

# MAINE STATE LEGISLATURE

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*Freedom of Access to Municipal Birth (Death Records)  
Municipalities, Access To Birth Death Records*

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AUGUSTA, MAINE 04333

November 21, 1977

Honorable John L. Martin  
Speaker of the House  
House of Representatives  
State House  
Augusta, Maine 04333

Re: Public Access to Birth and Death Records.

Dear Speaker Martin:

This responds to your request for an opinion as to whether birth and death records in town clerk's offices are subject to the provisions of the Freedom of Access Law, Title 1 M.R.S.A. § 401, et seq. The answer to your question lies in the construction of the Freedom of Access Law with the provisions of Title 22 M.R.S.A. § 2706.

Section 402(A) defines "Public Records" as

"The term 'public records' shall mean any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transactions of public or governmental business."

Since municipalities are clearly political subdivisions of the State, and birth and death records are records "received or prepared for use in connection with the transaction of public or governmental business,"

there can be no doubt that birth and death records maintained in town clerk's offices are public records. However, section 402(3)(A) creates an exception for records designated confidential by statute.

Title 22 § 2706 sets out the law regarding the disclosure of vital records. In general, it provides that

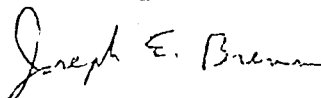
"Custodians of certificates and records of birth, marriage and death may permit inspection of records, or issue certified copies of certificates or records, or any parts thereof, when satisfied that the applicant therefor has a direct and legitimate interest in the matter recorded, the decision of the state registrar or the clerk of a municipality being subject to review by the Superior Court, under the limitations of this section."

Subsection 1 specifically provides that birth certificates of illegitimate children may not be inspected except upon the request of the illegitimate. Subsection 2 provides for the use of data in vital records for statistical research providing individual names are not used. Subsection 3 provides that necessary data may be provided for the compilation of national statistics. Subsection 4 makes it unlawful to disclose data from vital records except as authorized by § 2706.

The question presented, then, is which statute controls. There can be no doubt that the records of illegitimates are intended by the Title 22 § 2706(1) to be confidential and that such records would therefore fall within the confidentiality exception of Title 1, § 402(3)(A). With regard to access, in general, however, the statute does not make the records confidential, but merely delegates to the town clerks the discretion (subject to court review) to determine who has a "direct and legitimate interest in the matter recorded." This must be considered in light of the Declaration of Policy in Title 1, § 401, which states that it is the intent of the Legislature that the conduct of the people's business be done openly and that public records be open to public inspection. The declaration further provides that the Freedom of Access Law is to be interpreted liberally to promote its underlying purposes and policies.

It is my opinion, therefore, that except with regard to the records of illegitimate births, the mandate of Title 1, § 401, et seq. that the public have access to public records invalidates the discretionary nature of the municipal clerks' authority over vital records, and requires that public access to such records be permitted.

Sincerely,



JOSEPH E. BRENNAN  
Attorney General