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STATE OF MAINE

7	Inter-Departmental N	Memorandum Date July 26, 1978
To	Maynard Marsh	Dept.Inland Fisheries & Wildlife
From	Sarah Redfield, Assistant	DeptAttorney General
Subject _	Request of the Sportsmen's Alliance	of Maine
From	Sarah Redfield, Assistant	DeptAttorney General

This is in response to your oral request for advice as to the request which you have received from the Sportsmen's Alliance of Maine for use of the list of 95,000 license holders placed on magnetic tape by the Department of Inland Fisheries and Wildlife. It is my understanding from the letter of the Sportsmen's Alliance of Maine to you that the group wishes to use these names for a massive telephone solicitation effort. It is further my understanding that the group proposes to pay you for the rerun expense. The question presented by this request is whether or not the magnetic tape of license holders is a public record which must be made available to any member of the public upon request pursuant to the State's statute concerning Freedom of Access, Title 1 M.R.S.A. § 401-410. The list is such a public record.

Title 1 M.R.S.A. § 402.3 defines public records as:

"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 to 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 transaction of public or governmental business, except . . ."

There appears to be no question that a list of licenseholders kept on magnetic tape would be a data compilation from which information can be obtained after translation that is in the possession of your department and has been received and prepared for use in connection with the transaction of public business. Accordingly, such records must by statute be made available to any member of the public. It does not appear that any of the exceptions provided in this section would be applicable, see generally 1 M.R.S.A. § 402.3A-E. Title 1 M.R.S.A. § 408 provides as to public records that:

"except as otherwise provided by statute, every person shall have the right to inspect and copy any public record during regular business hours of the custodian or location of such records; provided that whenever inspection cannot be accomplished without translation of mechanical or electronic data compilations into some other form, the person desiring inspection may be requested to pay the state in advance the cost of translation and both translation and inspection may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the records sought and provided further that the cost of copying any public record to comply with this section shall be paid by the person requesting the copy." (emphasis supplied)

Pursuant to this section, the department must upon payment in advance for the cost of translation, translate its list from the mechanical form in which it is now kept to a form available for copying by the Sportsmen's Alliance of Maine.

The State of Maine has no explicit law regarding the privacy of records other than the exceptions to Title 1 M.R.S.A. § 402 and the specific confidentiality provisions of other State statutes. There does not appear to be any specific exception within the right-to-know law nor within the statutes of the Department of Inland Fisheries and Game which would keep the data of the department requested by the Sportsmen's Alliance confidential. (Cf. 5 U.S.C.A. § 552a). Without such specific exception or legislation, it does not appear that there is any basis for with-holding the records requested for the Sportsmen's Alliance of Maine. We recognize your concern regarding the privacy implications of releasing the lists for the intended uses. However, these concerns cannot negate the clear intent of the Freedom of Access Law which presently requires that the lists be made available regardless of the uses which are intended.

If you should have any further questions, please feel free to let me know.

SARAH REDETELD

Assistant Attorney General

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