

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date November 10, 1976

To Robert Doyle, Co-Chairman

Dept. Board of Certification for Geologists and Soil Scientists

From Joseph E. Brennan, Attorney

Dept. Attorney General

Subject Confidentiality of Board Records

You have asked several questions regarding the confidentiality of information in the possession of the Board of Certification for Geologists and Soil Scientists. Generally, the information involved consists of personal history, educational background and examination grades of persons who have applied for certification before the Board, and information which the Board has accumulated in the course of investigations in contemplation of certification revocation proceedings. For the reasons stated below, it is my opinion that these records may not be withheld from the public. Consequently, I am not responding to those of your questions which relate to the manner of insuring their confidentiality.

Section 402(3) of the Maine Freedom of Access Law, 1 M.R.S.A. §§401, et seq., defines a public record to mean:

"any written, printed or graphic matter . . . that is in the possession or custody of an agency or public official of this State . . . and has been received or prepared for use in connection with the transactions of public or governmental business or contains information relating to the transactions of public or governmental business."

The Act then goes on to describe five exceptions to this definition, which are, generally, (1) records designated confidential by statute, (2) records which would be privileged against discovery in civil or criminal proceedings, (3) legislative memoranda, (4) collective bargaining materials, and (5) memoranda of the boards of trustees of the University of Maine and Maine Maritime Academy.

It is clear that the documents you describe are within the general definition, in that they are written, are in the possession of a State agency and have been received or prepared in connection with official business. It is also obvious that they do not fall within any of the last three exceptions. The only possible ground for withholding them from the public, therefore, is that they fall within one of the first two exceptions.

It appears, however, that neither of these exceptions are available. The Board's enabling legislation, 32 M.R.S.A §§4901, et seq., does not contain any designation of its records as confidential, such as, for example, exists for investigation records of the Attorney General, 5 M.R.S. §200-D. Nor would the Board's records be privileged against discovery. There is obviously no such privilege in the case of the information which the Board obtains in connection with applications for certification. Conceivably, however, the Board's investigative reports might be deemed to be within an attorney - client

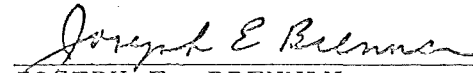
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if they were prepared in connection with an investigation supervised or directed by an attorney. On closer examination, however, this argument disappears because the attorney-client privilege applies only to communications between a client and his attorney and the investigative reports at issue would probably not fit into that category, even if they were to fall into the hands of a lawyer at some point. Rule 502, Me. R. Evid.

Since, therefore, the records do not fall within one of the exceptions, they must, pursuant to Section 408 of the Act, be available for inspection and copying (at the expense of the person so requesting) to members of the public at the offices of the Board during its regular business hours. However, the Board may want to adopt precautions to limit unsupervised access to and assure security of records.



JOSEPH E. BRENNAN
Attorney General

JEB/bls