

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04383

February 24, 1976

Representative Gail H. Tarr
State House
Augusta, Maine 04330

Dear Representative Tarr:

The following is in response to your request for information regarding a legislator's access to State or Federal files maintained on constituents.

Access to the files of all Federal agencies is regulated by the Federal Privacy Act of 1974, 5 U.S.C.A. 552a, the purpose of which is to protect an individual against invasion of personal privacy where that privacy may be affected by the collection, maintenance and use of information by the government. Paragraph (b) of the Act states in part as follows:

"(b) Conditions of Disclosure - No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written consent of, the individual to whom the record pertains, unless disclosure of the record would be--"

Paragraph (b) then lists eleven exceptions whereby disclosure can be made without written consent of the individual. A State legislator does not fall within any of the eleven classes of exceptions. Therefore, a written waiver executed by a constituent is required in order for a legislator to have access to the constituent's file. It should be noted that paragraph (d) of the Act requires a Federal agency to disclose information kept on an individual, if that individual so requests. The foregoing applies to the SBA since it is a Federal agency.

Although the Privacy Act was intended to apply to Federal agencies and their files, it also applies in many instances to State agencies which are partially funded with Federal money. For example, the Department of Human Services' A.F.D.C. program is funded in part by the Social Security Administration. Through regulations promulgated by H.E.W. pursuant to the Privacy Act, the Department of Human Services must make provisions in conformance with the Privacy Act and other applicable Federal statutes in order to safeguard the confidentiality of A.F.D.C. files. In the case of the Maine Guarantee Authority, where no federal money is involved, 10 M.R.S.A. 852, requiring that the Authority maintain its files in a confidential manner, would apply.

Because of the varying, and sometimes conflicting, Federal and State statutes and regulations in the area of confidentiality, it is necessary in most instances that a State agency resolve questions of access and privacy on a case-by-case basis. However, as a general rule, if a constituent requests that a legislator investigate a personal file maintained by a Federal or State agency on the constituent, the legislator should obtain a written authorization from the constituent prior to seeking access to the file.

Very truly yours,


JOSEPH E. BRENNAN
Attorney General

JEB:jg