

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

September 24, 1982

Michael Ryan
Counsel, Division of Employee Relations
Department of Personnel
State House Station #4
Augusta, Maine 04333

Re: Scope of 34 M.R.S.A. § 1-B.

Dear Mike:

Your opinion request dealing with the scope of 34 M.R.S.A. § 1-B has been referred to me for answer. Your question is whether a report prepared by the Office of Advocacy within the Department of Mental Health which includes information concerning a client of that Department is confidential under 34 M.R.S.A. § 1-B so that the institution is prohibited from releasing it to an employee and/or his union representative for purposes of a grievance proceeding. Your second question is whether the same result obtains for written statements generated by the Advocate's investigation and relevant to the grievance procedure.

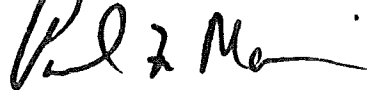
My opinion is that the report of the Advocate and any related information, including statements, are confidential under 34 M.R.S.A. § 1-B. In my view, § 1-B was intended as a broad exception to the general rule of freedom of access established by 1 M.R.S.A. § 401 et seq. The intent of § 1-B was apparently to protect the privacy of persons receiving services from the Department of Mental Health or any of the other institutions covered by that section. Given this intent, the language protecting "all orders of commitment, medical and administrative records, applications and reports

and facts therein suggests that any written material generated within the Department which might have an impact on the privacy rights of the Department's clients is confidential under § 1-B.

Givern this conclusion, I would answer your second question in the negative. Subsections 1-3 of § 1-B set out the specific circumstances under which information covered by that section may be disclosed. I think the Legislature intended these conditions to be exhaustive. Thus, it is my opinion that releasing documents covered by § 1-B with the client's name deleted^{1/} or after swearing the recipient to secrecy would violate that section.

I hope this information is useful. If you have any further questions, please do not hesitate to contact me.

Very truly yours,



PAUL F. MACRI
Assistant Attorney General

PFM/ec
cc: Gail Ogilvie

^{1/} It is notable that "client requests for action by [the Advocate's] office and all written records or accounts related to such request" are specifically deemed confidential only "as to the identity of the client" by 34 M.R.S.A. § 1-A(3). This language, enacted by P.L. 1975, c. 507, passed at the same session and on the same day as § 1-B, see II Me. Leg. Rec. at B1968 (1975), shows that the Legislature had in mind and could clearly express the distinction between full confidentiality and confidentiality of identity. This fact supports the conclusion I have reached.