

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

May 29, 1980

Honorable Judy C. Kany  
18 West Street  
Waterville, Maine 04901

Dear Representative Kany:

You have asked for an opinion regarding the applicability of the Freedom of Access Law, 1 M.R.S.A. §§ 401-410, to the disclosure of the names of persons holding motor vehicle registration numbers (also known as license plate numbers). You have informed us that a person residing in your district attempted to discover the identity of the driver in whose name a particular registration number was issued, and that both the municipal and State Police refused to disclose such information.

The Freedom of Access Law defines "public records" in the following manner:

The term "public records" shall mean any written, printed or graphic matter or any mechanical or electronic data compilation. . . 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. . . . 1 M.R.S.A. § 402(3).

The Access Law exempts five categories of material from the "public records" definition. See 1 M.R.S.A. § 402(3)(A)-(E). However, in the words of the Maine Supreme Judicial Court,

The Act, we are directed, "shall be liberally construed and applied to promote its underlying purposes and policies," 1 M.R.S.A. § 401 (1978), and a corollary to such liberal construction of the Act is necessarily a strict construction of any exceptions to the required public disclosure. Moffett v. City of Portland, Me., 400 A.2d 340, 348 (1979).

The Secretary of State is empowered by law to register motor vehicles in this State. See, generally, 29 M.R.S.A. Chapter 5. Registration records must be maintained in the following manner:

The Secretary of State upon granting the application shall register in a book or upon suitable index cards to be kept for the purpose the vehicle described in the application, giving to its owner a distinguishing number or other mark and shall thereupon issue a certificate of registration which shall contain the name, place of residence and address of the owner. 29 M.R.S.A. § 104.

Furthermore, the law gives the public what appears to be an absolute right to inspect these records.

All records of the Secretary of State pertaining to the applications and registration of vehicles and to operators' licenses shall be open to public inspection during office hours. 29 M.R.S.A. § 57 (first sentence).<sup>1/</sup>

Turning to the question of whether these records may also be obtained from police departments, our response must be based on the assumption that the police have custody of the

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<sup>1/</sup> It is our understanding that registration information is routinely disclosed by the Secretary of State.

relevant registration information.<sup>2/</sup> Presumably, when police agencies acquire these records, they do so for the purpose of facilitating the execution of their statutory duties. Therefore, these records, when in the possession of the police, would appear to be available to the public under the Access Law unless there are statutes designating them confidential, either generally or in specific circumstances. See 1 M.R.S.A. § 402(3)(A). Since there are two statutes which might be construed to except registration information in the custody of the police from the Access Law, we must now examine those provisions.

Section 1631 of Title 25 provides, with numerous exceptions, that "all criminal and administrative records of the State Police" are confidential. Insofar as registration records would not normally fall within any of the exceptions enumerated in § 1631, it is necessary to determine whether they constitute "criminal or administrative records" in the first instance. While we recognize that when read literally, the phrase in question could well be deemed to encompass registration information, we nonetheless conclude that the statute was not intended to reach that information.

The above conclusion is based upon two factors. First, the apparent purpose of § 1631 was to protect those activities of the State Police which might be rendered less effective if they were subject to publicity. This purpose is reflected in two of the exceptions to the general declaration of confidentiality which allow the release of otherwise confidential information when it would not jeopardize the investigation or prosecution of pending cases. See 25 M.R.S.A. § 1631, sub-§§ 11 and 14. It is difficult to see how the disclosure of regularly maintained registration information would conflict with this purpose, especially since the same information is readily available from another governmental agency. Second, when 25 M.R.S.A. § 1631 was enacted in 1959, the public already had complete access to registration records. See R.S. 1954, c. 22, § 5 (precursor of 29 M.R.S.A. § 57). We think it unlikely that the Legislature intended § 1631 to clothe in secrecy records which it had already opened to the public. In short, despite the potentially broad reading which could be given the phrase "criminal and investigative records," we do not believe that 25 M.R.S.A. § 1631 was designed to

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<sup>2/</sup> Since the law imposes no general obligation upon a governmental agency to disclose information not in its possession, our opinion is intended to apply only to those police departments which possess the records in question. Furthermore, we should point out that we have not surveyed Maine police departments to determine which, if any, do in fact have these records.

include registration information. Thus, such information, when regularly maintained by the State Police, would be subject to inspection under the Access Law. See 1 M.R.S.A. § 408.

Section 614 of Title 16 provides that "records in the custody of a local, county or district criminal justice agency containing intelligence and investigative information shall be confidential and shall not be disseminated" if their release might produce one of the seven results listed in the statute. See 16 M.R.S.A. § 614 (1)(A)-(G). Assuming that the identity of the person in whose name a motor vehicle is registered might under certain circumstances constitute "investigative information," § 614 could operate to limit the public's access to the records about which you have inquired. In final analysis, however, we believe that this limitation is more theoretical than real. Except perhaps in a very unique case, we deem it highly unlikely that the disclosure of registration information would lead to one of the consequences which § 614 seeks to avoid. This is particularly true in light of the fact that, as noted above, the identical information is readily available from another governmental agency.

To summarize, it is our conclusion that the Access Law would generally apply to registration information which "is in the possession or custody" of a police department. Thus, except in the very unusual situation in which 16 M.R.S.A. § 614 applies to the records in question,<sup>3/</sup> the citizen has a right of access to that information in accordance with 1 M.R.S.A. § 408.<sup>4/</sup>

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3/ We should note that there is also a specific exception for certain vehicles used by agencies with law enforcement or investigatory functions. Under the circumstances set out in 29 M.R.S.A. § 256(1)(A), the records of those vehicles are to be "designated and held confidential."

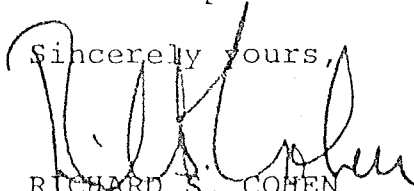
4/ 1 M.R.S.A. § 408 provides as follows:

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 record; 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 required 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 record 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.

You have also asked a question concerning the procedure which applies when a request for public access has been denied. This procedure is set forth in 1 M.R.S.A. § 409. In summary, once a request for access has been made,<sup>4/</sup> the governmental agency must grant access or produce a written statement containing the reasons for denying access within ten days of the request. If the agency denies access, any person aggrieved may appeal to the Superior Court within ten days of the receipt of the written notice of denial.

I hope that the foregoing information is helpful. Please contact me if further assistance can be provided.

Sincerely yours,



RICHARD S. COHEN  
Attorney General

RSC/ec

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<sup>4/</sup> The individual would be well advised to make a written request so that the record is clear.