

MAINE STATE LEGISLATURE

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June 9, 1976

George Mitchell, Commissioner

Indian Affairs

John M. R. Paterson, Deputy

Attorney General

Access to Department Files

FACTS

The Department of Indian Affairs provides special financial assistance to eligible Indians from appropriations made to the Department for that purpose. This special assistance is in addition to and distinct from assistance provided by either the Department of Human Services or the municipalities. (See 22 M.R.S.A. §§ 4713, 4771, 4772 and 4837). When an applicant for such assistance requests it from the Department, the Department obtains from the applicant data similar to that customarily obtained by the municipality or Human Services. Governor Francis Nicholas, Overseer of the Poor for the Pleasant Point Reservation (22 M.R.S.A. § 4705) has requested access to these files as they relate to Indians on that reservation.

QUESTION

Are the records maintained by the Department as described above public records and thus available for inspection or are they confidential?

ANSWER

Records maintained by the Department of Indian Affairs for the purpose of administering special financial assistance to Indians, separate and distinct from other general assistance programs, are public records and available for inspection under 1 M.R.S.A. § 405.

REASONING

The public policy of the State as enunciated in the Freedom of Access Law, 1 M.R.S.A. § 401, is that records of public agencies are to be open to public inspection.

Title 1 M.R.S.A. § 405 has translated this policy into a statutory mandate and currently provides that all public records shall be available for public inspection. Section 402-A defines public records to include all written, printed or graphic matter in the possession of the agency except (1) if specifically designated as confidential, (2) if within a privilege against discovery in any criminal or civil trial, or (2) legislative records and working papers. The records in question are not covered by any of the above exceptions.

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Title 22 M.R.S.A. § 4508 provides that all assistance provided under that chapter (i.e. Title 22 M.R.S.A. Chapter 1251) shall be confidential. The assistance provided here is not provided pursuant to that Chapter and is therefore not covered by that limitation.

A review of the newly effective Maine Rules of Evidence, reveals no evidentiary exception for information such as this which insulates this information from discovery or admissability in a trial.

Similarly, there appears to be no specific provision in the Indian laws, 22 M.R.S.A. § 4701 et seq which would provide for confidentiality of records of this sort. We must conclude, therefore, that the records in issue are public and may be inspected upon request. Such a result is consistent with current statutes and the newly enacted amendments to the Freedom of Access Law in P.L. 1975, c. 758.

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