

MAINE STATE LEGISLATURE

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STATE OF MAINE
AUGUSTA, MAINE



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STATE OF MAINE

ONE HUNDRED AND SEVENTH LEGISLATURE

COMMITTEE ON LEGAL AFFAIRS

January 11, 1977

The Honorable John L. Martin, Chairman
Legislative Council
State House
Augusta, Maine 04333

Re: H.P. 1597

Dear Speaker Martin:

I am transmitting to the Legislative Council the final report of the Legal Affairs Committee on its study of record-keeping and the right of privacy, pursuant to H.P. 1597.

Very truly yours,

Raymond N. Faucher
Raymond N. Faucher (TPD)
House Chairman

JA 24 '77

REPORT OF THE
JOINT STANDING COMMITTEE ON
LEGAL AFFAIRS

107TH LEGISLATURE

RECORD-KEEPING AND THE RIGHT
OF PRIVACY

H.P. 1597

SENATE

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LEGISLATIVE ASSISTANTS

Helen T. Ginder
Thomas P. Downing

INTRODUCTION

The Joint Standing Committee on Legal Affairs, of the 107th Legislature, was directed, through H.P. 1597, a joint order, to study the record-keeping practices of public and private agencies with respect to individuals and the effect of such practices on the individual's right of privacy. The study order, a copy of which is attached as an appendix to this report, referred to the "explosion of information-gathering" in recent years, aided by the development of computers for this purpose.

The order was a response to public concern over "too much information, unfair information practices and using information for purposes other than those for which it was gathered".

It directed the Legal Affairs Committee to study record-keeping with respect to individuals in Maine and to recommend legislative safeguards to protect individual privacy and to improve the individual's access to the records about him.

COMMITTEE PROCEDURES

The committee began its work on the study after the adjournment of the regular session of the 107th Legislature. The chairmen initially appointed three subcommittees. The first, chaired by Representative Albert E. Cote, was directed to review the practices of state agencies. Representative Donald H. Burns, the sponsor of the study order, was designated as chairman of a subcommittee to examine record-keeping in the private sector. The third subcommittee, chaired by Representative Thomas R. Perkins, was to solicit information and recommendations from various public and private interest groups, such as the bar associations, Common Cause, and the American Civil Liberties Union, and also to contact other governmental jurisdictions.

The legislative assistants assigned to the committee for the study were directed to review laws of Maine, other states, and the federal government, back statutes and case law, in the area, to search out studies and model legislation, and to review the practices of several different public and private agencies.

MEETINGS

During the period between the regular and special sessions of the 107th Legislature, the committee held a series of meetings and informal hearings with various agencies and groups that were arranged by the three subcommittees.

The first meeting was with representatives of the Departments of Human Services and Mental Health and Corrections. Each of these agencies, which operate under statutes discussed later, reviewed their statutes and regulations and presented samples of the types of records they maintain.

The committee met later with a representative of the Maine Civil Liberties Union and with members of the sociology department at Bates College, who discussed the general principles of confidentiality which should apply in the gathering and use of statistical material.

At another meeting, Mr. Stephen Locke, Director of Central Computer Sciences, Department of Finance and Administration, reviewed the operation of the state's computer services and outlined the procedures and built-in safeguards which are intended to prevent unauthorized access to personal information stored in the computer files.

Managers of two credit bureaus in the state discussed, at another meeting, how they operate under the requirements of the Federal Fair Credit Reporting Act, which regulates most of their activities.

The committee's final meeting before the beginning of the special session was with representatives of the Bureau of Banking, who discussed electronic funds transfer systems.

QUESTIONNAIRE

In an effort to study record-keeping practices in this state in more depth than allowed by a hearing, the committee had a questionnaire prepared to survey these in detail. The questionnaire, a copy of which is attached to this report, was sent on October 8, 1975, to 64 agencies. The recipients were the major departments and many of the minor agencies of state government and a number of private organizations, including banks, insurance companies and hospitals. A follow-up letter was sent on November 26th. / 11/26

For a detailed questionnaire to which responses were completely voluntary, the committee received a substantial degree of cooperation. There were replies, for a rate of %, most of which were thorough.

The respondents all indicated that they were aware of the problem of confidentiality of personal records and that all had some procedures to limit access to such records. A careful analysis of the questionnaires did not reveal any serious problems or potential problems. The committee did not have the time or resources to conduct an extensive investigation of record-keeping practices and therefore had to rely on the responses to the questionnaire. The committee did not hear of any specific examples of problems, although, a few general problem areas were mentioned, such as an employee's right of access to his or her own personnel records.

CURRENT LAW

1. Public Agencies.

The federal government responded recently to the same concerns that motivated this study by enacting the Privacy Act of 1974 (P.L. 93-579). The purpose of this law, as stated in Senate

Report No. 93-1183, is:

...to promote governmental respect for the privacy of citizens by requiring all departments and agencies of the executive branch and their employees to observe certain constitutional rules in the computerization, collection, management, use, and disclosure of personal information about individuals.

It is to promote accountability, responsibility, legislative oversight, and open government with respect to the use of computer technology in the personal information systems and data banks of the Federal Government and with respect to all of its other manual or mechanized files.

It is designed to prevent the kind of illegal, unwise, overbroad, investigation and record surveillance of law-abiding citizens produced in recent years from actions of some over-zealous investigators, and the curiosity of some government administrators, or the wrongful disclosure and use, in some cases, of personal files held by Federal agencies.

It is to prevent the secret gathering of information on people or the creation of secret information systems or data banks on Americans by employees of the departments and agencies of the executive branch.

It is designed to set in motion for long-overdue evaluation of the needs of the Federal Government to acquire and retain personal information on Americans, by requiring stricter review within agencies of criteria for collection and retention.

It is also to promote observance of valued principles of fairness and individual privacy by those who develop, operate, and administer other major institutional and organizational data banks of government and society.

The act accomplishes this by requiring agencies to give detailed notice of the nature and uses of their personal data banks and information systems and their computer resources. It requires a new Privacy Commission to maintain and publish an information directory for the public, to examine executive branch proposals for new personal data banks and systems, and to report to Congress and the President if they adversely affect privacy and individual rights. It penalizes those who keep secret such a personal information system or data bank. The law establishes certain minimum information-gathering standards relating to privacy and confidentiality, and also sets standards for handling of information. It clarifies individual rights related to records and establishes a Privacy Commission to oversee the federal records system and to study and make further recommendations in this area.

The Privacy Act applies to the government of Maine in many respects since state programs in which there is federal participation must comply. There is no state statute analogous to the act, but there are laws relating to specific state agencies which do apply, in a very general way, some of the act's basic principles, but, without the detailed safeguards.

22 MRSA §42 imposes upon the Department of Human Services a general requirement of confidentiality of its files on individuals. Many of the functions of the Department of Human Services where little or no federal money is involved have individual, statutory requirements of confidentiality. The following is a partial list of such functions and the applicable statutes:

- 22 M.R.S.A. §2706, Vital Records Generally
- 19 M.R.S.A. §534, Adoptions
- 19 M.R.S.A. §751, Child Custody Studies
- 22 M.R.S.A. §3859, Child Abuse and Neglect
- 15 M.R.S.A. §2609, Juvenile Proceedings
- 22 M.R.S.A. §4508, Municipal Support of the Poor
- 22 M.R.S.A. §1043, Register of Persons Having TB
- 22 M.R.S.A. §1094, Venereal Disease
- 22 M.R.S.A. §2374, Prescription and Other Narcotic Drugs

The Department of Mental Health and Corrections is regulated in the use of information by another broad statute, 34 M.R.S.A. §2256. It allows disclosure only upon the individual's consent, a court order, or "as ... may be necessary to carry out any of the provisions of this chapter". Where there is federal participation in departmental programs, the Privacy Act of course applies.

Although there was not time for a complete review of statutes relating to confidentiality of personal records in state agencies, there are a number of similar provisions relating to other agencies.

2. Private agencies.

The U.S. Congress has enacted legislation in recent years in the area of record-keeping by certain private organizations, the Fair Credit Reporting Act (P.L. 91-508). The act regulates the use of "consumer reports", which are defined to mean any communication relating not only to credit, but also to "character, general reputation, personal characteristics, or mode of living." Such reports may be furnished only to persons having certain defined purposes and may not contain obsolete information, as defined. Consumer reporting agencies are required to disclose to consumers, upon request according to established procedures, the substance, sources and recipients of reports the agency has made about the individual.

Maine does not have a similar statute, but, since reporting agencies deal mostly in interstate commerce, the federal act applies to virtually all consumer reports made in the state.

PROPOSED LEGISLATION

As a result of its study, the Legal Affairs Committee introduced two bills in the special session of the 107th Legislature.

L.D. 2272 -

As a result of its review of the Fair Credit Reporting Act and of its meeting on credit reporting agencies, the committee voted to present a bill, "AN ACT Relating to Disclosure of Consumer Reports", L.D. 2272, a copy of which is attached. The concept of this bill was similar to amendments to the Fair Credit Reporting Act that have been proposed in Congress. The bill would have required any creditor intending to obtain a credit report on a consumer to give written notice to the consumer of the fact that a report will be made, of the name and address of the reporting agency, and of the consumer's rights under the federal act, if the transaction would be subject to that act. The effect of the bill would be to extend the consumer's present rights under the federal law, where notice is given after a report is made.

At the public hearing on the bill during the session, the credit agency representatives testified that the bill would cause them a great deal of unnecessary paperwork. The committee determined that in most of the state there is only one reporting agency in an area, unlike more heavily urban areas where there might be several. Most consumers applying for credit are sophisticated enough to be aware that such reports will be made, the committee felt, and will know which agency is making the report. The committee therefore withdrew the bill from consideration.

L.D. 2270 -

The committee introduced a second bill, "AN ACT to Permit an Employee to Review His Personnel File", L.D. 2270. The bill resulted from a concern that had been expressed to committee members, although no specific problems were cited. The bill would allow state, county, municipal and private employees (or former employees) to review their personnel files, as defined in the bill. The bill would codify a right that many people had assumed already existed. The bill was amended after introduction to provide that the review take place during regular business hours and that the time spent on this by an employee not be considered as work hours.

The bill was enacted as Chapter 694 of the Public Laws of 1975, and a copy is attached.

CONCLUSION

In addition to the two proposals discussed above, the committee gave some consideration to a bill that would apply to state government, to some extent, provisions similar to those of the Privacy Act of 1974. It finally concluded, however, that the facts revealed by the questionnaire and its necessarily limited hearings did not justify such extensive and detailed legislation at this time.

The committee remains concerned by the problems that prompted the study. The potential for harm to individual rights exists even in as small and rural a state as Maine. The public and the Legislature must be aware of the danger and must exercise continuing care and oversight, especially in considering any legislation or state action that could increase the amount of record-keeping in relation to individuals.

A recent conference on privacy held by the Council of State Government and the President's Domestic Council Committee on the Right of Privacy recommended five basic guidelines which the Legal Affairs Committee endorses and believes should be kept in mind when future legislation is considered:

1. There must be no personal data record-keeping operation whose very existence is secret.
2. There must be a way for an individual to find out what information about him is in a record and how it is used.
3. There must be a way for an individual to prevent information about him obtained for one purpose from being used or made available for other purposes without his consent.
4. There must be a way for an individual to correct or amend a record of identifiable information about himself.
5. Any organization creating, maintaining, using, or disseminating records of identifiable personal data must assure the reliability of the data for the intended use and must take reasonable precautions to prevent misuse of the data.

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STATE OF MAINE

*Report of the
1962-63*

In House _____

Ordered,

Whereas, the twentieth century has witnessed a rapid explosion of information-gathering activity in both the public and private sectors; and

Whereas, the extent of modern record-keeping operation and the introduction of computers to the record-keeping world pose a growing threat to the privacy of every citizen; and

Whereas, there are dangers in the need to know brought about by gathering too much information, unfair information practices and using information for purposes other than those for which it was gathered; and

Whereas, use of incorrect or incomplete information, sales of mailing lists, keeping of untimely data and denial of an individual to see or correct his own record can unjustly deprive an individual of his basic rights; now, therefore, be it

Ordered, the Senate concurring, that the Legislative Council be authorized, through the Joint Standing Committee on Legal Affairs, to study in depth the various kinds of record-keeping practices in use today in both the public and private sectors of this State to determine what kinds of record-keeping practices can lessen the potential harm to the individual who is the record subject and to recommend safeguards which will give individuals more privacy and control over information about themselves; and be it further

Ordered, that the Council report the results of its findings, together with any proposed recommendations and necessary implementing legislation, to the next special or regular session of the Legislature;

SENATE

NEAL C. CORSON, DISTRICT 17, CHAIRMAN
ALTON E. CIANCHETTE, DISTRICT 23
PETER W. DANTON, DISTRICT 4



HOUSE

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STATE OF MAINE

ONE HUNDRED AND SEVENTH LEGISLATURE

COMMITTEE ON LEGAL AFFAIRS

October 8, 1975

Re: H.P. 1597 - Study of Record-Keeping and the Right of Privacy

The Committee on Legal Affairs has been charged with studying record-keeping practices in the public and private sectors in this state and the ways in which such practices might affect the individual's right of privacy. The Committee is concerned about increasing record-keeping, about individuals and about the computerization of such records and wishes to investigate whether these developments have affected the right of individuals. If the Committee finds that the right of privacy has been threatened, it will recommend legislation to protect these rights.

The Committee has prepared a questionnaire addressed to both public and private agencies as one means of studying such record-keeping practices. We are enclosing a copy of the questionnaire for you and request that you answer the questions on a separate sheet of paper, with your answers numbered the same as the questions. If your organization has different kinds of record-keeping systems, it might be more convenient for you to provide different sets of answers for each system.

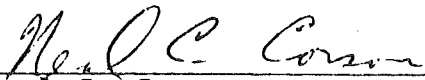
We would appreciate it if you would reply within 30 days from the date of this letter. Please return your answers in the enclosed stamped and addressed envelope.

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If there are any questions about the questionnaire or the study, please refer them first to the legislative assistants working on this study, Thomas P. Downing and Helen T. Ginder. Their office is at Room 427, State House and their telephone number is 289-2486.

We appreciate your cooperation in this matter.

Very truly yours,



Neal C. Corson (TPD)
Senate Chairman



Raymond N. Faucher (TPD)
House Chairman

enclosures

TPD/sym

-COMMITTEE ON LEGAL AFFAIRS-
-QUESTIONNAIRE ON RECORD KEEPING PRACTICES-
-PUBLIC AND PRIVATE AGENCIES AND-
-ORGANIZATIONS-

I. FOR STATE, COUNTY or MUNICIPAL AGENCIES ONLY-

- A. Name of Agency.
- B. Name of particular department, bureau or office in charge of the records system or systems.
- C. Name and address of person or persons in charge of the records system or systems.
- D. Statute, rules or regulations defining authority, and policies. (Please enclose a copy.)

II. FOR PRIVATE AGENCIES, ORGANIZATIONS OR BUSINESSES ONLY-

- A. Name of agency, organization or business.
- B. Name of particular department in charge of the records system or systems.
- C. Name and address of person or persons in charge of the records system or systems.
- D. Constitution, charter, articles or incorporation, by-laws or other document defining authority, policies and rules for implementation of record keeping systems. (Please enclose a copy.)

III. Please provide a complete listing of all personal information systems which you keep, including:

- 1. a description of the kinds of information contained herein;
- 2. the reason the information is kept; and
- 3. a description of the use made of information

- IV. Name the categories and number of persons in each category on whom information is or is expected to be maintained.
- V. Name the categories of information maintained, or to be maintained, indicating which categories are or will be stored in computer-accessible files.
- VI. Please name the categories of information sources.
- VII. Please describe your policies and practices regarding information storage.
- VIII. How long do you retain records?
- IX. How do you dispose of records?
- X. Please describe your provision for maintaining the integrity of the information in your records.
- XI. What provisions have been made:
 - 1. To inform a person he is a subject of information in the system;
 - 2. To enable a person to gain access to the information; and
 - 3. To enable a person to contest its accuracy, completeness, pertinence and the necessity for retaining it?
- XII. What methods do you have for assuring the reliability of data for the intended use?
- XIII. What precautions do you take to prevent misuse of data?

- XIV. Before providing one of your agency's or organization's service to an individual, do you require or request that individual to sign a waiver or disclaimer of confidentiality as to any records you maintain or intend to maintain about that individual?
- XV. Are your records or lists of persons about whom you have a record made available to other agencies or businesses?
If so:
- A. Please list the kinds of agencies or businesses.
 - B. Please state the use made of the records or lists by other agencies or businesses.
 - C. Is a person about whom you have a record notified that his name or record is to be made available to another agency or business?
- XVI. Use of Social Security numbers -
- A. Is the individual required to provide his social security number when making application for service?
 - B. What use is made of the social security number if it is required?
 - C. Do you inform an individual when providing his social security number is not mandatory?
 - D. Is there any penalty if an individual does not provide his social security number?
- XVII. We would be pleased to receive any further comments or information on this subject that you would like to provide the committee.

FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2272

H. P. 2123 House of Representatives, February 27, 1976
Reported by Mr. Faucher from the Committee on Legal Affairs pursuant
to H. P. 1597 and printed under Joint Rules No. 3.

EDWIN H. PERT, Clerk

Filed under Joint Rule 3 pursuant to H. P. 1597.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT Relating to Disclosure of Consumer Reports.

Be it enacted by the People of the State of Maine, as follows:

9-A MRSA § 3-206 is enacted to read:

§ 3-206. Disclosure of consumer reports

1. Definitions. As used in this section, unless the context requires otherwise, the following words shall have the following meanings.

A. Consumer report. "Consumer report" means any written, oral or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit.

The term does not include any report containing information solely as to transactions or experiences between the consumer and the person making the report; or any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device.

B. Consumer reporting agency. "Consumer reporting agency" means any person, firm, partnership, corporation or association which, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit in-

formation or other information on consumers for the purpose of furnishing consumer reports to 3rd parties.

2. Disclosure. If a creditor intends to obtain a consumer report relating to a person who has applied for credit, the creditor must give written notice to the consumer of the fact that the report will be made, of the name and address of the consumer reporting agency, and of the consumer's rights under the Federal Fair Credit Reporting Act, 15 U.S.C.A. § 1681 et seq., if the transaction is subject to this Act.

STATEMENT OF FACT

This bill is one of the results of the Legal Affairs Committee's study of public and private record keeping practices and the right of privacy. The study, which the committee will be continuing, is pursuant to a study order, H. P. 1597.

The bill would extend the rights which consumers now have under the Federal Fair Credit Reporting Act. A creditor would have to notify a consumer who applies for credit of the fact that a credit report will be made, of the name of the reporting agency and of the consumer's rights under federal law.

An Act to Permit an Employee to Review His Personnel File.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 5 MRSA § 638 is enacted to read:

§ 638. Employee right to review personnel file

The director shall, upon written request from an employee or former employee, provide the employee, former employee or his duly authorized representative with an opportunity to review his personnel file. Such reviews shall take place in the Department of Personnel and during its normal office hours. Time spent by an employee in reviewing his personnel file shall not be considered as time worked. For the purposes of this section, a personnel file shall include, but not be limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits which the director has in his possession.

Sec. 2. 26 MRSA § 631 is enacted to read:

§ 631. Employee right to review personnel file

The employer shall, upon written request from an employee or former employee, provide the employee, former employee or his duly authorized representative with an opportunity to review his personnel file if the employer has a personnel file for that employee. Such reviews shall take place at the location where the personnel files are maintained and during normal office hours. The employer may at his discretion allow the review to take place at such other location and time as would be more convenient for the employee. For the purpose of this section, a personnel file shall include, but not be limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits which the employer has in his possession.

Sec. 3. 30 MRSA § 64 is enacted to read:

§ 64. Employee right to review personnel file

The county commissioner shall, upon written request from an employee or former employee, provide the employee, former employee or his duly authorized representative with an opportunity to review his personnel file, if the county commissioner has a personnel file for that employee. Such reviews shall take place at the location where the personnel files are maintained and during normal office hours. For the purposes of this section, a personnel file shall include, but not be limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits which the county commissioner has in his possession.

Sec. 4. 30 MRSA § 2257 is enacted to read:

§ 2257. Employee right to review personnel file

The municipal officer shall, upon written request from an employee or former employee, provide the employee, former employee or his duly authorized representative with an opportunity to review his personnel file, if the municipal officer has a personnel file for that employee. Such reviews shall take place at the location where the personnel files are maintained and during normal office hours. For the purposes of this section, a personnel file shall include, but not be 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 officer has in his possession.

Approved Mar. 30, 1970.