

# OPEN GOVERNMENT GUIDE

Access to Public Records  
and Meetings in

MAINE

**REPORTERS  
COMMITTEE**  
FOR FREEDOM OF THE PRESS

Sixth Edition  
2011



# OPEN GOVERNMENT GUIDE

## OPEN RECORDS AND MEETINGS LAWS IN

# MAINE

*Prepared by:*  
Jonathan S. Piper  
Sigmund D. Schutz  
PRETI, FLAHERTY, BELIVEAU,  
PACHIOS & HALEY, LLP  
P.O. Box 9546  
One City Center  
Portland, Maine 04112-9546  
Tel: 207-791-3000  
Fax: 207-791-3111  
Internet: [www.preti.com](http://www.preti.com)

**REPORTERS  
COMMITTEE**  
FOR FREEDOM OF THE PRESS

Sixth Edition  
2011

# OPEN GOVERNMENT GUIDE

Access to Public Records and Meetings in

**MAINE**

**SIXTH EDITION  
2011**

Previously Titled  
Tapping Officials' Secrets

Published by The Reporters Committee for Freedom of the Press  
Lucy A. Dalglish, Executive Director

## **EDITORS**

Gregg Leslie, Legal Defense Director  
Mark Caramanica, Freedom of Information Director

## **ASSISTANT EDITORS**

Christine Beckett, Jack Nelson Legal Fellow  
Aaron Mackey  
Emily Peterson

Production of the sixth edition of this compendium was possible  
due to the generous financial contributions of:  
The Stanton Foundation

© 2011, 2006, 2001, 1997, 1993, 1989 by The Reporters Committee for Freedom of the Press.  
All rights reserved. No part of this publication may be reproduced in any form or  
by any means without the prior, written permission of the publisher.

ISBN: 1-58078-222-1

# Contents

Introductory Note .....	iv	V. PROCEDURE FOR OBTAINING RECORDS .....	9
User’s Guide .....	v	A. How to start.....	9
FOREWORD .....	1	B. How long to wait.....	10
Open Records.....	1	C. Administrative appeal.....	10
I. STATUTE -- BASIC APPLICATION.....	1	D. Court action.....	10
A. Who can request records? .....	1	E. Appealing initial court decisions.....	11
B. Whose records are and are not subject to the act? .....	1	F. Addressing government suits against disclosure.....	11
C. What records are and are not subject to the act? .....	2	Open Meetings.....	11
D. Fee provisions or practices.....	2	I. STATUTE -- BASIC APPLICATION.....	11
E. Who enforces the act? .....	2	A. Who may attend? .....	11
F. Are there sanctions for noncompliance? .....	3	B. What governments are subject to the law? .....	11
II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS ..	3	C. What bodies are covered by the law? .....	11
A. Exemptions in the open records statute.....	3	D. What constitutes a meeting subject to the law.....	12
B. Other statutory exclusions.....	4	E. Categories of meetings subject to the law.....	12
C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.....	4	F. Recording/broadcast of meetings.....	14
D. Are segregable portions of records containing exempt material available? .....	4	G. Are there sanctions for noncompliance? .....	14
E. Homeland Security Measures.....	4	II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS ..	14
III. STATE LAW ON ELECTRONIC RECORDS.....	4	A. Exemptions in the open meetings statute.....	14
A. Can the requester choose a format for receiving records? ..	4	B. Any other statutory requirements for closed or open meetings.....	14
B. Can the requester obtain a customized search of computer databases to fit particular needs? .....	5	C. Court mandated opening, closing.....	15
C. Does the existence of information in electronic format affect its openness? .....	5	III. MEETING CATEGORIES -- OPEN OR CLOSED.....	15
D. How is e-mail treated? .....	5	A. Adjudications by administrative bodies.....	15
E. How are text messages and instant messages treated? .....	5	B. Budget sessions.....	15
F. How are social media postings and messages treated? .....	5	C. Business and industry relations.....	15
G. How are online discussion board posts treated? .....	5	D. Federal programs.....	15
H. Computer software.....	5	E. Financial data of public bodies.....	15
I. How are fees for electronic records assessed? .....	6	F. Financial data, trade secrets or proprietary data of private corporations and individuals.....	15
J. Money-making schemes.....	6	G. Gifts, trusts and honorary degrees.....	15
K. On-line dissemination.....	6	H. Grand jury testimony by public employees.....	15
IV. RECORD CATEGORIES -- OPEN OR CLOSED.....	6	I. Licensing examinations.....	15
A. Autopsy reports.....	6	J. Litigation; pending litigation or other attorney-client privileges.....	15
B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations) .....	6	K. Negotiations and collective bargaining of public employees..	15
C. Bank records.....	6	L. Parole board meetings, or meetings involving parole board decisions.....	15
D. Budgets.....	6	M. Patients; discussions on individual patients.....	15
E. Business records, financial data, trade secrets.....	6	N. Personnel matters.....	15
F. Contracts, proposals and bids.....	6	O. Real estate negotiations.....	15
G. Collective bargaining records.....	6	P. Security, national and/or state, of buildings, personnel or other.....	15
H. Coroners reports.....	6	Q. Students; discussions on individual students.....	16
I. Economic development records.....	7	IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS ..	16
J. Election records.....	7	A. When to challenge.....	16
K. Gun permits.....	7	B. How to start.....	16
L. Hospital reports.....	7	C. Court review of administrative decision.....	16
M. Personnel records.....	7	D. Appealing initial court decisions.....	17
N. Police records.....	7	V. ASSERTING A RIGHT TO COMMENT.....	17
O. Prison, parole and probation reports.....	8	A. Is there a right to participate in public meetings? .....	17
P. Public utility records.....	8	B. Must a commenter give notice of intentions to comment? ..	17
Q. Real estate appraisals, negotiations.....	8	C. Can a public body limit comment? .....	17
R. School and university records.....	9	D. How can a participant assert rights to comment? .....	17
S. Vital statistics.....	9	E. Are there sanctions for unapproved comment? .....	17
		Statute.....	17

## Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

## User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

*Following the outline.* Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, [www.rcfp.org/ogg](http://www.rcfp.org/ogg). The Internet version of the outlines allows you to search the database and compare the law in different states.

*Updates:* The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at [www.rcfp.org/ogg](http://www.rcfp.org/ogg). This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.



**Prepared by:**

Jonathan S. Piper  
 Sigmund D. Schutz  
 PRETI, FLAHERTY, BELIVEAU,  
 PACHIOS & HALEY, LLP  
 P.O. Box 9546  
 One City Center  
 Portland, Maine 04112-9546  
 Tel: 207-791-3000  
 Fax: 207-791-3111  
 Internet: www.preti.com

**FOREWORD**

The Maine Legislature enacted the Maine Freedom of Access Act (“FOAA”) — sometimes referred to as the Right to Know Law — in 1959 as Public Law, Chapter 219 (Legislative Document 6: “An Act Pertaining to Freedom of Access to Public Records and Proceedings”). The FOAA as recodified and amended is found in Sections 401-412 of Title 1 of the Maine Revised Statutes Annotated (1 M.R.S.A. §§ 401 - 412). The FOAA covers both access to public proceedings and access to public records.

The FOAA broadly applies to state legislative, executive, and administrative bodies, all county, local, and governmental bodies, “blue ribbon” and hybrid bodies, and the Board of Trustees of the state universities, among other government entities. The FOAA does not apply to the Judicial Branch, which has adopted its own public information and confidentiality policy.

The FOAA itself contains a variety of exceptions, including for records that have been “designated confidential by statute.” As a result of this provision, many exceptions to public access are found outside the FOAA, scattered throughout the Maine Revised Statutes. To determine whether a particular record (or discussion of that record) is confidential requires review of statutes that relate to the government entity involved or the subject matter of the record. For example, access to law enforcement information is controlled to a large extent by the Criminal History Record Information Act, 16 M.R.S.A. §§ 611 - 623.

The FOAA has been the subject of frequent amendments. The Maine State Law and Legislative Library in Augusta, Maine, has available a compilation of the amendments to the FOAA since 1959.

**Open Records****I. STATUTE -- BASIC APPLICATION****A. Who can request records?**

Anyone. “Every person” may inspect and copy “any public record.” 1 M.R.S.A. § 408.

**1. Status of requestor.**

The status of the requester is not germane to FOAA requests. However, the status of the requester may allow access to certain categories of records that are otherwise exempt from public disclosure (e.g., victim access to criminal records; employee access to personnel records).

**2. Purpose of request.**

A requester need not state the purpose of a request. However, the purpose of a request may be relevant in some narrow instances where, for example, certain categories of records may be released only for qualified research purposes.

**3. Use of records.**

Public records may be used for any purpose.

**B. Whose records are and are not subject to the act?**

Whether records are public depends on a transactional test, not, in general, the identity of the person or agency possessing the record. Records are public so long as they “have been received or prepared for use in connection with the transaction of public or governmental business or that contain information relating to the transaction of public or governmental business.” 1 M.R.S.A. § 402(3).

**1. Executive branch.****a. Records of the executives themselves.**

The records of the executives themselves, such as governor, mayor, or commissioner of a department, are subject to the Act if the records have been received or prepared for use in connection with the transaction of public or government business or if they contain information relating to the transaction of public or governmental business. 1 M.R.S.A. § 402.

**b. Records of certain but not all functions.**

All records relating to the transaction of governmental or public business are available for inspection and copying. Purely private or personal records are not subject to disclosure.

**2. Legislative bodies.**

Records of the Legislature itself are subject to the Freedom of Access Act, but legislative papers and reports, working papers, drafts, internal memoranda, and similar works in progress are not public until signed and publicly distributed in accordance with rules of the Legislature. 1 M.R.S.A. § 402(3)(C).

**3. Courts.**

The courts are not subject to the Freedom of Access Act, although the legislature has, by statute, limited access to certain court records of proceedings affecting a significant personal right, such as juvenile proceedings, proceedings regarding sterilizations for incompetent people (34-B M.R.S.A. § 7014), approval of a minor’s abortion (22 M.R.S.A. § 1597-A) and commitments to mental institutions (34-B M.R.S.A. § 3864). The Supreme Judicial Court of Maine has adopted a Public Information and Confidentiality Policy, JB-05-20 (A. 5-09), which governs the release of public information and the protection of confidential and other sensitive information. The policy defines confidential records to include information made confidential by statute, rule or policy; information subject to a protective order; information

regarding a judge or law clerk's notes, drafts or working papers; and information relating to a pending or outstanding search warrant, arrest warrant or confidential law enforcement information.

#### 4. Nongovernmental bodies.

##### a. Bodies receiving public funds or benefits.

Whether a nongovernmental body is receiving public funds or benefits is a factor to be weighed in considering whether it is subject to public disclosure laws. *Town of Burlington v. Hospital Administrative District No. 1*, 2001 ME 59, ¶¶ 16-19, 769 A.2d 857.

##### b. Bodies whose members include governmental officials.

Whether a nongovernmental body includes governmental officials is a factor to be weighed in considering whether it is subject to public disclosure laws. *Town of Burlington v. Hospital Administrative District No. 1*, 2001 ME 59, ¶¶ 16-19, 769 A.2d 857.

#### 5. Multi-state or regional bodies.

To the extent that Maine governmental officials are serving on multi-state or regional bodies in connection with the transaction of governmental or public business, their records are public.

#### 6. Advisory boards and commissions, quasi-governmental entities.

The records of advisory boards and commissions are generally public, unless established by executive order issued by the Governor. 1 M.R.S.A. § 402(3)(J). With respect to quasi-governmental entities, the Maine Supreme Judicial Court has "looked to the function that the entity performs" to determine whether the records of advisory boards, commissions, and quasi-governmental entities are public records. *Town of Burlington v. Hosp. Admin. Dist.*, 2001 ME 59, ¶ 16, 769 A.2d 857. Factors to be considered include: (1) whether the entity is performing a governmental function; (2) whether the funding of the entity is governmental; (3) the extent of governmental involvement or control; and (4) whether the entity was created by private or legislative action. *Id.* The courts do not require that an entity conform to all factors, but that the factors be considered and weighed. *Id.*

The full membership meetings of any association, the membership of which is composed of counties, municipalities, school administrative units or other political or administrative subdivisions, are open to the public – along with boards, commissions, agencies or authorities of any such subdivisions, or any combination of any of these entities. 1 M.R.S.A. § 402(2)(D).

#### 7. Others.

The Freedom of Access Act applies to Indian Tribes within the state unless engaged in purely internal tribal matters, such as in the deliberative process of self government. *Great Northern Paper v. Penobscot Nation*, 2001 ME 68, 770 A.2d 574.

### C. What records are and are not subject to the act?

#### 1. What kind of records are covered?

All.

#### 2. What physical form of records are covered?

All. 1 M.R.S.A. § 402(3).

#### 3. Are certain records available for inspection but not copying?

No. All records are available for both inspection and copying. 1 M.R.S.A. § 408(1).

### D. Fee provisions or practices.

#### 1. Levels or limitations on fees.

An agency or official may charge a "reasonable fee to cover the cost of copying." 1 M.R.S.A. § 408(3)(A).

#### 2. Particular fee specifications or provisions.

##### a. Search.

The agency or official may charge a fee to cover the actual cost of searching for, retrieving, and compiling the requested public record of not more than \$10 per hour after the first hour of staff time per request. 1 M.R.S.A. § 408(3)(B). Compiling the public record includes reviewing and redacting confidential information. *Id.*

##### b. Duplication.

The fee must be "reasonable." 1 M.R.S.A. § 408(3)(A).

##### c. Other.

The cost of translating a record from an electronic form to a readable form, if necessary, can be charged. 1 M.R.S.A. § 408(3)(C). An agency or official may not charge for inspection. 1 M.R.S.A. § 408(3)(D). Many electronic records are available through InforME: The Information Resource of Maine. InforME is a self-supporting electronic gateway that provides and enhances access to public information stored in electronic form. 1 M.R.S.A. § 533. InforME charges a fee for most records; but a request may always be made directly to the relevant agency instead of through InforME.

#### 3. Provisions for fee waivers.

The agency or official may waive part or all of a fee if the requester is indigent or if release of the public record requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. 1 M.R.S.A. § 408(6).

#### 4. Requirements or prohibitions regarding advance payment.

An estimate of the time necessary to complete the request and total cost must be given if the cost is greater than \$20. 1 M.R.S.A. § 408(4). If the cost is greater than \$100, advance payment may be required. *Id.*

#### 5. Have agencies imposed prohibitive fees to discourage requesters?

Yes. There have been instances where government agencies — particularly municipal and county government and police departments — have attempted to impose exorbitant costs on requesters.

### E. Who enforces the act?

The Attorney General or any District Attorney may enforce the Act, as well as any private requester of records.

#### 1. Attorney General's role.

The Attorney General may enforce the Act, but prosecutions are virtually unheard of.

#### 2. Availability of an ombudsman.

An ombudsman position exists within the Department of Attorney General. 5 M.R.S.A. § 200-I. The position is unfunded and, effectively, dormant at the present time. A contact list for public records questions is available on the State's website at <http://www.maine.gov/foaa/contactlist/index.htm> (last visited April 14, 2011).

#### 3. Commission or agency enforcement.

None.

## F. Are there sanctions for noncompliance?

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 fine may only be collected by the state, not private persons.

A private person may recover court costs as well as reasonable attorney's fees and litigation expenses, although fees and expenses are only available to the substantially prevailing plaintiff if the court determines that the refusal to provide access to public records or illegal action in executive session was in bad faith. 1 M.R.S.A. § 409(4). Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe. *Id.*

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

Access to public records is limited by the 12 exemptions contained within the FOAA itself and by many statutes outside the FOAA addressing the confidentiality of particular records. 1 M.R.S.A. § 402(3).

### A. Exemptions in the open records statute.

#### 1. Character of exemptions.

##### a. General or specific?

Varies.

##### b. Mandatory or discretionary?

Varies.

##### c. Patterned after federal Freedom of Information Act?

No, with the exception of similarities contained in the intelligence and investigative exception to the Maine Criminal History Record Information Act found at 16 M.R.S.A. § 614.

#### 2. Discussion of each exemption.

a. *Records Designated Confidential by Statute.* The most troublesome general exemption contained in the FOAA is an exemption for records otherwise designated confidential by statute. 1 M.R.S.A. § 402(3)(A). There are many such exemptions scattered throughout Maine's Revised Statutes. Each one must be consulted individually.

b. *Privileged Records.* 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" are exempt from disclosure. 1 M.R.S.A. § 402(3)(B). The general purpose of this exemption was to achieve consistency between rules that would be applied to the state in a lawsuit and the FOAA. Until recently its use was infrequent. For example, an unpublished opinion of the Attorney General's Office advised the Bureau of Consumer Protection that it need not allow inspection of records containing the names of persons who had filed complaints, relying on the state's privilege to withhold names of informers. Maine Rules of Evidence, Rule 508. The Maine Supreme Court subsequently discussed the exemption in *Moffett v. City of Portland*, 400 A.2d 340 (Me. 1979), which held that the transcripts of statements made by police officers during an internal police disciplinary investigation were protected by the Fifth Amendment privilege of the officers and therefore need not be made available for inspection by the press. On at least one occasion a municipality joined with a taxpayer in an action requesting a declaratory judgment that business records submitted in support of a property tax abatement were trade secrets and therefore privileged. The *attorney-client privilege* applicable to governments and government agencies only applies to communications concerning a pending investigation, claim or action and then only if disclosure would seriously impair the government's ability to conduct that investigation or proceeding in the public interest. *Morrell v. Bd. of Selectmen, Town of Wiscasset*, Docket No. CV-01-001, (Lincoln

Superior Ct., Feb. 27, 2001).

c. *Legislative Papers and Reports.* The open records statute contains a specific exemption for legislative papers and reports until they are signed and publicly distributed and records, working papers, drafts and inter-office and intra-office memoranda used or maintained by any legislator or legislative employee to prepare proposed legislative papers or reports. 1 M.R.S.A. § 402(3)(C).

d. *Labor Negotiations.* Materials prepared "specifically and exclusively" for negotiations by a "public employer in collective bargaining with its employees and their designated representatives" are exempt from disclosure. 1 M.R.S.A. § 402(3)(D). The concern originally prompting this exemption arose out of collective bargaining negotiations between a public employer and its employees. The purpose was to allow the public employer to develop a bargaining strategy that would not be known by its employees in advance. Despite the clear language of the exemption, a few local governments have assumed that it may be used in other negotiations.

e. *University of Maine Faculty and Administrative Committee Records.* An exemption protects "records, working papers, inter-office and intra-office memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy and the University of Maine." 1 M.R.S.A. § 402(3)(E). The chief purpose of the exemption was to protect such records as academic examinations and tests from premature disclosure.

f. *Exemption Not Lost by Transfer to Other Governmental Entity.* An exemption applies to records in the possession of local governments or intra-state organizations that would be declared confidential if they were in the possession of an agency or official of the state or a political or administrative subdivision thereof. 1 M.R.S.A. § 402(3)(F).

g. *Insurance Records.* The third specific exemption protects "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" whose membership is composed exclusively of political or administrative subdivisions of the state or of other organizations of any such subdivision. 1 M.R.S.A. § 402(3)(G).

h. *Medical Records and Reports of Municipal EMS.* An exemption protects from disclosure medical records and reports of municipal ambulance, rescue and emergency medical service units. 1 M.R.S.A. § 402(3)(H).

i. *Juvenile Records.* Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter are confidential. 1 M.R.S.A. § 402(3)(I).

j. *Gubernatorial Advisory Organizations.* Working papers, including records, drafts and inter-office and intra-office memoranda, used or maintained by certain advisory boards and commissions established, authorized or organized by law or resolve or by Executive Order issued by the Governor or by any staff or members of the board or commission unless such working paper is distributed by a member or in a public meeting are confidential. 1 M.R.S.A. § 402(3)(J).

k. *Minor Recreational Records.* Personally identifying information concerning minors participating in municipal recreation and non-mandatory educational programs are confidential *if* the municipality enacts an ordinance specifying the circumstances in which the records will be withheld from disclosure. 1 M.R.S.A. § 402(3)(K).

l. *Security Records.* An exemption protects records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. 1 M.R.S.A. § 402(3)(L). For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple

persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure. *Id.*

m. *Information Technology Infrastructure and Systems.* An exemption protects records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems. 1 M.R.S.A. § 402(3)(m).

n. *Social Security Numbers in the Possession of the Department of Inland Fisheries and Wildlife.* An exemption protects Social Security numbers in the possession of the Department of Inland Fisheries and Wildlife. 1 M.R.S.A. § 402(3)(n).

o. *Personal Contact Information Concerning Public Employees.* Home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number information for public employees is exempt, unless that information is specifically made public by other law. 1 M.R.S.A. § 402(3)(o).

p. *Geographic Information on Trails on Private Land.* Geographic information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information. 1 M.R.S.A. § 402(3)(p).

q. *Department of Corrections Security.* Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the general public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials, the Department of Corrections or members of the State Board of Corrections under conditions that protect the information from further disclosure. 1 M.R.S.A. § 402(3)(q).

## B. Other statutory exclusions.

Many significant exceptions to the availability of public records are contained in statutes other than the Freedom of Access Act. As explained above, the usual statutory mechanism is a declaration that information or records of a certain description are confidential and may not be disclosed outside the agency having custody. Examples are tax records, except for property tax records, (36 M.R.S.A. § 191), applications for concealed weapons permits (25 M.R.S.A. § 2006), personnel records (30-A M.R.S.A. § 2702), and certain records of the Finance Authority of Maine (10 M.R.S.A. § 975-A). There are a great many of these statutes; a review of pertinent statutory materials is therefore necessary whenever action to compel inspection of a record is contemplated.

## C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

The Maine Supreme Judicial Court has repeatedly held that the statutory exceptions to the FOAA are to be strictly construed in favor of public access. See, e.g., *Doe v. Department of Mental Health, Mental Retardation, and Substance Abuse Services*, 699 A.2d 422 (Me. 1997). The Court has, however, created a judicial exception to the FOAA for documents prepared for a lawful executive session. *Blethen Me. Newspapers, Inc. v. Portland Sch. Comm.*, 2008 ME 69, ¶ 18, 947 A.2d 749 (“Because the executive session was lawful, documents prepared for use during the executive session and notes made during the executive session are not subject to public examination.”)

The FOAA does recognize privileges, i.e., 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” are exempt from disclosure. 1 M.R.S.A. § 402(3)(B). Any record that would be privileged against disclosure in litigation involving a state agency is not subject to disclosure as a public record. Maine recognizes most of the common law and constitutional privileges that are recognized by other states. The privileges bearing on disclosure of public records would appear to be confined to the privilege against self-incrimination, *Moffett v. City of Portland*, 400 A.2d 340 (Me. 1979), the privilege not to disclose the identity of an informer (M. R. Evid. 509), a limited lawyer-client privilege (M.R. Evid. 502), trade secrets (M.R.Evid. 507), a physician/psychotherapist potential privilege (M.R. Evid. 503), and privileges for communications to sexual assault counselors and victim and witness advocates. 16 M.R.S.A. § 53-C.

The attorney-client privilege applicable to government clients only applies to communications concerning a pending investigation, claim or action and only when disclosure would seriously impair the conduct of that investigation or proceeding. *Morrell v. Bd. of Selectmen, Town of Wiscasset*, Docket No. CV-01-001, (Lincoln Superior Ct., Feb. 27, 2001).

## D. Are segregable portions of records containing exempt material available?

The Freedom of Access Act itself does not specifically require redaction of records, but the Courts have endorsed the use of redaction to allow disclosure of public information contained in a document that also contains lawfully confidential information. *Anastos v. Town of Brunswick*, 2011 ME 41, ¶ 11, \_\_\_ A.2d \_\_\_ (Mar. 24, 2011) (“the mere existence of some element of proprietary information within a document does not presumptively render the entire document confidential in every instance”). In addition, certain statutes specifically require redaction. See, e.g. Finance Authority Records, 10 M.R.S.A. § 975-A.

## E. Homeland Security Measures.

The Freedom of Access Act contains two categories of “homeland security”-type records exempted from public disclosure:

- (1) Security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public; and
- (2) Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems.

1 M.R.S.A. § 402(3)(L), (M). A separate exemption provides overlapping confidentiality for the Secretary of State’s information technology system plans and security information 29-A M.R.S.A. § 257.

Although not enacted as a homeland security measure, Maine law provides for confidentiality for law enforcement’s “intelligence and investigative” information. Reports or records that contain intelligence and investigative information “prepared by, prepared at the direction of or kept in the custody” that would “[i]nterfere with law enforcement proceedings” or disclose “investigative techniques and procedures or security plans and procedures not generally known by the general public” are exempt from disclosure. 16 M.R.S.A. § 614(1)(A), (G).

## III. STATE LAW ON ELECTRONIC RECORDS

### A. Can the requester choose a format for receiving records?

The statute does not directly address this issue. Because the format of the record (i.e., whether electronic or otherwise) does not control whether it is a public record that must be disclosed, the requester can request disclosure of any formats that may be available. 1 M.R.S.A.

§ 408; see *MacLmage of Maine, LLC v. Androscoggin Cty.*, slip op., CV-09-605 (Cumb.Cty.Sup.Ct. Feb. 20, 2011) (requiring disclosure of records on external hard drives).

**B. Can the requester obtain a customized search of computer databases to fit particular needs?**

Yes, but the requester must pay the actual cost of serving for, retrieving and compiling the requested record of not more than \$10 per hour after the first hour. 1 M.R.S.A. § 408(2)(B).

**C. Does the existence of information in electronic format affect its openness?**

No.

**D. How is e-mail treated?**

**1. Does e-mail constitute a record?**

Yes. According to the Maine Attorney General, “Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail 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” and is not deemed confidential or excepted from the Freedom of Access Act, it constitutes a “public record.” Maine Freedom of Access, Frequently Asked Questions, <http://www.maine.gov/foaa/faq/index.shtml#records> (last visited April 14, 2011).

**2. Public matter on government e-mail or government hardware**

Yes. With the exception of computer programs, technical data, logic diagrams and source code related to data processing or telecommunications that qualify as trade secrets, “any document created or stored on a State Government computer must be made available in accordance with” the public records law. 5 M.R.S.A. § 1976.

**3. Private matter on government e-mail or government hardware**

The use of government e-mail or government hardware render for private purposes or matters should mean that otherwise private e-mails are public record given Maine’s broad definition of public records as information “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” is a public record (1 M.R.S.A. § 402(3)) and records “stored” on State Government computers are public record (5 M.R.S.A. § 1976(2)). There are no cases addressing this question.

**4. Public matter on private e-mail**

Yes, so long as the e-mail was “received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business.” 1 M.R.S.A. § 402(3).

**5. Private matter on private e-mail**

No.

**E. How are text messages and instant messages treated?**

No cases, but it is likely that text and instant message would be treated in the same fashion as e-mail and other documents, regardless of format – so long as the e-message was “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” the message is a public record. 1 M.R.S.A. § 402(3).

**1. Do text messages and/or instant messages constitute a record?**

Yes. “Any record, regardless of the form in which it is maintained by an agency or official, can be a public record.” Maine Freedom of Access, Frequently Asked Questions, <http://www.maine.gov/foaa/faq/index.shtml#records> (last visited April 14, 2011).

**2. Public matter message on government hardware.**

Yes. “[A]ny document created or stored on a State Government computer must be made available in accordance with” the public records law. 5 M.R.S.A. § 1976.

**3. Private matter message on government hardware.**

The use of government hardware rendered for private purposes or matters should mean that otherwise private messages are public record given Maine’s broad definition of public records as information “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” is a public record (1 M.R.S.A. § 402(3)) and records “stored” on State Government computers are public record (5 M.R.S.A. § 1976(2)). There are no cases addressing this question.

**4. Public matter message on private hardware.**

The use of government hardware render for private purposes or matters should mean that those otherwise private messages are public record given Maine’s broad definition of public records as information “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” is a public record. 1 M.R.S.A. § 402(3)). There are no cases addressing this question.

**5. Private matter message on private hardware.**

No.

**F. How are social media postings and messages treated?**

So long as the postings or messages were “received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business.” 1 M.R.S.A. § 402(3).

**G. How are online discussion board posts treated?**

So long as the posts were “received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business.” 1 M.R.S.A. § 402(3).

**H. Computer software**

**1. Is software public?**

Computer programs, technical data, logic diagrams and source code related to data processing or telecommunications that qualify as trade secrets are not public records. 5 M.R.S.A. § 1976(1). Otherwise, “any document created or stored on a State Government computer must be made available in accordance with” the public records law. 5 M.R.S.A. § 1976.

**2. Is software and/or file metadata public?**

Computer programs, technical data, logic diagrams and source code related to data processing or telecommunications that qualify as trade secrets are not public records. 5 M.R.S.A. § 1976(1). Otherwise, “any document created or stored on a State Government computer must be made available in accordance with” the public records law. 5 M.R.S.A. § 1976. There are no cases governing metadata in public records specifically.

## I. How are fees for electronic records assessed?

The fee standard is generally the same regardless of whether the records requested are electronic or otherwise. 1 M.R.S.A. § 408(3). The statute provides for a fee for searching for, retrieving, and compiling an electronic public record, as well as translation of the record into a readable form, if necessary. *Id.*

## J. Money-making schemes.

### 1. Revenues.

The InforME statute is a revenue generating statute, although it is only meant to be self-sustaining. 1 M.R.S.A. §§ 531-538. Section 533 establishes InforME and provides its purposes. The last paragraph of that section reads as follows: “Nothing in this Act may be construed to affect the rights of persons to inspect or copy public records under [the FOAA] or the duty of data custodians to provide for public inspection and copying of their records.” Some government entities do attempt to use sale of public records as a money-making venture, but that is illegal under the public records law, which limits fees to “a reasonable fee to cover the cost of copying.” 1 M.R.S.A. § 408(3)

### 2. Geographic Information Systems.

The Office of Geographic Information Systems is established within the Office of Information Technology. 5 M.R.S.A. § 1992. The statute addresses public geographic information. 5 M.R.S.A. § 2002(9).

## K. On-line dissemination.

There is no requirement that electronic records be made available on-line.

## IV. RECORD CATEGORIES -- OPEN OR CLOSED

### A. Autopsy reports.

Autopsy reports of the Office of the Chief Medical Examiner are available to the general public to the same extent and subject to the same conditions as records of a criminal investigation. Photographs of the Office, pathology slides and recorded communications expressing or evidencing suicidal intent in the possession of the Office of the Chief Medical Examiner are confidential. 22 M.R.S.A. §§ 2841(3), 3022(8)(9), and (11).

### B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

#### 1. Rules for active investigations.

Information concerning active investigations is generally confidential. 26 M.R.S.A. § 3. Names of individuals, firms or corporations are confidential. 26 M.R.S.A. § 3.

#### 2. Rules for closed investigations.

The director may release information and reports to other government agencies if the director believes that the information will serve to further the protection of the public or assist in the enforcement of local, state, and federal laws. 26 M.R.S.A. § 3.

### C. Bank records.

Information obtained in any fashion by the Superintendent of Banking pertaining to supervised financial institutions is confidential. 9-B M.R.S.A. § 226. Applications for a charter, merger, branch, acquisition, subsidiary formation, name change or other similar request are available for public inspection, but any confidential material regarding the applicant must be deleted from the public copy. *Id.* at § 252.

## D. Budgets.

Budgets are matters of public record. In addition, “discussion of a budget or budget proposal” notwithstanding an agency’s right to go into executive session to discuss certain personnel records. 1 M.R.S.A. 405(6).

## E. Business records, financial data, trade secrets.

Availability must be determined separately for each state or local office in which the records are located. Thus, records submitted to the Attorney General in Unfair Trade Practice and Antitrust investigations are confidential. 16 M.R.S.A. § 614. Information filed with the Securities Division of the Bureau of Banking under the Maine Securities Act is public. 32 M.R.S.A. § 10701. Applications submitted to the Finance Authority of Maine are generally available except for the information that would create a competitive disadvantage to an applicant or constitute an invasion of privacy. 10 M.R.S.A. § 975-A. Information contained in records accumulated by the same agency for the purpose of administering a loan is not available. *Id.*

a. Trade secrets, to the extent protected by an evidentiary privilege, are confidential. *See* 1 M.R.S.A. § 402(3)(B) and M. R. Evid. 507.

b. Pesticides, Animal Feeds and Hazardous Substances Requiring Labeling. Formulae filed with the Department of Agriculture are confidential. 7 M.R.S.A. §§ 508(2), 606(2)(C) and 722.

b. Hazardous Waste. Information on hazardous waste submitted to the Department of Environmental Protection may be designated confidential, and if so designated will not be made available to the public without affording the submitter an opportunity to establish that the information is a trade secret, and commercial harm to the submitter will be caused by disclosure. 38 M.R.S.A. § 1310-B.

c. Water Discharge License Records. Information produced in licensing and enforcement hearings may be designated confidential and withheld from public disclosure on a showing that it is not generally known and that disclosure would cause commercial harm. 38 M.R.S.A. § 414.

d. Hazardous Substances. The Community Right to Know Act, providing information about hazardous substances at designated sites, has a trade secret exception. 22 M.R.S.A. § 1696-F. Similar exceptions are applicable to the disclosure of chemical substances in the work place by the Bureau of Labor Standards (26 M.R.S.A. §§ 1711(12), 1716) and to the reporting of the progress made in attaining the toxics release reduction and hazardous waste reduction goals (38 M.R.S.A. § 2307).

## F. Contracts, proposals and bids.

All contracts of public agencies, state and local, are public records from the time of execution or opening of the bids. Bids for public contracts are public records after the letting of the contract. 5 M.R.S.A. §§ 1825-B(6), 1825-D. Sealed proposals submitted for competitive bidding shall remain sealed until the time and place specified in the advertisement for the bids. 5 M.R.S.A. § 1745 (“Sealed proposals for any public improvements . . . shall remain sealed until opened at the time and place stated in the advertisement or as the Governor may direct.”).

## G. Collective bargaining records.

Proposals and other records prepared by a public agency for negotiations with an organization of its employees are not available until the negotiations have been concluded. 1 M.R.S.A. § 402(3)(D).

## H. Coroners reports.

Maine does not have county coroners. That function is performed by the Chief Medical Examiner, a state office. Most records and reports of the Office of the Chief Medical Examiner regarding a specific

medical examiner case are not public records. 22 M.R.S.A. § 3022. Otherwise, Medical Examiner records are public.

### **I. Economic development records.**

Five categories of documents relating to economic development are confidential by statute. 5 M.R.S.A. § 13119-A. These include proprietary information, tax or financial information, financial statements, credit assessments, and any records in connection with the matching of potential investors with business in the State by the Department of Economic and Community Development or a municipality. *Id.*

### **J. Election records.**

#### **1. Voter registration records.**

Maine has a central registration system which is maintained by the Secretary of State's office. 21-A M.R.S.A. § 172. Each voter's registration information is kept in this file except for those voters who enroll in the Address Confidentiality Program in which case the residence information for that voter must be kept under seal is not subject to public inspection. *Id.*; 21-A M.R.S.A. § 1(21); *see also* 21-A M.R.S.A. 122-A (address confidentiality program).

#### **2. Voting results.**

Ballots must be counted publicly so that those present may observe the proceedings. 21-A M.R.S.A. § 695(1). In addition, as soon as the ballots are counted, the results must be made public at the voting place. 21-A M.R.S.A. § 695(3).

### **K. Gun permits.**

All applications for a permit to carry concealed firearms and documents made a part of the application, refusals and any information of record collected by the issuing agency during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of state law are confidential and may not be made available for public inspection or copying. The applicant may waive this confidentiality by written notice to the issuing authority. All proceedings relating to the issuance, refusal or revocation of a permit to carry concealed firearms are not public proceedings, unless otherwise requested by the applicant. 25 M.R.S.A. § 2006.

The list of permits to carry concealed firearms and information contained in the permits is a public record. 25 M.R.S.A. § 2006.

### **L. Hospital reports.**

Maine enacted comprehensive scheme regulating access to medical information of all kinds, applicable to hospitals, all medical care providers, insurers and public agencies. The only information about a patient that can be released by a hospital without written patient consent is confirmation of admission, a brief description of the patient's health status, such as "stable" or "critical," and room number. This information is only available in response to inquiries that identify the patient by name and only if the patient has not prohibited release of any information. 22 M.R.S.A. § 1711-C. Any information in the possession of the Maine Health Data Organization (established as a uniform health care reporting information system) is available for public inspection except confidential commercial information as defined by rule making and information that may identify an individual patient or health care provider. 22 M.R.S.A. § 8707. Records of hospital licensing are not declared confidential (22 M.R.S.A. Ch. 405), and thus are public. (1 M.R.S.A. § § 402, 408). But information relating to patients, recipients of government assistance or persons making a complaint to the Department of Human Services may not be released to the public (22 M.R.S.A. § 1828). Additionally, applications for certificates of need, which contain extensive financial data concerning hospitals, are available for public inspection. 22 M.R.S.A. § 313.

### **M. Personnel records.**

#### **1. Salary.**

A public employee's salary is a matter of public record. An independent non-profit has posted all State of Maine employee salaries on the internet. *See* <http://www.maineopengov.org/> (last visited April 15, 2011).

#### **2. Disciplinary records.**

Disciplinary records are confidential until disciplinary action is taken, if the final written decision imposes or upholds discipline. If an arbitrator overturns or removes disciplinary action, the decision is public, except the employee's name must be deleted from the final written decision. 5 M.R.S.A. § 7070. In general, the same rules apply to county employees (30-A M.R.S.A. § 503), municipal employees (30-A M.R.S.A. 2702), and school employees (20-A M.R.S.A. § 6101).

#### **3. Applications.**

Applications are confidential until the application is hired, at which point they become public records. 5 M.R.S.A. § 7070. In general, the same rules apply to county employees (30-A M.R.S.A. § 503), municipal employees (30-A M.R.S.A. 2702), and school employees (20-A M.R.S.A. § 6101).

#### **4. Personally identifying information.**

A public employee's personal contact information – home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number – is confidential. 1 M.R.S.A. § 402(3)(O). This exemption does not apply to elected officials; their personal contact information remains public.

#### **5. Expense reports.**

Expense reports are a matter of public record.

#### **6. Other.**

All other records "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" are a matter of public record unless within a specific statutory exemption. 1 M.R.S.A. § 402(3).

### **N. Police records.**

#### **1. Accident reports.**

Generally available.

#### **2. Police blotter.**

All "original records of entry, such as police blotters, that are maintained by criminal justice agencies and that are compiled and organized chronologically" are public records. 16 M.R.S.A. § 612(2)(B). A trial court ruled that name and address of the complainant or caller in an electronic equivalent of a police blotter were confidential even if the law enforcement agency makes no specific showing that releasing the identity of the complainant would interfere with the law enforcement investigation or constitute an unwarranted invasion of personal privacy. *Lewiston Daily Sun v. Herrick*, Docket No. CV-95-36 (July 15, 1996). The case was not appealed.

#### **3. 911 tapes.**

Transcripts of 911 calls are available to the public. The transcript will not contain names, addresses or telephone numbers of persons placing the call or receiving assistance. The general location where the assistance was sent is available. Upon good cause shown by the requester, a court may release the audio tape. 25 M.R.S.A. § 2929.

#### 4. Investigatory records.

##### a. Rules for active investigations.

Active investigations are subject to the same statute governing access to intelligence and investigative information. Pursuant to 16 M.R.S.A. § 614(1), reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of a local, county or district criminal justice agency; the Bureau of State Police; the Department of the Attorney General; the Maine Drug Enforcement Agency; the Office of State Fire Marshal; the Department of Corrections; the criminal law enforcement units of the Department of Marine Resources or the Department of Inland Fisheries and Wildlife; or the Department of Conservation, Division of Forest Protection when the reports or records pertain to arson are confidential and may not be disseminated if there is a reasonable possibility that public release or inspection of the reports or records would:

- A. Interfere with law enforcement proceedings;
- B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;
- C. Constitute an unwarranted invasion of personal privacy;
- D. Disclose the identity of a confidential source;
- E. Disclose confidential information furnished only by the confidential source;
- F. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;
- G. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;
- H. Endanger the life or physical safety of any individual, including law enforcement personnel;
- I. Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;
- J. Disclose information designated confidential by some other statute; or
- K. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or anti-trust laws.

##### b. Rules for closed investigations.

The records related to a closed investigation are public except for nonconviction data (16 M.R.S.A. § 613) and intelligences and investigative information (16 M.R.S.A. § 614).

##### 5. Arrest records.

Available. The identity and other information concerned arrested persons is available 16 M.R.S.A. § 612-A.

##### 6. Compilations of criminal histories.

Records containing conviction data are always open to anyone. 16 M.R.S.A. §§ 611-622. Non-conviction data is generally confidential. 16 M.R.S.A. § 613.

##### 7. Victims.

The identity of a victim generally receives no special treatment, although victim information may be treated as intelligence and investigative information under 16 M.R.S.A. § 614. The identity of minor victims of sexual offenses is confidential and prosecutors shall refrain

from unnecessary pre-trial publicity that might reveal the minor's identity. 30-A M.R.S.A. § 288. Additionally, if the victim requested assistance by calling 911, the identity of the victim could not be obtained by accessing the 911 tape or transcript. 25 M.R.S.A. § 2929

##### 8. Confessions.

The availability of a confession is controlled by the availability of investigatory records of the offense involved. 16 M.R.S.A. § 614

##### 9. Confidential informants.

Information on the identity of a confidential source is generally confidential as an intelligence and investigative record. 16 M.R.S.A. § 614(1)(D).

##### 10. Police techniques.

In general "investigative techniques and procedures or security plans and procedures not generally known by the general public" are confidential. 16 M.R.S.A. § 614(1)(G).

##### 11. Mug shots.

Mug shots are generally made available. 16 M.R.S.A. § 612-A (record of persons detained); 16 M.R.S.A. § 612(2)(A) (wanted posters, announcements, and lists).

##### 12. Sex offender records.

Sex offender records are generally available and can be accessed on the State's Sex Offender Registry Website (<http://sor.informe.org>). 34-A M.R.S.A. § 11222(1-A). This includes offenders sentenced as adults in Maine or other jurisdictions after January 1, 1982 for a sex offense or a sexually violent. 34-A M.R.S.A. § 11202.

##### 13. Emergency medical services records.

Medical records and reports of municipal ambulance, rescue, and other emergency units are not available. 1 M.R.S.A. § 402(3)(H). However, these records are available upon request to law enforcement officers investigating criminal conduct. *Id.*

##### O. Prison, parole and probation reports.

Generally available. "Public records" is defined to specifically *include* the following:

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 adult 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 client to disclose the information.

##### P. Public utility records.

Available to the extent duplicated in the records of adjudicatory proceedings of the Public Utilities Commission. Information that identifies individual utility customers is confidential. 35-A M.R.S.A. § 704. Utility personnel records are confidential. 35-A M.R.S.A. § 114. Utilities may also obtain protective orders for proprietary information such as future marketing plans. 35-A M.R.S.A. § 1311.

##### Q. Real estate appraisals, negotiations.

###### 1. Appraisals.

An appraisal is generally available, except when prepared for use in connection with an executive session to discuss or consider "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” and “only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency.” 1 M.R.S.A. 405(6)(C).

## 2. Negotiations.

Records related to negotiations are available except when prepared for use in connection with an executive session to discuss or consider “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” and “only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency.” 1 M.R.S.A. 405(6)(C).

## 3. Transactions.

Transactions are a matter of public record except when prepared for use in connection with an executive session to discuss or consider “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” and “only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency.” 1 M.R.S.A. 405(6)(C).

## 4. Deeds, liens, foreclosures, title history.

These records and indexes in each registry office must be made and kept for public inspection. 33 M.R.S.A. § 651. These include copies of judgments such as a foreclosure judgment. 33 M.R.S.A. § 654.

## 5. Zoning records.

Zoning records are public.

## R. School and university records.

Access to school and university records is controlled by federal law, the United States Family Educational Rights and Privacy Act of 1974, Public Law 93-380, as amended by Public Law 93-568, and the United States Education of All Handicapped Children Act. 20-A M.R.S.A. § 6001.

Records of the University of Maine, the Maine Maritime Academy and the Maine Technical College System are available to the same extent as other public records except for records, working papers, inter-office and intraoffice memoranda used by or prepared for faculty and administrative committees of these institutions. All financial records of the institution are available except records pertaining to financial aid granted to individual students. 20-A M.R.S.A. §§ 11418, 11444. Criminal history record information obtained by school departments pertaining to teachers, school employees and applicants for employment is confidential. 20-A M.R.S.A. § 6103(3).

### 1. Athletic records.

University athletic records are generally public. The availability of secondary and elementary school records is controlled by federal law, which generally provides for confidentiality of such records. 20-A M.R.S.A. § 6001.

Records identifying minors who participate in municipal recreation programs are excluded from the definition of public records if the municipality enacts an ordinance specifying the circumstances in which the records will be withheld from disclosure. 1 M.R.

### 2. Trustee records.

Generally available.

### 3. Student records.

Public. The availability of secondary and elementary school records is controlled by federal law, which generally provides for confidentiality of such records. 20-A M.

## S. Vital statistics.

### 1. Birth certificates.

Custodians of certificates and records of birth, marriage and death may permit inspection of records, or issue certified copies of certificates or records, or any parts thereof, when satisfied that the applicant therefor has a direct and legitimate interest in the matter recorded, the decision of the state registrar or the clerk of a municipality being subject to review by the Superior Court, under the limitations of 22 M.R.S.A. § 2706.

### 2. Marriage & divorce.

Custodians of certificates and records of birth, marriage and death may permit inspection of records, or issue certified copies of certificates or records, or any parts thereof, when satisfied that the applicant therefor has a direct and legitimate interest in the matter recorded, the decision of the state registrar or the clerk of a municipality being subject to review by the Superior Court, under the limitations of 22 M.R.S.A. § 2706.

### 3. Death certificates.

Custodians of certificates and records of birth, marriage and death may permit inspection of records, or issue certified copies of certificates or records, or any parts thereof, when satisfied that the applicant therefor has a direct and legitimate interest in the matter recorded, the decision of the state registrar or the clerk of a municipality being subject to review by the Superior Court, under the limitations of 22 M.R.S.A. § 2706.

### 4. Infectious disease and health epidemics.

Department of Health 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. These records include, but are not limited to, information on genetic, communicable, occupational or environmental disease entities, and information gathered from public health nurse activities, or any program for which the department collects personally identifying medical information. 22 M.R.S.A. § 42. However, medical and epidemiologic information in which an individual can not be identified can be released to the public.

In addition, the names of individuals having or suspected of having a notifiable disease or condition are confidential. 22 M.R.S.A. § 824. Information concerning a notifiable disease or condition or suspected epidemic that is provided by a doctor to the Bureau of Health must also be kept confidential. 22 M.R.S.A. § 815

## V. PROCEDURE FOR OBTAINING RECORDS

### A. How to start.

#### 1. Who receives a request?

A request for a record should be presented to the custodian of the record or to the office in which the record is likely to be located.

#### 2. Does the law cover oral requests?

The law applies to oral and written requests. It is advisable to use a written request if there is any indication that the records will not be provided or if the request is complex.

##### a. Arrangements to inspect & copy.

No prior arrangements are necessary, but in practice many governmental entities require prior arrangements for non-routine records.

##### b. If an oral request is denied:

#### (1). How does the requester memorialize the refusal?

An oral or written request must be denied in writing within five working days of the request. The denial must state the reason for the denial. 1 M.R.S.A. § 408.

**(2). Do subsequent steps need to be in writing?**

There are no subsequent steps except litigation, which must be in writing.

**3. Contents of a written request.**

**a. Description of the records.**

A request should sufficiently state the records sought. Prudence dictates that as much specificity as possible be provided as to the type of records and where the records may be located (e.g., the staff who generated the records or state offices involved).

**b. Need to address fee issues.**

Need not be addressed, but it is helpful to address any fee issues.

**c. Plea for quick response.**

A request for a quick response may be made, but the law does require that it be honored.

**d. Can the request be for future records?**

The statute only provides a right to examine records in existence. As a practical matter, an accommodation may be reached with a governmental entity to provide records when they come into existence. A declaratory judgment or an injunction may be obtained from a court to ensure access to future records.

**e. Other.**

The request need not ask for a response at any particular time.

**B. How long to wait.**

**1. Statutory, regulatory or court-set time limits for agency response.**

An agency must provide access to requested records during regular business hours within a reasonable period of time after the request is made. 1 M.R.S.A. § 408(1). If access is denied, the agency has five working days to supply in writing its reasons for a refusal to allow inspection of requested records. 1 M.R.S.A. § 409. In practice, an oral request is often not denied in writing, and many agencies assume they have five days to respond to a request by permitting inspection.

**2. Informal telephone inquiry as to status.**

The Act does not address informal telephone inquiries. As a practical matter, this is prudent and most governmental entities will communicate the status of a request.

**3. Is delay recognized as a denial for appeal purposes?**

Yes. Delay in responding to a request is recognized as a denial for appeal purposes when the delay extends beyond the five-working-day deadline. *Cook v. Lisbon School District*, 544 A.2d 335 (Me. 1996). An appeal must be brought within five days of denial. *Guy Gannett Publishing Co. v. Maine Department of Public Safety*, 555 A.2d 474 (Me. 1989).

**4. Any other recourse to encourage a response.**

No. If the lack of a response appears willful, the requester may seek assistance from the Attorney General or local District Attorney's office, which are authorized to enforce the Act and seek civil penalties. 1 M.R.S.A. § 410. As a practical matter, assistance and enforcement are exceedingly rare. A requester may ask a municipality or school district to seek advice from the Maine Municipal Association or the Maine School Management Association, respectively, which may in some instances support disclosure of records.

**C. Administrative appeal.**

None.

**D. Court action.**

**1. Who may sue?**

Any person "aggrieved by denial" of access to a public record may appeal within five working days of the receipt of a written notice of denial to any superior court within the state. 1 M.R.S.A. § 409.

**2. Priority.**

The court is required to assign FOAA appeals priority for trial over all other actions except writs of *habeas corpus* and actions brought by the state against individuals. 1 M.R.S.A. § 409. In practice, such cases are given expedited treatment, but a motion should be filed requesting same.

**3. Pro se.**

Any individual may proceed *pro se* in Maine. Most entities (e.g., corporations) must be represented by counsel.

**4. Issues the court will address:**

**a. Denial.**

The court is required to decide the issues presented by the appeal *de novo*, i.e., independent from and without deference to the governmental body's findings of fact. 1 M.R.S.A. § 409. If the court determines that the denial was not for just and proper cause, it shall enter an order for disclosure. 1 M.R.S.A. § 409.

**b. Fees for records.**

The courts will address fee issues if raised. No reported cases on point.

**c. Delays.**

A delay past the 5 working day period for response is considered a denial. *Guy Gannett Publishing Co. v. Maine Dept. of Public Safety*, 555 A.2d 474 (Me. 1989). No decisions exist on what may constitute a "reasonable time" for providing access to a record. 1 M.R.S.A. § 408(1).

**d. Patterns for future access (declaratory judgment).**

A declaratory judgment may be sought, but in practice a court's decision with respect to one record will be treated as if it were a declaratory judgment pertaining to all similar records.

**5. Pleading format.**

The pleading is in the form of a statutory appeal – a petition for review under M. R. Civ. P. 80B (local government) or 80C (state government) pursuant to 1 M.R.S.A. § 409(1). The appeal is from the governmental agency's administrative action denying access to the record. The records sought, basis for disclosure, and background facts should be included as should a copy of the letter requesting access and any denial or other response.

**6. Time limit for filing suit.**

Within 5 working days of denial. 1 M.R.S.A. § 409(1). The appeal period is strictly construed. *Guy Gannett Publishing Co. v. Maine Department of Public Safety*, 555 A.2d 474 (Me. 1989) (commencement of an action dismissed because it was not filed within the 5-day appeal period).

**7. What court.**

Superior Court. 1 M.R.S.A. § 409(1). Typically, the appeal is filed in the County where the records are located, but there are no decisions on venue. Appeals relating to State of Maine records are often filed in Kennebec County Superior Court, the seat of state government.

**8. Judicial remedies available.**

An order for disclosure of the records in question. 1 M.R.S.A. § 409(1).

## 9. Litigation expenses.

### a. Attorney fees.

Reasonable attorney's fees may be recovered by the substantially prevailing plaintiff if the court determines that the refusal or illegal action was committed in bad faith. 1 M.R.S.A. § 409(4). Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe. *Id.*

### b. Court and litigation costs.

Court costs may be recovered as in any civil action. In addition, reasonable expenses may be recovered by the substantially prevailing plaintiff if the court determines that the refusal or illegal action was committed in bad faith. 1 M.R.S.A. § 409(4).

## 10. Fines.

A fine may only be recovered by the Attorney General or District Attorney. 1 M.R.S.A. § 410; *Scola v. Town of Sanford*, 1997 ME 119, ¶ 7, 695 A.2d 1194, 1195.

## 11. Other penalties.

None.

## 12. Settlement, pros and cons.

No particular factors apply. In some instances settlement may be achieved by an agreement to provide a redacted set of records if the information giving rise to non-disclosure can be segregated or removed from the records. Alternative dispute resolution is not mandatory in Freedom of Access Act cases.

### E. Appealing initial court decisions.

#### 1. Appeal routes.

The only appeal from Superior Court is directly to the Supreme Judicial Court of Maine.

#### 2. Time limits for filing appeals.

An appeal must be initiated by filing a notice of appeal within 21 days following the entry of judgment. M.R.App.P. 2(b)(3).

#### 3. Contact of interested amici.

The Maine Supreme Judicial Court will often allow *amici* to file briefs. It generally will not allow *amici* to present oral argument.

### F. Addressing government suits against disclosure.

A reverse FOAA action may be filed against government by a private party to prevent disclosure.

# Open Meetings

## I. STATUTE -- BASIC APPLICATION.

### A. Who may attend?

Any person may attend any "public proceeding" in Maine, subject to the statutory authority of the body or agency holding the proceeding to move into executive session. 1 M.R.S.A. § 403.

### B. What governments are subject to the law?

The Freedom of Access Act defines "public proceedings" as "the transaction of any functions affecting any or all citizens of the state" by one of the bodies identified below. 1 M.R.S.A. § 402(2).

#### 1. State.

The state is subject to the Act. This includes: the Legislature and its committees and subcommittees; any "board or commission of any state agency or authority"; and the boards of trustees and committees and subcommittees of the state's three systems of post-secondary education: the University of Maine, the Maine Maritime Academy, and the Maine Vocational Technical Institutes. It also includes bodies that have only advisory functions if created by Executive Order of the Governor or law or resolve of the Legislature, unless such enactment specifically excludes the advisory board from the Freedom of Access Act. 1 M.R.S.A. § 402.

#### 2. County.

All counties are subject to the Act. 1 M.R.S.A. § 402.

#### 3. Local or municipal.

Any meeting of a municipality, school district or any regional or other political or administrative subdivision is subject to the Act. 1 M.R.S.A. § 402. In *Lewiston Daily Sun v. City of Auburn*, 544 A.2d 335 (Me. 1988), a special committee appointed by the mayor solely to investigate the alleged wrongdoing of a local city committee and to recommend solutions to any problems found was held to be conducting public proceedings when it met. The court explained that the municipality could not avoid the open meetings requirements of the Freedom of Access law by delegating an investigation that otherwise would have been undertaken by the city council.

### C. What bodies are covered by the law?

#### 1. Executive branch agencies.

##### a. What officials are covered?

The coverage of the Act is not generally determined by which officials are meeting.

##### b. Are certain executive functions covered?

The coverage of the Act is not generally determined by the nature of the executive functions, but instead by whether the proceeding is by a public body covered by the law.

##### c. Are only certain agencies subject to the act?

Any board or commission of any state agency or authority is covered by the Act. 1 M.R.S.A. § 402.

#### 2. Legislative bodies.

The Legislature of Maine and its committees and subcommittees are covered. 1 M.R.S.A. § 402(2)(A).

#### 3. Courts.

Courts are generally considered not to be subject to the Act, even though certain statutes do provide for confidentiality in certain Court proceedings (e.g., juvenile criminal proceedings).

#### 4. Nongovernmental bodies receiving public funds or benefits.

The Act applies to the board of directors of a non-profit, non-stock private corporation that provides statewide non-commercial public broadcasting services and any of its committees and subcommittees. 1 M.R.S.A. § 402(2)(E). Maine currently has only one such entity, Maine Public Broadcasting. Membership meetings of organizations whose members are governments or government agencies, such as the Maine Municipal Association must be held in public.

#### 5. Nongovernmental groups whose members include governmental officials.

The Act does apply to groups whose members are local governments.

#### 6. Multi-state or regional bodies.

There is no precedent on multi-state bodies, but regional bodies composed of public officials are covered.

#### 7. Advisory boards and commissions, quasi-governmental entities.

Quasi-governmental entities whose functions are sufficiently governmental to qualify them as political subdivisions of the state, such as certain hospital administrative districts and water and sewer districts are subject to the Act. The Advisory bodies created by Executive Order, law or resolve are covered unless the instrument that created the body excludes it from the Act. 1 M.R.S.A. § 402(2)(F).

#### 8. Other bodies to which governmental or public functions are delegated.

If a committee or board is not created by Executive Order, law or resolves, it may be considered to be included in the Act if it receives public funds and performs a governmental function. Attorney General Opinion #85-19 (Sept. 26, 1985). If the body's existence is temporary, or ad hoc, in nature, then meetings may not be public proceedings. *Lewiston Daily Sun v. City of Auburn*, 544 A.2d 335 (Me. 1988).

#### 9. Appointed as well as elected bodies.

The Act applies to appointed as well as elected bodies.

### D. What constitutes a meeting subject to the law.

#### 1. Number that must be present.

##### a. Must a minimum number be present to constitute a "meeting"?

The term "meeting" is not defined in the Act. 1 M.R.S.A. § 406. If the body in question has three or more members and is otherwise subject to the Freedom of Access Act open meetings requirements, it generally must meet in public, regardless of the number of members present. 1 M.R.S.A. § 406. There are no exceptions for information gathering, fact finding, deliberations, workshops, and the like. A gathering at which a quorum is present, the business of the body is discussed and decisions are made is generally considered to be a meeting, even if not all members of the body have been notified or are present and the circumstances are informal. Except for "Legislative Subcommittee," the Act does not define the number of members that must be present. A legislative subcommittee consists of three or more legislators appointed to conduct legislative business on behalf of the committee. Statutorily created bodies generally contain provisions in the enacting legislation regarding the membership requirements of the entity.

##### b. What effect does absence of a quorum have?

None. The act does not refer to or require a quorum.

#### 2. Nature of business subject to the law.

##### a. "Information gathering" and "fact-finding" sessions.

Information gathering and fact-finding sessions must be undertaken in public.

##### b. Deliberations toward decisions.

Deliberations must occur in public.

#### 3. Electronic meetings.

The Act does not specifically address electronic meetings; and no Court decision has addressed the subject. The Act, which must be liberally construed, would likely be interpreted to apply to any meeting held in a chat room or other electronic forum.

##### a. Conference calls and video/Internet conferencing.

The Act does not specifically address conference calls or internet conferencing; and no Court decision has addressed the subject. The Act, which must be liberally construed, would likely be interpreted to apply to any meeting held by conference call.

##### b. E-mail.

The Act does not specifically address electronic meetings; and no Court decision has addressed the subject. The Act, which must be liberally construed, would likely be interpreted to apply to the use of e-mail to conduct a meeting.

##### c. Text messages.

There are no decisions on whether text messages constitute a meeting, but the purpose of the public meetings law is broad and would prevent the use of electronic means to hold meetings. "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." 1 M.R.S.A. § 401.

##### d. Instant messaging.

There are no decisions on whether instant messaging constitutes a meeting, but the purpose of the public meetings law is broad and would prevent the use of electronic means to hold meetings. "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." 1 M.R.S.A. § 401.

##### e. Social media and online discussion boards.

There are no decisions on whether the use of social media and online discussion boards constitute a meeting, but the purpose of the public meetings law is broad and would prevent the use of electronic means to hold meetings. "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." 1 M.R.S.A. § 401.

### E. Categories of meetings subject to the law.

#### 1. Regular meetings.

##### a. Definition.

All meetings are subject to the law. The term "meeting" is not defined. 1 M.R.S.A. § 406. There is no requirement that a quorum be present so long as a body consists of three or more persons. *Id.*

##### b. Notice.

Notice must be given of all meetings of a body or board consisting of three or more members. 1 M.R.S.A. § 406.

**(1). Time limit for giving notice.**

The notice must be given in ample time to allow public attendance. 1 M.R.S.A. § 406. However, actual notice of as little as 1 day in some circumstances may be enough to satisfy the Act. *Crispin v. Town of Scarborough*, 736 A.2d 241, 249 (Me.1999).

**(2). To whom notice is given.**

The general public served by the body or agency concerned. 1 M.R.S.A. § 406.

**(3). Where posted.**

Notice is required to be disseminated in a manner reasonably calculated to notify the public in the area served by the governmental body or agency. 1 M.R.S.A. § 406. This language is interpreted in various ways. Notices for meetings of legislative and executive agencies, boards or committees are published in a weekly calendar and in the newspaper designated as the "State Newspaper." Notices for municipalities, counties, school administrative districts and other political or administrative subdivisions are frequently published in newspapers. Meetings on some topics, such as a zoning change, require newspaper notice.

**(4). Public agenda items required.**

There is no general requirement for the agenda to be published, but notice must give some reasonable level of information about the content of the meeting. It is good practice to post the agenda.

**(5). Other information required in notice.**

The Act does not require information other than the date, time and place of the meeting to be published except for special publication requirements, such as zoning changes.

**(6). Penalties and remedies for failure to give adequate notice.**

The Act does not provide for any specific penalty or remedy for failure to give adequate notice. For willful violations of the notice provisions, the state or local government entity, whose officer or employee committed the violation, is liable for a civil violation payable to law enforcement only of not more than \$500. 1 M.R.S.A. § 410.

**c. Minutes.****(1). Information required.**

There is no general statutory requirement that bodies subject to the Freedom of Access Act record minutes. Some individual requirements applicable to particular agencies can be found elsewhere in Maine Revised Statutes, e.g., 30-A M.R.S.A. § 2524. However, every agency must make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. 1 M.R.S.A. § 407.

**(2). Are minutes public record?**

If minutes are recorded, they are public records. 1 M.R.S.A. § 403.

**2. Special or emergency meetings.****a. Definition.**

The Act does not define emergency meetings.

**b. Notice requirements.****(1). Time limit for giving notice.**

There is no time limit set for giving notice, but notice shall be given, where practical, by the same or faster means used to give members of the agency notice of the meeting. 1 M.R.S.A. § 406.

**(2). To whom notice is given.**

Notice must be given to local representatives of the media. 1 M.R.S.A. § 406.

**(3). Where posted.**

There is no provision for the posting of notice for an emergency meeting.

**(4). Public agenda items required.**

No agenda needs to be included in the notice.

**(5). Other information required in notice.**

The notice need only provide the time and location of the meeting.

**(6). Penalties and remedies for failure to give adequate notice.**

The Act does not provide for any specific penalty or remedy for failure to give adequate notice. For willful violations of the notice provisions, the state or local government entity, whose officer or employee committed the violation, is liable for a civil violation payable to law enforcement only of not more than \$500. 1 M.R.S.A. § 410.

**c. Minutes.****(1). Information required.**

There is no requirement that minutes be taken.

**(2). Are minutes a public record?**

If minutes are taken, they are public records.

**3. Closed meetings or executive sessions.****a. Definition.**

There is no definition of executive sessions in the Act. Permissible executive sessions are defined by the content of the deliberations and discussion that may be undertaken in private.

**b. Notice requirements.**

No notice is required in advance of a meeting when an executive session is planned. A motion must be made at the meeting. In practice, local government bodies sometimes announce an intent to go into executive session in advance as part of a posted agenda.

**(1). Time limit for giving notice.**

Not required.

**(2). To whom notice is given.**

Not required.

**(3). Where posted.**

Not required.

**(4). Public agenda items required.**

A motion to go into executive session must state the precise nature of the business of the session, but no notice in advance of the motion is required. 1 M.R.S.A. § 405(4).

**(5). Other information required in notice.**

Not required.

**(6). Penalties and remedies for failure to give adequate notice.**

None.

**c. Minutes.****(1). Information required.**

Minutes of an executive session are not required.

**(2). Are minutes a public record?**

Yes. If minutes contain information derived from documents declared confidential by statute, the minutes (or at least the part with the confidential information) is confidential. See *Guy Gannett Publishing Co. v. City of Portland*, Docket No. CV-92-858 (Cumberland County Superior Court, Sept. 24, 1992).

**d. Requirement to meet in public before closing meeting.**

The public body must come out of executive session and close a meeting in public session.

**e. Requirement to state statutory authority for closing meetings before closure.**

The motion to go into executive session must state the precise nature of business and a citation to statutory authority that permits the executive session for the stated business. 1 M.R.S.A. § 405(4).

**f. Tape recording requirements.**

There is no requirement that executive sessions be tape recorded.

**F. Recording/broadcast of meetings.**

**1. Sound recordings allowed.**

Any person attending a public proceeding has a right “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.” 1 M.R.S.A. § 404. Bodies and agencies are authorized to make reasonable rules and regulations governing these activities but may not prohibit them. *Id.*

**2. Photographic recordings allowed.**

Any person attending a public proceeding has a right to film the proceedings, or to make a live broadcast, provided that the filming or broadcasting does not interfere with the orderly conduct of proceedings. 1 M.R.S.A. § 404. Bodies and agencies are authorized to make reasonable rules and regulations governing these activities but may not prohibit them.

**G. Are there sanctions for noncompliance?**

Any official action taken in an illegal executive session may be declared null and void. 1 M.R.S.A. § 409(2). The Act does not provide for any specific penalty or remedy for failure to give adequate notice or otherwise comply with the Act. For willful violations of the notice provisions, the state or local government entity, whose officer or employee committed the violation, is liable for a civil violation payable to law enforcement only of not more than \$500. 1 M.R.S.A. § 410.

**II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS**

**A. Exemptions in the open meetings statute.**

**1. Character of exemptions.**

**a. General or specific.**

The exemptions are specific and only those topics listed in the Freedom of Access Act can be discussed in executive session. 1 M.R.S.A. § 405.

**b. Mandatory or discretionary closure.**

Closure is for the most part discretionary (i.e., only upon vote of the members of the body), but in some instances is mandatory.

**2. Description of each exemption.**

Pursuant to 1 M.R.S.A. § 405(6), deliberations may be conducted in executive sessions on the following matters and no others:

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 vio-

lated;

(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) 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.

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. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;

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;

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.

**B. Any other statutory requirements for closed or open meetings.**

Some state agencies or governmental bodies may have their own requirements for open or closed meetings. If the meetings are designated as closed, the statutory basis must still fall within one of the permitted topics for executive sessions listed in 1 M.R.S.A. § 405. Examples include: legislative investigating committee meetings may be closed if so requested by a witness, 3 M.R.S.A. § 427; Commission of

Governmental Ethics and Election Practices meetings are open unless six of the seven members want the meeting closed, 1 M.R.S.A. § 1005; confirmation hearings and pre-hearings are open unless the committee determines that the meeting should be closed to avoid damage to the nominee's reputation, 3 M.R.S.A. § 154; concealed firearms permits are closed unless the applicant requests that it be open, 25 M.R.S.A. § 2006; meetings of the Maine Drug Enforcement Advisory Board are open unless there is a discussion of pending investigations, 25 M.R.S.A. § 2957.

**C. Court mandated opening, closing.**

None.

**III. MEETING CATEGORIES -- OPEN OR CLOSED.**

**A. Adjudications by administrative bodies.**

Generally open. 5 M.R.S.A. § § 9051-A & 9052.

**1. Deliberations closed, but not fact-finding.**

Executive sessions may only be used for deliberations. Any votes or official action must occur in an open meeting. 1 M.R.S.A. § 405(2). The question of fact-finding is not addressed apart from the subject matter of the exceptions themselves (i.e., some exceptions permit submission of facts to the public body in executive session).

**2. Only certain adjudications closed, i.e. under certain statutes.**

The Maine Revised Statutes governing specific administrative bodies may allow the body to conduct closed adjudications provided it complies with the list of acceptable executive topics. 1 M.R.S.A. § 405.

**B. Budget sessions.**

Open to the public. 1 M.R.S.A. § 405.

**C. Business and industry relations.**

May be closed if the discussion concerns economic development and premature disclosure of the information to be discussed would prejudice the competitive or bargaining position of the body or agency concerned. 1 M.R.S.A. § 405(6)(D). May also be closed if held by the Finance Authority of Maine, and include a discussion of confidential business and financial information provided by an applicant for financial assistance. 1 M.R.S.A. § 405(6)(F). Similarly, discussions concerning an application for a tax increment finance district between a governmental entity and the applicant/developer may be closed to discuss financial information declared confidential by statute. 10 M.R.S.A. § 382, 36 M.R.S.A. § 6760. Otherwise open.

**D. Federal programs.**

Not an independent basis for holding an executive session, but may coincide with other permissible reasons for executive session, such as a discussion of information otherwise confidential. 1 M.R.S.A. § 405(6)(F).

**E. Financial data of public bodies.**

Generally open unless the subject of the discussion is a particular transaction in which the body could be prejudiced by premature disclosure of its intentions and offering price. 1 M.R.S.A. § 405(6)(D).

**F. Financial data, trade secrets or proprietary data of private corporations and individuals.**

Executive session is allowable when the data to be discussed is contained in records that have been made confidential, as is generally the case with trade secrets. 1 M.R.S.A. § 405(6)(F).

**G. Gifts, trusts and honorary degrees.**

Open to the public.

**H. Grand jury testimony by public employees.**

No public body is likely to discuss such testimony; Maine law does not address meetings to discuss grand jury testimony by public em-

ployees. Grand jury proceedings are closed to the public. M. R. Crim. P. 6(e). Grand jury records are confidential absent an order of the Court. M. R. Crim. P. 6(e).

**I. Licensing examinations.**

Closed to the public. 1 M.R.S.A § 405(G).

**J. Litigation; pending litigation or other attorney-client privileges.**

Public bodies are permitted to meet in executive session to consult with counsel. 1 M.R.S.A. § 405(6)(E). It can be argued that permission extends only to matters for which an attorney-client privilege could be claimed and that public bodies have a narrower privilege than private persons. M. R. of Evid. 502.

**K. Negotiations and collective bargaining of public employees.**

**1. Any sessions regarding collective bargaining.**

Closed to the public unless both sides agree otherwise. 1 M.R.S.A. § 405(6)(D).

**2. Only those between the public employees and the public body.**

Closed to the public unless both sides agree otherwise. 1 M.R.S.A. § 405(6)(D).

**L. Parole board meetings, or meetings involving parole board decisions.**

Public, unless the board is discussing its investigation of an application for a pardon, reprieve or commutation, or its recommendation to the governor on such application. 5 M.R.S.A. § 9052; 34-A M.R.S.A. § 5210(4)(C)

**M. Patients; discussions on individual patients.**

To the extent the discussion dealt with information contained in an individual or mental health record, it could be held in executive session, since such records are invariably confidential. 1 M.R.S.A. § 405(6)(E).

**N. Personnel matters.**

Discussion of personnel matters concerning individual employees may be held in executive session if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy would be violated. 1 M.R.S.A. § 405(6)(A). The employee may request in writing that the meeting be public. 1 M.R.S.A. § 405(6)(A)(2). A discussion of budget matters must be in public. *Id.*

**1. Interviews for public employment.**

Closed.

**2. Disciplinary matters, performance or ethics of public employees.**

Closed.

**3. Dismissal; considering dismissal of public employees.**

Closed.

**O. Real estate negotiations.**

Discussion of the acquisition or disposition of publicly owned property may be held in executive session only if such discussion would prejudice the bargaining position of the agency or body; the negotiation itself may not. 1 M.R.S.A. § 405(6)(C).

**P. Security, national and/or state, of buildings, personnel or other.**

Closed in so far as the matter would include discussion of confidential security-related documents. 1 M.R.S.A. § 405(6)(F).

### Q. Students; discussions on individual students.

Executive session permitted when the discussion concerns expulsion or suspension, not otherwise. 1 M.R.S.A. § 405(6)(B).

## IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

### A. When to challenge.

#### 1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

Yes. Actions to enforce the FOAA are privileged with respect to trial assignment. 1 M.R.S.A. § 409(2). A motion may be made for a temporary restraining order or a preliminary injunction to keep a public body from entering an executive session. M.R.Civ.P. 65.

#### 2. When barred from attending.

A challenge may be made when a person is barred from attending an executive session. 1 M.R.S.A. § 409(2).

#### 3. To set aside decision.

A court may set aside any decision made in an illegal executive session. 1 M.R.S.A. § 409(2).

#### 4. For ruling on future meetings.

No specific precedent. Mandatory injunctive relief is available, but requires a substantial showing, such as a pattern and practice of holding illegal meetings.

#### 5. Other.

A claim for violation of the open meetings act must be filed “within thirty days of discovering a possible violation.” *Palmer v. Portland Sch. Comm.*, 652 A.2d 86, 89 (Me. 1995).

### B. How to start.

#### 1. Where to ask for ruling.

##### a. Administrative forum.

##### (1). Agency procedure for challenge.

None.

##### (2). Commission or independent agency.

None.

##### b. State attorney general.

The state Attorney General can be asked to issue an advisory ruling on an issue of statutory interpretation or on the applicability of the FOAA with respect to State of Maine records. The state Attorney General ordinarily will not investigate alleged violations of the FOAA. An Attorney General opinion is advisory only.

##### c. Court.

An action must be brought in Maine State Superior Court, generally in the county where the meeting was held.

#### 2. Applicable time limits.

A claim for violation of the open meetings act must be filed “within thirty days of discovering a possible violation.” *Palmer v. Portland Sch. Comm.*, 652 A.2d 86, 89 (Me. 1995).

#### 3. Contents of request for ruling.

A complaint should be filed with the Court sufficient to set out the facts giving rise to the alleged violations. Any meeting notice, minutes or decision can be attached. The same information and documents should be provided to the Attorney General in connection with any informal request for a ruling.

#### 4. How long should you wait for a response?

The Attorney General may indicate when a response will be made. The Courts will establish a scheduling order that will govern deadlines after a complaint is filed.

#### 5. Are subsequent or concurrent measures (formal or informal) available?

No.

### C. Court review of administrative decision.

#### 1. Who may sue?

Any person.

#### 2. Will the court give priority to the pleading?

When the proceeding seeks an order setting aside action taken in executive session it has priority over all other cases except writs of habeas corpus or actions brought by the state against individuals. 1 M.R.S.A. § 409(2).

#### 3. Pro se possibility, advisability.

Any individual may proceed *pro se* in Maine. Most entities (e.g., corporations) must be represented by counsel. A challenge can be brought *pro se* and the courts are generally solicitous of a *pro se* claim. However, governmental entities are represented by counsel and will have the upper hand against unrepresented claimants.

#### 4. What issues will the court address?

##### a. Open the meeting.

The Court may be asked to open a meeting that has not yet taken place, but will only do so upon a showing sufficient to obtain injunctive relief.

##### b. Invalidate the decision.

The Court will address whether to invalidate any official action taken at an executive session. 1 M.R.S.A. § 409(2).

##### c. Order future meetings open.

The Court may be asked to open a meeting that has not yet taken place, but will only do so upon a showing sufficient to obtain injunctive relief.

#### 5. Pleading format.

An action is taken by statutory appeal to Superior Court pursuant to M.R.Civ. P. 80B (local government or M.R.Civ.P. 80C (state government)). 1 M.R.S.A. § 409(2). Any minutes, agenda, or other documentation related to the meeting should be attached to the appeal.

#### 6. Time limit for filing suit.

Any person may appeal “[u]pon learning of any such action.” 1 M.R.S.A. § 409(2). A claim for violation of the open meetings act must be filed “within thirty days of discovering a possible violation.” *Palmer v. Portland Sch. Comm.*, 652 A.2d 86, 89 (Me. 1995).

#### 7. What court.

The actions must be filed in Maine Superior Court. The action is usually filed in the county where the challenged executive session or meeting took place.

#### 8. Judicial remedies available.

Any official action taken in executive session may be declared null and void. 1 M.R.S.A. § 409(2). Declaratory judgment and injunctive relief are also available.

#### 9. Availability of court costs and attorneys’ fees.

Court costs are available as in ordinary civil actions; attorneys’ fees and reasonable expenses (in addition to court costs) are available upon a showing that illegal action in executive session was taken in “bad faith.” 1 M.R.S.A. § 409.

#### 10. Fines.

Fines may not be collected by private parties. If the District Attorney or Attorney General brings an action against the offending government entity, the government entity may have to pay the state a \$500 fine for willful violations. 1 M.R.S.A. § 410.

## 11. Other penalties.

None.

### D. Appealing initial court decisions.

#### 1. Appeal routes.

A Superior Court decision may be appealed directly to the Supreme Judicial Court of Maine sitting as the Law Court.

#### 2. Time limits for filing appeals.

An appeal must be initiated by filing a notice of appeal within 21 days following the entry of judgment. M.R.App.P. 2(b)(3).

#### 3. Contact of interested amici.

The Maine Supreme Judicial Court will often allow *amici* to file briefs. It generally will not allow *amici* to present oral argument.

## V. ASSERTING A RIGHT TO COMMENT.

The FOAA does not grant a right to comment at public meetings; however, comments may be authorized by the statutes or bylaws governing a specific public body. A person wishing to comment may request an opportunity to do so, and many public bodies do allow an opportunity for public comment. Anyone wishing to do so should contact the relevant public body for their protocols and expectations regarding public comment.

### A. Is there a right to participate in public meetings?

Generally, no. Statutes regarding specific governmental bodies may deal with this subject. For example, in state proceedings governed by the Administrative Procedure Act, a party may need to intervene to have the right to comment.

### B. Must a commenter give notice of intentions to comment?

Not addressed.

### C. Can a public body limit comment?

Yes.

### D. How can a participant assert rights to comment?

A person wishing to comment may request an opportunity to do so. Some public bodies will afford an opportunity to do so. Many bodies allow public comment as a routine agenda item, but not all.

### E. Are there sanctions for unapproved comment?

Not specifically, but repeated attempts to comment despite instructions by the public body not to do so may result in arrest.

## Statute

### Open Records and Meetings

*Maine Revised Statutes*

*Title 1. General Provisions*

*Chapter 13. Public Records and Proceedings*

*Subchapter I. Freedom of Access*

#### § 401. Declaration of Public Policy; rules of construction

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

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

#### § 402. Definitions

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

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

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 Community 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;

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

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

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

(2) Receives its funding from the public and private school mem-

bers, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.

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

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

A. Records that have been designated confidential by statute;

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 Community College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B;

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;

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;

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

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

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

N. Social security numbers in the possession of the Department of Inland Fisheries and Wildlife;

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

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

(2) “Public employee” means an employee as defined in Title 14, section 8102, subsection 1, except that “public employee” does not include elected officials;

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

Q. Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the general public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials, the Department of Corrections or members of the State Board of Corrections under conditions that protect the information from further disclosure.

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 adult 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 client to disclose the information.

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

§ 403. *Meetings to be open to public*

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

§ 404. *Recorded or live broadcasts authorized*

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

§ 405. *Executive Sessions*

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

1. Not to defeat purposes of subchapter. An executive session may not be used to defeat the purposes of this subchapter as stated in section 401.

2. Final approval of certain items prohibited. An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at an executive session.

3. Procedure for calling of executive session. An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.

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

5. Matters not contained in motion prohibited. Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.

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

A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:

(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the individual's reputation or the individual's right to privacy would be violated;

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

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

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

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

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

(1) The student and legal counsel and, if the student is a minor,

the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire;

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. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;

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

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;

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.

§ 406. *Public Notice*

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

§ 407. *Decisions*

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

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

§ 408. *Public Records Available for Public Inspection and Copying*

1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the

agency or official shall acknowledge receipt of the request within a reasonable period of time.

2. Inspection, translation and copying scheduled. Inspection, translation and copying 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 public record sought.

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

A. The agency or official may charge a reasonable fee to cover the cost of copying.

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.

C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.

D. An agency or official may not charge for inspection.

4. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than \$20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 5 applies.

5. Payment in advance. The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:

A. The estimated total cost exceeds \$100; or

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.

6. Waivers. The agency or official may waive part or all of the total fee if:

A. The requester is indigent; or

B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

#### § 409. Appeals

1. Records. If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must 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, 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 are 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 is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals are 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 are not exclusive of any other civil remedy provided by law.

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

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

#### § 410. Violations

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

#### § 411. Right to Know Advisory Committee

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

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

A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate;

B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House;

C. One representative of municipal interests, appointed by the Governor;

D. One representative of county or regional interests, appointed by the President of the Senate;

E. One representative of school interests, appointed by the Governor;

F. One representative of law enforcement interests, appointed by the President of the Senate;

G. One representative of the interests of State Government, appointed by the Governor;

H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House;

I. One representative of newspaper and other press interests, appointed by the President of the Senate;

J. One representative of newspaper publishers, appointed by the Speaker of the House;

K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House;

L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; and

M. The Attorney General or the Attorney General's designee.

The advisory committee shall invite the Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member of the committee.

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

A. Except as provided in paragraph B, members are appointed for terms of 3 years.

B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed.

C. Members may serve beyond their designated terms until their successors are appointed.

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

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

6. Duties and powers. The advisory committee:

A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general

compliance issues and respond to requests for interpretation and clarification of the laws;

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

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

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

E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation;

F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released;

G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations;

H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered;

I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records;

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

K. May undertake other activities consistent with its listed responsibilities.

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

Legislative Council shall administer any funds received by the advisory committee.

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

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

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

#### *§ 412. Public Records and Proceedings Training for Certain Elected Officials*

1. Training required. Beginning July 1, 2008, an elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official. For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.

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

- A. The general legal requirements of this chapter regarding public records and public proceedings;
- B. Procedures and requirements regarding complying with a request for a public record under this chapter; and
- C. Penalties and other consequences for failure to comply with this chapter.

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

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

4. Application. This section applies to the following elected officials:

- A. The Governor;
- B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;
- C. Members of the Legislature elected after November 1, 2008;
- D. [2007, c. 576, §2 (RP).]
- E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;
- F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;
- G. Officials of school units and school boards; and
- H. Officials of a regional or other political subdivision who, as part of

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

*Subchapter 1-A: Exceptions to Public Records*

§ 431. Definitions

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

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

2. Review committee. “Review committee” means the joint standing committee of the Legislature having jurisdiction over judiciary matters.

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

1 §432. EXCEPTIONS TO PUBLIC RECORDS; REVIEW

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

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

A. Whether a record protected by the exception still needs to be collected and maintained;

B. The value to the agency or official or to the public in maintaining a record protected by the exception;

C. Whether federal law requires a record to be confidential;

D. Whether the exception protects an individual’s privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;

E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business’s interest substantially outweighs the public interest in the disclosure of records;

F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body’s interest substantially outweighs the public interest in the disclosure of records;

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;

H. Whether the exception is as narrowly tailored as possible; and

I. Any other criteria that assist the review committee in determining the value of the exception as compared to the public’s interest in the record protected by the exception.

2-A. Accountability review of agency or official. In evaluating each public records exception, the advisory committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains

or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

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

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

§ 433. Schedule for Review of Exceptions to Public Records

1. Scheduling guidelines.

2. Scheduling guidelines. The advisory committee shall use the following list as a guideline for scheduling reviews of public records exceptions.

A. Exceptions codified in the following Titles are scheduled for review in 2008:

- (1) Title 1;
- (2) Title 2;
- (3) Title 3;
- (4) Title 4;
- (5) Title 5;
- (6) Title 6;
- (7) Title 7;
- (8) Title 8;
- (9) Title 9-A; and
- (10) Title 9-B.

B. Exceptions codified in the following Titles are scheduled for review in 2010:

- (1) Title 10;
- (2) Title 11;
- (3) Title 12;
- (4) Title 13;
- (5) Title 13-B;
- (6) Title 13-C;
- (7) Title 14;
- (8) Title 15;
- (9) Title 16;
- (10) Title 17;
- (11) Title 17-A;
- (12) Title 18-A;
- (13) Title 18-B;
- (14) Title 19-A;
- (15) Title 20-A; and
- (16) Title 21-A.

C. Exceptions codified in the following Titles are scheduled for review in 2012:

- (1) Title 22;
- (2) Title 23;
- (3) Title 24;
- (4) Title 24-A; and
- (5) Title 25.

D. Exceptions codified in the following Titles are scheduled for review in 2014:

- (1) Title 26;
- (2) Title 27;
- (3) Title 28-A;
- (4) Title 29-A;
- (5) Title 30;
- (6) Title 30-A;

- (7) Title 31;
- (8) Title 32;
- (9) Title 33;
- (10) Title 34-A;
- (11) Title 34-B;
- (12) Title 35-A;
- (13) Title 36;
- (14) Title 37-B;
- (15) Title 38; and
- (16) Title 39-A.

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

*§ 434. Review of Proposed Exceptions to Public Records*

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

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

- A. Whether a record protected by the proposed exception needs to be collected and maintained;
- B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;
- C. Whether federal law requires a record covered by the proposed exception to be confidential;
- D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
- E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
- F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;
- G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;
- H. Whether the proposed exception is as narrowly tailored as possible; and
- I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.

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

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

*Subchapter 2: Destruction or Misuse of Records*

*§ 452. Removal, Secretion, Mutilation or Refusal to Return to State Documents*

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

*Subchapter 3: Printing and Purchase of Documents and Laws*

*§ 501. State Agency Defined*

As used in this subchapter, the word "agency" shall mean a state department, agency, office, board, commission; or quasi-independent agency, board, commission, authority or institution.

*§ 501-A. Publications of State Agencies*

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

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

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

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

5. Electronic publishing. An agency or committee that electronically publishes information to the public is only required to provide the State Librarian with one printed copy of an electronically published publication. An electronically published publication is not required to be provided to the State Librarian if the publication is also published in print or in an electronic format and is provided to the State Librarian in compliance with subsection 4 or the publication is:

- A. Designed to provide the public with current information and is subject to frequent additions and deletions, such as current lists of certified professionals, daily updates of weather conditions or fire hazards; or
- B. Designed to promote the agency's services or assist citizens in use of the agency's services, such as job advertisements, application forms, advertising brochures, letters and memos.

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

*§ 502. Property of State*

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

*§ 503. Delivery to Successor in Office*

All revisions of the statutes, and supplements thereto, the session laws and the Maine Reports sold or furnished to any state, county or municipal officer,

shall be held in trust by said officer for the sole use of his office; and at the expiration of his term of office or on his removal therefrom by death, resignation or other cause, such officer, or if he is dead, his legal representatives, shall turn them over to his successor in office. If there is no successor to his office, such officer, or his legal representatives, shall turn over all of said publications to the State, county or municipal unit which purchased the same.

*§ 504. Source of Authority to Be Shown*

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

*§ 505. Mailing Lists*

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

*Subchapter 4: Executive Orders*

*§ 521. Executive Orders*

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

2. Dissemination. A copy of every executive order shall be filed with the Legislative Council, the Law and Legislative Reference Library and every county law library in this State within one week after the Governor has issued that order.



