

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

79-161

Inter-Departmental Memorandum Date August 30, 1979

To Rodney S. Quinn

Dept. Secretary of State

From Steven F. Wright, Assistant

Dept. Attorney General

Subject Datatron request

In response to your letter of August 9, 1979, I have reviewed the Freedom of Access Law and would offer the following observations with regard to your specific inquiries.

The Freedom of Access Law, 1 MRSA §401, et seq., expressly proscribes any denial of public accessibility to the records of the Secretary of State, except those clothed with confidentiality by statute. 1 MRSA §§402(3), 408. None of the records requested by Datatron in their letter of July 2, 1979, are confidential. Therefore, their request for access to these records cannot be refused.

It should be noted that access to and inspection of the files of licensed drivers are not what Datatron has requested. Datatron seeks an actual copy of the computer tape containing an electronic data compilation of the names and addresses of all Maine licensees. Section 408 provides, in pertinent part that

whenever inspection cannot be accomplished without translation of mechanical or electronic data compilations into some other form, the person desiring inspection may be required to pay the State in advance the cost of translation. . . 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.

It appears clear that the Secretary of State may assess Datatron the "cost of translation" and the "cost of copying" the records it seeks. <sup>1/</sup> The statute does not further define "cost". Neither does it offer guidance as to what criteria should be taken into consideration by an agency in ascertaining its cost for developing a copy of a requested public record. A reasonable assessment of the costs attributable to translation or copying the data or information requested by Datatron should be undertaken, and the fee charged for that information should be reflective of that assessment. As you have stated in your letter, past charges for similar information requests would be relevant to any such assessment, if such charges were based on an analysis of the costs of developing and copying the information.

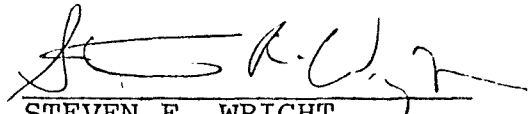
<sup>1/</sup> 29 MRSA §57-A, as last amended by P.L.1979, c. 439 §6, provides that copies of driver record history reports and conviction data may be furnished commercial users for a fee of \$3.00 for each request. This statute is established for the purpose of generating revenue (See, statement of Fact, H-706, House Amendment "A" to S.P. 586, L.D. 1651, one legislative form of P.L.1979, c. 439) primarily from insurance companies when they seek to verify information on policy applications. We believe this statute

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The determination of departmental costs of developing copies of public records may be an area ripe for rules and regulations. The Maine Administrative Procedure Act of 5 MRSA §8051, et seq., anticipates the promulgation of generally applicable agency policies. The promulgation of rules governing the determination of agency costs in developing translations or copies of public records would also assure those requesting the information fair and impartial cost assessments. Adoption of such rules would provide for public input into the department's criteria for assessing costs.

Your expressed intention of having the entire department undertake a comprehensive review of the subject area to establish a detailed, broad policy appears valuable. I would be pleased to meet with any of your deputies to discuss in more detail their legal obligations and to consider alternatives in establishing this policy.

If you have further questions on this topic, please contact me.

  
STEVEN F. WRIGHT  
Assistant Attorney General

SFW:jg

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is inapposite to the instant request as it appears to pertain to the purchase of conviction data with regard to specified individuals. The instant request seeks only a list of names and addresses of all Maine licensees.