

# 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)

1 M.R.S.A. 402(3) (A)  
39 M.R.S.A. 112

STATE OF MAINE *Freedom of Access Industrial Accident Com. Files.*

Inter-Departmental Memorandum Date December 2, 1976

To John V. Keaney, Commissioner Dept. Industrial Accident Commission  
pm Joseph E. Brennan, Attorney General Dept. Attorney General

Subject Public Access to Files Concerning Workmen's Compensation Injuries

This responds to your letter of November 22, 1976. In that letter you request an opinion as to whether the files of the Industrial Accident Commission are public records which must be available for viewing by members of the public. It is our view that under the Maine Freedom of Access Law, 1 M.R.S.A. § 401, et seq., the files of the Industrial Accident Commission are public documents which must be available for viewing by the public subject to the exception for documents entitled to protection by 39 M.R.S.A. § 112.

Discussion:

The Maine Freedom of Access Law, 1 M.R.S.A. § 401, et seq., generally provides that public meetings be open and public records be available for public view. The term "public records" is defined at 1 M.R.S.A. § 402(3) and includes most materials which would be in agency files and upon which agencies would rely in doing their business. However, certain exceptions are stated indicating documents which need not be available for public inspection. Among the five exceptions, two are potentially relevant to the instant question, the exception for records designated confidential by statute [§ 402(3)(A)] and the exception for records within the scope of the privilege against discovery or use as evidence in civil or criminal trials [§ 402(3)(B)].

A review of the Workmen's Compensation Law, Title 39 M.R.S.A. indicates no statute designating the files of the Industrial Accident Commission, or any portion of them, confidential. However, 39 M.R.S.A. § 112 does provide that statements made by injured employees shall not be admissible in evidence or considered in any way in any proceeding in accordance with Title 39 unless certain conditions were met. Such statements made by employees would be within the scope of a privilege against use as evidence, an exception to the public records provided by 1 M.R.S.A. § 402(3)(B).<sup>\*</sup> Accordingly, statements


---

\* Additionally some documents in the files might be subject to the physician-patient privilege against discovery, see Maine Rules of Evidence, § 503.

John V. Keaney  
Page 2  
December 2, 1976

made by injured employees and included in the files of the Industrial Accident Commission need not be made available for public inspection unless those statements were made in proceedings before the Industrial Accident Commission or unless the other provisions of 39 M.R.S.A. § 112 by which the injured employee can approve disclosure of the statement have been complied with.

Thus, the files of the Industrial Accident Commission are available for public inspection except for the statements of injured employees which are subject to the protection of 39 M.R.S.A. § 112.

  
JOSEPH E. BRENNAN  
Attorney General

JEB/ec