

# MAINE STATE LEGISLATURE

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William G. Blodgett, Executive Director

Retirement

Charles R. Laroche, Assistant

Attorney General

**Public View of Retirement System Records**

**SYLLABUS:**

Retirement System membership and retirement payroll data required to be made by that System are public records which anyone can view at the System's Office, pursuant to 1 M.R.S.A. § 405.

**FACTS:**

Two situations are presented. First, a newspaper reporter desires to see the retirement payroll data relating to another person, which data indicates the source of his retirement benefit, amount earned based on prior service, membership service, and cost of living increases; it also shows the retirement plan that person selected, such as, full benefits, options 1-2-3-4; it also indicates the amount withheld for federal tax, state tax, association dues, health insurance premiums and the net check amount.

Second, the wife of a retired person desires a letter stating information from the System's records concerning her husband's membership-retirement account, i.e., date retired, amount husband withdrew from the System when he withdrew contributions in 1971, amount of contributions he paid back to the System in 1973, method of repayment, and the amount he receives per month as a retirement allowance at this time; she desires this information for use in divorce proceedings.

**QUESTIONS:**

1. Are all of the above-described "public records"?
2. Are the above-described persons entitled to view such records and to make copies of them?
3. Does the Executive Director have to mail out copies of such records to such persons?

**ANSWERS:**

1. Yes.
2. Yes.
3. No.

REASONS:

1 M.R.S.A. § 405 provides:

"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 photo-static copies of the records or minutes so inspected, except as otherwise specifically provided by statute." (emphasis supplied)

There is no statutory provision which declares that any of the Retirement System records are to be confidential. Hence, the exception provided in 1 M.R.S.A. § 405 is inapplicable.

Not all information in the files of a State agency are public records. 76 C.J.S., Records, § 1, at page 112 declares:

"The elements essential to constitute a public record are, namely, that it be a written memorial, that it be made by a public officer, and that the officer be authorized by law to make it; but the authority of the officer need not be derived from express statutory enactment, and if authorized to make the record, it is not necessary that he should be required to do so."

The authority and prior opinions of this Office indicate that not all memoranda in the files of an Agency are "public records" and that correspondence from one in his private capacity to an Agency would not generally be a "public record." See 1961-1962 Attorney General's Report, p. 82, 83; 1943-1944 Attorney General's Report, p. 110-112; Opinion of Deputy Attorney General Fogg to Mr. Royden V. Brown, dated August 6, 1940; Opinion of Deputy Attorney General West to Mr. John P. Harriman, dated May 4, 1962; and People v. Harnett, 226 N.Y.S. 338.

All of the information described in the two fact situations seems to fit within the general definition of a "public record." Accordingly, the described persons are, pursuant to 1 M.R.S.A. § 405, entitled to view and make copies of those records. However, there is no duty upon an Agency to send copies of such records to these persons.

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CHARLES R. LAROCHE  
Assistant Attorney General