

PUBLIC ACCESS TO PUBLIC RECORDS

The Police & Maine's Freedom of Access Act



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Maine Revised Statutes
Title 1: GENERAL PROVISIONS
Chapter 13: PUBLIC RECORDS AND PROCEEDINGS
Subchapter 1: FREEDOM OF ACCESS
[Selected Portions]

§400. SHORT TITLE

This subchapter may be known and cited as "the Freedom of Access Act."

§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 does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter. 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

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;
- 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;

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;

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, systems and software, including records or information maintained to ensure government operations and technology continuity and to facilitate disaster recovery. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;

N. Social security numbers;

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 personal address, telephone number, facsimile number, ~~home~~ e-mail address, cellular telephone number, pager number and username, password and uniform resource locator for a person social media account as defined in Title 16 section 615, subsection 4; 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;

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 or the Department of Corrections under conditions that protect the information from further disclosure;

S. E-mail addresses obtained by a political subdivision of the State for the sole purpose of disseminating noninteractive notifications, updates and cancellations that are issued from the political subdivision or its elected officers to an individual or individuals that request or regularly accept these noninteractive communications;

V. Participant application materials and other personal information obtained or maintained by a municipality or other public entity in administering a community well-being check program, except that a participant's personal information, including health information, may be made available to first responders only as necessary to implement the program. For the purposes of this paragraph, "community well-being check program" means a voluntary program that involves daily, or regular, contact with a participant and, when contact cannot be established, sends first responders to the participant's residence to check on the participant's well-being.

§408-A. PUBLIC RECORDS AVAILABLE FOR INSPECTION AND COPYING

Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record.

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

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

A. A request need not be made in person or in writing.

B. The agency or official shall mail the copy upon request.

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

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

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

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

- (1) The terms of the request and any modifications agreed to by the requesting party;
- (2) A statement of the facts that demonstrate the burdensome or oppressive nature of the request, with a good faith estimate of the time required to search for, retrieve, redact if necessary and compile the records responsive to the request and the resulting costs calculated in accordance with subsection 8;
- (3) A description of the efforts made by the body, agency or official to inform the requesting party of the good faith estimate of costs and to discuss possible modifications of the request that would reduce the burden of production; and
- (4) Proof that the body, agency or official has submitted a notice of intent to file an action under this subsection to the party requesting the records, dated at least 10 days prior to filing the complaint for an order of protection under this subsection.

B. Any appeal that may be filed by the requesting party under section 409 may be consolidated with an action under this subsection.

C. An action for protection may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require upon the request of any party.

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

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

6. No requirement to create new record. An agency or official is not required to create a record that does not exist.

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

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

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

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

A. The agency or official may charge a reasonable fee to cover the cost of copying. A reasonable fee to cover the cost of copying is no more than 10¢ per page for a standard 8 1/2 inches by 11 inches black and white copy of a record. A per-page copy fee may not be charged for records provided electronically.

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving, and compiling the requested public record in accordance with this paragraph. Compiling the public record includes reviewing and redacting confidential information.

(1) The agency or official may not charge a fee for the first 2 hours of staff time per request.

(2) After the first 2 hours of staff time, the agency or official may charge a fee of not more than \$25 per hour.

C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format.

D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies.

E. The agency or official may charge for the actual mailing costs to mail a copy of a record.

F. An agency or official may require payment of all costs before the public record is provided to the requester.

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

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

- A. The estimated total cost exceeds \$100; or
- B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.

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

- A. The requester is indigent; or
- B. The agency or official considers release of the public record requested to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

12. Retention of fees or costs. An agency may retain any fees or costs charged under this section.

§409. APPEALS

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

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.

§410. VIOLATIONS

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

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

- A. A fine of not more than \$500 for a civil violation described in subsection 1;
- B. A fine of not more than \$1,000 for a civil violation described in subsection 1 that was committed not more than 4 years after a previous adjudication of a civil violation described in subsection 1 by an officer or employee of the same state government agency or local government entity; or
- C. A fine of not more than \$2,000 for a civil violation described in subsection 1 that was committed not more than 4 years after 2 or more previous adjudications of a civil violation described in subsection 1 by an officer or employee of the same state government agency or local government entity.

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

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

[PL 2021, c. 313, §5 (AMD).]

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

A. The general legal requirements of this chapter regarding public records and public proceedings; [PL 2007, c. 349, §1 (NEW).]

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

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

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

[PL 2019, c. 300, §1 (AMD).]

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

[PL 2019, c. 300, §1 (AMD).]

§413. PUBLIC ACCESS OFFICER

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

2. Acknowledgment and response required. An agency, county, municipality, school administrative unit and regional or other political subdivision that receives a request to inspect or copy a public record shall acknowledge and respond to the request regardless of whether the request was delivered to or directed to the public access officer.

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

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

Maine Revised Statutes
Title 16: COURT PROCEDURE -- EVIDENCE
Chapter 7: CRIMINAL HISTORY RECORD INFORMATION ACT

§701. SHORT TITLE

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

§702. SCOPE; APPLICATION

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

1. **Public criminal history record information.** Public criminal history record information, the dissemination of which is governed by section 704; and
2. **Confidential criminal history record information.** Confidential criminal history record information, the dissemination of which is governed by section 705.

§703. DEFINITIONS

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

1. **Administration of criminal justice.** "Administration of criminal justice" means activities relating to the apprehension or summoning, detention, pretrial release, post-trial release, prosecution, adjudication, sentencing, correctional custody and supervision or rehabilitation of accused persons or convicted criminal offenders. "Administration of criminal justice" includes the collection, storage, and dissemination of criminal history record information.
2. **Confidential criminal history record information.** "Confidential criminal history record information" means criminal history record information of the following types:
 - A. Unless the person remains a fugitive from justice, summons and arrest information without disposition if an interval of more than one year has elapsed since the date the person was summonsed or arrested and no active prosecution of a criminal charge stemming from the summons or arrest is pending;
 - B. Information disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor;
 - C. Information disclosing that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings;
 - D. Information disclosing that a grand jury has determined that there is insufficient evidence to warrant the return of a formal charge;

- E. Information disclosing that a criminal proceeding has been postponed for a period of more than one year or dismissed because the person charged is found by the court to be mentally incompetent to stand trial or to be sentenced;
- F. Information disclosing that a criminal charge has been filed, if more than one year has elapsed since the date of the filing;
- G. Information disclosing that a criminal charge has been dismissed by a court with prejudice or dismissed with finality by a prosecutor other than as part of a plea agreement;
- H. Information disclosing that a person has been acquitted of a criminal charge. A verdict or accepted plea of not criminally responsible by reason of insanity, or its equivalent, is not an acquittal of the criminal charge;
- I. Information disclosing that a criminal proceeding has terminated in a mistrial with prejudice;
- J. Information disclosing that a criminal proceeding has terminated based on lack of subject matter jurisdiction;
- K. Information disclosing that a criminal proceeding has been terminated because the court lacked jurisdiction over the defendant; and
- L. Information disclosing that a person has petitioned for and been granted a full and free pardon.

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

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

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

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

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

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

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

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

§704. DISSEMINATION OF PUBLIC CRIMINAL HISTORY RECORD INFORMATION

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

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

§705. DISSEMINATION OF CONFIDENTIAL CRIMINAL HISTORY RECORD INFORMATION

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

- A. Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;
- B. Any person for any purpose when expressly authorized by a statute, executive order, court rule, court decision or court order containing language specifically referring to confidential criminal history record information or one or more of the types of confidential criminal history record information;
- C. Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement must specifically authorize access to data, limit the use of the data to purposes for which given, ensure security and confidentiality of the data consistent with this chapter and provide sanctions for any violations;
- D. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement must specifically authorize access to confidential criminal history record information, limit the use of the information to research, evaluation or statistical purposes, ensure the confidentiality and security of the information consistent with this chapter and provide sanctions for any violations;
- E. Any person who makes a specific inquiry to the criminal justice agency as to whether a named individual was summonsed, arrested, detained, or had formal criminal charges initiated on a specific date;

F. The public for the purpose of announcing the fact of a specific disposition that is confidential criminal history record information, other than that described in section 703, subsection 2, paragraph A, within 30 days of the date of occurrence of that disposition or at any point in time if the person to whom the disposition relates specifically authorizes that it be made public; and

G. A public entity for purposes of international travel, such as issuing visas and granting of citizenship.

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

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

§706. PUBLIC INFORMATION ABOUT PERSONS DETAINED FOLLOWING ARREST

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

A. The identity of the arrested person, including the person's name, year of birth, residence and occupation, if any;

B. The statutory or customary description of the crime or crimes for which the person was arrested including the date and geographic location where the crime is alleged to have occurred;

C. The date, time and place of the arrest; and

D. The circumstances of the arrest including, when applicable, the physical force used in making the arrest, the resistance made to the arrest, what weapons were involved, the arrested person's refusal to submit and the pursuit by the arresting officers.

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

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

§707. UNLAWFUL DISSEMINATION OF CONFIDENTIAL CRIMINAL HISTORY RECORD INFORMATION

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

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

§708. INAPPLICABILITY OF THIS CHAPTER TO CRIMINAL HISTORY RECORD INFORMATION CONTAINED IN CERTAIN RECORDS

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

- 1. Posters, announcements, lists.** Posters, announcements or lists used for identifying or apprehending fugitives from justice or wanted persons;
- 2. Records of entry.** Records of entry, such as calls for service, formerly known as "police blotters," that are maintained by criminal justice agencies, that are compiled and organized chronologically and that are required by law or long-standing custom to be made public;
- 3. Records of public judicial proceedings.** Records of public judicial proceedings:
 - A. Retained at or by the District Court, Superior Court or Supreme Judicial Court. Public access to and dissemination of such records for inspection and copying are as provided by rule or administrative order of the Supreme Judicial Court; and
 - B. From federal courts and courts of other states;
- 4. Published opinions.** Published court or administrative opinions not impounded or otherwise declared confidential;
- 5. Records of public proceedings.** Records of public administrative or legislative proceedings;
- 6. Records of traffic crimes.** Records of traffic crimes maintained by the Secretary of State or by a state department of transportation or motor vehicles or the equivalent thereof for the purposes of regulating the issuance, suspension, revocation or renewal of a driver's, pilot's or other operator's license; and
- 7. Pardons, commutations, reprieves and amnesties.** Petitions for and warrants of pardons, commutations, reprieves and amnesties.

§709. RIGHT TO ACCESS AND REVIEW

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

2. Review. A person or the person's attorney may request amendment or correction of criminal history record information concerning the person by addressing, either in person or in writing, the request to the criminal justice agency in which the information is maintained. The request must indicate the particular record involved, the nature of the amendment or correction sought and the justification for the amendment or correction.

On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned criminal history record information is accurate and complete. If investigation reveals that the questioned criminal history record information is inaccurate or incomplete, the criminal justice agency shall immediately correct the error or deficiency.

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

3. Administrative appeal. If there is a request for review, the head of the criminal justice agency shall, not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the review and either make the requested amendment or correction or refuse to do so. If the head of the criminal justice agency refuses to make the requested amendment or correction, the head of the criminal justice agency shall permit the requesting person to file with the criminal justice agency a concise statement setting forth the reasons for the disagreement with the refusal. The head of the criminal justice agency shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4. Disputed criminal history record information disseminated by the criminal justice agency with which the requesting person has filed a statement of disagreement must clearly reflect notice of the dispute after the filing of such a statement. A copy of the statement must be included, along with, if the criminal justice agency determines it appropriate, a copy of a concise statement of the criminal justice agency's reasons for not making the amendment or correction requested.

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

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

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

Maine Revised Statutes
Title 16: COURT PROCEDURE -- EVIDENCE
Chapter 9: INTELLIGENCE AND INVESTIGATIVE RECORD INFORMATION
ACT

§801. SHORT TITLE

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

§802. APPLICATION

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

§803. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

§804. LIMITATION ON DISSEMINATION OF INTELLIGENCE AND INVESTIGATIVE RECORD INFORMATION

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

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

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

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

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

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

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

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

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

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

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

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

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

§805. EXCEPTIONS

This chapter does not preclude dissemination of intelligence and investigative record information that is confidential under section 804 by a Maine criminal justice agency to:

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

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

3. An accused person or that person's agent or attorney. A person accused of a crime or that person's agent or attorney for trial and sentencing purposes if authorized by:

A. The responsible prosecutorial office or prosecutor; or

B. A court rule, court order or court decision of this State or of the United States.

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

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

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

§806. Exceptions subject to reasonable limitations

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

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

1-A. A government agency or subunit of a government agency responsible for investigating child or adult abuse. A government agency or subunit of a government agency in this State or another state that pursuant to statute is responsible for investigating abuse, neglect, or exploitation of children or incapacitated or dependent adults if:

- A. The intelligence and investigative record information is being provided in response to a request by that agency or subunit of an agency for records regarding a particular person or persons; and
- B. The intelligence and investigative record information relates to alleged or proven conduct that is criminal under Title 17-A, chapters 9, 11, 12, 13, 21, 23, 33, 35, 41, 43, or 45 [Offenses against the person, sexual assaults, sexual exploitation of minors, kidnapping and criminal restraint, offenses against public order, offenses against the family, arson, sex trafficking, criminal use of explosives, weapons, and drugs.] by a person in paragraph A. The intelligence and investigative record information obtained pursuant to this subsection may be used only for the purpose for which it was obtained and, as necessary, for administrative or ombudsman office oversight of the agency or subunit of an agency obtaining the information;

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

3. Repealed.

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

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

§806-A. Video depicting use of deadly force

This chapter does not preclude the public dissemination of that portion of a video in the custody of the Attorney General depicting the use of deadly force by law enforcement when the public interest in the evaluation of the use of deadly force by law enforcement and the review and investigation of those incidents by the Attorney General outweighs the harms contemplated in section 804. Upon receiving a request for video depicting the use of deadly force, the Attorney General shall issue a decision on whether to release the video no later than 30 days after the request and, in the event of denial, shall provide written notice stating in detail the basis for the denial, a time frame for release of all or part of the video and the process to appeal the decision pursuant to Title 1, section 409.

§808. NO RIGHT TO ACCESS OR REVIEW

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

§809. UNLAWFUL DISSEMINATION OF CONFIDENTIAL INTELLIGENCE AND INVESTIGATIVE RECORD INFORMATION

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

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

Maine Revised Statutes
Title 15: COURT PROCEDURE -- CRIMINAL
Chapter 507: PETITION, ADJUDICATION AND
DISPOSITION

§3308-A. Dissemination of juvenile intelligence and investigative record information by a Maine criminal justice agency

The following provisions apply to the dissemination of juvenile intelligence and investigative record information collected by or at the direction of or kept in the custody of any Maine criminal justice agency.

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

B. "Criminal justice agency" has the same meaning as in Title 16, section 803, subsection 4.

C-1. "Dissemination" has the same meaning as in Title 16, section 703, subsection 6.

D. "Executive order" has the same meaning as in Title 16, section 803, subsection 6.

E. "Juvenile intelligence and investigative record information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency or kept in the custody of a criminal justice agency while performing the administration of juvenile justice. "Juvenile intelligence and investigative record information" includes information of record concerning investigative techniques and procedures and security plans and procedures prepared or collected by a criminal justice agency or another agency. "Juvenile intelligence and investigative record information" does not include criminal history record information as defined in Title 16, section 703, subsection 3 or intelligence and investigative record information as defined in Title 16, section 803, subsection 7.

F. "State" has the same meaning as in Title 16, section 803, subsection 8.

G. "Statute" has the same meaning as in Title 16, section 803, subsection 9.

2. Information part of juvenile case records. To the extent juvenile intelligence and investigative record information has been made part of the juvenile case records, dissemination of that juvenile intelligence and investigative record information by the court having actual custody of the juvenile case records must be as provided by section 3308-C, subsection 4.

3. Limited dissemination. Except as otherwise provided in subsection 2, juvenile intelligence and investigative record information is confidential and may be disseminated by a Maine criminal justice agency only to:

A. Another criminal justice agency;

B. A person or public or private entity as part of performing the administration of juvenile justice;

B-1. A health care provider. "Health care provider" has the same meaning as in 45 Code of Federal Regulations, Section 160.103;

B-2. A governmental agency or subunit of a governmental agency in this State or another state that pursuant to statute is responsible for investigating abuse, neglect or exploitation of children or a governmental agency in this State or another state responsible for the licensing of child care facilities, family child care providers or children's camp programs or their employees;

C. A juvenile accused of a juvenile crime or that juvenile's agent or attorney for adjudicatory or dispositional purposes if authorized by:

- (1) The responsible prosecutorial office or prosecutor; or
- (2) A court rule or court order of this State or of the United States.

As used in this paragraph, "agent" means a licensed professional investigator, an expert witness or the juvenile's parents, guardian or legal custodian;

D. A juvenile crime victim or that victim's agent or attorney if authorized by:

- (1) Statute; or
- (2) A court order pursuant to section 3307 or 3308-C.

As used in this paragraph, "agent" means a licensed professional investigator or an immediate family member if, due to death, age, physical or mental disease, disorder or intellectual disability or autism, the victim cannot realistically act on the victim's own behalf;

E. A federal court, the District Court, including when it is exercising the jurisdiction conferred by section 3101, the Superior Court or the Supreme Judicial Court and an equivalent court in another state; and

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

4. Dissemination of juvenile intelligence and investigative record information subject to reasonable limitations. The dissemination of juvenile intelligence and investigative record information by a criminal justice agency pursuant to subsection 3, paragraphs B, B-1, B-2 and D is subject to limitations to reasonably ensure that dissemination of the information will not:

- A. Interfere with law enforcement proceedings relating to crimes;
- 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, including, but not limited to, the personal privacy of juveniles and victims;

- D. Disclose the identity of a confidential source;
- E. Disclose confidential information furnished only by a confidential source;
- F. Disclose investigative techniques and procedures or security plans and procedures not known by the general public;
- G. Endanger the life or physical safety of any individual, including law enforcement personnel;
- H. Disclose information designated confidential by statute; and
- I. Interfere with proceedings relating to civil violations, civil enforcement proceedings and other civil proceedings conducted by the Department of the Attorney General or by a district attorney's office.

To comply with this subsection a criminal justice agency may deny access in whole or in part to records that contain or constitute juvenile intelligence and investigative record information. A criminal justice agency also may prepare and provide redacted copies of such records to a person or public or private entity authorized to receive the information under this section.

5. Secondary dissemination of confidential juvenile intelligence and investigative record information restricted. A person or public or private entity authorized to receive juvenile intelligence and investigative record information under this section may not further disseminate such information unless expressly authorized to do so by statute, court decision or court order. "Express authorization" means language in the statute, court decision or court order that specifically speaks of juvenile intelligence and investigative record information or specifically refers to a type of juvenile intelligence or investigative record.

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

7. Unlawful dissemination of confidential juvenile intelligence and investigative record information. Any person who intentionally disseminates confidential juvenile intelligence and investigative record information knowing it to be in violation of any provision of this chapter commits a civil violation for which a fine of not more than \$1,000 may be adjudged. The District Court has jurisdiction over violations under this subsection.

Maine Revised Statutes
Title 17-A: MAINE CRIMINAL CODE
Chapter 48: VICTIMS' RIGHTS

§1176. CONFIDENTIALITY OF VICTIM RECORDS

1. General rule of confidentiality. Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined must be kept confidential, subject to disclosure only as authorized in this section.

2. Disclosure to law enforcement or victim services agencies. Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined may be disclosed only to:

- A. A state agency if necessary to carry out the statutory duties of that agency;
- B. A criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile justice;
- C. A victims' service agency with a written agreement with a criminal justice agency to provide services as a victim advocate; or
- D. A person or agency upon request of the victim.

3. Limited disclosure as part of court order or bail condition. A bail commissioner, judge, justice, court clerk, law enforcement officer or attorney for the State may disclose a victim's current address or location to the defendant or accused person, or the attorney or authorized agent of the defendant or accused person, as part of a bail condition or court order restricting contact with the victim, only when it is clear that the defendant already knows the victim's current address or location, or when the victim requests that such bail condition or court order be issued and the victim requests that the current address or location be specified.

4. Limited disclosure pursuant to discovery. Notwithstanding the provisions of the Maine Rules of Criminal Procedure, Rule 16, an attorney for the State may withhold the current address or location of a victim from a defendant, or the attorney or authorized agent of the defendant, if the attorney for the State has a good faith belief that such disclosure may compromise the safety of the victim.

5. Disclosure of victim's request for notice prohibited. In no case may a victim's request for notice of release of a defendant be disclosed except to those employees of the agency to which the defendant is committed and the office of the attorney for the State with which the request was filed in order for those employees to perform their official duties.

Maine Revised Statutes
Title 25: INTERNAL SECURITY AND PUBLIC SAFETY
Chapter 341: THE MAINE CRIMINAL JUSTICE ACADEMY

§2805-C. COMPLAINT REVIEW COMMITTEE

3. Investigation and notice of complaints. Before proceeding with a hearing to suspend or revoke a certificate issued by the board pursuant to section 2803-A, the board, the complaint review committee or board staff shall notify the chief administrative officer of the agency employing the certificate holder that the board is investigating the certificate holder. The chief administrative officer shall investigate the alleged conduct of the certificate holder and, notwithstanding any other provision of law, report the findings and provide copies of the investigative reports to the board within 30 days of receiving notice of the investigation. The board shall proceed with any suspension or revocation action it determines appropriate after receiving the chief administrative officer's findings and reports. This subsection does not preclude a chief administrative officer from investigating conduct that may give rise to grounds for suspension or revocation before receiving a request for an investigation from the board, the complaint review committee or board staff, as long as the chief administrative officer notifies the board following that investigation if the investigation reveals reasonable cause to believe that a certificate holder has engaged in conduct described in section 2806-A, subsection 5, and providing to the board the findings and investigative reports related to the conduct. Nothing in this subsection precludes the board from investigating the conduct of a certificate holder on its own or referring a matter of such conduct to another agency for investigation regardless of whether it receives an investigative report from the chief administrative officer under this section.

§2806-A. DISCIPLINARY SANCTIONS

10. Confidentiality; access to documents. All complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in suspension or revocation of a certificate that are considered by the board or the complaint review committee established pursuant to section 2805-C are confidential. If a person subject to this chapter requests an adjudicatory hearing under the Maine Administrative Procedure Act, that hearing must be open to the public. The hearing officer who presides over the hearing shall issue a written decision that states the conduct or other facts on the basis of which action is being taken and the reason for that action. Once issued, the hearing officer's written decision is a public record under the Freedom of Access Act, regardless of whether it is appealed.

Maine Revised Statutes
Title 25: INTERNAL SECURITY AND PUBLIC SAFETY
Chapter 352: EMERGENCY SERVICES COMMUNICATION

§2929. CONFIDENTIALITY OF SYSTEM INFORMATION

1. Definition. As used in this section, "confidential information" means the following information as contained in any database, report, audio recording or other record of the bureau or a public safety answering point:

- A. The names, addresses and telephone numbers of persons listed in E-9-1-1 databases;
- B. Names, addresses and telephone numbers that are omitted from a telephone utility directory list at the request of a customer;
- C. The name, address and telephone number of a caller to a public safety answering point; or
- D. The name, address and telephone number of and any medical information about a person receiving emergency services through the E-9-1-1 system.

2. Confidentiality. Confidential information may not be utilized for commercial purposes and may not be disclosed in any manner except as follows:

- A. A public safety answering point may disclose confidential information to public or private safety agencies and emergency responders for purposes of processing emergency calls and providing emergency services;
- B. A public safety answering point may disclose confidential information to a law enforcement officer or law enforcement agency for the purpose of criminal investigations related to an E-9-1-1 call;
- C. A public safety answering point may disclose confidential information to designees of the bureau director for the purpose of system maintenance and quality control; and
- D. The bureau director may disclose confidential information to public safety answering points, public or private safety agencies, emergency responders or others within the E-9-1-1 system to the extent necessary to implement and manage the E-9-1-1 system.

Confidential information that is required to be disclosed to providers of emergency services and providers of emergency support services pursuant to 47 United States Code, Section 222(g) remains subject to the confidentiality provisions of this section, and a provider of emergency services and emergency support services that acquires such confidential information pursuant to that provision of federal law may use the information solely for the purposes of delivering or assisting in the delivery of emergency notification services as defined in 47 United States Code, Section 222(h)(6). System databases, including, but not limited to, those disclosed pursuant to 47 United States Code, Section 222(g), remain the property of the bureau pursuant to section 2926, subsection 6. The name, address and telephone number of any person to whom any outgoing emergency notification call is made using confidential information acquired pursuant to 47 United States Code, Section 222(g) are confidential and may not be disclosed except as provided in this section.

3. Disclosure required. The restrictions on disclosure provided under subsection 2 apply only to those portions of databases, reports, audio recordings or other records of the bureau or a public safety answering point that contain confidential information. Other information that appears in those records and other records, except information or records declared to be confidential under other law, is subject to disclosure pursuant to Title 1, section 408-A. The bureau shall develop procedures to ensure protection of confidential records and information and public access to other records and information. Procedures may involve developing edited copies of records containing confidential information or the production of official summaries of those records that contain the substance of all nonconfidential information.

4. Audio recordings of E-9-1-1 calls; confidential. Audio recordings of emergency calls made to the E-9-1-1 system are confidential and may not be disclosed except as provided in this subsection. Except as provided in subsection 2, information contained in the audio recordings is public information and must be disclosed in transcript form in accordance with subsection 3. Subject to all the requirements of subsection 2, the bureau or a public safety answering point may disclose audio recordings of emergency calls made to the E-9-1-1 system in the following circumstances:

- A. To persons within the E-9-1-1 system to the extent necessary to implement and manage the E-9-1-1 system;
- B. To a law enforcement officer or law enforcement agency for the purpose of criminal investigations related to an E-9-1-1 call;
- C. To designees of the bureau director for the purpose of system maintenance and quality control; and
- D. In accordance with an order issued on a finding of good cause by a court of competent jurisdiction.

5. Unlisted telephone numbers. The name and address associated with the number of a telephone company customer with an unlisted telephone number may be furnished to the E-9-1-1 system for processing a request for E-9-1-1 services from that number and for the provision of emergency services resulting from the request.

6. Penalty for disseminating information. Knowingly disclosing confidential information in violation of subsection 2 or knowingly disclosing audio recordings of emergency calls to the E-9-1-1 system in violation of subsection 4 is a Class E crime.

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MEMORANDUM

Date: April 2014
To: Law Enforcement and Prosecutors
From: Attorney General Janet T. Mills
Subject: Release of E-9-1-1 tapes

The Maine Supreme Court recently ruled that transcripts of the E-9-1-1 calls in a certain murder case constituted public records under Maine's Freedom of Access Act. *MaineToday Media, Inc. v. State of Maine*, 2013 ME 100.

The case involved the interplay between three Maine statutes dealing with the release of records: the Freedom of Access Act (FOAA), the Criminal History Record Information Act (CHRI), replaced, effective October 9, 2013, with, as relevant here, the Intelligence and Investigative Information Act (IIIA),¹ and the Emergency Services Communication statute (ESC).

The ESC states that audio recordings of E-9-1-1 emergency calls are confidential and are not to be disclosed, but that the "information contained in the audio recordings is public information and must be disclosed in transcript form" after any confidential information in the transcript has been redacted. 25 MRS § 2929. "Confidential information" under the ESC means names, addresses, telephone numbers and certain medical information.

The IIIA, however, requires additional analysis of E-9-1-1 transcripts to determine if the information is confidential for other reasons.

¹ 16 M.R.S. §§ 801-809, replacing former 16 M.R.S. §§ 611 and 614.

The IIIA prohibits public release or disclosure of “intelligence and investigative information” (information collected by a criminal justice agency with regard to known, suspected or possible crimes) if there is a reasonable possibility that disclosure would affect the fundamental public interest in fair trials, personal privacy, confidential informants and investigative strategies.

In the *MaineToday Media* case, the Court ruled that the State failed to meet its burden of establishing a reasonable possibility that disclosure of the E-9-1-1 transcripts would interfere with law enforcement proceedings.² The Court declined to adopt a blanket rule that disclosure of E-9-1-1 transcripts in any active investigation or prosecution would automatically interfere with law enforcement proceedings. The Court did not analyze the potential invasion of personal privacy or the impact on a fair trial that disclosure of the transcripts may have since these issues were not properly before the Court.

The ruling does not mean, however, that E-9-1-1 transcripts made as part of a major criminal case are automatically disclosable. The Court noted that the State had charged the defendant with murder and that he was being held without bail; there was no continuing investigation.

Because the *MaineToday Media* decision is not a blanket dictate that E-9-1-1 transcripts must always be released to the public on request, requests for transcripts should be reviewed on a case-by-case basis. Any request should be referred to the appropriate prosecutor.

The prosecutor will review the request to determine, for instance, whether there is an active criminal investigation, whether a person’s individual privacy interests are involved, whether the call involved a confidential informant, whether the information would prejudice an accused’s right to a fair trial and whether there are other valid confidentiality concerns, such as references to personal medical information.

Citizens should be encouraged to call E-9-1-1 and not worry that their confidential information will become public. By carefully responding to transcript requests, we can protect that privacy and conduct effective investigations, while at the same time guarding the public’s right to know what its government is doing.

Please call this office if you have any questions.

Thank you.

² See 16 M.R.S. § 804(1), replacing former 16 M.R.S. § 614(1)(A).

Maine Revised Statutes
Title 25: INTERNAL SECURITY AND PUBLIC SAFETY
Chapter 252: PERMITS TO CARRY CONCEALED HANDGUNS

§2006. ACCESS TO INFORMATION AND PROCEEDINGS

1. Application, refusals and collected information; proceedings. All applications for a permit to carry concealed handguns and documents made a part of the application, refusals and any information of record collected by the issuing authority during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 2003 and 2005 are confidential and are not public records for the purposes of Title 1, chapter 13, subchapter 1. The applicant may waive this confidentiality by written notice to the issuing authority. All proceedings relating to the issuance, refusal, suspension or revocation of a permit to carry concealed handguns are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant.

2. Permanent record of permit. The issuing authority shall make a permanent record of each permit to carry concealed handguns in a suitable book or file kept for that purpose. The record must include the information contained in the permit itself. The record is confidential except that the following information about each permit holder is not confidential and is a public record:

- A. The municipality of residence;
- B. The date the permit was issued; and
- C. The date the permit expires.]

This subsection does not limit disclosure of confidential information for criminal justice purposes or permitting purposes to law enforcement officers and issuing authorities.

Maine Revised Statutes
Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES
Chapter 372: STATE CIVIL SERVICE SYSTEM

§7070. [STATE EMPLOYEE] PERSONNEL RECORDS

Every appointment, transfer, promotion, demotion, dismissal, vacancy, change of salary rate, leave of absence, absence from duty and other temporary or permanent change in status of employees in both the classified service and the unclassified service of the Executive and Legislative Departments shall be reported to the director at such time, in such form and together with such supportive or pertinent information as he shall by rule prescribe.

The director shall maintain a perpetual roster of all officers and employees in the classified and unclassified services, showing for each person such data that the director considers pertinent.

Records of the Bureau of Human Resources shall be public records and open to inspection of the public during regular office hours at reasonable times and in accordance with the procedure as the director may provide.

The following records shall be confidential and not open to public inspection, and shall not be "public records," as defined in Title 1, section 402, subsection 3:

1. Papers relating to applications, examinations or evaluations of applicants. Except as provided in this subsection, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the State for use in the examination or evaluation of applicants for positions as state employees.

A. Notwithstanding any confidentiality provision other than this subsection, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

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

C. This subsection does not preclude union representatives from access to personnel records, consistent with subsection 4, which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection;

2. Personal information. Records containing the following, except they may be examined by the employee to whom they relate when the examination is permitted or required by law:

A. Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

B. Performance evaluations and personal references submitted in confidence;

C. Information pertaining to the credit worthiness of a named employee;

D. Information pertaining to the personal history, general character or conduct of members of the employee's immediate family;

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

E. Except as provided in section 7070-A, complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

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

- (1) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or
- (2) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

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

This subsection does not preclude union representatives from having access to personnel records, consistent with subsection 4, that may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this subsection remain confidential and are not open for public inspection;

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

4. Disclosure of certain information for grievance and other proceedings. The Director of Human Resources may release specific information designated confidential by this section to be used in negotiations, mediation, fact-finding, arbitration, grievance proceedings and other proceedings in which the State is a party. For the purpose of this subsection, "other proceedings" means unemployment compensation proceedings, workers' compensation proceedings, human rights proceedings and labor relations proceedings. Confidential information provided under this subsection shall be governed by the following.

- A. The information to be released shall be information only as necessary and directly related to the proceeding as determined by the Director of Human Resources.
- B. Repealed.
- C. The proceeding for which the confidential information is provided shall be private and not open to the public; or, if the proceeding is open to the public, the confidential information shall not be disclosed except exclusively in the presence of the fact finder, the parties and counsel of record, and the employee who is the subject of the proceeding and provisions are made to ensure that there is no public access to the confidential information.

The State may use this confidential information in proceedings and provide copies to the employee organization that is a party to the proceedings, provided the information is directly related to those proceedings as defined by the applicable collective bargaining agreement. Confidential personnel records in the possession of the Bureau of Human Resources may not be open to public inspection and may not be "public records," as defined in Title 1, section 402, subsection 3.

5. Constitutional obligations of a prosecutor. Notwithstanding this section or any other provision of law, this section does not preclude the disclosure of confidential personnel records and the information contained in those records to the Attorney General, a deputy attorney general, an assistant attorney general, a district attorney, a deputy district attorney, an assistant district attorney or the equivalent departments or offices in a federal jurisdiction that are related to the determination of and compliance with the constitutional obligations of the State or the United States to provide discovery to a defendant in a criminal matter. A person or entity participating in good faith disclosure under this subsection or participating in a related proceeding is immune from criminal and civil liability for the act of disclosure or for participating in the proceeding.

§7070-A. PERSONNEL RECORDS; DEADLY FORCE OR PHYSICAL FORCE BY LAW ENFORCEMENT OFFICER

The name of a law enforcement officer is not confidential under section 7070, subsection 2, paragraph E in cases involving:

- 1. Deadly force. The use of deadly force by a law enforcement officer; or
- 2. Physical force. The use of physical force by a law enforcement officer resulting in death or serious bodily injury.

In cases specified in subsections 1 and 2, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.

Maine Revised Statutes
Title 30-A: MUNICIPALITIES AND COUNTIES
Chapter 1: COUNTY OFFICERS

§503. [COUNTY EMPLOYEE] PERSONNEL RECORDS

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

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

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

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

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

B. County records containing the following:

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

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

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

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

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

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

- (a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or
- (b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

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

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

1-A. Investigations of deadly force or physical force by law enforcement officer. The name of a law enforcement officer is not confidential under subsection 1, paragraph B, subparagraph (5) in cases involving:

- A. The use of deadly force by a law enforcement officer; or
- B. The use of physical force by a law enforcement officer resulting in death or serious bodily injury.]

In cases specified in paragraphs A and B, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.

3. Employee right to review. On written request from an employee or former employee, a county official with custody of the records shall provide that employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the county official has a personnel file for that employee. These reviews shall take place during normal office hours at the location where the personnel files are maintained.

- A. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits of which the county official has possession.
- B. The records described in subsection 1, paragraph B, may also be examined by the employee to whom they relate, as provided in this subsection.

4. Constitutional obligations of a prosecutor. Notwithstanding this section or any other provision of law, this section does not preclude the disclosure of confidential personnel records and the information contained in those records to the Attorney General, a deputy attorney general, an assistant attorney general, a district attorney, a deputy district attorney, an assistant district attorney or the equivalent departments or offices in a federal jurisdiction that are related to the determination of and compliance with the constitutional obligations of the State or the United States to provide discovery to a defendant in a criminal matter. A person or entity participating in good faith disclosure under this subsection or participating in a related proceeding is immune from criminal and civil liability for the act of disclosure or for participating in the proceeding.

Maine Revised Statutes
Title 30-A: MUNICIPALITIES AND COUNTIES
Chapter 123: MUNICIPAL OFFICIALS

§2702. [MUNICIPAL EMPLOYEE] PERSONNEL RECORDS

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

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

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

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

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

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

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

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

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

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

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

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

- (a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or
- (b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

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

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

1-A. Investigations of deadly force or physical force by law enforcement officer. The name of a law enforcement officer is not confidential under subsection 1, paragraph B, subparagraph (5) in cases involving:

- A. The use of deadly force by a law enforcement officer; or
- B. The use of physical force by a law enforcement officer resulting in death or serious bodily injury.

In cases specified in paragraphs A and B, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.

2. Employee right to review. On written request from an employee or former employee, the municipal official with custody of the records shall provide the employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the municipal official has a personnel file for that employee. These reviews shall take place during normal office hours at the location where the personnel files are maintained. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits which the municipal official may possess. The records described in subsection 1, paragraph B, may also be examined by the employee to whom they relate, as provided in this subsection.

3. Constitutional obligations of a prosecutor. Notwithstanding this section or any other provision of law, this section does not preclude the disclosure of confidential personnel records and the information contained in those records to the Attorney General, a deputy attorney general, an assistant attorney general, a district attorney, a deputy district attorney, an assistant district attorney or the equivalent departments or offices in a federal jurisdiction that are related to the determination of and compliance with the constitutional obligations of the State or the United States to provide discovery to a defendant in a criminal matter. A person or entity participating in good faith disclosure under this subsection or participating in a related proceeding is immune from criminal and civil liability for the act of disclosure or for participating in the proceeding.

RESPONDING TO A FREEDOM OF ACCESS ACT (FOAA) REQUEST

[All citations are to M.R.S. Title 1.]

I. Receipt

1. Is it a FOAA request or a request for information?
2. When did you receive the request?

Internal FOAA database entry

How is the agency tracking and retaining FOAA requests?

Internal Communication

1. Do agency management, the public access officer, and the press contact need to be consulted?
2. Who has custody of responsive records?

II. Acknowledgment

Acknowledge receipt of request within 5 working days of receipt of the request.
[§ 408-A(3)]

III. Estimate

1. Provide an estimate of time within which the agency will comply with request within a reasonable amount of time of receiving the request. [§ 408-A(3)]
FOAA requires a reasonable time frame for providing records. [§ 408-A]
Provide estimate of fees within a reasonable amount of time of receiving the request.
[§ 408-A(3)]
Seek confirmation from requester before proceeding with response for estimate greater than \$30.
2. Review any fee waiver request.

IV. Clarify

1. Restate the language of the request in the acknowledgment to confirm scope and content.
2. Communicate with requester to narrow a broad request. (Not obligated to suggest less specific or broader request, but it's usually to your advantage.)

V. Notice of denial

1. Provide written notice to requester within 5 working days of receipt of the request if denying access to any public records. State reason for denial. [§ 408-A(4)]
2. If the identification of confidential records requires more time, provide an initial written notice within 5 working days of receipt of the request explaining that access to some public records may be denied after the review is complete. This notice may be combined with acknowledgement of receipt.
3. A supplemental denial or further explanation of the grounds for the denial may be provided depending on the circumstances.

¹ All citations are to M.R.S. Title 1.

VI. Search (but not research – a search reasonably calculated to discover public records responsive to the request)

1. Public access officer and/or assigned staff identify who may have responsive records.
2. Explain scope of the request such as period of time encompassed, types of public records requested, and time frame for responding.
3. If subject of FOAA request may have been described in computerized records (emails, word documents, etc.) using various words, determine multiple key words to be used for searching, such as:
 - names of individuals, business entities
 - project names
 - towns, cities, etc.
 - common misspellings of names
 - Note: In some circumstances, it may be helpful to agree with requester on key words.
4. Where to search for responsive public records:
 - paper files
 - email in-box, drafts, deleted items, sent mail, archived emails
 - documents on computer desktop
 - documents in recycle bin
 - documents in file server folder
 - computer backup files/tapes/disks, if relevant

VII. Confidentiality review

Determine if any public records requested are confidential, privileged or otherwise protected from disclosure. [§ 402(3), § 408-A]

1. Redact confidential or privileged material where reasonably possible rather than withholding entire public record.
2. If access is denied in whole or in part, provide written notice of denial and state reason for denial. [§ 408-A(4)] (Note, again, exception in Intelligence & Investigative Information Act. 16 M.R.S. § 807.)
3. Depending on the circumstances, including the types and numbers of records requested, written notice may take the form of a letter summarizing the reasons for denial of access or of a more formal privilege log.

VIII. Provide access

Schedule time to inspect records, provide paper copies, or provide access to an electronically stored record as either a printed document or in the medium it is stored at the discretion of the requester. [§ 408-A(5) &(7)]

IX. . Time and expense

1. Track staff time, actual costs and copying fees.
2. The invoice will account for the recorded costs and any fee waiver that has been granted.
3. Fees:
 - Copying fee [§ 408-A(8)(A)] Capped at \$0.10 a page. No fee if provided electronically.
 - Actual cost of searching, retrieving, and compiling (compiling includes reviewing and redacting confidential information) of \$25/hour after the first two hours of staff time.

[§ 408-A(8)(B)]

 - Determine actual cost to convert into form susceptible of visual or aural comprehension or into usable format. [§ 408-A(7)(A) & (8)(C)]

- Actual mailing costs. [§ 408-A(8)(E)]
4. No charge for inspection unless public record cannot be inspected without being compiled or converted. [§ 408-A(1) & (8)(D)]
 5. Fee notification if cost is greater than \$30.
 - If estimated total cost is greater than \$30, you must inform requester (preferably in writing) before proceeding. [§ 408-A(9)]
 6. Fee notification if cost is greater than \$100.
 - If estimated total cost is greater than \$100, requester may be required to pay all or portion of estimated costs before search, retrieval, compiling, conversion & copying.
 - Payment in advance may be required if requester has previously failed to pay assessed fee in timely manner. [§ 408-A(9) & (10)]
 7. Part or all of the fee may be waived if:
 - Requester is indigent, or
 - The agency determines release of public record requested to be in public interest because doing so is likely to contribute significantly to public understanding of operations or activities of government and is not primarily in commercial interest of requester.



GUIDELINES FOR THE RELEASE OF INTELLIGENCE AND INVESTIGATIVE RECORD INFORMATION

The release of intelligence and investigative information is governed by the limitations outlined in 16 M.R.S. § 804. The release of such information requires discretion, and such information is confidential if there is a reasonable possibility that public dissemination would interfere with an investigation, the trial process, or the personal privacy of victims, complainants, witnesses, or suspects. Other considerations also preclude dissemination. If an investigation or prosecution is pending, consultation with the prosecuting attorney before disseminating information is imperative.

Examples of information that MAY BE RELEASED in connection with an investigation, incident or crime include:

The fact of an investigation and the identity of the investigating agency and the locality.

The type and nature of the incident or crime. A crime is believed to have been committed and a brief description of the crime. Only that which is known; do not speculate.

Names of all persons arrested, including age, gender, residence, employment, and marital status – except in the case of juveniles when only the age, gender and hometown of the juvenile may be released – a description of the crime(s) for which the person was arrested including the date and geographic location where the crime is alleged to have occurred, the date, time and place of the arrest, and the circumstances of the arrest including, when applicable, the physical force used in making the arrest, the resistance made to the arrest, what weapons were involved, the arrested person's refusal to submit and the pursuit by the arresting officers. *Special care is required if identifying the person arrested, the charge, and/or the person's address or town of residence may make the identity of the victim obvious. In such cases, the agency may choose to provide only the name of the defendant and the charge.*

The names of officers and departments involved, except the names of any undercover law enforcement officer.

The scheduling of any judicial proceeding and place of defendant's detention.

A warning to the public of any dangers.

Examples of information that SHOULD NOT BE RELEASED in connection with an investigation, incident or crime include:

The identity of a suspect prior to the issuance of a complaint or warrant or prior to arrest if there is no warrant or the complaint or warrant is impounded, except to the extent necessary to assist in the apprehension of a suspect and/or to warn the public of any dangers. (In some cases, this may mean naming the suspect absolutely and warning that the suspect is likely armed, where the suspect was last seen, and what the suspect looks like.)

The identity of complainants or witnesses.

The identity of victims, particularly in crimes of a sensitive nature involving domestic violence, sexual assault, or children. This includes address and location information of victims and their immediate family members. There may be limited situations in which victims have waived privacy interests or the public interest in the workings of government outweighs personal privacy.

The identity of critically injured or deceased persons prior to notification of the next of kin.

Do not comment on the evidence!

The results of any investigative procedures, such as blood alcohol tests, polygraph tests, fingerprint comparisons, or lineups, or the suspect's refusal or failure to submit to any such procedures.

Existence of the contents of any confession, admission or statement of a defendant, or the defendant's failure or unwillingness to make a statement.

Statements as to the character or reputation of the defendant.

Specific cause of death, unless officially determined by the Office of the Chief Medical Examiner.

The possibility of a plea of guilty to the offense charged or a lesser charge.

The defendant's guilt or innocence or other matters relating to the merits of the case or the evidence.