

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)

STATE OF MAINE

Inter-Departmental Memorandum Date April 24, 1975

To Nicholas L. Caraganis, Director Dept. Personnel
From Joseph E. Brennan, Attorney General Dept. Attorney General
Subject Public Inspection of Personnel Department Records

SYLLABUS:

"Applications for examination" and "applicants' results of examination" are public records open to view by Maine citizens pursuant to 1 M.R.S.A. § 405, et seq.

FACTS:

This request for opinion results from continuing interest in and inquiry about applicants for the position of State Trooper and the consistent declination of the Department of Personnel to provide such information in accordance with Personnel Rule 6.7.

The first request for information (names, addresses, and scores of all women failing the State Police Physical Aptitude Examination) came from the Maine Human Rights Commission. We answered the Department's inquiry at that time by opinion dated November 6, 1974. Our opinion was that the Maine Human Rights Commission lacked the statutory authority to investigate alleged discrimination by law enforcement agencies.

The instant request for information is addressed to the Personnel Department by the Maine Civil Liberties Union and the media. The Personnel Department insists that the records at issue are confidential records of a delicate nature not subject to view under the "right to know law." 1 M.R.S.A. § 405, et seq.

QUESTIONS AND ANSWERS:

1. Whether applications for examination, submitted to and on file with the Department of Personnel, are public records available for public inspection? Yes.

2. Whether applicants' examination results, on file with the Department of Personnel, are public records available for public inspection? Yes.

3. If the answers to the foregoing questions are affirmative, under what conditions may they be inspected? See Reasons.

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, 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 abstract or photographic or photostatic copies of the records or minutes so inspected, except as otherwise specifically provided by statute."
(Emphasis supplied.)

With respect to the Personnel Department, the only statutory provision which is applicable to the exception provided by 1 M.R.S.A. § 405 is 5 M.R.S.A. § 592.2(M). Section 592.2(M) allows the Department to limit by reasonable regulation public inspection of the minutes of its proceedings. There is no further authority in the Personnel Department's enabling statute (5 M.R.S.A. § 551, et seq.) to otherwise limit public access to its records. To the extent that Personnel Rule 6.7 seeks to exclude access to Department records, other than to the minutes of its proceedings, the Rule is inconsistent and in conflict with 1 M.R.S.A. § 405, et seq., and is of no effect and invalid. Joyce v. Webber, 151 Me. 234 (1961); and McKenney v. Farnsworth, 121 Me. 450 (1922).

Are "applications for examination" and "applicants' examination results" public records within the meaning of 1 M.R.S.A. § 405, the "right to know law?"

Secrecy of identity of applicants and applicants' examination results are incompatible with the provisions of Chapter 57, Title 5, when read in light of 1 M.R.S.A. § 405. For example, 5 M.R.S.A. § 671 provides:

"Appointments to and promotions in the classified service shall be made according to merit and fitness, from eligible lists prepared upon the basis of examinations, which so far as practicable shall be competitive. No person shall be appointed, transferred, promoted or reduced as an officer, clerk or employee or laborer in the classified service in any manner or by any means other than those prescribed in chapters 51 to 61 and in the rules of the board made in pursuance to chapters 51 to 61."

5 M.R.S.A. § 674 provides:

"In making appointments to any position on an open competitive basis in the classified service, preference in appointment shall be given to honorably discharged male and female veterans and widows of such, and to the wives of disabled veterans who themselves are not qualified but whose wives are qualified to hold such positions."

5 M.R.S.A. § 675 allows certain veterans to obtain a reopening of an examination. 5 M.R.S.A. § 677 authorizes certain temporary and provisional appointments under certain circumstances.

Public view of the Personnel Department files, including the completed applications on file, is essential to assure the public that appointments to the classified service are in fact being made in accordance with the statutory requirements of Chapter 57, Title 5.

By consistent opinion the Attorney General has indicated that the term "public record" should be interpreted broadly because "Maine's freedom of access law. . . was designed to subject the workings of public agencies to public scrutiny as fully as possible and to limit strictly the records that could be withheld from public view." Attorney General's Opinion, June 6, 1974.

The right of surveillance granted to the public by 1 M.R.S.A. § 405 is extremely broad and "includes 'the transaction of any functions affecting any or all citizens' by virtually all arms of government, local and state. . . ." Attorney General's Opinion, June 11, 1974. It seems particularly evident that no meaningful examination of the Personnel Department's actions could occur without access to applications for examination and applicants' examination results. The applications and the examination results contain important information critical to any meaningful evaluation of the Department's function. Indeed, it is unlikely that Department action could be challenged successfully without also challenging the factors upon which such action was constituted. Without examining applications and examination results, it will seldom be possible to determine whether the Department is discharging its legal obligation that "appointments to and promotions in the classified service shall be made according to merit and fitness, from eligible lists prepared upon the basis of examinations. . . ." 5 M.R.S.A. § 671; and Attorney General's Opinion, June 11, 1974.

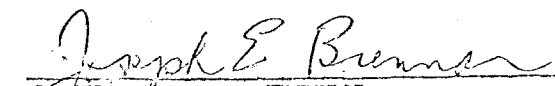
The elements essential to constitute a public record are fundamental and well settled. (See Attorney General's Opinion, February 9, 1944; 76 C.J.S., Records, § 1 at 112; and 66 Am. Jur.2d, Records and Recording Law, § 1 at 342) The records at issue here contain all the elements essential to constitute public records, but the Department insists that that being so, the records are still entitled to confidentiality. A basis of the supposed confidentiality of the records at issue in exception to statutory command, is that public inspection of the records would cause administrative disruption of the Department. Such disruption is implicit in any statute requiring public inspection of agency records. The problem of disruption is no greater for the Department of Personnel than for any other State agency, nor so great as to be insoluble.

The more serious implication in declaring "applications for examination" and "applicants' examination results" public records is the resultant loss of privacy to the individual applicant. No harm will come to an applicant where the information gleaned is purely statistical, but considerable discomfort, embarrassment and inconvenience may result if identities, addresses and personal facts, elicited by and appearing on applications and examination results become accessible to the public. The "right to know law" makes no provision for personal discomfort or embarrassment which results from disclosure, nor does any interpretation of the statute.

The Legislature has struck a balance between the competing interests -- the public right to know and the individual right to privacy. The Legislature has determined that the public's right to know is more important and its determination must prevail.

"Applications for examination" and "applicants' results of examination" are public records open to view by citizens of the State, pursuant to 1 M.R.S.A. § 405, et seq., during regular business hours at the Department of Personnel. Prior to allowing the public to examine applications for examination, the Department is required, in accordance with 16 M.R.S.A. § 600 and 15 M.R.S.A. § 2161-A, to expunge information elicited from the applicant relating to arrest.

In answer to question #3, the statute requires only that each inquiring citizen be allowed to inspect public records during the regular business hours of the agency. The implication of this requirement is that inspection be on the premises of the agency and subject to reasonable agency procedures and conditions.


JOSEPH E. BRENNAN
Attorney General