

MAINE STATE LEGISLATURE

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INTER-OFFICE MEMORANDUM

Date: December 7, 1979

To: Stephen O. Smith, Acting Dir.
Rona Backstrom, Counseling Supervisor Office: Job Service

From: Susan P. Herman, Assistant Attorney General SPH Office: Legal

Subject: Release of Test Scores and Other Data for Use in Validation Studies

You have requested an opinion as to whether test scores and other related information such as age, sex and education level may be released for validation studies. The test in question, Assessment of Career Decision Making, is designed for use in career counseling. The test will be administered by the Comprehensive Deliverer of CETA Services in Franklin County. The services which are performed by the Comprehensive Deliverer include: intake and assessment, work experience, on the job training, less than class training, summer youth employment programs, and youth programs pursuant to provisions of the Comprehensive Employment & Training Act of 1973 as amended. The test scores and related information will be used to determine the validity of the instrument as a test.

There are two relevant statutes to consider: (1) The Privacy Act of 1974, 5 USC § 552 et seq (2) the Family Education Rights & Privacy Act of 1974, 20 USCA § 1232 (g) made applicable in Maine by 20 M.R.S.A. § 803.

The Privacy Act of 1974 prohibits the release of records maintained by a federal agency if that record contains a name or other identifying number or symbol assigned to the individual, except pursuant to a written waiver. 5 USC § 552 a (b). Disclosure is permitted where the recipient of the information has provided the agency with a written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable.

The Privacy Act of 1974 is not applicable to the release of information by the Comprehensive Deliverer in question because the Comprehensive Deliverer is a private non-profit state chartered corporation funded partially through the Community Services Administration and partially through CETA. The Privacy Act is applicable only to "each authority of the Government of the United States," 5 USCA § 552 (e). Although the Comprehensive Deliverer is funded with federal funds, it is not a federal agency subject to the provisions of the Privacy Act of 1974.

The Family Educational Rights and Privacy Act of 1974, 20 USCA § 1232 (g), was enacted in Maine in 1974, 20 M.R.S.A. § 805. The provisions of this Act prohibit, with certain exceptions not here applicable, the disclosure of personally identifiable information pertaining to a student without a written waiver from the student and/or parent, 20 USC § 1232 (g). A student is defined as an individual with respect to whom an educational agency maintains education records. The term, however, does not include an individual who has not been in attendance at the institution, 45 CFR § 993. The Act is further limited in application to those educational agencies funded through a federal program for which the U.S. Commissioner of Education has responsibility. Since the individual taking the test in

question is not a student as defined by 45 CFR 399.3, and the Comprehensive Deliverer is not funded with monies for which the U. S. Department of Education has responsibility, the provisions of the Family Educational & Privacy Act are not applicable.

Therefore, neither the federal Privacy Act of 1974 nor the Family Educational rights & Privacy Act prohibit disclosure of test results and related information. There is no general Privacy Act in effect in Maine.¹ However, in order to avoid any potential confidentiality problems, it is recommended that the guidelines of both the Privacy Act of 1974 and the Family Educational Rights and Privacy Act of 1974 be followed. The information released should be limited to test scores and any other information which is not personally identifiable. Prior to the release of information the Comprehensive Deliverer should obtain:

- (1) A written waiver signed by each individual stating that he/she consents to the use of specific information for limited purposes;
- (2) A written assurance from the person to whom the information will be released, stating the purposes for which the information will be used (i.e. for research and/or statistical purposes and not for evaluation of any particular individual).

SPH:e

¹Maine has enacted several specific privacy statutes protecting the confidentiality of certain information:

Criminal history record information 16 M.R.S.A. § 601 et seq
Employee review of personnel file 5 M.R.S.A. § 638
26 M.R.S.A. § 631
30 M.R.S.A. §§ 64, 2257
Vital Records 22 M.R.S.A. § 2706
Welfare Records 22 M.R.S.A. § 42
Social Security # for drivers license 29 M.R.S.A. § 539A
Mental Hospital records 34 M.R.S.A. § 1-B
Hospital Lien law 10 M.R.S.A. § 3412
Personnel records of State Employees 5 M.R.S.A. § 554
School Personnel records 20 M.R.S.A. §§ 807, 808