

# 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**

*J. J. D.  
M. W.*

DEPARTMENT OF THE ATTORNEY GENERAL



Memo From

WILLIAM J. KELLEHER  
ASSISTANT ATTORNEY GENERAL  
COUNSEL, MENTAL HEALTH & CORRECTIONS

Date: 24 December 1975  
To: Clyde Leib, Director of Admr. Services Dept: Mental Health and Corrections  
Subject: AUTHORITY OF DEPARTMENT OF MENTAL HEALTH AND CORRECTIONS TO REQUIRE DISCLOSURE OF EMPLOYEES OF GRANT RECIPIENTS

SYLLABUS:

The Department of Mental Health and Corrections may require, as a condition to the provision of monies to non-stock corporations, that each recipient furnish to the Department a list of all employees and their respective salaries. This information would be available to public inspection pursuant to 1 MRSA §405.

FACTS:

The Governor has requested of the Commissioner of the Department of Mental Health and Corrections that he secure the names and salaries of all employees of non-stock corporations which receive monies from that Department either through grants or as incidents of contractual relationships for the provision of personal services to that Department.

The following questions have been propounded with respect to the proposed action:

QUESTIONS AND ANSWERS:

1. May the Department of Mental Health and Corrections require the disclosure of the names and respective salaries of all employees of non-stock corporations which receive monies from the Department of Mental Health and Corrections as a condition to the provision of such monies. Yes.
2. If the answer to the first question is in the affirmative, is the information subject to public disclosure under 1 MRSA Chapter 13, Subchapter I? Yes.

REASONS:

1. The Department of Mental Health and Corrections is authorized to grant monies for the following purposes: correctional program improvement (34 MRSA Chapter 62-A); community mental health services (34 MRSA Chapter 183); community-based services for the mentally retarded (34 MRSA Chapter 184-C); and for programs for retarded individuals in boarding and nursing homes (34 MRSA Chapter 186). Substantial amounts of money are granted to non-stock corporations under these authorities each year. Additionally, there are many non-stock corporations which receive monies pursuant to contracts with the Department for the provision of personal services.

Pursuant to its granting authorities, the Department is mandated to adopt and promulgate rules, regulations and standards relating to the administration of services authorized by the respective grant authorities.

Necessary to the resolution of this first question is an exploration of several Personnel Rules. Personnel Rule 5.2d provides, in relevant part:

"Any salary paid to an employee in the classified service shall represent the total remuneration for the employee... Except as otherwise provided no employee shall receive pay from the state in addition to the salary authorized under the schedules provided in the pay plan for services rendered by him either in the discharge of his ordinary duties or any additional duties which may be imposed upon him or which he may undertake or volunteer to perform..."

Significantly, the Department of Finance and Administration requires that every contract for personal services entered into by the State include the following paragraphs:

"12. EMPLOYMENT AND PERSONNEL. The Contractor shall not engage on a full-time, part-time or other basis during the period of this agreement, any professional or technical personnel who are or have been at any time during the period of this agreement in the employ of any State Department or Agency, except regularly retired employees, without written consent of the public employer of such person..."

13. No individual employed by the State at the time this contract is executed or any time thereafter shall be admitted to any share or part of this contract or to any benefit that may arise therefrom directly or indirectly due to this employment or by financial interest in the Contractor or any affiliate of the Contractor..."

It would appear entirely reasonable, then, that the Department of Mental Health and Corrections take steps to assure that no state employees benefit from the grant or contractual transfer of monies to non-stock corporations. These steps might well include promulgating regulations which require all recipients of grants to provide the names and salaries of all their employees. Prior to entering into contracts for personal services, the Department might require the same information from all proposed contractors.

The Governor and Commissioner may well have other sound reasons for wishing to require the disclosure of the information under discussion, e.g. the considered need to know how and on whom public monies are spent in order to be fully accountable for the State's actions.

We answer "yes" to your first question.

2. Your second question asks whether the above-discussed information would be subject to public disclosure under the provisions of Chapter 13, Subchapter I of Title I of the Maine Revised Statutes (Freedom of Access Law). Pertinently, 1 MRSA §405 provides:

"Every citizen of this State shall...have the right to inspect all public records...and to make memoranda abstracts or photographic or photostatic copies of the records or minutes so inspected, except as otherwise specifically provided by statute."

Public records are defined in §405-A:

"The term public records shall mean any written, printed or graphic matter, or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or of its political subdivisions and has been received or prepared for use in connection with the transaction of public or governmental business, or contains information relating to the transaction of public or governmental business, except:

- 1. Records designated confidential. Records that have been designated confidential by statute.

. . .  
. . ."

Section 1-A of Title 34 of the Maine Revised Statutes, as enacted by P.L. 1975, c. 495, §2, provides relevently,

"All orders of commitment, medical and administrative records, applications and reports and facts therein pertaining to any persons receiving services from the department, from any hospital pursuant to chapter 191, or from any facility licensed by the department pursuant to section 2052-A, shall be kept confidential..."

We find no other statute making records of the Department of Mental Health and Corrections confidential. Therefore, should the Department obtain the information under discussion, inasmuch as it is not rendered confidential, it is subject to public inspection pursuant to the above set out provision.

William J. Kelleher  
William J. Kelleher  
Assistant Attorney General

WJK/vv

STATE OF MAINE  
DEPARTMENT OF MENTAL HEALTH AND CORRECTIONS  
AUGUSTA, MAINE 04333

4 November 1975

Courtland D. Perry and  
William J. Kelleher, Ass't. Attys. Gen'l.

Mental Health and Corrections

Clyde Leib

Mental Health and Corrections

**Request for Attorney General's Opinion**

Pursuant to a request from Governor James Longley, Commissioner Rosser has asked each of the state's community mental health centers to provide to the department specific names and salaries of their respective employees. This information has not previously been required from the mental health centers, although grant application regulations now being drafted by the Department of Mental Health and Corrections will require the reporting of titles and salary ranges in the future.

The Commissioner's request has raised a number of legal questions on the part of mental health centers relating to the rights of privacy of mental health center employees and whether the state's request for specific salary information will breach these employees' rights. The Governor's request for the information was made with the specific purpose of making this information available to the press and general public.

This request for an opinion seeks answers to the following questions:

1. May the Department of Mental Health and Corrections require disclosure of the names and respective salaries of all employees of non-stock corporations which receive monies from the Department of Mental Health and Corrections as a condition to the provision of such monies?
2. If the answer to the first question is in the affirmative, is the information subject to public disclosure under the 1 MRSA Chapter 13, Sub-chapter I?

CL/mr/vv