

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

Department of Health and Welfare

STATE HOUSE, AUGUSTA, MAINE

Date February 14, 1974

To Dean Fisher, M.D., Commissioner Att: Carl V. O'Donnell, Acting Director, Health
Facilities Planning and Construction Service
From Harrison B. Wetherill, Jr., Assistant Attorney General
Subject Public Disclosure - Hill-Burton Program

SYLLABUS:

Under the Maine Freedom of Access Law, 1 M.R.S.A. §§ 401-406, any member of the public has a right to inspect and to make copies of all "public records" in the custody of the Health Facilities Planning and Construction Service. Any documents produced by the State Agency or by its staff or records of any documents forwarded by the State Agency to the federal government are public records and must be available for inspection by the public. Documents furnished to the State Agency by others and not made a part of a public record, as defined above, may be treated as confidential records.

FACTS:

Under Title VI of the Federal Public Health Service Act a designated state agency is to handle administration of federal loans and grants for construction and modernization of hospitals and other medical facilities in accordance with a state plan. Pursuant to 22 M.R.S.A. § 1709 the Health Facilities Planning and Construction Service was designated as the responsible State Agency and, as an administrative body of the state, is subject to the requirements of the Maine Freedom of Access Law, 1 M.R.S.A. §§ 401-406, the pertinent part of which Law reads, "every citizen of this state shall, during the regular business or meeting hours of all such bodies or agencies, and on the regular business premises of all such bodies or agencies, have the right to inspect all public records, including any minutes of meetings of such bodies or agencies as are required by law, and to make memoranda abstracts or photographic or photostatic copies of the records or minutes so inspected, except as otherwise specifically provided by statute." 1 M.R.S.A. § 405.

QUESTIONS:

1. What constitutes a "public record"?
2. Is a State Department required to disclose the contents of its files to the general public upon request (on demand)?
3. Is material such as financial data supplied by a project sponsor considered "public" or "privileged" information?
4. Is a State Department required to provide copies of correspondence or documents to the general public on request? If so, should there not be established a rate of so much per page and a system for recording fees received and turning them in to the State Treasurer?

ANSWERS:

1. The term "public records", as used in the Maine Freedom of Access Law, refers to records which result from Agency action. This includes all records

except those which are furnished to the Agency by others and which do not thereafter leave the agency in the form of official correspondence between the Agency and the federal government.

2. Public records must be made available for inspection upon request. Non-public records need not be made available upon either request or demand.

3. Financial data supplied by a project sponsor is considered privileged until such data is incorporated in an Agency report or forwarded to the Federal Government as part of an approved and recommended application.

4. No.

REASONS:

The central issue here is the interpretation of the words "public records" in 1 M.R.S.A. § 405. 1961-62 Attorney General Report 82, while recognizing that the drawing of a definite line was difficult, made a general distinction between public and confidential records based upon whether the record was made by the State Agency itself or was provided to the Agency by other people. This distinction was based on the declaration of policy found in the first section of the Freedom of Access Law. The policy of the law is to insure that "actions" and "deliberations" of all bodies of the state are open to the public. Records furnished to state bodies by others do not represent "actions" or "deliberations" of the state body.

In the present instance a further refinement of the line between public and privileged records is required since the Health Facilities Planning and Construction Service functions to a large extent as an intermediary between applicants for federal funds and the federal government, the State Agency being charged with forwarding materials with approval and recommendations to the federal government. Records of the materials thus forwarded, even if initially furnished by outside applicants, become public records as a result of the "action" of approval and forwarding. Of course the very same materials are also available for inspection by the public at the federal level as soon as they reach the custody of the federal agencies under the Freedom of Information Act unless they happen to fall within one of the exceptions in that Act.