

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)

STATE OF MAINE

Inter-Departmental Memorandum Date November 24, 1976

To Joseph Stephenson, State Purchasing Dept. Bureau of Purchases
Agent

From Donald G. Alexander, Deputy Dept. Attorney General

Subject Relation of Bid Records to Freedom of Access Law

This responds to your request for an opinion as to whether the provisions of 5 M.R.S.A. § 1816-6 can be interpreted to exempt those bid records or portions of bid records which are not listed in subsection 6 from public access under the Freedom of Access Law, 1 M.R.S.A. § 401, et seq.

It is the view of this office that 5 M.R.S.A. § 1816-6 cannot be presumed to exempt bid records, other than the records specified in subsection 6, from public access. The Freedom of Access Law, specifically 1 M.R.S.A. § 401, specifies that the subchapter be liberally construed in favor of public access. The term "public records" is defined by 1 M.R.S.A. § 402-3. Under subsection 3 public records are generally to be available to the public unless they are subject to one of five stated exceptions. Three of the stated exceptions relating to legislative papers, collective bargaining materials, and University of Maine documents clearly do not apply. The two general exceptions relate to records designated confidential by statute and records which would be within the scope of a privilege against discovery or use as evidence in civil or criminal court proceedings. The bid documents are not exempt from discovery or use as evidence and in fact are used in court proceedings when contests develop relating to bidding matters. Thus, the question is limited to whether there is any statute which designates bid records confidential. Our review of the law indicates no such statute. Title 5, § 1816-6, cannot be read as designating any documents confidential. It simply indicates ministerial actions which are to be taken by the Bureau of Purchases in recording bids and publicizing successful bidders. The fact that sub-§ 6 specifies that the bid record and successful bid, after the award or letting of the contract, shall be open to public inspection does not, by implication, prohibit public access to other bidding documents.

DONALD G. ALEXANDER
Deputy Attorney General

DGA/ec