig.Nale@legislature.maine.gov]
Sent: Thursday, August 24, 2017 9:42 AM
To: Fisher, Adam C.
Cc: McCarthyReid, Colleen
Subject: Right to Know Advisory Committee

Hi Adam,

Peggy Reinsch forwarded your email about possibly presenting some of the Library's work on digitization and public access and concerns about ensuring permanent public access to the Right to Know Advisory Committee this year. Senator Lisa Keim and Representative Chris Babbidge are the legislative members of the Advisory Committee this year and they've expressed an interest in hearing more about this at the Advisory Committee’s first meeting on Wednesday, September 6 at 9:00 am in the Judiciary Committee room of the State House. Would you be available for a brief presentation then?

Colleen McCarthy Reid (copied here) and I are staff to the Advisory Committee this year; please feel free to contact either of us about scheduling something. (I am out of the office for the rest of the week, but checking email.)

Thanks very much. Looking forward to talking more soon,
Craig

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Maine State Legislature
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craig.nale@legislature.maine.gov
STATUTE: 1 M.R.S. §402, Sub-§3, ¶C-1

AGENCY: Legislative Council, Executive Director

CONTACT PERSON: Grant Pennoyer

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

QUESTIONS

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

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

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

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

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

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the Right to Know Advisory Committee
13 State House Station Augusta, Maine 04333
www.maine.gov/legis/opla/righttoknow
FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

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

4. Does your agency recommend changes to this exception?

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

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

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

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

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