

# MAINE STATE LEGISLATURE

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To Donald Bisset, State Fire Marshal Dept. Public Safety  
From Joseph E. Brennan, Attorney General Dept. Attorney General  
Subject Release of Pre-Arrest Investigative Reports to Insurance Companies  
(16 M.R.S.A. §§301-307)

FACTS:

Historically, insurance companies have requested and received copies of reports of fire investigations conducted by the State Fire Marshal. Such reports may include results of laboratory analysis, witness interviews, photographs, diagrams, newspaper clippings and similar investigative materials. The reports may reflect that the cause of the fire was accident or design or that the cause was of undetermined origin. If the reports indicate that the fire was the result of design, the reports may indicate either that no suspect has been identified or that one or more suspects have been identified. In many instances in the past, the information contained in the investigative reports has been used by insurance companies to deny the payment of claims, even though the investigation produced insufficient evidence to warrant an arrest.

QUESTION:

Does the Criminal History Record Information Act prohibit the State Fire Marshal from releasing to insurance companies reports of fire investigations?

ANSWER:

Under the provisions of the Criminal History Record Information Act (16 M.R.S.A. §601 et seq.), the State Fire Marshal may release to insurance companies reports of fire investigations under the following circumstances:

1. when the reports do not reveal the identity of individuals, or
2. when the reports identify individuals but do not contain identifiable descriptions or notations of arrest, detention, the filing of a charging document, disposition, sentencing, correctional supervision or release, or
3. when the reports identify individuals and contain identifiable descriptions or notations of arrest, detention, etc., but the request is reasonably contemporaneous with the event (i.e. the arrest, detention, etc.) regarding which the request is made.

REASONING:

The Criminal History Record Information Act (16 M.R.S.A. § 601 et seq., enacted by P.L. 1975, c. 763, §3) places controls on the dissemination of criminal history record information by criminal justice agencies. Whether the investigative reports of the State Fire Marshal are subject to the Act's controls depends in the first instance upon whether the State Fire Marshal's Office is a criminal justice agency, since the controls established by §§603 and 604 apply only to such agencies. Section 601(3) defines "criminal justice agency" as

"those agencies at all levels of Federal or State Government which perform as their principal function, activities relating to crime prevention, including research or the sponsorship of research, the apprehension, prosecution, adjudication, incarceration or rehabilitation of criminal offenders or the collection, storage, dissemination or usage of criminal history record information."

The principal duty of the State Fire Marshal's Office is the enforcement of laws, ordinances and regulations concerned with fire prevention, arson and explosives. 25 M.R.S.A. §2396. Because the principal function of the Office is that of crime prevention and the apprehension and prosecution of criminal offenders, the State Fire Marshal's Office is a "criminal justice agency."

Given that the State Fire Marshal's Office is a criminal justice agency, the Act will control the dissemination of the State Fire Marshal's investigative reports if they constitute criminal history record information. Section 601(2) defines "criminal history record information" as

"information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, complaints, indictments, informations and any disposition arising therefrom, sentencing, correctional supervision and release. . . ." (Emphasis added)

It is clear from the definition that records pertaining to criminal activity do not constitute criminal history record information unless they mention the name of an individual (or describe him sufficiently so that he may be identified) and contain a notation indicating that the individual mentioned has formally entered the

criminal justice system either by his arrest or detention, or by the filing of a charging indictment against him, or by the occurrence of any of the other criminal justice transactions enumerated in the definition. Thus, an investigative report which contains information regarding the cause of a fire but which does not identify an individual as a suspect would clearly not be criminal history record information. This is because the Act is designed to control only those records which relate to individuals. Moreover, if the report identified a person as a suspect in the fire but did not contain a notation that the person had been arrested, indicted, or had entered any of the other stages of the criminal justice process listed in §601(2), the report would not constitute criminal history record information.<sup>1</sup>

1. Although the discussion of the Act in the Legislative Record provides no guidance on this issue, this conclusion is buttressed by an analysis of the federal regulations upon which much of the Criminal History Record Information Act is based. Regulations issued by the Department of Justice in May 1975 imposed upon the states certain requirements regarding the security of criminal records, adherence to which was enforced by the threat of discontinued funding under the Omnibus Crime Control and Safe Streets Act. In enacting the Criminal History Record Information Act, a major purpose of the Maine Legislature was to achieve compliance with the federal mandate and thereby ensure continued L.E.A.A. funding. This intent is demonstrated by the marked similarity of the language and format of 16 M.R.S.A. § 601 et seq and the federal regulations--many of the provisions of which are identical. Therefore, in view of the legislature's reliance upon and adoption of the provisions of the federal regulations, interpretative material relating to the regulations may be used to construe the Criminal History Record Information Act.

The definition of "criminal history record information" in the federal regulations issued in May 1975, is virtually identical to that found in 16 M.R.S.A. §601(2). See 28 C.F.R. §20.3(b) (1975). The commentary relating to the definition of "criminal history record information" in the regulations was as follows:

"The definition of criminal history record information is intended to include the basic offender-based transaction statistics/computerized criminal history (OBTS/CCH) data elements. If notations of an arrest, disposition, or other formal criminal justice transactions occur in records other than the traditional 'rap sheet' such as arrest reports, any criminal history record information contained in such reports comes under the definition of this subsection.

"The definition, however, does not extend to other information contained in criminal justice agency reports. Intelligence or investigative

If the report contained such notations, it could not, pursuant to §604, be disseminated to the insurance companies unless the notations were excised or unless dissemination were permissible under §602(3).

Section 602(3) provides in pertinent part:

"Nothing in this subchapter shall be construed to prevent a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release or prosecution of an individual, the adjudication of charges or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates. . . ."

This language manifests a legislative recognition that criminal justice agencies should not be precluded from releasing information regarding current developments in the criminal justice process. Cf. Commentary to 28 C.F.R. §20.20(c)(1975), 40 Fed. Reg. 22118 (1975). Pursuant to this exception, if an investigative report contains criminal history record information and the insurance company's request to examine the report is reasonably contemporaneous with the event(s) (i.e. the arrest, apprehension or other criminal justice transaction) noted in the report, the State Fire Marshal would not be prohibited from releasing those portions of the report which relate to the contemporaneous event.

I trust that this reponse will answer your question satisfactorily. As additional questions regarding the Act arise, please feel free to contact this office.

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Attorney General

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information (e.g. suspected criminal activity, associates, hangouts, financial information, ownership of property and vehicles) is not included in the definition of criminal history record information."

This comment makes clear that the definition of "criminal history record information" in the federal regulations was not intended to encompass reports of investigations which do not contain notations or descriptions of formal transactions (e.g., arrest, indictment) within the criminal justice system.