

**MAINE'S "RIGHT TO KNOW" LAW:**  
**An Introduction and Guide**

Me. Rev. Stat. Ann., Tit. 1, §§ 401-410

Current Through 119th Legislature, 1999 First Regular Session

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## PREFACE

This handbook is designed to deliver on its title: “An Introduction and Guide to Maine’s ‘Right To Know’ Law.” The authors have attempted to provide the complete text of relevant provisions of the law organized in an easy to understand manner. We published the first such guide in 1996. An updated list of exemptions to the law is provided, although surely not all-inclusive. The Guide is also updated to include the Maine Judicial Branch’s revised Public Information and Confidentiality Policy and an article on executive sessions, “Freedom of Access Law: It’s Not Easy Keeping Secrets,” written by one of the authors for the Maine Bar Journal. By reading the applicable law and the “Tips for When You’re In the Field” any journalist should be well on his or her way to excelling in obtaining maximum possible access to Maine governmental information.

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AN INTRODUCTION AND GUIDE**

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## WORKING THROUGH THE RIGHT TO KNOW LAW

### **I. Maine’s Freedom of Access Act (“FAA”) Is Not the Federal Freedom of Information Act (“FOIA”)**

- A. Maine law applies to Maine entities.
- B. Federal law applies to federal entities -- “Never the twain shall meet.”

### **II. Scope of the Freedom of Access Act**

- A. All state legislative, executive, and administrative bodies.
- B. All county, local and, governmental bodies.
- C. “Blue Ribbon” and hybrid bodies.
- D. Does **not** apply to courts.
  - 1. For relevant statutes and the State of Maine Judicial Branch Public Information and Confidentiality Policy, see Appendix A and Appendix A.1, respectively.

### **III. Purpose**

- A. Legislative Declaration of Intent.

#### **Declaration of public policy; rules of construction** (Me. Rev. Stat. Ann. tit. 1, § 401)

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.

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

- B. Judicial Approach to Right to Know Appeals:

The Freedom of Access Law should be liberally construed and applied to promote its underlying purpose and a corollary to such liberal construction is necessarily a strict construction of any exceptions to required public disclosure. Guy Gannett Publishing Co. v. University of Maine,

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A.2d 470, 471 (1989).

#### IV. How the Freedom of Access Act Works

A. Access to Public Proceedings, See Appendix B.1 for an overview.

1. Is it a “public proceeding?”

**Definitions** (Me. Rev. Stat. Ann. tit. 1, § 402(2)(A)-(F))

**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;
- 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 Technical College System and any of its committees and subcommittees;
- C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;
- 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;
- 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; and
- 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.

2. If it is a “public proceeding,” then it is presumptively “open.”

**Meetings to be open to public** (Me. Rev. Stat. Ann. tit. 1, § 403)

Except as otherwise provided by statute or by section 405, all public proceedings shall be open to the public, any person shall be permitted to attend any public proceeding and any record or minutes of such proceedings that is required by law shall be made promptly and shall be open to public inspection.

a. Exempt public proceedings, See Appendix B.

3. You can tape or film and broadcast a “public proceeding.”

**Recorded or live broadcasts authorized** (Me. Rev. Stat. Ann. tit. 1, § 404)

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.

4. *Was the “public proceeding” properly noticed?*

**Public notice** (Me. Rev. Stat. Ann. tit 1, § 406)

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.

5. *Can the “public proceeding” be held in “executive session?”*

**Permitted deliberation.** Deliberations may be conducted in executive sessions on the following matters and no others: (Me. Rev. Stat. Ann. tit. 1, § 405(6)(A)-(F) as amended by 1999 Me. Legis. Serv. Ch. 40 (West).)

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 reputation or the individual's right to privacy would be violated;
- (2) Any person charged or investigated shall be permitted to be present at an executive session if that person desires;
- (3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against him 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 shall be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal;

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, provided that:

- (1)<sup>1</sup> The student and legal counsel and, if the student be a minor, the student's parents or legal guardians shall be permitted to be present at an executive session if the student, parents or guardians so desire.

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<sup>1</sup> So in original. No Subpar. (2) was enacted.

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;

D. Negotiations between the representatives of a public employer and public employees may be open to the public provided both parties agree to conduct negotiations in open sessions. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators may be held in an executive session;

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 counsel to his 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;

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; and

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 extent of an examination; and review of examinations with the person examined.

6. *Is § 405 the only place to look in determining if an executive session is permitted?*

- a. *Discussions of confidential records*  
See Appendix C for list of confidential records.

G. 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. (Me. Rev. Stat. Ann. tit. 1, § 405(6)(F))

7. *Has the public body properly gone into and come out of executive session?*

**Executive sessions** (Me. Rev. Stat. Ann. tit 1, § 405(1)-(5))

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions.

1. **Not to defeat purposes of subchapter.** These sessions shall not be used to defeat the purposes of this subchapter as stated in section 401.
2. **Final approval of certain items prohibited.** No ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official actions shall be finally approved at executive sessions.
3. **Procedure for calling of executive sessions.** Executive sessions may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.
4. **Motion contents.** A motion to go into executive session shall indicate the precise nature of the business of the executive session.

5. **Matters not contained in motion prohibited.** No other matters may be considered in that particular executive session.

8. Has the agency made the necessary written record?

#### **Decisions** (Me. Rev. Stat. Ann. tit. 1, § 407)

**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.

**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 appraise the individual concerned 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.

9. What if a body improperly goes into executive session?

#### **Appeals** (Me. Rev. Stat. Ann. tit. 1, § 409)

**1. Records.** If any body or agency or official, who has custody or control of any public record, shall refuse permission to so inspect or copy or abstract a public record, this denial shall be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. Any person aggrieved by denial may appeal therefrom, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

**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 shall be illegal and the officials responsible shall be 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 shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.

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

- a. Alternate Remedy for Violations: Equitable Injunction
- b. Penalty for Violations

#### **Violations** (Me. Rev. Stat. Ann. tit. 1, § 410)

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.

The \$500 civil penalty may only be sought by the Attorney General, not by any private party. Scola v. Town of Sanford, 1997 ME 119, ¶ 7, 695 A.2d 1194, 1195.

**B. Access to Documents or Records**

1. *Is it a public record?*

**Definitions** (Me. Rev. Stat. Ann. tit. 1, 402(3), (3-A))

**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:

**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, conviction data, address of furlough and dates of furlough;
- B. Records relating to out-of-state probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, conviction data, address of residence and dates of supervision; and
- C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, conviction data and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a prisoner to disclose the information.

2. *Is it exempt?*

(Me Rev. Stat. Ann. tit. 1, § 402(3)(A)-(J))

- A. Records that have been designated confidential by statute;
- 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;
- 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;
- 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;

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Technical 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;

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;

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;

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; and

I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter.

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.

3. *Is it designated confidential by statute?*  
*See Appendix C.*

4. *If a document is a “public record” and not “exempt” how do you get it?*

#### **Public records available for public inspection (Me. Rev. Stat. Ann. tit. 1, § 408)**

Except as otherwise provided by statute, every person shall have the right to inspect and copy any public record during the regular business hours of the custodian or location of such record; provided that, whenever inspection cannot be accomplished without translation of mechanical or electronic data compilations into some other form, the person desiring inspection may be required to pay the State in advance the cost of translation and both translation and inspection may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the record sought and provided further that the cost of copying any public record to comply with this section shall be paid by the person requesting the copy.

5. *What if you request a public record and they don't give it to you?*

#### **Appeals (Me. Rev. Stat. Ann. tit. 1, § 409)**

**1. Records.** If any body or agency or official, who has custody or control of any public record, shall refuse permission to so inspect or copy or abstract a public record, this denial shall be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. Any person aggrieved by denial may appeal therefrom, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

**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 shall be illegal and the officials responsible shall be 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 shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.

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

V. **TIPS FOR WHEN YOU'RE IN THE FIELD**

- A. If you expect a problem wouldn't it be nice to know the law going in?
- B. If you know they're going to deny you access to the meeting get an injunction -- and not one hour before the meeting is due to begin.
- C. Ask why?
- D. Why, ask why?
- E. "Show me where it says that."
- F. Challenge the grounds and basis for an executive session.
- G. Don't take "no" for an answer, but don't get arrested either.
- H. If you don't get access to a meeting or record, see your lawyer – "time is of the essence" in obtaining relief.

**APPENDIX A:**  
**RECORDS AND PROCEEDINGS BEFORE THE JUDICIAL BRANCH**

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**I. Proceedings Before the Judicial Branch**

Trials, hearings, or other proceedings before the judicial branch are not included within the definition of public proceedings, and, therefore, are not within the scope of Maine’s right-to-know law. However, the public generally does have access to proceedings before the judicial branch, subject to certain statutes which explicitly limit whether proceedings before the judicial branch are public.

**A. Pretrial Criminal Proceedings**

A pretrial proceeding is defined as an appearance before the Court at which both parties are present and motions are heard, witnesses testify, or evidence is presented, when the appearance occurs after the beginning of the initial appearance of the accused and before the swearing in of the jury, or in a jury-waived trial, before the calling of the first witness. See Me. Rev. Stat. Ann. tit. 15 § 457(1) (West Supp. 1998). The general public may not be excluded from a pretrial criminal proceeding at which the Court hears an evidence suppression motion except as otherwise provided by statute or unless the Court finds a substantial likelihood that:

- 1) Injury or damage to the accused’s rights to a fair trial will result from conducting the proceeding in public;
- 2) Alternatives to closure will not protect the accused’s right to a fair trial; and
- 3) Closure will protect against the perceived injury or damage. See Me. Rev. Stat. Ann. tit. 15 § 457(1) (West Supp. 1998).

The above limitation on the Court's power to close proceedings to the public does not limit the powers of courts to maintain decorum by ordering unruly spectators from the courtroom, by reasonably limiting the number of spectators, or by exercising similar powers of judges at common law. Me. Rev. Stat. Ann. tit. § 457(1) (West Supp. 1998). In addition, this limitation does not require that a proceeding to determine the validity of a claim of evidentiary privilege, as provided in the Maine Rules of Evidence, be open to the public. Me. Rev. Stat. Ann. tit. § 457(1) (West Supp. 1998).

Art. 1, § 6 of the Constitution of Maine provides that in all criminal prosecutions, the accused shall have a right "[t]o have a speedy, public and impartial trial. . . ." The U.S. Supreme Court's decision, *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 65 L.Ed.2d 973 (1980) also controls public access to criminal trials. Another Supreme Court decision, *Gannett Company, Inc. v. DePasquale*, 443 U.S. 368, 61 L.Ed.2d 608 (1979), governs the exclusion of the press and the public in pretrial suppression hearings.

B. *Minors as Trial Spectators*

Any court may exclude minors as spectators from the courtroom during the trial of any cause, civil or criminal, when their presence is not necessary as witnesses or parties. Me. Rev. Stat. Ann. tit. 14, § 1401 (West 1980).

C. *Divorce and Custody Proceedings*

Information in connection with Department of Human Services child support enforcement activity and medical support recoupment pursuant to the law governing the location of persons, income and property for support of dependents, is confidential and available only for the use of appropriate departmental personnel and legal counsel for the department in carrying out their functions. Me. Rev. Stat. Ann. tit. 19-A, § 2152 (West 1998). The Court must honor the request of either party in a divorce child custody action, unless the other party who has entered an appearance objects, that the public be excluded from the court proceedings. Me. Rev. Stat. Ann. tit. 19-A, § 901(B) (West 1998) If the public is excluded, only the parties, their attorneys, court officers, and witnesses may be present. Id.

D. *Mental Health Commitment Proceedings*

The hearing in mental health commitment proceedings is confidential, unless permission is granted by the person or his or her counsel and the presiding District Court Judge approves. The Court may order a public hearing on the request of the relevant person or counsel. Me. Rev. Stat. Ann. tit. 34-B, § 3864(5)(G) (West 1988). See also Me. Rev. Stat. Ann. tit. 34-B, § 5476(6) (West 1988).

E. *Summary Proceedings Against Delinquent Insurers*

The Court or the Superintendent of Insurance must hold all hearings in summary proceedings privately if requested by the insurer proceeded against; alternately the insurer may request a public proceedings. Me. Rev. Stat. Ann. tit. 24-A, § 4406 (West 1990).

II. *Records of Judicial Branch*

The release of public information and the protection of confidential and other sensitive information is governed by the State of Maine Judicial Branch Public Information and Confidentiality Policy, S.J.C. Docket No. SJC-138, adopted May 28 1996 (“Judicial Confidentiality Policy”). The Public Information and Confidentiality Policy is attached at Appendix 1.A. Certain other statutes effect the confidentiality of other records that are generated by or appear before the judicial branch, some of which are listed below.

A. *Protection from Harassment*

To protect the plaintiff from harassment, the Court may order the omission or deletion of the plaintiff’s address from any papers available to the public. Me. Rev. Stat. Ann. tit. 5, § 4656 (West 1989).

B. *Duties of the State Court Administrator; Investigation of Complaints*

The State Court Administrator has the responsibility of investigating complaints with respect to the operation of the courts and relating to court and judicial security. Such complaints and investigative files are confidential, except with respect to other criminal justice agencies. Me. Rev. Stat. Ann. tit. 4, § 17(3) (West 1989).

C. *Court Order Concerning Consent to Abortion*

In order for the Court to issue an order for the purpose of consenting to an abortion by a minor, a petition must be submitted. The petition is a confidential record and the Court files on the petition must be impounded. Me. Rev. Stat. Ann. tit. 22, § 1597-A(6)(B) (West 1992).

D. *Mental Health Commitment Records*

Any report of commitment proceedings before a District Court are confidential unless permission of the person involved or his or her counsel is granted and the presiding District Court Judge approves. Me. Rev. Stat. Ann. tit. 34-B, § 3864(5)(G), (H) (West 1988). See also Me. Rev. Stat. Ann. tit. 34-B, § 5476(6)(H) (West 1988).

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**APPENDIX A.1:**

**STATE OF MAINE JUDICIAL BRANCH**  
**PUBLIC INFORMATION AND CONFIDENTIALITY POLICY**

(SEE ATTACHED)

APPENDIX A.1

SUPREME JUDICIAL COURT  
DOCKET NO. SJC-138

**State of Maine  
Judicial Branch**

**PUBLIC INFORMATION AND CONFIDENTIALITY POLICY**

I. Scope and Purpose.

This policy governs the release of public information and the protection of confidential and other sensitive information within the Judicial Branch. It is the policy of the Judicial Branch to provide meaningful and easy access to court dockets, case files and related information to the public; to appropriately and consistently respond to non-routine requests by the public for information; to protect information which is designated as confidential from inadvertent or inappropriate disclosure and to assure that sensitive information is only communicated to appropriate recipients outside of the Judicial Branch. This policy applies to all case types, including civil and criminal cases.

II. Definitions.

As used in this policy, the following terms have the following meanings:

- A. “Aggregate information” means a request for information that is not maintained in the requested form and that would have to be assembled or derived from other records.
- B. “AOC” means the Administrative Office of the Courts.
- C. “At and by courts” means information or records of public judicial proceedings that are maintained at a Clerk’s office or transferred to the Records Center or other records storage under the control of a Clerk’s office.
- D. “Clerk’s office” means the office of the Clerk of the Law Court, of the Administrative Court or of any Superior or District Court.
- E. “Criminal history record information” has the same meaning as is defined by 16 M.R.S.A. § 611, sub-§ 3.
- F. “Criminal justice agency” has the same meaning as is defined by M.R.S.A. § 611, sub-§ 4 and includes, but is not limited to, police agencies, border patrol, sheriff’s offices, probation and parole, jails, Department of Attorney General and District Attorneys’ offices.
- G. “Confidential information” means:

1. the information or a portion of the information is made confidential by statute, policy or rule, or
  2. the information or a portion of the information was impounded or sealed by a judge or is the subject of a pending motion or other request for impoundment or sealing<sup>1</sup>, or
  3. the information is contained in judge's or law clerk's notes, judge's or law clerk's drafts, communications between judges or clerks regarding the decision of cases, or other judicial working papers, or
  4. the information is contained in or relates to a pending request for or an outstanding search warrant, arrest warrant, or other document that contains confidential law enforcement information.
- H. "Judge" means a Justice of the Supreme Judicial Court, Superior Court or Administrative Court, a Judge of the District Court, or the Chief Justice or Judge of those courts.
- I. "Non-conviction data" has the same meaning as defined by 16 M.R.S.A. §611, sub-§ 9.
- J. "Non-criminal justice agency" means a governmental entity or agency which is not engaged in the administration of the criminal justice system.
- K. "Non-routine request" means a request for information that is not contained in case files, dockets, indices, lists or schedules, a request that seeks confidential or sensitive information, or a request for aggregated information that cannot be responded to without a material expenditure of staff time.
- L. "OIT" means the Office of Information Technology within the Administrative Office of the Courts.
- M. "Public information" means any information that is not confidential information.
- N. "Routine request" means a request for information that is contained in case files, dockets, indices, lists or schedules, or a request that does not seek confidential, sensitive or controversial information and that can be responded to without a material expenditure of staff time.
- O. "SBI" means State Bureau of Identification.
- P. "Scheduling information" means information listing or pertaining to the scheduling of a judicial activity related to a pending case.

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<sup>1</sup> In some limited circumstances, all information about a case may be impounded, specific information within a case, such as the identity of a party, or the fact that an impoundment motion was made and granted may be impounded or sealed. In these circumstances, judges need to make the scope of the impoundment order clear to the Clerk's office and Clerk's office and OIT staff must take appropriate steps to ensure that the impoundment information is not reflected in publicly available materials such as dockets, indices and displays at public access terminals.

- Q. “Standing request” means a request for information or record or a type of information or record that is intended to be a continuing request, with supplementary responses as new information becomes available.

III. Records maintained at or by courts.

A. In-Person Requests.

1. Information and records relating to cases that are maintained in case files, dockets, indices, lists or schedules by and at the District, Administrative, Superior or Supreme Judicial Courts are generally public information and access shall be provided to a person who requests to inspect them or have copies made by Clerk’s office staff unless the information or a portion of it is confidential as provided in Part II, ¶ G.
2. Records that are confidential or that contain information designated as confidential, materials that have been impounded or sealed by a judge, materials that are subject to a pending motion or other request for impoundment or sealing, or judge’s and law clerk’s notes and work papers must be placed in a separate sealed envelope in the file, and the file or record must have a label conspicuously affixed to it indicating that the file or record contains confidential materials.<sup>2</sup> If a request for access is made concerning the non-confidential portion of a record, the clerk shall remove the confidential materials before making the record available for inspection. Requests for inspection of confidential materials contained within a case file must be made by motion with notice to all parties of record as provided in the Maine Rules of Civil Procedure or Maine Rules of Criminal Procedure.
3. Criminal history records containing both conviction and non-conviction data maintained by and at a Clerk’s office are open to public inspection and copying, and must be supplied if the records or indexes are not located in a publicly accessible place.
4. If there is any doubt whether information is confidential information Judicial Branch personnel should proceed cautiously in responding to the information request and provide access to information only when it is clearly appropriate to do so, or after consultation with a judge, a Regional Court Administrator or the Public Information Officer. Non-routine requests should be referred to the Public Information Officer.
5. In-person requests for information that would require Clerk’s office staff to perform research or provide aggregate information and in-person standing requests must be declined, unless the Chief Judge or Justice has

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<sup>2</sup> Clerks are encouraged to use a separate filing system for confidential materials, in which the materials are separately kept from the case files, where space and operational considerations permit such a system.

Judges may also maintain a confidential filing system for notes and work papers, or may destroy them at the conclusion of the case.

pre-authorized a response, and the requestor should be informed that the requestor may conduct the research by examining the dockets themselves, or by using the public access terminal where one is available.

6. Admitted and proffered exhibits, including both documents and physical items, are part of the public record of a case, and while in the custody of the Clerk's office, are available for inspection and copying. Exhibits submitted to the clerk, but never proffered or admitted, must be made available to the submitting party, but are subject to inspection or copying while in the custody of the Clerk's office. Public copying or inspection may be limited by the terms of a protective order or by a judicial order or administrative order governing the handling of contraband or dangerous materials.
7. Unless a juror has requested protection of certain information, jury lists and questionnaires, except for Confidential Jury Questionnaires in sex cases, are public information. Trial judges may protect juror information on request, or may issue general protective orders covering juror or jury information.

B. Telephone requests for information.

1. Due to the risks of misunderstanding, misinterpretation or incorrect quotation of oral information the policy of the Judicial Branch is to carefully limit the release of information by telephone. Clerk's office staff may respond to telephone requests for information only in the following circumstances:
  - a. Information about the status of a particular case may be given to parties, counsel, or other agencies with an interest<sup>3</sup> in that matter, and
  - b. Scheduling information on non-confidential cases may be released to any caller.
  - c. Information may be given to criminal justice agencies as follows:
    - i. Police emergencies or other urgent legitimate needs. If information is needed to respond to an emergency or for another situation in which an immediate response is needed, such as a patrol stop, border check, suspect in custody, check of imposed sentencing conditions, including conditions of probation, or a check of pending charges against a person under a person under investigation, court personnel may provide the requested information by

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<sup>3</sup> If a clerk has reason to doubt that the caller is a party or party's counsel, the clerk should call back at the telephone number kept on file for that party or counsel. Agencies with an interest in a matter include, for example, Probation and Parole, the Department of Corrections or other law enforcement agencies.

telephone, with a caution that it is partial information and that it only reflects the information maintained at that court.

- ii. Other criminal justice agency requests. Court personnel should evaluate the nature of the requested information and the need for a quick response against the other workload considerations in the court. The general rule is not to respond by phone, but to refer the requestor to SBI or to tell the requestor to get the information when next in court. (For example, to pick up disposition copies of abstracts or to use the public access terminal.) However, for one-time requests when common sense dictates it, court personnel may provide the information over the telephone.
  - d. Information may be given to non-criminal justice governmental agencies, (i.e. DHS, DEP, military recruiters, etc.) in limited circumstances. These requests, in general, should not be responded to over the phone and should be responded to in the same manner as other telephone requests. However, all situations cannot be anticipated and clerks will sometimes be presented with an urgent need for information by a non-criminal justice agency (i.e. a request from DHS about a criminal record when they are in the process of preparing an emergency child protective matter). In those limited situations clerks have the discretion to respond by telephone, with the caution that the provided information is partial and reflects only the information maintained at that court.
2. Telephone requests for comprehensive criminal history record information must be referred to SBI (624-7009) pursuant to 16 M.R.S.A. § 616. Telephone requests for traffic record information must be referred to the Bureau of Motor Vehicles (287-2386) which maintains records of motor vehicle violations pursuant to 29-A M.R.S.A. § 2607. Telephone requests for Fish and Wildlife offense information should be referred to the Maine Warden's Service (287-5221) which maintains records of violations of related portions of Title 12. Telephone requests for Marine Resources offense information should be referred to the Marine Patrol (624-6571) which maintains records of violations of related portions of Title 12.
3. In order to eliminate the dangers of misunderstanding or inaccuracy telephone requestors of other information about a specific case should be told to make a written inquiry or to visit the court to examine the records themselves.
4. Telephone requests for information that would require Clerk's office staff to perform research or provide aggregate information and standing requests for categories of information must be declined, and the requestor informed that the requestor may conduct the research at the Clerk's office.

C. Mail requests for information.

1. Mail requests for comprehensive criminal history record information should be returned to the sender with a memo referring them to the State Bureau of Investigation pursuant to 16 M.R.S.A. §616. Mail requests for traffic record information should be similarly returned and referred to the Bureau of Motor Vehicles. Mail requests for Fish and Wildlife violation information should be similarly returned and referred to the Maine Warden's Service. Telephone requests for Marine Resources offense information should be referred to the Marine Patrol (624-6571) which maintains records of violations of related portions of Title 12. The standard referral form should be used for this purpose.
2. Routine mail requests that make a specific inquiry related to an identified case should be responded to in writing, with appropriate copy and attestation fees.
3. Mail requests for information that would require Clerk's office staff to perform research or provide aggregate information and standing requests must be refused, and the requestor informed that the requestor may conduct the research at the Clerk's office unless the Chief Judge or Justice has pre-authorized a response. Non-routine mail requests should be referred to the Public Information Officer in the same manner as in-person requests.

D. Transcripts or recordings of court hearings.

Requests for transcripts or recordings of court hearings are governed by Administrative Orders. See, SJC Administrative Order, Effective June 1, 1988 and Administrative Order, Effective March 15, 1995.

IV. Records maintained at or by AOC or OIT.

A. Routine information requests.

Staff members may respond to routine requests for non-confidential information if the information can be provided without a material expenditure of staff time to compile or aggregate the requested information and if the request does not involve personnel information or other sensitive or controversial issues. The staff member shall notify the Public Information Officer of the nature of the request and the type of information provided.

B. Non-routine information requests.

If, either

1. a formal request for information is made,
2. responding to a request will require a material expenditure of staff time, or

3. a request involves confidential information or information that the receiving staff member considers potentially sensitive or controversial in light of the identity of the requestor, the content of the information, or the nature of the request,

the staff member shall refer the requestor to the Public Information Officer.

The Public Information Officer shall make a recommendation as to how to respond to these requests. Recommendations made by the Public Information Officer may be reviewed by the State Court Administrator. A decision by the State Court Administrator constitutes final agency action.

C. Routine Personnel information requests.

Employee personnel records are confidential pursuant to 5 M.R.S.A. § 7070. An employee may request information from that employee's personnel file or employment records by contacting the Director of Human Resources. An employee may also authorize a third party to verify employment or to obtain specified information from the employee's file or records through the Director of Human Resources. A union may request information about an employee or group of employees, to the extent authorized by statute or an applicable collective bargaining agreement, from the Director of Human Resources. The Director shall provide the requested information unless the request is not properly authorized, or violates the affected employee's rights to privacy, and in those circumstances the Director shall refer the request as provided in paragraph B.

Requests for information pertaining to an employee or group of employees, including performance or statistical information, from requestors other than the employee or an authorized union are non-routine requests subject to referral under paragraph B.

D. Fees.

Fees will be charged for the provision of documents or information in accordance with applicable statutes, court rules and policies, where they apply. If there is no applicable statute, court rule or policy which applies to a specific document or record, inspection of the document shall be provided at no charge and copies of documents shall be made and provided at the rate then in effect as set by the Fee Policy.

Requests for electronic data, or for extracts, abstracts or compilations of documents or records which involve a material expenditure of effort by Judicial Branch personnel require a special determination and will be responded to after consideration of:

1. the availability of personnel to fulfill the request,
2. the response time, if any was requested, and
3. the other workload of the affected staff.

If such a request is granted the requestor shall be assessed a fee which is sufficient to cover the Judicial Branch's full actual costs, including staff time and associated overhead, for producing the requested information. The response and fee shall be determined by the Public Information Officer in consultation with the State Court Administrator.

V. Dissemination of other information.

Judicial Branch employees are limited from disclosing court related information other than in the performance of an official duty by the Judicial Branch Code of Conduct.

Judicial Branch or other governmental employees who seek information for reasons other than the performance of an official duty must file a written request with the Public Information Officer and will receive an official response.

The requested information may or may not be public information depending upon the context, and if the information is determined to be public, the Judicial Branch needs to keep a record of the fact that the request was made and properly responded to.

VI. For further information contact:

The Judicial Branch Public Information Officer; the appropriate Regional Court Administrator; or the State Court Administrator.

(Final Version 1  
Adopted May 28, 1996)  
SDS\PF\FILES\SDSCHUTZ\RIGHT TO KNOW\APPENDIX A.1.DOC

**APPENDIX B:**  
**EXEMPT PUBLIC PROCEEDINGS**

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**Introduction**

Statutory exemptions outside the Freedom of Access Act rendering public proceedings closed to the public are scattered throughout Maine’s law and render a number of proceedings confidential. Me. Rev. Stat. Ann. tit. 1, § 403 (West 1989).

A. Legislative Investigating Committees

The Legislature has the power to create a committee and delegate it the power to administer oaths, issue subpoenas, and take depositions in connection with any clearly stated, and therefore limited, subject of study or investigation. See Me. Rev. Stat. Ann. tit. 3, § 411, § 412 (West 1989). If an investigating committee so decides, testimony before it can be taken at a closed session. See Me. Rev. Stat. Ann. tit. 3, § 427 (West 1989). In addition, if any witness so requests, his or her testimony must be taken in executive session, unless otherwise decided by investigating committee action. Id.

B. Commission on Governmental Ethics and Election Practices

By an affirmative vote of at least three of the nine members of the Commission on Governmental Ethics and Election Practices, the public may be excluded from any meeting, hearing, or session. See Me. Rev. Stat. Ann. tit. 1, § 1005 (West 1989 and Supp. 1998). (See confidentiality of records of commission).

C. Confirmation Pre-Hearings and Hearings.

The appropriate joint standing committee of the legislature must hold a pre-hearing conference for each nominee for a position for which legislative confirmation is required. See Me. Rev. Stat. Ann. tit. 3 § 154 (West Supp. 1998). If the committee determines that it is necessary to avoid damage to the reputation of the nominee or that there are issues that should be discussed privately, the pre-hearing conference may go

into executive session. *Id.* at § 156. During such a session only the committee members and the partisan staff assistants may attend. *Id.* Public Hearings in the confirmation and appointment process must be held in accordance with Me. Rev. Stat. Ann. tit. 3, § 157 (West Supp. 1995).

D. *Concealed Firearm Permits.*

All proceedings relating to the issuance, refusal or revocation of a permit are not proceedings for purposes of the Freedom of Information Act. See Me. Rev. Stat. Ann. tit. 25, § 2006 (West 1988).

E. *Sterilization Proceedings*

Court proceedings for persons seeking sterilization or being considered for sterilization are closed to the public unless the person otherwise consents. Me. Rev. Stat. Ann. tit. 34-B, § 7014(1) (West 1988 and Supp. 1998).

F. *Communicable Diseases.*

Hearings under the law governing the control of communicable diseases are confidential and no report of the proceedings may be released to the public, unless by request of the subject of the hearing and with court approval. Me. Rev. Stat. Ann. tit. 22, § 811(6)(E) (West 1992).

G. *Maine Drug Enforcement Agency Advisory Board.*

All meetings of the Maine Drug Enforcement Advisory Board are subject to the Freedom of Access Act, except that those meetings may be held in executive session to discuss any case investigations or any disciplinary actions. Me. Rev. Stat. Ann. tit. 25, § 2957 (West Supp. 1995).

**APPENDIX B.1:**

**SIGMUND D. SCHUTZ, "FREEDOM OF ACCESS LAW: IT'S NOT EASY  
KEEPING SECRETS," 14 Me.Bar.J. 138-142 (Apr. 1999).**

(SEE ATTACHED)

# Freedom of Access Law: It's Not Easy Keeping Secrets

*Sigmund D. Schutz, Esquire*

*The generation that made the nation thought secrecy in government one of the instruments of old world tyranny and committed itself to the principle that a democracy cannot function unless the people are permitted to know what their government is up to.*

—Henry Steele Commager<sup>1</sup>

## INTRODUCTION

Maine's Freedom of Access Act ("FAA" or "Act")<sup>2</sup> is the wellspring of a broad public right to open government meetings. Over time this right has become subject to many exemptions, over 80 by the author's count. Each exemption permits government discussion and deliberation of a category of subjects in secret. Concern over inappropriately broad interpretation of these exemptions by public bodies has triggered legislative proposals in the current session aimed at mitigating abuses.<sup>3</sup> It is against this backdrop that the Law Court held last summer in *Underwood v. City of Presque Isle* that public bodies have the burden of proving that an executive session was lawful.<sup>4</sup> The decision in *Underwood* has already been applied to hold that a Town failed to prove that its actions during executive session were within the FAA.<sup>5</sup> Although *Underwood* did not overrule prior precedent, the Law Court recognized that it was contrary to what "prior opinions may have suggested."<sup>6</sup>

This article will consider the practical effects of *Underwood* on

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governmental bodies subject to the FAA. *Underwood* guides the two basic tasks confronting a public body wishing to hold a closed meeting. The first task is to make an accurate and conservative determination of the scope of the subjects that may be discussed in executive session. This determination should be made from a post-*Underwood* mind-set. Every

subject presumptively cannot be discussed in executive session unless proven otherwise. The second task is procedural, to carefully adhere to the procedures for convening an executive session and to create a supporting record. A review of these two essential tasks in the wake of *Underwood* sheds light on the burden facing public bodies considering whether to enter executive session.

## I. FIRST TASK: ERR ON THE SIDE OF PUBLIC ACCESS.

The public has a right to notice<sup>7</sup> and to broad access to public proceedings. Public proceedings are expansively defined to include "transactions of any functions affecting any or all citizens of the State" by nearly all state, county, or local boards, commissions or committees, including those of the University of Maine, entities controlled by the state, and political and administrative subdivisions.<sup>8</sup> The most notable set of proceedings excluded from the definition of public proceedings are those of the judiciary, which are governed by specific court rules.<sup>9</sup> The argument that a fact gathering meeting was not a "public proceeding" was rejected by Justice Lipez while he was on the Law Court in a well reasoned decision giving the term "transactions" its broad, plain meaning.<sup>10</sup> Overall, the definition of "public proceedings" is very broad, including virtually all meetings of individuals and entities affiliated with the government.

The otherwise broad ambit of “public proceedings” that cannot be closed to the public is undermined by the multitude of exceptions.<sup>11</sup> The FAA itself sets forth five protected subjects that may lawfully be discussed in executive session; summarized as follows:

1. Discussion of employment issues only if public discussion could be reasonably expected to cause damage to the reputation or the individual’s right to privacy would be affected;<sup>12</sup>
2. A school board’s discussion of the suspension or expulsion of a student;<sup>13</sup>
3. Discussion of property issues that would prejudice the competitive or bargaining position of the governmental body;<sup>14</sup>

4. Negotiations between a public employer and public employees;<sup>15</sup> and

5. Consultations between a public body and its Attorney concerning pending or contemplated litigation, matters that are confidential under the Maine Code of Professional Responsibility, or matters that would clearly place the public body at substantial disadvantage.<sup>16</sup>

A practical difficulty is that the Act does not cite or cross-reference the many additional exceptions throughout other areas of Maine law. There are at least seven specific exemptions applicable to public proceedings outside the FAA that can be invoked by a governmental body.<sup>17</sup> In addi-

tion, discussions of information contained in records designated confidential are also closed.<sup>18</sup> By the author’s count, there are about seventy statutory exceptions rendering a category of records confidential.<sup>19</sup> Clearly, many special interest groups and programs with confidentiality needs have won the legislature’s approval of special protection. Most recently, effective July, 1998 the laws providing confidentiality to municipal and county employee information were broadened in response to a decision granting public access in *Doe v. Dept. of Mental Health*.<sup>20</sup> Although an executive session may be held to discuss only specifically enumerated matters and “no others,”<sup>21</sup> there are many such matters. Thus, the initial task is to determine whether there is any law pertaining to the subject

<sup>1</sup> *Environmental Protection Agency v. Minsk*, 410 U.S. 73, 105 (1973) (Douglas, J., dissenting) (quoting Henry Steele Commager, *The New York Review of Books*, Oct. 5, 1972 at 7).

<sup>2</sup> 1 M.R.S.A. §§ 401-410.

<sup>3</sup> Rep. Kevin Glynn (R-South Portland) is sponsoring in the current 119<sup>th</sup> Session L.D. 205, “An Act to Require Electronic Recording of Closed Sessions of Public Bodies”; and L.D. 437, “An Act to Clarify the Law Regarding Executive Sessions of Public Bodies”. The former Bill, L.D. 205, as originally drafted would require public bodies to record executive sessions electronically or by videotape and to make those records public under certain circumstances. The latter Bill, L.D. 437, would require that the parties to a labor negotiation be noted on the record and that a public body must state the case name of pending litigation on the record prior to entering executive session for this purpose. Neither Bill has survived the Judiciary Committee as drafted. For updates on the status of this legislation, please see Rep. Glynn’s website, [www.glynn.org](http://www.glynn.org).

<sup>4</sup> *Id.*, 1998 ME 166, ¶ 23, 715 A.2d 148. Representative Chick of Lebanon has presented L.D. No. 1857, “An Act To Amend The Freedom of Access Laws,” which would clarify that 72-hour notice prior to the public meeting be required. The Act would also require the creation of an agenda listing the items to be discussed at the public meeting and much needed tougher penalties for violations. For the first time, a private party would be able to recover a monetary penalty for a violation of the law.

<sup>5</sup> *Id.*, AP-98-25, slip op. at 7 (Cumberland Cty. Sup.Ct., August 20, 1998) (Justice Susan Calkins).

<sup>6</sup> *Underwood*, 1998 ME 166, ¶ 23.

<sup>7</sup> 1 M.R.S.A. § 406.

<sup>8</sup> 1 M.R.S.A. § 402(2).

<sup>9</sup> The Law Court refused to enforce a statute regulating proceedings in Maine trial courts by opening them to the media, finding such regulation to be an unconstitutional violation of the separation of powers. *See* Direct Letter of Address to Joseph E. Brennan, Charles P. Pray and John L. Martin dated April 25, 1986 (signed by every Justice of the Law Court), citing Me. Const. Art. VI, § 1. The court cited its “power to preserve the ability of the judiciary to function in the manner determined to be most conducive to the performance of its assigned task.” *Id.* at 6.

<sup>10</sup> *Guy Gannett Publishing Co. v. City of Portland*, CV-92-858, *supra*, at 7.

<sup>11</sup> 1 M.R.S.A. § 403. “Except as otherwise provided by statute or by section 405, all public proceedings shall be open to the public, any person shall be permitted to attend any public proceeding and any record or minutes of such proceedings that is required by law shall be made promptly and shall be open to public inspection.” *Id.* (emphasis added).

<sup>12</sup> 1 M.R.S.A. § 405(6)(A). Notwithstanding that a closed meeting could otherwise be held on an employment-related issue, the legislature directed that all “budget” and “budget proposal” issues be discussed in public. *Id.* The legislative history of the provision indicates that the terms “budget” and “budget proposal” are meant to be interpreted broadly, specifically including discussions of the salary for a job or set of jobs, and even whether a particular job should continue to exist. House Legis. Record, 113th Legislature (April 9, 1987) (L.D. 1161). Despite what this legislative history indicates about the intent of the budget provision, the legislature failed to amend a provision permitting discussion or consideration of the “compensation” of an individual or group of public officials when that discussion could be reasonably expected to cause damage to the reputation or the individual’s right to privacy would be violated. This may have been an oversight. In sum, the term budget in this context generally will have wide applicability when a public body is considering the expenditure of public funds.

<sup>13</sup> 1 M.R.S.A. § 405(6)(B).

<sup>14</sup> 1 M.R.S.A. § 405(6)(C).

<sup>15</sup> 1 M.R.S.A. § 405(6)(D).

<sup>16</sup> 1 M.R.S.A. § 405(6)(E).

<sup>17</sup> *See* 3 M.R.S.A. § 427 (legislative investigating committees); 1 M.R.S.A. § 1005 (Commission of Governmental Ethics and Election Practices); 3 M.R.S.A. § 154 (confirmation hearings and pre-hearings); 25 M.R.S.A. § 2006 (concealed firearm permits); 24-B M.R.S.A. § 7014 (sterilization proceedings); 22 M.R.S.A. § 811 (communicable diseases); and 25 M.R.S.A. § 2957 (meetings of the Maine Drug Enforcement Advisory Board).

<sup>18</sup> 1 M.R.S.A. § 405(6)(F).

<sup>19</sup> *See* “Guide to Maine Freedom of Access Law,” published by Preti, Flaherty, Beliveau, Pachios & Haley, LLC (1996).

<sup>20</sup> *Id.*, 699 A.2d 422 (Me.1997). The language of 30-A M.R.S.A. § 2702 was amended, effective July 9, 1998. Me.Legis.Serv. Ch.769 at 702 (West) to require disclosure only of decisions imposing or upholding discipline against municipal or county employees.

<sup>21</sup> 1 M.R.S.A. § 405(6).

under consideration for discussion in executive session.

No matter whether a Court or the public body itself is determining the scope of an exemption, a decision is often hampered by the lack of reported authority and the vagueness of many of the exemptions. In making tough interpretive decisions, the public body and the court must keep the policy and purpose of the FAA in mind.<sup>22</sup> The Legislature has flatly instructed that the Act be interpreted to promote free and unrestricted access to government decision-making:

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. . . . This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.<sup>23</sup>

The Law Court has followed the Legislature's instruction, declaring "to a maximum extent the people's business must be done in public."<sup>24</sup> The Courts uniformly reject arguments that an executive session was permissible because it would be impractical, inconvenient, or inefficient to hold a public discussion on a subject.<sup>25</sup>

Just as the Act itself should be interpreted to promote public access, exceptions to the Act, whether found within the Act itself or in other provisions strewn through Maine law, should be interpreted narrowly. In *Underwood* the Court advised, "any statutory exceptions to the requirement of public deliberations must be narrowly construed."<sup>26</sup> The Act and exceptions to it, wherever found in Maine law, are interpreted to promote public access.

The *Underwood* decision confirms how the policy behind the FAA

guides every aspect of cases arising under it, including the procedural issue of burdens of proof. A *ratio decidendi* of *Underwood* was that the "underlying purposes and policies" require a public body prove that its executive session is lawful. The goal of promoting free access has now been applied not only to the substantive provisions regulating access to meetings, but also to a key procedural issue in FAA cases.

By allocating the burden of proof *Underwood* also teaches a mind-set. Public bodies should presume that a subject must be discussed openly and that a closed meeting is presumptively illegal. A decision to hold an open meeting is the best way to avoid a successful challenge. To the extent a public body can deliberate openly it should seek ways to do so, particularly as some of the exceptions to the Act permit a public body the option of going into executive session, rather than requiring it. In addition, courts will carefully police decisions to go into executive session. If there is an argument that an exception does not apply, public policy will frequently dictate that the exception will be found inapplicable. A public body's

decision to go into executive session should be made conservatively, firmly erring on the side of openness.

## II. SECOND TASK: ADHERE TO THE PROCEDURE FOR ENTERING EXECUTIVE SESSION AND GENERATE AN ADEQUATE RECORD.

Public bodies should have known all along of the necessity to strictly follow the procedure for convening an executive session, but the consequences are now more clear than ever before: the Town that does not follow the appropriate procedures will find it difficult or impossible to meet its burden of proof. In *Underwood*, the Law Court held:

If the FAA is to be liberally construed and applied to promote its underlying purposes and policies. . . . the burden should not be on the party asserting a violation to establish what the public body did and said at a meeting from which the party was excluded. Rather, a public body charged with violating terms of the FAA during an executive session has the burden of proving that its actions during the executive session complied with an exception to the FAA's open meeting requirement.<sup>27</sup>

<sup>22</sup> The legislature instructed that executive sessions "shall not be used to defeat the purposes" of the FAA. 1 M.R.S.A. § 405(1).

<sup>23</sup> 1 M.R.S.A. § 401.

<sup>24</sup> *Moffett v. City of Portland*, 400 A.2d 340, 347-348 (Me.1979).

<sup>25</sup> The argument that government efficiency warrants an executive session is clearly attractive to towns, and was most recently raised by the Town of Scarborough in its brief to Justice Calkins in *Guy Gannett Communications v. Town of Scarborough*, who rejected the argument. The limited legislative history to the Freedom of Access Act does contain a brief but notable discussion by Rep. Henderson of a Bangor ordinance similar to a proposed bill, ultimately passed, that shapes Maine's executive session law. Rep. Henderson noted the opposition of the City Manager and other "small groups" to a Bangor ordinance similar to the proposed state legislation restricting the availability of executive sessions:

[During discussion of a Bangor ordinance similar to the proposed executive session amendments, there] were the traditional. . . reactions from the small groups of people who make decisions on the feeling that they have greater wisdom than the rest, by raising questions about interference, and that people would be listening in too much and might be disrupting the meetings. . . and the City Manager was generally of the same persuasion that [the ordinance] interfered with the smooth functioning and administration of things that maybe people ought not to get involved with.

. . . .  
I think [Bangor ordinance restricting the availability of executive sessions] should be extended to all of the citizens in the state and I don't think it would do any harm.

House Legis. Record, 107th Legislature (May 19, 1975) at B1122. The legislature was clearly aware that some objected to public access as an "interference" in the activities of government, but expressly rejected such considerations and passed the law. See also *Ohio ex rel Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St.3d 165, 15 Med.L.Rptr. 2083, 2086 (1988) ("The ends sought by secret discussion of the public's business, no matter

For the first time, the Law Court explicitly dispelled any doubt whether public bodies bear the burden of proving compliance with exceptions to the FAA. The burden of proof has a number of practical implications for proper procedures.

### A. Before Executive Session

After making a well considered decision that a subject may permissibly be discussed in executive session, the public body must then properly go into executive session. In light of *Underwood*, sound practice dictates that a public body should create a detailed record supporting its decision. The first step in carrying its burden of proof is to state, on the record, the factual predicate leading the public body to believe an exception applies. For example, if the public body wishes to receive from its attorney updates on the status of pending litigation, the name of the case, its status as pending, and that the town attorney is present and wishes to give an update should be made on the record.<sup>28</sup> The public body should deliberate on the record whether the predicate facts warrant an executive session. A statement on the record of the factual predicate will

help to ensure an adequate basis for a decision to go into executive session.

After a factual predicate is on the record, the body must then pass a motion stating the “precise nature of the business of the executive session.”<sup>29</sup> This motion should set forth on the record the precise subjects for discussion and purpose of the executive session.<sup>30</sup> The motion should be akin to a specific agenda for discussion in executive session. The public body should be self-consciously creating a record clearly establishing a reasoned basis to close a public proceeding, and limiting the subjects to be discussed.<sup>31</sup> A failure to create an adequate record should itself be a basis for finding an executive session illegal, given that the policy behind the Act applies to procedures for invoking executive sessions as much as it does to the substance of the topics discussed. An adequate record is also the only means by which a public body could hope to avoid a time-consuming trial of the facts of the executive session.<sup>32</sup> Moreover, a citizen questioning a closed session could be convinced, based on the carefully wrought public record, that the public body complied with the law. The public body itself can also

rely on the record as evidence that it did not discuss impermissible subjects in executive session.

After a satisfactory record is created, the present and voting members of the body must then approve the motion by a public recorded vote of 3/5 of the members.<sup>33</sup>

### B. During Executive Session

A motion to deliberate on specific subjects permitted by law to be discussed in a closed session does not ensure that those subjects, and only those subjects, will actually be brought up in executive session. Discipline is required. Discussion cannot extend beyond the scope of the motion to go into executive session,<sup>34</sup> or beyond the scope of the particular exemption justifying an executive session. For example, no response may be made to a question by a member of a public body that calls for an answer beyond the scope of the executive session.<sup>35</sup> While there is not necessarily a bright line between permissible and unlawful deliberation,<sup>36</sup> the public body must keep in mind that a court may be asked to make an after-the-fact review of deliberations held in executive session to determine if in fact only matters that could legally be discussed were discussed.<sup>37</sup> If discussion strays, a challenge should succeed.

Because the public body carries the burden of proving that discussion was limited only to those permitted subjects of deliberation in executive session, it should consider keeping contemporaneous notes or minutes of the subjects discussed in executive session. Rep. Kevin Glynn (R-South Portland) introduced legislation this session that would have required electronic or video tape recording of executive sessions.<sup>38</sup> The proposal has not survived the Judiciary Committee. For a public body considering a highly contentious issue, this may make sound voluntary practice. These descriptions or recordings may have

how admirable or altruistic, never justify the means.”).

<sup>26</sup> *Underwood*, *supra*, at ¶ 16. See also *Moffett v. City of Portland*, 400 A.2d 340, 348 (Me.1979) (“[A] corollary to such liberal construction of the Act is necessarily a strict construction of any exceptions to the required public disclosure.”); *Bangor Pub. Co. v. City of Bangor*, 544 A.2d 733, 736 (Me.1988) (“Because the Freedom of Access Act mandates liberal construction of its terms . . . , we must interpret strictly any statutory exceptions to its requirements.”).

<sup>27</sup> *Underwood v. City of Presque Isle*, 1988 Me. 166 ¶ 19.

<sup>28</sup> See *Vella v. Town of Camden*, 677 A.2d 1051, 1055 (citations omitted) (Me.1996).

<sup>29</sup> 1 M.R.S.A. § 405(4).

<sup>30</sup> In *Vella v. Town of Camden*, the Law Court upheld an executive session in which the town attorney updated the town council on the status of litigation where the record “clearly established” that the “stated . . . purpose” of the session was a permitted subject of closed deliberation. *Id.*, 677 A.2d at 1055.

<sup>31</sup> See *Vella*, 677 A.2d at 1055 (upholding executive session where the record “clearly established” a stated purpose to confine discussion to permitted subjects of deliberation) and *Wisconsin ex re. Journal/Sentinel, Inc. v. Pleva*, 16 Med.L.Rptr. 2262, 2265 (Wisc.Ct.App.1989) (a “reasoned basis to close” a public proceeding must be placed on the record).

<sup>32</sup> *Underwood*, *supra* at ¶ 22.

<sup>33</sup> 1 M.R.S.A. § 405(3).

<sup>34</sup> 1 M.R.S.A. § 405(5).

<sup>35</sup> *Guy Gannett Publishing Co. v. City of Portland*, CV-92-858, slip op. at 12 (Cumberland Ct. Sup. Ct., Sept. 24, 1992) (Lipez, J.) at 10 n.9.

<sup>36</sup> *Underwood*, *supra*, at ¶ 16.

<sup>37</sup> *Guy Gannett Publishing Co. v. City of Portland*, CV-92-858, slip op. at 12 (Cumberland Ct. Sup. Ct., Sept. 24, 1992) (Lipez, J.) at 10.

<sup>38</sup> See, *supra*, note 4.

to be disclosed to the Court *in camera* to show compliance with the law or to the public in entirety or as redacted if there were a violation. Notes or minutes may also be the basis for sworn statements that may be submitted to the judge *in camera*.<sup>39</sup> To the extent the public body fails to keep contemporaneous records of the subjects discussed in executive session, it opens itself to successful challenges. Minutes or notes from a meeting could be given greater probative weight than vague affidavits proffered after a meeting, particularly when the public body did not make a unanimous decision to go into executive session. It would be unfortunate if different members of the same public body have differing recollections of subjects discussed in executive session and offer conflicting affidavits. The public body must be ready to meet its burden of proof if challenged.

### C. After Executive Session

The ultimate decision or “official action” on any subjects discussed in a closed session must be made publicly after the executive session is over.<sup>40</sup> For example the decision to narrow the number of candidates for a position is an “official action” that cannot be made in executive session.<sup>41</sup> The final vote, or action, even if no final vote is required, must be public. Thus, even when a public body may deliberate in a closed session, it may never keep its final decision from the public.

A public body which recognizes that, for one reason or another, an executive session should not have been held, or that subjects were improperly discussed in executive session, ought to immediately come clean. The public body should admit its error and voluntarily describe what happened in executive session, answer questions about the contents of the executive session, and, if appropriate, hold a new session open to the public.

Of course, any action taken in executive session must be nullified.<sup>42</sup> As former Law Court Justice Lipez recognized, there is no way to recreate secret deliberations,<sup>43</sup> so efforts should be made throughout executive session to avoid any improper subjects.

### CONCLUSION

The line of cases leading to *Underwood* has practical implications for public bodies. The burden of proving compliance with the FAA requires public bodies to set forth a reasoned basis for going into executive session on the record. Insufficient care in creating a record invites a successful challenge, and likely will require a costly fact-finding trial in the Superior Court if the public body is to have any hope of success. Public bodies must recognize that their responsibility is to err on the side of openness. Courts will enforce this

duty. Open government deliberation is not only a rule of law, but a matter of public responsibility. According to Madison, “[a] popular Government, without popular information, or the means of acquiring it, is but a prologue to a farce or tragedy...”<sup>44</sup> To the extent the public can have access to governmental decision-making, it should. Although a burden of proof is a procedural tool to decide disputes, it should have a considerable effect on the number of executive sessions held and the care with which public bodies choose to go into executive session.

<sup>39</sup> *Id.* at 11.

<sup>40</sup> 1 M.R.S.A. § 405(2).

<sup>41</sup> *Guy Gannet Communications v. Town of Scarborough*, AP-98-25, slip op. at 7 (Cumberland Cty. Sup.Ct., August 20, 1998) (citing *Booth Newspapers v. University of Michigan Board of Regents*, 507 N.W.2d 422, 430-431 (Mich.1993)).

<sup>42</sup> *Id.*

<sup>43</sup> *City of Portland*, *supra* at 7-9.

<sup>44</sup> 9 Writings of James Madison (Hunt Ed. 1910) 103.

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## Introduction

Numerous statutes throughout the laws of Maine except a wide variety of public records from the Freedom of Access Act by rendering them confidential or exempt from the Act. Me. Rev. Stat. Ann. tit. 1, § 408 (West 1989 & Supp. 1995) and Me. Rev. Stat. Ann. tit. 1, § 402(3)(A) (West 1989 & Supp. 1995).

### A. Hospital and Medical Records

#### 1. Health Care Records

Detailed provisions governing access to health care information are contained at Me. Rev. Stat. Ann. tit. 22, §§1711, 1711-A, 1711-B, and 1711-C (West 1992 & Supp. 1998), as amended by 1999 Me. Legis. Serv. Ch. 512, Part A (Health and Welfare-Healthcare Information-Confidentiality).

#### 2. Results of Antibody to HIV (AIDS) Test

The results of an HIV test may not be disclosed except under very specific circumstances. Me. Rev. Stat. Ann. tit. 5, § 19203 et seq. (West 1989 & Supp. 1998), as amended by 1999 Me. Legis. Serv. Ch. 512, Part B.

#### 3. Mental Examinations of Criminal Defendants

Reports by mental health examiners of criminal defendants are generally confidential, unless otherwise ordered by the court following a petition for release or for involuntary commitment proceedings. Me. Rev. Stat. Ann. tit. 15 § 101-C(3) (West 1980 & Supp. 1998). The reports must be distributed to the court and counsel for the state and the defendant. Id. The person who has undergone a mental health examination may also have access to the records of the examination. Id.

#### 4. Alcoholism and Drug Treatment Patient Records

The alcoholism and drug treatment patient records of health care providers are confidential. Me. Rev. Stat. Ann. tit. 24, § 2329(8) (West 1990).

#### 5. Board of Registration, Hospital Peer Review, Quality Assurance Records Assurance Records, and Professional Compliance Review Records

All proceedings and records of proceedings concerning medical staff reviews, hospital reviews, and other reviews of medical care conducted by committees, physicians, and other health care personnel on behalf of hospitals located in Maine or on behalf of individual physicians, when required by law, or by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association Committee on Hospital Accreditation or are conducted under the auspices of the State or County professional society to which the physician belongs are confidential and exempt from discovery. Me. Rev. Stat. Ann. tit. 32 § 3296 (West 1988 & Supp. 1998).

Any reports, information, or records received and maintained by the Board of Registration during an investigation are confidential. The Board itself may disclose such materials that do not identify or permit identification of any patient or physician only in a disciplinary hearing before the Board; at a subsequent trial or appeal of the Board action; to governmental licensing or disciplinary authorities; pursuant to court order; or to qualified personnel for bona fide research or educational purposes. Disclosure of records rendered confidential by the Maine Health Security Act is unlawful and constitutes a Class E crime. Me. Rev. Stat. Ann. tit. 24, § 2510 (West 1980 & Supp. 1998).

Order of the Board of Registration arising from investigations and relating to disciplinary actions against a physician are not confidential. Me. Rev. Stat. Ann. tit. 24 § 2510(4) West. 1990 & Supp. 1995).

All records of a license hospital that are received or prepared during the course of satisfying a hospital's duty to identify and prevent medical injury are confidential under this provision and § 2510(1). Internal peer reviews and quality assurance programs, as well as external Board of Registration inquiries, are confidential, and protected from discovery. Me. Rev. Stat. Ann. tit. 24, § 2503(3) West 1990).

Professional competence review records are also generally privileged and confidential. Me. Rev. Stat. Ann. tit. 24, § 2510-A (West Supp. 1998).

#### 6. Health Maintenance Organization (HMO) Records

Any data or information pertaining to the diagnosis, treatment, or health of any applicant or enrollee in a Health Maintenance Organization ("HMO") and that is obtained from that person or from a health care provider by any HMO must be held confidentially. Such information may be disclosed only: as necessary to carry out the purposes of the law regarding HMPs; pursuant to another statute or court order for the production of evidence in discovery; or in the event of litigation between a member and the HMO. Me. Rev. Stat. Ann. tit. 24-A § 4224 (West 1990 & Supp. 1998).

#### 7. Department of Mental Health and Mental Retardation Records

Any client request for action by the Office of Advocacy of the Department of Mental Health and Mental Retardation and all written records or accounts related to such requests are confidential as to the identity of the client. Me. Rev. Stat. Ann. tit. 34-B, § 1205(5) (West 1988 & Supp. 1998). Subject to limited exceptions, all orders of commitment, medical and administrative records, applications, and reports, and the facts contained within them are also confidential. Me. Rev. Stat. Ann. tit. 34-B § 1207 (West 1988 & Supp. 1998). All records of persons receiving mental health services are confidential except that the person with mental retardation or autism or, if the person is incompetent, a parent or guardian, is entitled to have access to the records upon request; and the commissioner or a residential facility may have access. Me. Rev. Stat. Ann. tit. 34-B § 5605(15) (West Supp. 1998).

#### 8. Sterilization Proceeding Records

Reports of Court proceedings are closed to public inspection, unless the person to be sterilized consents. Me. Rev. Stat. Ann. tit. 34-B § 7014(1) (West 1988 & Supp. 1998).

9. *Applicants to the Maine Managed Care Insurance Plan Demonstration*

All department records regarding the identity, medical status, or financial resources of individuals, business, or business owners applying for enrollment in the Maine Managed Care Insurance Plan Demonstration are confidential and subject only to release by the applicant. Me. Rev. Stat. Ann. tit. 22, § 3188(4) (West 1992).

10. *Abortion and Miscarriage Reports*

The identity of any patient or physician reporting pursuant to the law requiring the reporting of each abortion and miscarriage is confidential and the Department of Human Services must take the steps which are necessary to insure the confidentiality of the identity of patients or physicians reporting. Me. Rev. Stat. Ann. tit. 22, § 1596 (West 1992).

11. *Reported Information of Notifiable Diseases to Bureau of Health*

Subject to certain limitations, physician-patient and psychotherapist-patient confidentiality and privileges are abrogated to the extent necessary to permit reporting to the Bureau of Health and cooperation and investigation by the Bureau of incidents of notifiable disease. Me. Rev. Stat. Ann. tit. 22, § 815 (West 1992). Any person who receives information under the law regarding the control of communicable diseases must treat as confidential the names of individuals having or suspected of having a notifiable communicable disease. Me. Rev. Stat. Ann. tit. 22, § 824 (West 1992). Such information may be released for adult or child protection purposes in accordance with the Adult Protective Services Act and certain provisions. See Me. Rev. Stat. Ann. tit. 22, §§ 3470 et seq., §§ 4001 et seq. (West 1992) and Me. Rev. Stat. Ann. tit 5, § 19201 et seq. (West 1989).

12. *Administration of Medicaid Program and Licensing or Certification*

Records that are made, acquired, or retained by the Department of Human Services in connection with the administration of the Medicaid Program and the licensing or certification of hospitals, nursing homes, and other medical facilities and entities may be confidential. Me. Rev. Stat. Ann. tit. 22, § 1828 (West 1992).

13. *Healthcare Finance Commission Records*

Any information, except commercial information obtained from a payor or privileged medical information, and any studies or analyses that are filed with, or otherwise provided to, the commission under this chapter must be made available to any person upon request, provided that individual patients or health care practitioners are not directly identified. Me. Rev. Stat. Ann. tit. 22, § 1828 (West 1992). A Recent law requiring the Bureau of Insurance and the Maine Health Care Finance Commission to cooperate in the field of health care information and data has exempted both from their respective confidentiality restrictions only in so far as allowing information to be shared. Me. Rev. Stat. Ann. tit. 24-A, § 226, citing 1993 Me. Laws 702 § B-2 (not codified).

14. Occupational Disease Reporting

The names and related information which may identify individuals having an occupational disease, any condition caused by environmental factors associated with employment, must be confidential and may be released only to other public health officials, agents, or agencies, or by court order or by written authorization of the individual being reported on Me. Rev. Stat. Ann. tit. 22 § 1494 (West 1992) All other information submitted to report on occupational disease is available to the public. Id.

15. Participants in Marijuana Therapeutic Research Program

There was a reference to the confidentiality of the records of the Marijuana Therapeutic Research Program at Me. Rev. Stat. Ann. tit. 22 § 2418 (repealed effective December 31, 1987). Any records of the Research Program may still be confidential.

16. Medical and Insurance Information in Possession of Retirement System

Medical information of any kind in the possession of the retirement system, including information pertaining to diagnosis or treatment of mental or emotional disorders, is not open to public inspection and is not a public record under the Freedom of Access Act. Me. Rev. Stat. Ann. tit. 5 § 17057(1) (West Supp. 1998). Information in the possession of the retirement system regarding a participant's designated beneficiary or amount of coverage or group life insurance is also not open to public inspection and is not a public record. Me. Rev. Stat. Ann. tit. 5, § 17057(2) (West Supp. 1998).

17. Information or Records Under the Maine Emergency Medical Services Act

Any reports, information or records provided to the board or department under the Maine Emergency Medical Services Act of 1982 is confidential insofar as the information or records identify any patient. Me. Rev. Stat. Ann. tit. 32, § 92 (West Supp. 1998).

Records of quality assurance activities of any emergency medical services quality assurance committee approved by the board are confidential. Me. Rev. Stat. Ann. tit. 32, 92-A(2) (West Supp. 1998).

18. State Board of Nursing

Any reports, information or records provided to the State Board of Nursing by a health care facility under the law regarding Nurses and Nursing is confidential insofar as the reports, information, or records identify or permit identification of any patient. Me. Rev. Stat. Ann. tit. 32, § 2105-A(3) (West 1988 & Supp. 1995).

19. Records of Proceedings of Hospital Medical Staff Review Committees

All proceedings and records of proceedings concerning the medical staff reviews and hospital reviews conducted by committees of physicians and other health care personnel when

required by law or by accreditation committees is confidential without a showing of good cause. Me. Rev. Stat. Ann. tit. 32, § 2599 (West Supp. 1995).

20. Medical Malpractice Claim Screening Panels

Subject to certain exceptions, all proceedings before the screening panels, including final determinations, may be treated as confidential by the panel and the parties to the claim. Me. Rev. Stat. Ann. tit. 24, § 2857 (West 1990 & Supp. 1998) as amended by 1999 Me. Legis. Serv. Ch. 523, §4.

21. Maine Health Data Organization

The Board of Directors of the Maine Health Data Organization must adopt rules making available to any person, upon request, information, except privileged medical information and confidential commercial information, provided to the organization as long as any individual patients or health care practitioners are not directly identified. The board must adopt rules governing public access in the least restrictive means possible to information that may indirectly identify a particular patient, health care practitioner, provider, or payor. Me. Rev. Stat. Ann. tit. 22 § 8707 (West Supp. 1998). Other researchers or the Department may obtain access to otherwise confidential information under certain circumstances. Id. All information designated as confidential or treated as confidential by the Maine Health Care Finance Commission must remain confidential. Id.

B. Records Relating to Minors

1. Adoption Proceeding Records

All probate records relating to any adoption decreed on or after August 8, 1953 are confidential, and may only be opened to examination by specified persons by order of a Probate Judge. Me. Rev. Stat. Ann. tit. 18-A, § 9-310 (West 1998). However, any medical or genetic information in the court records relating to an adoption must be made available to the adopted child upon reaching the age of 18, the adopted child's descendants, adoptive parents, or legal guardian on petition of the court. Id.

2. Consent of Minors for Health Services

Any minor who may consent to health care services as provided under the law governing consent of minors for health services is entitled to the same confidentiality afforded adults, except where parental notification is deemed by the practitioner to be necessary for health or treatment reasons. Me. Rev. Stat. Ann. tit. 22, § 1505 (West Supp. 1998).

3. Immunization Records

Each superintendent must keep uniform records of the immunizations and immunization status of each child. These records are part of the child's permanent education records. These records are also confidential, except that state and local health personnel have access to them in connection with an emergency. Me. Rev. Stat. Ann. tit. 20-A, § 6357 (West 1993).

4. School Counselors and Social Workers

A school counselor or school social worker may not be required, except under specific circumstances, to divulge or disclose information gathered during a counseling session. Me. Rev. Stat. Ann. tit. 20-A, § 4008 (West 1993).

C. Adult Protective Records

All Department of Human Services records containing personally identifying information that are created or obtained in connection with the Department's adult protective activities and activities related to an adult while under the jurisdiction of the Department are confidential and subject to release under limited conditions. Me. Rev. Stat. Ann. tit 22, § 3474(1) (West 1992). Conditions under which the Department may disclose the relevant information at its option are detailed in Me. Rev. Stat. Ann. tit 22, § 3474(2) (West 1992). Instances when the department must disclose the relevant information are listed in Me. Rev. Stat. Ann. tit 22, § 3474(3) (West 1992). Information or records obtained by subpoena are treated in accordance with Me. Rev. Stat. Ann. tit 22, § 3474 (West 1992). Me. Rev. Stat. Ann. tit 22 § 3480 (West 1992). Instances when the department must disclose the relevant information are listed in Me. Rev. Stat. Ann. tit 22, § 3473(3) (West 1992). Information or records obtained by subpoena are treated in accordance with Me. Rev. Stat. Ann. tit 22, § 3474 (West 1992). Me. Rev. Stat. Ann. tit 22 § 3480 (West 1992).

D. Employment and Labor Records

1. Arbitration Proceedings for Labor Disputes

Any information disclosed by either party to a dispute to the State Board of Arbitration and Conciliation or any of its members in carrying out the law regarding the Board is confidential, except as may be otherwise provided in the law regarding the Board is confidential, except as may be otherwise provided in the law regarding the Board. See Me. Rev. Stat. Ann. tit 26, § 939 (West 1988). An instance where information disclosed to the Board may be made public is where the Board chooses to publish a report of a matter including its findings of fact and recommendations for settling the controversy. See Me. Rev. Stat. Ann. tit 26, § 935 (West 1988).

2. State Civil Service System Employment Records

Records of the Bureau of Human Resources agree generally public records open to inspection by the public during regular office hours at reasonable times and in accordance with a procedure provided by the director. Me. Rev. Stat. Ann. tit. 5, § 7070 (West 1989 & Supp. 1998). Certain records of the Bureau of Human Resources are confidential and are not public records for purposes of the Freedom of Access Act. See Me. Rev. Stat. Ann. tit. 5 § 7070(1)-(3) (West 1989 & Supp. 1998). Some records relating to applications, examinations, or evaluations, as well as some personal information may be confidential. See Me. Rev. Stat. Ann. tit. 5 § 7070(1), (2) (West 1989 & Supp. 1998). Even information that is confidential may nonetheless be disclosed under certain circumstances and upon request to the Director of Employee Relations for use in a grievance or other proceeding. Me. Rev. Stat. Ann. tit. 5, § 7070 (4) (West 1989 & Supp. 1998).

3. County Employment Record

Certain county personnel records are not public records under the Freedom of Access Act and are not open to public inspection. See Me. Rev. Stat. Ann. tit. 30-A, § 503 (West 1996 & Supp. 1998). Notably, the name of a law enforcement officer in an investigation into the use of deadly force or physical force resulting in death or serious bodily injury by a law enforcement officer is not confidential. See Me. Rev. Stat. Ann. tit 30-A, § 503(1-A) (West 1996 & Supp. 1998). Additionally, the findings of any investigation into the officer's conduct are not longer confidential when the investigation is complete, unless criminal charges are brought. *Id.* Employees may examine their own personnel file. Me. Rev. Stat. Ann. tit. 30-A, § 503 (2) (West 1996 & Supp. 1998).

4. *Municipal Employment Records*

Certain municipal employment records are not public records under the Freedom of Access Act and are not open to public inspecting. See Me. Rev. Stat. Ann. tit. 30-A 2702 (West 1996 & Supp. 1998).

5. *Employee Records Available Under Child and Family Services and Child Protection Act.*

Notwithstanding any other provision of the law, the confidentiality of employee records is abrogated in relation to required reporting, cooperating with the Department of Human Services or Guardian Ad Litem in an investigation or other child protective activity or giving evidence in a child protective proceeding. Me Stat. Ann. tit. 22, § 4016 (West 1992). See also me. Rev. Stat. Ann tit. 22, § 4015 (West 1992) (husband-wife and physician and psychotherapist-patient privileges under the Maine Rules of Evidence and confidentiality also abrogated).

6. *Reports and Records Held by the Director of the Bureau of Labor*

All information and reports by the Director of the Bureau of Labor are confidential and no names of individuals, firms, or corporations may be used in any reports of the director not made available for public inspection. Me. Rev. Stat. Ann. tit. 26, § 3 (West 1988 & Supp. 1998).

In the report of the Bureau of Labor Standards no mention may be made of the names of individuals, firms or corporations supplying the information called for under the labor and industry law unless by written permission. Me. Rev. Stat. Ann. tit. 26, § 43 (West 1988).

7. *Records of Wages and Hours Worked*

Any and all information regarding the wages and hours worked by an employee received by the Bureau of Labor Standards is confidential. Me. Rev. Stat. ann. tit. 26, § 665(1) (West 1988).

8. *School Employee Information*

A record of directory information, consisting of each employee's name, dates of employment, regular and extracurricular duties, all courses taught in that school administrative unit, post-secondary educational institutions attended, major and minor fields of study

recognized by the post-secondary institutions attended, degrees received and dates awarded is public pursuant to Me. Rev. Stat. Ann. tit. 26, § 6101(1), (2)(A) (West 1993 & Supp. 1998). A great deal of sensitive information other than that included in the directory information listed above is not public information, including: information related to the examination or evaluation of applicants for employment; medical information, performance evaluations, credit information, certain personal information not included as part of the directory information, complaints, an individual's social security number, a teacher action plan, and criminal history record information obtained pursuant to § 6103. *Id.* at § 6101(2)(B). The commissioner has access to confidential documents, and such documents must also be provided simultaneously to the employee. *Id.* at § 6101(3).

9. *Certification and Registration of Teachers: Criminal Checks*

Beginning January 1, 1999, certification, authorization, and renewal are subject to the commissioner obtaining criminal history record information, which is confidential. Me. Rev. Stat. Ann. tit. 20-A, § 6103 (West Supp. 1998).

10. *Unemployment Information*

All information transmitted to the Bureau of Employment Security, the Unemployment Insurance Commission or its authorized representatives pursuant to the law relating to unemployment compensation is absolutely privileged and may not be made the subject matter or basis in any action of slander or libel, unless used to enforce specified laws. Me. Rev. Stat. Ann. tit. 26, § 1047 (West 1988 & Supp. 1998).

All information obtained or obtained from any individual pursuant to the administration of unemployment compensation law, except to the extent necessary for proper presentation of a claim, is confidential and not open to public inspection other than to public employees in the performance of their public duties, in any manner revealing the individual's or employing units identity. Me. Rev. Stat. Ann. tit. 26, § 1082(7) (West 1988 & Supp. 1998). The department will supply to any party to and adjudicatory proceeding information from the records relating to the proceeding. *Id.*

11. *Teacher Action Plan treated as Part of Teacher's Employment Record.*

A teacher action plan, which describes the skills to be developed and improved by a teacher, created as a part of a school's legally mandated support system is treated as an employment record and therefore is confidential. Me. Rev. Stat. Ann. tit. 20-A § 13015(5) (West 1993).

E. *Social Welfare Programs*

1. *Community Services Programs*

Information acquired by a state agency, municipality, district, private corporation, etc., which relates to the provision of services by the Bureau of Child and Family Services or a community action agency is confidential for purposes of the Freedom of Access Act. Any

person whose interest is protected by this law may waive their protection. Me. Rev. Stat. Ann. tit. 22 § 5328 (West Supp. 1998).

The Maine Community Services Act of 1983 was repealed in 1991. Records from the Division of Community Services may, however, still exist. Records containing certain information relating to the programs of the Division of Community Services or programs administered by community action agencies were protected by a confidentiality provision. See Me. Rev. Stat. Ann. tit 5, § 3523 (repealed 1991).

## 2. Housing Authority

Numerous records obtained by the Housing Authority are deemed confidential for purposes of the Freedom of Access Act. Me. Rev. Stat. Ann. tit. 30-A, § 4706(1) (West 1996). Wrongful disclosure is explicitly prohibited, and some exceptions to confidentiality are provided in Me. Rev. Stat. Ann. Tit. 30-A, § 4706(2) (West 1996). Any person whose interest is protected by the confidentiality of certain Housing Authority records may waive their protection. See Me. Rev. Stat. Ann. tit 30-A § 4706(3) (West 1996). Penalties are provided in Me. Rev. Stat. Ann. tit 30-A § 4706(4) (West 1996).

## 3. Department of Human Services

### a. Department Records

The use of records papers, files and communications by any other agency of Department of Human Services records is limited to the purposes for which they are furnished and by the law under which they are furnished. Me. Rev. Stat. Ann. tit. 22, § 42(2), (5) (West 1992). It is unlawful for any person, except for purposes directly connected with the administration of the public assistance and in accordance with the rules and regulations of the Department, to solicit, disclose, receive, or make use of, any list of names of, or any information concerning persons applying for or receiving assistance. Id.

Any person violating this law is punishable by fine and imprisonment. Id. Department records that contain personally identifying medical information that are created or obtained in connection with the Department's public health activities or programs are confidential. Me. Rev. Stat. Ann. tit. 22 § 42(5) (West Supp. 1995). Such medical records may not be examined in any judicial, executive, legislative, or other proceedings as to the existence or content of any individual's records obtained by the department. Id. Exceptions to the confidentiality of medical records are when release of certain information would not identify an individual, is necessary to carry out the law governing the control of communicable diseases, is authorized by the subject of the records, and when disclosures are specifically provided for by statute or departmental rule. Id.

### b. Department Records Relating to In-Home and Community Support Services for Adults with Long-Term Care Needs

Unless specifically rendered confidential by Me. Rev. Stat. Ann. tit. 22 § 7703(2) (West 1992) or other law, all records, including license records, made, acquired, or retained by the Department of Human Services in connection with its responsibilities under the subtitle relating to in-home and community support services for adults with long-term care needs are available to

the public. confidential information may be disclosed to certain parties under specified circumstances. See Me. Rev. Stat. Ann. tit. 22 § 7703(3) (West 1992). Under some circumstances confidential information must be disclosed. See Me. Rev. Stat. Ann. tit. 22, § 7703(4) (West 1992). Information otherwise confidential that either must be released or is released at the option of the Department may only be sued for the purpose for which it was provided and may not be further disseminated. Me. Rev. Stat. Ann. tit. 22 § 7703(5) (West 1992).

c. *Department Records Obtained in Connection with Child Protective Activities*

All department records which contain personally identifying information and are created or obtained in connection with the department's child protective activities and activities related to a child while in the care or custody of the department are confidential and subject to release only under certain conditions. Me. Rev. Stat. Ann. tit. 22, § 4008(1) (West 1992 & Supp. 1995). Provisions dealing with optional disclosure, mandatory disclosure, penalties for unlawful dissemination, and the retention on unsubstantiated child protection services records also exist. See Me. Rev. Stat. Ann. tit. 22, § 4008(2)-(5) (West 1992 & Supp. 1995). Records released by the Department under § 4008 may only used for the purposes for which the release was intended. Me. Rev. Stat. Ann. tit. 22, § 4007(5) (West 1992). See also Me. Rev. Stat. Ann. tit. 19-A, § 905 (West 1998) (investigators ordered by the Court in divorce or custody proceedings).

4. *General Assistance Records*

a. *Responsibility of Overseer*

The overseer, the official designated by a municipality to administer a general assistance program, must keep complete and accurate records pertaining to general assistance. Records, papers, files, and communications relating to an applicant or recipient made or received by persons charged with responsibility of administering General Assistance are confidential and no information relating to a person who is an applicant or recipient may be disclosed to the general public, unless expressly permitted by that person. Me. Rev. Stat. Ann. tit. 22, § 4306 (West 1992)

b. *Responsibility of Parties Other Than Overseer for General Assistance Records*

Upon request of any municipal official charged with the responsibility of administering general assistance, the Department of Human Services and any other department of State having information which has a bearing on the eligibility of any person applying for general assistance shall release that information. Me Rev. Stat. Ann. tit. 22, § 4314(1) (West 1992). The information shall be restricted to the facts necessary for the official to make a determination of eligibility for general assistance. *Id.* Financial institutions and employers may also be contacted to release information on an applicant. See Me. Rev. Stat. Ann. tit. 22, § 4314(2), (3) (West 1992 & Supp. 1995). Any person who is responsible for administering general assistance and who seeks and obtains information is subject to the same rules of confidentiality as the person who is caretaker of the information which is by law confidential. Me. Rev. Stat. Ann. tit. 22, § 4314(4) (West 1992).

5. *Privacy of persons Involved in Comparing Names and Social Security Numbers of Individuals Included in Public Assistance Rolls*

The privacy of individuals involved in comparing names and social security numbers of individuals included in public assistance rolls (“matching”) must be protected to the maximum extent possible. Me. Rev. Stat. Ann. tit. 22, § 16 (West 1992).

6. *Access to Financial Records of Deposit Accounts of Individuals Owning Overdue Child Support*

The list of individuals owing overdue child support, their social security numbers, and the amount of the overdue support which is provided by the department to a financial institution is confidential. Me. Rev. Stat. Ann. tit. 22 § 17 (West Supp. 1998). Knowing or unauthorized use is subject to a civil penalty of \$1,000.00. Id.

7. *State Employee Assistance Program Records*

No records of the identity, assessment, diagnosis, prognosis, referral or treatment of a client of the program may be State Employee Assistance Program may be maintained in the personnel records of individuals who participate in the program. Any such records are confidential. Me. Rev. Stat. Ann. tit. 5, § 957(5) (West Supp. 1998).

8. *Substance Abuse Treatment Facility Records*

Registration and other records of treatment facilities must remain confidential and are privileged to the patient. Me. Rev. Stat. Ann. tit. 5, § 20047 (West Supp. 1998). Such information may be made available for research purposes into the cause and treatment of alcoholism and drug abuse so long as patient’s names and identifying information is not disclosed. Id.

9. *Services to Maine’s Aging and Adults*

Information and records obtained pursuant to an investigation under the long-term care ombudsman program of complaints received on behalf of individuals receiving long-term care services provided by home-based care programs, the Medicaid waiver program, licensed home agencies, certified homemaker agencies and licensed adult care agencies are confidential unless the ombudsman authorizes disclosure. Me. Rev. Stat. Ann. tit. 22 § 5107-A (West Supp. 1998). The ombudsman may not disclose the identity of any complainant or resident unless the complainant or resident authorizes disclosure. Id. The complainant may designate to whom his or her identity will be disclosed and for what purposes. Id.

10. *Community Development Records*

Certain records pertaining to an individual applicant for assistance pursuant to the law regarding community development are confidential and wrongful disclosure is prohibited. Me. Rev. Stat. Ann. tit. 30-A, § 5205 (West 1996 & Supp. 1998).

F. *Criminal, Police, Parole Board, and Investigatory Records*

1. Hearings and Investigations of Parole Board

All information obtained under the law governing Parole Boards and any report furnished to the Governor regarding applications for pardon, reprieve, or communication is confidential. Me. Rev. Stat. Ann. tit. 34-A, § 5210(4)(C) (West 1988).

2. Criminal History Record Information Act

For the extensive provisions relating to the disclosure of records and information pertaining to an individual's criminal history see the Criminal History Record Information Act, Me. Rev. Stat. Ann. tit. 16, §§ 611-619, (West 1983 & Supp. 1998). Notably, the recent act which requires the registration of sex offenders provides that sex offender registration information is criminal history record information. See Me. Rev. Stat. Ann. tit. 34-A, § 11104 (West Supp. 1998).

3. State Fraud Division

The attorney general is authorized to create a State Fraud Division. Among its powers, the Division has access to all information in the files of any department, commission, or agency of State Government, for use in connection with its official purpose regardless of any statute relating to confidentiality. Me. Rev. Stat. Ann. tit. 5, § 200-C (West 1989).

4. Complaints and Investigative Reports of the Department of Professional and Financial Regulation

All complaints and investigative reports of the licensing boards and commissions within the Department of Professional and Financial Regulation must be confidential during the pendency of an investigation. Me. Rev. Stat. Ann. tit. 10, § 8003-B(1) (West 1996). At the conclusion of an investigation, such records become public unless required by another provision of the law. Records may be disclosed to certain expected persons. See Me. Rev. Stat. Ann. tit. 10, § 8003-B(2) (West 1996). Certain records remain confidential upon the conclusion of an investigation. See Me. Rev. Stat. Ann. tit. 10, § 8003-B(2-A) 1596 (West 1996). Certain records may be disclosed in accordance with the client or patient's desire or applicable law. Id.

5. Medical Records Pertinent in Criminal Proceeding or Investigation

Medical records turned over to the Attorney General or a deputy or assistant in a criminal proceeding or investigation are confidential. Me. Rev. Stat. Ann. tit. 5, § 200-E(2)(A), (4) (West 1989).

6. Department of Corrections

a. Requests for Action by Office of Attorney

Requests for action by the Office of Advocacy are treated as confidential. Me. Rev. Stat. Ann. tit. 34-A, § 1203(5) (West 1988 & Supp. 1998).

b. Other Confidential Information

All orders of commitment, medical and administrative records, applications, and reports and facts contained in them, pertaining to any person receiving services from the Department of Corrections are confidential, with certain exceptions. See Me. Rev. Stat. Ann. tit. 34-A, § 3003 (West 1988 & Supp. 1998).

c. Department of Corrections Employees

The following information pertaining to Department of Corrections Employees and independent contractors is confidential, and that part of any record of the Department's containing this information is not a public record under the Freedom of Access Act: 1) non-business addresses and telephone numbers of employees; 2) the existence, names, addresses and telephone numbers of family members, household members, and person to be notified in the event of an emergency; and 3) information pertaining to work schedules. Me. Rev. Stat. Ann. tit. 34-A, § 1212 (West Supp. 1998).

7. Misuse of Information by Public Servant

A public servant, who knows that official action is contemplated or is acting in reliance on information which he has acquired by virtue of his office or from another public servant and misuses the information for pecuniary gain, is guilty of a Class E crime. See Me. Rev. Stat. Ann. tit. 17-A, § 609 (West 1983).

8. Investigation by Attorney General of Complaints of Unauthorized Practice of Law

Investigations by the Attorney General of complaints of the unauthorized practice of law are confidential. Me. Rev. Stat. Ann. tit. 4, § 809 (West 1989). The disclosure of the name of a person under investigation, of any witness examined, or any other information obtained in the investigation, is a felony. Id.

9. Maine Drug Enforcement Agency Advisory Board

The investigative records of the Maine Drug Enforcement Agency Advisory Board are confidential. Me. Rev. Stat. Ann. tit. 25, § 2957 (West Supp. 1998)

10. Victim Advocates and Coordinators

Communicators to governmental victim witness advocates or coordinators are generally privileged. Me. Rev. Stat. Ann. tit. 16, § 53-A, 53-B, and § 53-C (West Supp. 1998), as amended by 1999 Me. Legis. Serv. Ch. 369 (West).

11. Juvenile Petitions

Records contained in a juvenile petition are generally confidential. Me. Rev. Stat. Ann. tit. 15, § 3308 (7)(E), as enacted by 1999 Me. Legis. Serv. Ch. 345 (West). Confidentiality of criminal justice information relating to juveniles is required under Maine Rev. Stat. Ann. Tit. 20-A § 1055(11), as amended by 1999 Me. Legis. Serv. Ch. 345 (West).

G. Financial and Tax Records

1. Fiduciary Institutions

A fiduciary institution may not disclose to any person, except to the customer or his duly authorized agent, any financial records relating to that customer of that fiduciary institution unless the customer authorizes disclosure or the financial records are sought in response to a subpoena, summons, warrant or court order conforming with the requirements provided in Me. Rev. Stat. Ann. tit. 9-B, §§ 162, 163 (West 1997 & Supp 1998).

2. Finance Authority of Maine

Upon request reasonably describing the records to which access is sought and in a manner prescribed by the Finance Authority of Maine, a large number of financial records must be disclosed. For a list of the records which must be disclosed. Me. Rev. Stat. Ann. tit. 10, § 975-A(1) (West 1996). A number of records are designated as confidential for purposes of the Freedom of Access Act; a list of those records is contained in Me. Rev. Stat. Ann. tit. 10, § 975-A(2) (West 1996). Wrongful disclosure, knowingly disclosing or divulging records confidential under Me. Rev. Stat. Ann. tit. 10, § 975A(2) (West 1996), is explicitly prohibited by Me. Rev. Stat Ann. tit. 10, § 975-A(3) (West 1996). The Finance Authority has discretion to authorize disclosure of certain types of information or information under certain circumstances pursuant to Me. Rev. Stat. Ann. tit. 10, § 975-A(3)( West 1996). All records in the possession of the Finance Authority are governed by Me. Rev. Stat. Ann. tit. 10, § 975-A (West 1996), notwithstanding when the record was obtained by the Finance Authority.

3. Financial Disclosure by Executive Employees

Each executive employee must annually file with the Secretary of State a sworn and notarized statement of finances for the preceding calendar year, which are public records. Me. Rev. Stat. Ann. tit. 5, § 19(6) (West 1989 and Supp. 1998). Statements including reportable liabilities must be filed within thirty days after being incurred. Me. Rev. Stat. Ann. tit. 5, § 19(7) (West 1989 and Supp. 1998).

4. Maine Revised Securities Act Information

Information filed with or obtained by the Securities Administrator is not public only to the extent it is rendered confidential by the Securities and Exchange Commission. See 17 C.F.R. 200.80 et seq. and Me. Rev. Stat. Ann. tit. 9-B, § 226 (West 1980 & Supp. 1998). Me. Rev. Stat. Ann. tit. 32, § 10701(3), (4) (West 1988 & Supp. 1995) as amended by 1999 Me. Legis. Serv. Ch. 184, §21 (West).

5. Bureau of Banking Information

Information derived by or communicated to the Superintendent of the Bureau of Banking or to any employee of the Bureau may not be disclosed to the public, but may be disclosed when the Superintendent authorizes disclosure, but then only to a court of law or equity. Limited disclosure to governmental agencies is permitted. Me. Rev. Stat. Ann. tit. 9-B, § 226 (West 1997).

6. Tax Records

Persons permitted to receive or view any portion of any report, return, or other information provided to the state tax assessor may not divulge that information in any manner, unless an exemption applies. Me. Rev. Stat. Ann. tit. 36, § 191 (West 1990 & Supp. 1998).

7. Consensus Economic Forecasting Commission

The Department of Administrative and Financial Services may provide information and data to the Consensus Economic Forecasting Commission on request. The committee members are bound by the confidentiality restrictions of Me. Rev. Stat. Ann. tit. 36, § 191 (West 1990 & Supp. 1998) concerning the tax records supplied. Me. Rev. Stat. Ann. tit. 5, & 1710-J (West Supp. 1998).

8. Financial Information as Required Under State and Federal Law

Any records or information in the possession of any state or federal agency directly or indirectly involved in the regulation of financial institutions or financial institution holding companies that is recognized under state or federal law as confidential remains confidential if delivered or disclosed under the law pertaining to the regulation of financial institutions. Me. Rev. Stat. Ann. tit. 9-B, § 252(3-A) (West 1997 & Supp. 1998).

9. Employment Tax Increment Financing Program

Any record obtained or developed by the commissioner or the State Tax Assessor for designation or approval of an employment tax increment financing program is confidential if the person or business who supplied the record so requests or if the commissioner determines that the information may give a competitor a competitive advantage over the person or business to which the information pertains. Me. Rev. Stat. Ann. tit 36, § 6760 (West Supp. 1998).

10. State Tax Increment Financing

Most records, including applications, obtained or developed by a municipality, the Commissioner of Economic and Community Development or the State Tax Assessor for designation or approval of a state tax increment financing district are not confidential unless they meet certain criteria. Me. Rev. Stat. Ann. tit. 30-A, § 5254-A(8) (West 1996 & Supp. 1998).

11. Small Enterprise Growth Program

The small Enterprise Growth Board manages a fund which makes disbursements to .qualify small businesses pursuing eligible projects. The records which must be disclosed and which are confidential are discussed in Me. Rev. Stat. Ann. tit. 19-A, § 391, as amended 1996 Me. Laws 699, § 3. Wrongful disclosure is prohibited. Id.

H. Records Under Public Utilities Law

1. Generally

A person employed by the commission to inspect utilities may not divulge information ascertained by inspection except under limited circumstances. Me. Rev. Stat. Ann. tit. 35-A § (3)(C) (West 1988). Numerous other records of public utilities are confidential. See Me. Rev. Stat. Ann. tit. 35-A, § 114 (West 1988).

2. Public Utilities Commission: Protective Orders

Records placed under a protective order by the Public Utilities Commission pursuant to the Maine Rules of Civil Procedure are within the scope of a privilege against discovery and are not public records. Me. Rev. Stat. Ann. tit. 35-A, § 1311-A (West Supp. 1995).

3. Information Related to Violation of Public Utilities Law

The Public Utilities Commission may declare and treat as confidential communications from any person concerning the affairs of a utility that are reasonably related to a violation of state laws. Me. Rev. Stat. Ann. tit. 35-A, § 1316-A (West Supp. 1995).

4. Certain Customer Information

The following customer records are confidential for purposes of the Freedom of Access Act: 1) Information acquired by the Consumer Assistance Division regarding the payment and credit history and financial condition of a customer who has requested the assistance of the division; and 2) information acquired by the Consumer Assistance Division regarding the medical condition of a customer or member of a customer's family. Me. Rev. Stat. Ann. tit. 35-A, § 704(5). Complication data is not confidential and certain information may be disclosed in connection with the investigation of an individual customer complaint. Id. The Consumer Assistance Division is required to prepared its decisions or abstracts thereof in a manner which protects the confidentiality of customer information. Id. These decisions or abstracts of decisions are available for public access. Id.

I. Regional Planning Commission Minutes

The minutes of the proceedings of a regional cooperation commission must be filed in the commission's office and are a public record. See Me. Rev. Stat. Ann. tit. 30-A, §2324 (West Supp. 1995).

J. Administrative Agencies

1. Adjudicatory Proceedings

The agency holding an adjudicatory proceeding must make a record consisting of certain items listed in Me. Rev. Stat. Ann. tit. 5, § 9059(1) (West 1989). All hearings must be recorded in a form susceptible to transcription, and transcription must be made if necessary for the prosecution of an appeal. Me. Rev. Stat. Ann. tit. 5, § 9059(2) (West 1989). A copy of the record or the recordings must be made available to the public, but the agency must withhold,

obliterate, or otherwise prevent the dissemination of any portions of the record which are made confidential by state or federal statute, and must do so in the least restrictive manner possible. Me. Rev. Stat. Ann. tit. 5, § 9059(3) (West 1989).

2. Rule-making by Administrative Agencies

At least 20 days prior to a hearing on any proposed rule and at least 20 days prior to the comment deadline of any rule without a hearing, the agency must make copies of the proposed rule available to persons upon request. Me. Rev. Stat. Ann. tit. 5, § 8053(3-A) (West 1989 and Supp. 1995).

3. Records of Administrative Boards

Records and minutes of all boards shall be open and readily available in a place convenient and accessible to the public, unless the information is required by law to be kept confidential or is privileged information. Me. Rev. Stat. Ann. tit. 5, § 12003-A(5) (West 1989 and Supp. 1995).

K. Records or Information Provided to the Government, Trade Secrets

1. Agricultural Market Research and Development Fund

Information relative to market research or development activities provided to the Department of Agriculture, Food, and Rural Resources prior to formal application, included in grant applications or provided to the department to fulfill reporting requirements, is confidential information and shall not be publicly disclosed by the department provided that:

- a) The person to whom the information belongs or pertains has requested that it be designated as confidential; and
- b) The Department has determined that the information gives the person making the request opportunity to obtain a business or competitive advantage over another person who does not have access to the information or will result in loss of business or other significant detriment to the person making the request if access is provided to others. Me. Rev. Stat. Ann. tit. 7, § 401-D(5) (West 1989).

2. Records of the Maine Geological Survey, Bureau of Public Lands, or any Other Agency Having Jurisdiction Over State-Owned Lands

The information contained in annual reports filed by those with mining leases on state owned lands with the Director of the Maine Geological Survey may be shared with other governmental agencies, but are not records available for public inspection or disclosure under the Freedom of Access Act. Me. Rev. Stat. Ann. tit. 12, § 549-B(13) (West 1994).

3. Manufactured Housing Board

All information reported to or otherwise obtained by the Manufactured Housing Board, its director, or any of its employees which contains or relates to a trade secret, or which, if

disclosed would put the person furnishing the information at a substantial competitive disadvantage, shall be considered confidential, unless disclosed to other governmental agencies enforcing manufactured housing law or when relevant in any proceeding under related law, rule or regulation. Me. Rev. Stat. Ann. tit. 10, § 9012 (West 1980).

4. Computer Programs and Technical Data as Trade Secrets

Computer programs, technical data, logic diagrams, and source code related to data processing or telecommunications are confidential and not public records under the Freedom of Access Act, to the extent they contain trade secrets held in private ownership as defined in Me. Rev. Stat. Ann. tit. 10, § 1542, and have been provided to a state agency by an authorized independent vendor or contractor under an agreement by which:

- a) All trade secrets that can be protected are identified without disclosing the secret;
- b) The vendor or contractor retains all intellectual property rights in those trade secrets; and
- c) The state agency agrees to hold and use the programs, data, diagrams, or source code without disclosing any identified trade secrets. Me. Rev. Stat. Ann. tit. 5, § 1890-B (West Supp. 1995).

5. Environmental Records

a. Board of Environmental Protection, Hazardous Waste Information

Information relating to hazardous waste and submitted to the Department of Environmental Protection may be designated as confidential by the party submitting it. Such parties must demonstrate to the satisfaction of the commissioner that the designated information cannot be disclosed because it is a trade secret, otherwise it is a public record. Me. Rev. Stat. Ann. tit. 38, § 1310-B (West 1995).

b. Hazardous Air Pollutants

In carrying out an inventory of hazardous air pollutants, the Department of Environmental Protection or the Commissioner may receive information designated by the individual submitting it as being only for the confidential use of the Department. Except for emissions data, which is a public record, designated confidential information is confidential. Me. Rev. Stat. Ann. tit. 38, § 585-C (West 1989 & Supp. 1995).

The identity of chemical substances, in use or present at a specific location, unless trade secrets, and certain other information related to such substances must be made available. Me. Rev. Stat. Ann. tit. 22, 1696-D, 1696-F (West 1992) as amended by 1999 Me. Legis. Serv. Ch. 57, 3.

c. Trade Secrets

Reports, records, or information obtained by the Department of Environmental Protection may be confidential to the extent protected as trade secrets. Me. Rev. Stat. Ann. tit. 38, § 414 (West Supp. 1995).

6. Commission on Biotechnology

All information submitted to and received by the Commission on Biotechnology pertaining to any ongoing experiment is confidential unless the Commission determines that there is a compelling reason to make the information public. Me. Rev. Stat. Ann. tit. 7, §234 (West 1989). The Commission must notify the person providing the information, who may request a hearing. Id. If no hearing request is made, the information may be made public. Id.

7. Marketing of Feeds

Any person who uses to his own advantage or reveals to other than the commissioner or officers of the Maine Department of Agriculture Food and Rural Resources, or to the courts when relevant in any judicial proceeding, any information acquired under the law relating to the marketing of feeds, concerning any methods, records, formulations, or processes which as a trade secret are entitled to protection is guilty of a felony. Me. Rev. Stat. Ann. tit. 7, § 722 (West 1989). The Maine government may share information with other states and the federal government. Id.

8. Maine Farmers and Agricultural Businesses

Information provided voluntarily to the Department of Agriculture, Food and Rural Resources to fulfill reporting requirements may be confidential on request. Me. Rev. Stat. Ann. tit. 7, §20, enacted by 1999 Me. Legis. Serv. Ch. 140 (West 1999).

9. Pesticide Control

Data submitted under the law governing pesticide control is confidential and not available for public inspection. See Me. Rev. Stat. Ann. tit. 7, § 607(4) (West 1989 & Supp. 1995).

10. Bureau of Liquor Enforcement

All business and financial records of retail and wholesale licensees are confidential. Me. Rev. Stat. Ann. tit. 28-A, § 754 (West 1988).

11. Archaeological Site Location Information

In order to protect the site from unlawful excavation or harm, any information on the location or other attributes of any site in the possession of the Maine Historic Preservation Commission, the State Museum, the Bureau of Parks and Recreation, other state agencies or the University of Maine System may be deemed by the Maine Historic Preservation Commission or State Museum to be confidential and exempt from the Freedom of Access Act. Me. Rev. Stat. Ann. tit. 27, § 377 (West Supp. 1995). Such data is available for the purpose of archaeological research, but reasonable requirements on its use, including requirements of confidentiality, may be imposed. Id.

12. Records Regarding Acquisition of Gasoline and Heating Oil Assets

Under Maine law it is unlawful to acquire controlling stock or substantial assets that include those used in gasoline sales or heating oil sales without providing notice to the Department of the Attorney General at least thirty days prior to the date of acquisition. See Me. Rev. Stat. Ann. tit. 10, § 1109(2) and (3) (West Supp. 1995). Information received by the Attorney General as a result of this reporting is confidential. Me. Rev. Stat. Ann. tit. 10, § 1109(4) (West Supp. 1995).

13. Records Reported Under Petroleum Market Share

Information received by the Department of the Attorney General pursuant to the law requiring reporting of petroleum records by wholesalers and investigations by the Attorney General related to the records is confidential. Me. Rev. Stat. Ann. tit. 10, § 1673 (West Supp. 1995).

14. Aquaculture Monitoring Program

Information that is designated confidential by the party supplying the information to the government is confidential. Me. Rev. Stat. Ann. tit. 12, § 6077(4) (West 1994). However, information so designated must be a trade secret, or production, commercial, or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. *Id.* In addition the public records must include an indication that the information so designated has been submitted to the Department. *Id.*

15. State Nuclear Safety Program

All licensed facilities must permit access to all records not proprietary, security-related, as restricted by federal law. Me. Rev. Stat. Ann. tit. 22, § 664 (West 1992 Supp. 1998).

16. Maine Technology Investment Fund

The Maine Technology Investment Fund, created within the Maine Science and Technology Foundation, is empowered to protect all proprietary information. Me. Rev. Stat. Ann. tit. 5, § 13131(2)(4) (West Supp. 1998).

L. Food and Drug Records

1. Potato Records

a. Maine Potato Board

All books and records of the Maine Potato Board are open to public inspection under the Freedom of Access Act, provided that records and meetings of the board may by vote be closed to the public where public disclosure of the subject matter of the records or meetings would adversely affect the competitive position of the Maine potato industry or segments of the industry. Me. Rev. Stat. Ann. tit. 36, § 4604(5) (West 1990 & Supp. 1998).

b. Minimum Standards for Planting Potato

Records pertaining to minimum standards for planting received by the Department of Agriculture, Food, and Rural Resources are confidential and not available for inspection, notwithstanding the Freedom of Access Act. Me Rev. Stat. Ann. tit. 7, § 951-A (West 1989 and Supp. 1998).

2. Maine Sardine Council

Certain tax records, individual plant pack data, quality control information, and any other proprietary information obtained from individual processing plants, including information concerning packing technology are confidential. Me. Rev. Stat. Ann. tit. 32, § 4167(6) (West Supp. 1998).

3. Marine Resources Law

The Commissioner of Marine Resources may collect statistics from any source and may require reporting of these statistics. The information collected by or reported to the Commissioner is confidential and may not be disclosed in a manner or form that permits identification of any person or vessel, except when required by court order or when specifically permitted under marine resource law. Me. Rev. Stat. Ann. tit. 12, § 6173 (West 1994). Notwithstanding § 6173 and except as explicitly provided in Me. Rev. Stat. Ann. tit. 12, §6077(4)(A), (B) (West 1994), information obtained by the department under the Marine Resources Act is a public record under the Freedom of Access Act. Me. Rev. Stat. Ann. tit. 12, §6077(4) (West 1994).

4. Maine Agriculture Bargaining Board

Certain information provided to the Maine Agricultural Board by an association is confidential until the board renders a final decision as to the qualification of the association. After rendering a final decision, the information is a public record under the Freedom of Access Act. Me. Rev. Stat. tit. 13, § 1957(8) (West 1981 & Supp. 1998).

5. Ginseng License Applications

The names and addresses of licensees and records required of licensees by the department pertaining to the location of ginseng plantings are confidential and may not be made available for public inspection. Me. Rev. Stat. Ann. tit. 7, § 2226 (West Supp. 1998). However, confidentiality terminates when the records are used by the department as evidence from an enforcement action, are subpoenaed, or are used in any prosecution for criminal action. Id.

6. Sale of Aquacultured Atlantic Salmon

A person licensed to engage in the aquaculture of Atlantic Salmon must report to the Atlantic Salmon Authority the number, weight, and locations sold to of all Atlantic Salmon within the authority's jurisdiction. All such records are confidential documents. Me. Rev. Stat. Ann. tit. 12, § 9904(7) (West Supp. 1998).

M. Miscellaneous Records

1. Teacher Certification and Registration Records

Transcripts, recommendations, and other documents submitted in support of an application for certification, or collected by the Department of Education for verification of certification records are confidential. Me. Rev. Stat. Ann. tit. 20-A, § 13004(2) (West 1993). Such resources may be made available only to school boards and superintendents; authorized personnel of the department; and individuals and their representatives who request to examine their own records. Id. Complaints, charges or accusations made to or investigated by the Department of Education, and any replies to such complaints, charges, or accusations are also confidential. Me. Rev. Stat. Ann. tit. 20-A, § 13004(2-A) (West 1993). Charges or information filed by the Commissioner with the Administrative Court in support of a petition to revoke or suspend certification and any decision of that court are public records. Id.

2. Ballots and Electoral Materials

Ballots are not public records, and may be inspected only in accordance with electoral laws. Me. Rev. Stat. Ann. tit. 21-A, § 22 (1), (2) (West 1993 & Supp. 1998). All lists, books, documents, and records required to be prepared by or filed with a public official, including the Secretary of State, and which relate to elections are public records.

3. Concealed Firearm Permits

Unless waived, all applications for a permit to carry concealed firearms and documents made a part of the application, refusals, and any other information of record collected by the agency as part of assessing good moral character are confidential. Me. Rev. Stat. Ann. tit. 25, § 2006 (West 1988).

4. Chemical Substance Identification Act

Chemical identification lists and material safety data sheets made by corporations pursuant to Maine Law are available upon the request of any affected employee or former employee. Me. Rev. Stat. Ann. tit. 26, § 1716 (West 1988). If such information is in the form of a trade secret it is so confidential.

Information obtained by any agency pursuant to the Chemical Substance Identification Act is confidential. The Director of the Bureau of Health may provide the public with information relating to chemicals in the workplace. Me. Rev. Stat. Ann. tit. 26, § 1721 (West 1988).

5. Confirmation Hearings and Prehearings

Records filed with the Legislative Information Office under the law governing confirmation of judicial appointments are public records upon filing, subject to the Freedom of Access Act. Me. Rev. Stat. Ann. tit. 3 § 159 (West Supp. 1998). All documents prepared for or reviewed in the pre-hearing conference also become public records pursuant to the Freedom of Access Act at the conclusion of the conference except for those documents which the committee seals. If sealed, a document is exempt from public disclosure. Id. However, at the close of each

legislative session, the Legislative Information Office must review each official file, remove each sealed document, and replace sealed documents with an information sheet generally identifying the sealed document and noting its removal. Id. The file is then forwarded to the State Archives. Id. The sealed documents are destroyed. Id.

6. *Housing, Community, or Economic Development Records and Proceedings*

Numerous records of the Department of Economic and Community Development, development corporations and municipal or local developments are confidential for purposes of the Freedom of Access Act. Me. Rev. Stat. Ann. tit. 5, § 13119-A (West Supp. 1998). Disclosure is required and permitted of certain otherwise confidential records. Me. Rev. Stat. Ann. tit. 5, §§ 13119-B, 13119-C (West Supp. 1998).

7. *Records of the Certification of Minority, Women's and Disadvantaged Business Enterprises*

Records and correspondence utilized by state agencies in the certification of minority business enterprises, women's enterprises and disadvantaged business enterprises which pertain to the applicant's financial or tax status, to private contracts made by the applicant, to the applicant's trade secrets or to any other matter customarily regarded as confidential business information are confidential and not open for public inspection. Me. Rev. Stat. Ann. tit. 5, § 791 (West 1989).

8. *Human Rights Act*

Persons who are not parties to a complaint under the Human Rights Act as a complainant or a person accused of discrimination have a right to privacy. Any records of the Maine Human Rights Commission which are open to the public under the Freedom of Access Act, must be kept in such a manner as to ensure that data identifying these third parties is not reflected on the records. Only data reflecting the identity of these person may be kept confidential. Me. Rev. Stat. Ann. tit. 5, § 4612(5) (West 1989).

9. *Records in the Possession of the Medical Examiner*

When in the custody of a medical examiner, reproductions of medical reports and reports compiled by the police incorporated into the file, communications with the Department of the Attorney General, death certificates and any amendments made to the certificates, except for the information contained in the medical certificate by the medical examiner, and not ordered "withheld" by the Attorney General, and reports pertaining to cases under investigation by the Department of the Attorney General are confidential. Me. Rev. Stat. Ann. tit. 22, § 3022(8) (West 1992). Other entities also may not release reports of the Office of Chief Medical Examiner ("Medical Examiner") and must refer all requests to the Medical Examiner. The Medical Examiner need not release medical examiner reports to the public until a next of kin has been contacted. Me. Rev. Stat. Ann. tit. 22, § 3022(9) (West 1992). The Medical Examiner must cooperate with research requests within certain bounds. Me. Rev. Stat. Ann. tit. 22, § 3022(10) (West 1992). In addition written or recorded material expressing or evidencing suicidal intent held by the Medical Examiner are not subject to public access. Me. Rev. Stat. Ann. tit. 22, § 3022 (11) (West 1992).

10. *Veteran's Services*

All claims and documents pertaining to claims for benefits under the law relating to Veteran's Services, whether pending or adjudicated, are confidential and privileged. Me. Rev. Stat. Ann. tit. 37-B, § 506 (West 1989 & Supp. 1998).

11. *Workers' Compensation*

The minutes of trustee meetings and information relating to individual compensation cases that a self-insurer is required to file or make available are not public records. Me. Rev. Stat. Ann. tit. 39-A, § 403(15) (West Supp. 1998).

The Workers' Compensation Board's audit and enforcement program's audit working papers are confidential. Me. Rev. Stat. Ann. tit. 39-A, § 19319, as enacted by 1999 Me. Legis. Serv. Ch. 391, § 2 (West).

12. *Protection From Abuse: Confidentiality of Plaintiff's Address*

The domestic relations law pertaining to protection from abuse contains the following provision, to protect the plaintiff or minor child, the court may order the omission or deletion of his or her address from any papers available to the public. Me. Rev. Stat. Ann. tit. 19-A, § 4008 (West 1998).

13. *Library Records*

Records maintained by any public municipal library, including the Maine State Library and libraries of the University of Maine System and the Maine Maritime Academy, that contain information relating to the identity of a library patron relative to the patron's use of books or other materials at the library, are confidential. Me. Rev. Stat. Ann. tit. 27, § 121 (West 1988 & Supp. 1998). Those records may only be released with the express written permission of the patron involved or as the result of a court order. Id.

14. *Water Wells*

Information collected by the Maine Geological Survey pursuant to the law governing water well information *is* exempt from the Freedom of Access Act. Me. Rev. Stat. Ann. tit. 12, § 550-B (West 1994 & Supp 1998).

15. *Contract Security Companies*

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, etc. are confidential and may not be made available for public inspection or copying. Me. Rev. Stat. Ann. tit. 32, § 9418 (West 1988). A permanent record of licenses exists and is available for public inspection. Id. The names of security guards employed by a licensed contract security company is also available upon specific request. Id.

16. Commercial Whitewater Outfitter's Licenses

To determine whether a person seeking an allocation, that is the privilege to taking a specified number of passengers per day on whitewater trips on a particular river, is an affiliated outfitter, certain records may be submitted to the department. These records are confidential and made available only to persons involved in determining affiliation and only for that purpose. Me. Rev. Stat. Ann. tit. 12, § 7365(7) (West 1994 & Supp. 1998).

If financial records are required by the Bureau of Parks and Recreation in the Department of Conservation, they are confidential. Me. Rev. Stat. Ann. tit. 12, § 7369(7)(C) (West 1994 & Supp. 1998).

17. Records of the Office of Consumer Credit Regulation

A number of records of the Office of Consumer Credit Regulation are confidential, unless they become part of the record of a judicial proceeding or administrative hearing. Me. Rev. Stat. Ann. tit. 9-A, § 6-116 (West 1997).

18. Insurance Information

Any report of information relating to a particular claim is confidential and may not be revealed by the superintendent, except that the superintendent may make compilations including this experience. Me. Rev. Stat. Ann. tit. 24-A, §§ 2384-B(8), 2384-C (West Supp. 1998).

Records filed with and in the possession of the Superintendent of Insurance are confidential insofar as all data or information derived therefrom identifies or permits identification of the insured or insureds or the incident or occurrences for which a claim was made. Me. Rev. Stat. Ann. tit. 24, § 2604 (West 1990). In addition, reports made to the superintendent and report records kept by the superintendent are not subject to discovery and are not admissible, except at Board of Licensure in Medicine or Osteopathic proceedings. Me. Rev. Stat. Ann. tit 24, § 2978 (West Supp. 1998). See also Me. Rev. Stat. Ann. tit 24-A, §§ 216, 222 (West 1990 & Supp. 1998). An examination report of persons or business associations that are subject to examination by the superintendent is a public record, except insofar as it identifies individual insured or individual applicants for insurance. Me. Rev. Stat. Ann. tit. 24-A, § 227 (West 1990 & Supp. 1998).

19. Actions for Professional Negligence

The notice of claim and all other documents filed with the court in an action for professional negligence during the pre-litigation screening process are confidential. Me. Rev. Stat. Ann. tit. 24, § 2853(1-A) (West 1990 & Supp. 1998).

20. Rehabilitation Services: Misuse of Lists and Records

Rehabilitation services are goods and services necessary to assist a person with a disability to engage in a gainful occupation or to determine the individual's rehabilitation potential. It is unlawful, except for purposes directly connected with the administration of the rehabilitation program and in accordance with its rules, for a person or individual to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in or acquiesce in

the use of a list of names of, or information concerning, individuals applying for or receiving rehabilitation when that list or information is directly or indirectly derived from the records, papers, files, or communications of the State. Me. Rev. Stat. Ann. tit. 26, § 1412 (West Supp. 1998).

21. Department of Transportation

The records and correspondence of the right-of-way division of the Department of Transportation relating to negotiations for and appraisals of property, pending the final settlement for all claims on the project to which they relate, etc. are confidential until nine months following the completion date of the project or in the case of a claim that has been appealed to the Superior Court. Me. Rev. Stat. Ann. tit. 23, § 63 (West 1992).

22. Commission on Governmental Ethics

The records of the commission on governmental ethics and any information received by it in the course of its investigation and conduct of its affairs is confidential, except the Legislators' statements of sources of income, evidence or information disclosed at public hearings, the commission's findings of fact and its opinions and guidelines are public records. Me. Rev. Stat. Ann. tit. 1, §1013(2)(J) (West 1989 & Supp 1998). All complaints are confidential until the investigation is completed and a hearing ordered or until the nature of the investigation becomes public knowledge. Me. Rev. Stat. Ann. tit. 1, § 1013(3) (West Supp. 1998).

23. Abuse of Office or Position: Conflict of Interest

The use or disclosure of confidential information obtained because of office or position for the benefit of self or another is abuse of office or position by a Legislator. Me. Rev. Stat. Ann. tit. 1, § 1014(3)(C) (West 1989).

24. 9-1-1 Telephone Calls

Any record, recording or information obtained by a public or private safety agency, including a public safety answering point, for the purpose of providing E-9-1-1 services and that reveals the name, address or telephone number of, or information that may identify, a person requesting emergency service or reporting an emergency by placing a 9-1-1 call is confidential under the Freedom of Access Act. Me. Rev. Stat. Ann. tit. 25, § 2929(2) (West Supp. 1998).

25. Unlisted Telephone Numbers

Any portion of public safety answering point records containing customer information described in Me. Rev. Stat. Ann. tit. 35-A, § 7501(1) and omitted from telephone utility directory listings upon request of the customer is confidential and may not be disseminated. Me. Rev. Stat. Ann. tit. 25, § 2929(2) (West Supp. 1998).

26. Names of Patrons of the State Archives

Archival materials under the State Archivists supervision are generally available for public use. However, state records maintained by the archivist that contain information related

to the identity of an archives patron relative to the patron's use of materials at the archives are confidential. Me. Rev. Stat. Ann. tit. 5, § 95(11) (West 1989 & Supp. 1998). Such records may only be released with the express written consent of the patron involved or as a result of a court order. Id.

27. Lobster Promotion Council

Although the employees of the Lobster Promotion Council may not be construed as state employees and the agency may not be construed as a state agency for any purpose, all meetings and records of the council are subject to the Freedom of Access Act. Me. Rev. Stat. Ann. tit. 12, § 6455(1-A)(C) (West 1994 & Supp. 1998). However, the council may, by a majority vote of its members, designate market studies or promotional plans developed or funded by the council as confidential. Id. Such confidential information is available to certain government bodies. Id.

28. Leading Inspection Records

All records received or maintained by the Department of Human Services that has been received as a result of a report by lead inspectors and that contain information that identifies, or could lead to the identification of an individual are confidential. Me. Rev. Stat. Ann. tit. 22, § 1322-D (West Supp 1998).

29. Maine Turnpike Authority

A log or record identifying the name, address, or travel patterns of a patron of the turnpike, whether prepared for enforcement of authority tolls or other purposes of the authority, is for the exclusive use of the authority in the discharge of its duties under the law governing the Maine Turnpike Authority. Me. Rev. Stat. Ann. tit. 23, § 1982 (West Supp. 1998). Such material is confidential and not available to the public, except that a law enforcement officer or a representative of an insurance company making a request for specific records in the course of conducting the officer's or the representative's business may have access to the otherwise confidential material to the same extent as would be provided under the Freedom of Access Act. Id.

30. Northern New England Passenger Rail Authority

Records and correspondence relating to negotiations or trade secrets received by the Northern New England Passenger Rail Authority and estimates of costs on projects to be put out to bid are confidential and the authority is deemed to have a lawyer-client privilege. Me. Rev. Stat. Ann. tit. 23, § 8115 (West Supp. 1998).

31. DNA Records

All DNA records are confidential and may not be disclosed to any person or agency unless the agency is granted a right to access within the statute. See Me. Rev. Stat. Ann. tit. 25, § 1577(1) and (2) (West Supp. 1998). DNA records may be released to advance DNA analysis methods and to support statistical interpretation of DNA analysis, including the development of population data bases, so long as personal information is removed from DNA records prior to the release of those records. Me. Rev. Stat. Ann. tit. 25, § 1577(3) (West Supp. 1998).

32. Abandoned or Unclaimed Property

Maine has adopted the Uniform Unclaimed Property Act, which contains confidentiality provisions. Me. Rev. Stat. Ann. tit. 33, § 1971(4) (West Supp. 1998).

33. Pulp and Paper Manufacturing Sector Stabilization Assistance

A business engaged in the pulp and paper industry undertaking, a certified environmental improvement project is eligible to apply for reimbursement of certain costs under the Pulp and Paper Manufacturing Sector Stabilization Assistance Program. The names of the recipients of reimbursements under the program and the amount of each reimbursement is a public record. Me. Rev. Stat. Ann. tit. 30-A, § 5270(6) (West 1996). However, records obtained by the applicant, the commissioner or the Commissioner of Environmental Protection for approval of a pulp and paper environmental improvement reimbursement is confidential, as are certain other records developed by the applicant. Me. Rev. Stat. Ann. tit. 30-A, § 5270(6)(A) and (B) (West 1996).

34. Motor Vehicles

Upon receiving a written request by an appropriate criminal justice official and showing cause that it is in the best interest of public safety, the Secretary of State may determine that records of a non-government vehicle may be held confidential for a specific period of time, which may not exceed the expiration of the current registration. Me. Rev. Stat. Ann. tit. 29-A, § 253 (West 1996). Records of all unmarked vehicle registrations are confidential. Me. Rev. Stat. Ann. tit. 29-A, § 517(4) (West 1996) (this section also limits the time during which records of non-government vehicles may be held confidential to the expiration of the vehicle's current registration).

A person's motor vehicle registration and driver's license may be held confidential for a specified period of time upon request and a showing that the person is in danger of serious bodily harm or death and is relocating for the purpose of avoiding such harm. Me. Rev. Stat. Ann. tit. 29-A, § 255 (West Supp. 1998).

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