

# MAINE STATE LEGISLATURE

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November 4, 1975

David S. Silsby, Director

Legislative Research

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Availability of files of the Legislative Research Office

Your memo of October 16, 1975, poses a number of questions, the first of which is:

"1. Based on Judge Goffin's opinion in the above case, are records, working papers, inter and intra office memoranda maintained in this office and made before October 2, 1975, by Legislators, legislative agencies or legislative employees for the purpose of preparing Senate or House papers available for public inspection under any provision of law either during the legislative biennium in which they are prepared or at any other time?"

The definition of "public records," 1 M.R.S.A. § 402-A, as adopted by P.L. 1975, Chap. 623 provides, in its exceptions, those public documents which need not be made available for public inspection. The third exception of Sec. 402-A covers the records, working papers, and inter office and intra office memoranda maintained by the legislature for preparation of Senate or House papers or legislative reports. However, that exception from public availability is limited to the biennium in which said legislative documents are prepared. Thus legislative reports prepared for the 106th Legislature are not protected from public disclosure by this provision. However, all documents included in the above exception (3) which are currently in the possession of your office or other legislative offices may be withheld from public availability if they were prepared in connection with legislative matters considered in this biennium. That protection will end with the end of the biennium.

2. You ask as to whether the effect of the new law is to supersede the Court Decision.

The new law does not actually supersede the Court decision of September 30. The Court decision itself specifically recognized that it was not considering the effects of the new law. The Court noted: "What the situation might or might not be on and after October 2, 1975 is not meaningful at this prior time." The new law creates a new situation which the Court decision did not address. As indicated above, the new law does extend protection to all those documents listed in § 402-A-3 prepared in connection with legislative activities of the 107th Legislature. This protection includes those documents prepared on or before October 2, 1975, in connection with the activities of the 107th Legislature. The law in effect on September 30, which the Court construed, no longer applies.

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3. Is control over records, working papers, inter and intra office memoranda of questions 1 and 2 vested in the individual of the Executive, Judicial or Legislative branch for whom they were prepared, in legislative leaders, or in the Director of Legislative Research?

This question is more appropriately answered when questions come up with regard to specific documents. Some documents used in connection with preparation of legislation will be controlled by each of the above mentioned entities. For example, some documents in the Legislative Research Office are clearly considered by individual legislators to be within their control. See Legislative Record, House, March 25, 1975, B280-281 Statements of Representative Rolde, Representative Mills and Representative Perkins.

4. Can the Director of Legislative Research continue the policy of his office requiring the permission of the individual for whom records, working papers or memoranda of the type specified in questions 1 and 2 were prepared before anyone other than that individual is permitted access to those records, working papers and memoranda?

As the documents cited are not automatically public records since they are specified as one of the exceptions to Sec. 402-A, the Director of Legislative Research may continue present policies controlling public access to those documents and requiring permission of the individual for whom those documents were prepared before granting access. Again, however, we would emphasize that this right to limit access only applies to documents of the current legislative biennium and in the future would only apply to legislative documents of the then current legislative biennium.

A final note: There may be some legislative documents which, as part of the legislative deliberative process might be covered by the exception in sub-§ 2 of 402-A relating to documents within the privilege against discovery. (Cf. Morgan v. United States, 304 U.S. 1 (1938); United States v. Morgan, 313 U.S. 407 (1940); Zion First National Bank v. Taylor, 390 P.2d 854 (Utah, 1914)).

Again, the documents covered by this privilege can only be determined as specific situations arise.

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