

# MAINE STATE LEGISLATURE

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June 11, 1974

*gab*  
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*jac* *yes*  
Taxation

Jon A. Lund, Attorney General

Attorney General

Citizen access to local tax assessor's property record cards.

**SYLLABUS:**

Property record cards used by local tax assessors to record facts considered in valuing parcels of real estate are public records as that phrase is used in Maine's Freedom of Access Law, since they are used to record information on which the assessors base their "deliberations" and the "action" of valuing property.

**FACTS:**

Property record cards are used by some local tax assessors to record facts considered relevant to assessing the value of real estate. Such facts include location, area, topographical features, vegetation; the size, construction, use and condition of any improvements. The cards may be prepared during an inspection of the property or later, using rough notes taken during an inspection. The valuation assigned each parcel is recorded in a valuation book, which is open to public inspection, but discloses none of the factors considered in arriving at the valuations listed. It is common practice to allow a taxpayer to inspect record cards pertaining to his own property. In some municipalities all property record cards are open to inspection. In others they are not.

**QUESTIONS AND ANSWERS:**

1. Has a taxpayer a legal right to insist on examination of any or all property record cards maintained in the office of a municipal assessor? Yes.

2. If the answer to question 1 is in the affirmative, has a taxpayer a legal right to insist on examination of any or all documentary material, including correspondence with other taxpayers, relating to activities of the assessor's office and maintained in that office, and what basis is to be used to determine whether a taxpayer has a legal right to insist on examination of any specific documentary material maintained in a municipal assessor's office? The Freedom of Access Law allows citizens access to pertinent documentary materials considered by tax officials.

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REASONS:

Neither the Freedom of Access Law (Title 1, M.R.S.A., Ch. 13) nor any other provision of Maine Revised Statutes, defines the "public records," to which that law grants access. Instead, the law declares a general citizen right of surveillance over the business of government exercised in part by access to "public records." External evidence of legislative intent indicates this phrase was designed to be all inclusive. We would have to assume, in any event, that the Legislature intended access to all records reasonably necessary to exercise the right of surveillance it had granted (See 1961-62 A.G. Report, p. 83). That right-- extremely broad -- includes "the transactions of any functions affecting any or all citizens" by virtually all arms of government, local or state, and extended to both "actions" and "deliberations." It requires, in our opinion, a broader construction of the phrase "public records" than the records required by law or necessary, to which your letter of February 12 was limited. While it may be reasonable to assume that most "actions" would be reflected in a record required by law or necessary to carry out a required duty, certainly the same is not true of "deliberations," or of the information on which actions and deliberations are based and without which they cannot be reviewed or understood. It is perhaps significant in this connection that §405 uses the phrase "required by law," but only to describe minutes of meetings of public bodies.

It seems particularly evident that no meaningful examination of the assessor's "deliberations" could occur without access at least to the property record cards, when used. The cards are a concise account of the factors weighed in arriving at a valuation. The variety of permissible valuation factors is such that a mere statement of valuation, as in the valuation book, sheds little, if any, light on the valuation process. Indeed, it is unlikely that a valuation can be challenged successfully without also challenging the process or factors from which it was derived as arbitrary or discriminatory. Sears, Roebuck & Co. v. Inhabitants of Presque Isle, 107A, 2d 475, 479-80 (Me. 1954). Without examination of the property record cards it will seldom be possible to determine whether the assessors are discharging their legal obligation "that real estate and tangible personal property be valued on an equal basis." *Id.* One purpose of the Freedom of Access Law was to enable members of the general public to make just such determinations.

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It seems clear that the Legislature did not use the phrase "public records" as a term of art in the Freedom of Access Law and that we would not be justified in using a judicial definition of the term, developed outside the context of the Maine statute, in construing the Act. Actually, there is no one generally accepted judicial definition that could justifiably be assumed to have been incorporated in the vocabulary of the statute. The phrase is part of divers rules of law and its content accordingly varies with the problems those rules tackle. For example, the definition "records required by law or necessary" seems to be borrowed from the official records exception to the hearsay rule. [see Knox Line Co. v. Maine State Highway Com'n., 230 A.2d 814, 820 (Me. 1967).]

For the same reasons as the Freedom of Access Law requires exhibiting property record cards to any citizen, it appears to allow citizen access to other pertinent documentary materials. We see no reason why correspondence from taxpayers should not be included when it contains information considered by the assessor in the valuation process.

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