

# MAINE STATE LEGISLATURE

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AUGUSTA, MAINE 04333

July 31, 1978

Marilyn Proulx  
Maine Potato Commission  
Box 71 - Agricultural Center  
Presque Isle, Maine 04769

Re: Reports of the Department of Audit

Dear Marilyn:

This is in response to your oral request for an opinion as to whether the reports of the Department of Audit concerning the Maine Potato Commission are public documents which must be made available to the public under the State's Right to Know Law, Title 1 M.R.S.A. § 401-410. These reports are such public records.

Title 1 M.R.S.A. § 402.3 provides in pertinent part that the term public record shall mean:

"Any written, printed or graphic matter. . . 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:

A. Records that have been designated confidential by statute; . . ."

Reports of the Department of Audit are clearly written matter, in the possession of agencies of the state, prepared for use in connection with the transaction of governmental business, and containing information relating to the transaction of public or governmental business. The only exception to this provision which might be applicable is that in § 402.3.A concerning records designated confidential by statute. In this regard, the statute of the Maine Potato Commission contains no confidentiality provision. See, generally, Title 36 M.R.S.A. §§ 4561 - 4572. The statute governing the Department of Audit provides that the department has

authority to audit all agencies, including independent commissions, of the State and report on such audits annually to the Legislature and Governor, see Title 5 M.R.S.A. §§ 243 and 244. Title 5 M.R.S.A. § 244, further provides, in pertinent part, as follows:

". . . [The State Auditor] shall prepare and publish a report for each fiscal year, setting forth the essential facts of such audit in summary form, within the following fiscal year after the books of the State Controller have been officially closed. If he shall find in the course of his audit evidences of improper transactions, or of incompetence in keeping accounts or handling funds or of any other improper practice of financial administration, he shall report the same to the Governor and Legislature immediately. If he shall find evidences of illegal transactions, he shall forthwith report such transactions to the Governor and to the Attorney General. All such evidences shall be included in the annual report of the State Auditor and he may, at his discretion make them public at any time during the fiscal year."

This section appears to provide for the discretion of the State Auditor to keep confidential to some extent reports containing evidences of improper or incompetent financial administration.

The audit reports concerning the Maine Potato Commission indicate

"Within the scope of the examination, the financial transactions were appropriately handled, with such exceptions that may be noted in the commentary."

Generally, then, the audit reports would not be within the scope of the discretion of the auditor to maintain them as other than public documents. Even to the extent that such exceptions are noted in the audit report, conversation with the State Auditor indicates that he has not in fact exercised his discretion to keep these documents private and would upon request make them available to any member of the public. Accordingly, even the above-quoted limited exception to the Right to Know Law does not protect the audit reports concerning the Maine Potato Commission from being made available to any member of the public as a public record consistent with Title 1 M.R.S.A. § 403.3 and Title 1 M.R.S.A. § 408. The latter section provides that

"Except as otherwise provided by statute, every person shall have the right to inspect and copy any public record during the regular business hours of the custodian or location of such records. . . provided further that the cost of copying any public record to comply with this section shall be paid by the person requesting the copy."

If I can be of any further assistance to you in this matter,  
please feel free to let me know.

Sincerely yours,



SARAH REDFIELD  
Assistant Attorney General

SR:jg

cc: Joseph Williams, Commissioner of Agriculture  
George Rainville, State Auditor