

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 356

H. P. 278

House of Representatives, January 24, 1973

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Secretary

Presented by Mr. McTeague of Brunswick.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Provide for Freedom of Information.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 1, § 405, repealed. Section 405 of Title 1 of the Revised Statutes is repealed.

Sec. 2. R. S., T. 1, c. 13, sub-c. I-A, additional. Chapter 13 of Title 1 of the Revised Statutes is amended by adding a new subchapter I-A to read as follows:

SUBCHAPTER I-A

FREEDOM OF INFORMATION

§ 407. Declaration of public policy; freedom of information

The Legislature finds and declares that free access to all information concerning the conduct of the people's business is a fundamental and necessary right of every person in this State.

§ 408. Definitions

As used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. **Agency.** "Agency" means every state office, department, division, bureau, board and commission or other state agency, and also includes a county, municipality, sewer district, water district or other general purpose district, local development corporation or municipal board, commission or other agency or office thereof.

2. **Person.** "Person" includes any natural person, corporation, partnership, firm or association or other legal entity.

3. **Public records.** "Public records," sometimes called "records," includes any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any agency regardless of physical form or characteristics.

4. **Writing.** "Writing" means handwriting, typewriting, printing, photostating, photographing and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and printed, magnetic or punched cards, discs, drums and other documents.

§ 409. Public records open to inspection during office hours; right to inspect; adoption of procedures

Public records are open to inspection at all times during the office hours of the agency and every citizen has a right to inspect any public record, except as otherwise provided. Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

§ 410. Record exempt from disclosure requirements

Nothing in this subchapter shall be construed to require disclosure of records that are:

1. **Preliminary drafts.** Preliminary drafts or intra-agency memoranda which are not retained by the agency in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure;

2. **Litigation.** Records pertaining to pending litigation and administrative enforcement proceedings to which the agency is a party, until such litigation, claim or proceeding has been finally adjudicated or otherwise settled, and informal opinions of the Office of Attorney General;

3. **Personnel files.** Personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;

4. **Private business.** Information submitted to the Department of Commerce and Industry or the Department of Manpower Affairs in answer to general business surveys or in the form of affirmative inquiries concerning private business decisions;

5. **Security files.** Records of complaints to or investigations conducted by or on behalf of or records of intelligence information or security procedures of, the office of the Attorney General and county attorneys and any police agency, or any such investigatory or security files compiled by any other agency for correctional or law enforcement purposes;

6. **Attorney General records.** All other records of the Office of Attorney General, except formal opinions rendered to a state agency, the Governor or

the Legislature, provided that records shall not be transferred to the custody of the Office of Attorney General to evade the disclosure provisions of this chapter;

7. Examination data. Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

8. Real estate. The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by the agency relative to the acquisition, but not disposition, of property, or to prospective public supply and construction contracts, until such time as all of the property has been acquired or the contract has been entered into, provided that the law of eminent domain shall not be affected by this provision;

9. Library and museum. Library and museum materials made or acquired and presented solely for reference or exhibition purposes;

10. Prohibition by law. Records, the disclosure of which are prohibited pursuant to federal or other applicable state law;

11. Governor. Records in the custody of or maintained by the Governor or employees of the Governor's office employed directly in his office, provided that records shall not be transferred to the custody of the Governor's office to evade the disclosure provisions of this chapter; and

12. Legislative committee. Records in the custody of or maintained by any legislative investigative committee.

Nothing in this section is to be construed as preventing any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Partial exemption from disclosure of a record pursuant to this section shall not be deemed to permit exemption of the full record.

§ 411. Trade secrets

Trade secrets are not public records under this section. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure or production data which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article of trade or a service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

§ 412. Withholding records from inspection: justification; public interest

The agency shall justify, in writing, withholding any record, within 3 days of receiving any request for a record, by demonstrating that the record in question is exempt under express provisions of this chapter or other provisions of federal or state law.

§ 413. Identifiable public records; right to copy information

Any person may receive a copy of any identifiable public record or copy thereof. Upon request to it, the agency shall provide an exact copy unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

§ 414. Request for copy; fee

A request for a copy of an identifiable public record or information produced therefrom, or a certified copy of such record, shall be accompanied by payment of a reasonable fee or deposit, including actual reproduction costs, personnel time and other overhead costs established by the agency, or the prescribed statutory fee, where applicable, such fee to be retained by the agency producing the copy.

§ 415. Enforcement of right to inspect or receive copy of records; proceedings

Any person may institute proceedings for injunctive or declarative relief in any Superior Court to enforce his right to inspect or to receive a copy of any public record or class of public records under this subchapter. The times for responsive pleadings and for hearings in such proceedings shall be set by the court with the object of securing a decision as to such matters at the earliest possible time. The court in deciding the case may, when it deems necessary, examine the records in camera.

If the court finds that the public official's decision to refuse disclosure is not justified under sections 410, 411 or 412, it shall order the public official to make the record public and shall award the complainant costs, including reasonable attorneys' fees. If the court determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content, with a written order supporting the decision refusing disclosure.

§ 416. Violations

The willful violation of any of the provisions of this subchapter shall be punishable by a fine of not more than \$1000 or by imprisonment for not more than one year.

§ 417. Status of existing judicial records unaffected by chapter provision

The provisions of this subchapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this Act, nor to affect the rights of litigants, including parties to administrative proceedings under the laws of discovery of this State.

STATEMENT OF FACT

This bill would codify Maine citizens' rights of proper access to information under the control of their public servants. It would provide definitive guidelines for both citizens and state and local agencies for determining which records are public and provide for a method of enforcing the public's "right-to-know." The following provisions are noteworthy: (1) both state and local governmental agencies are subject to the law; (2) computer data is included within the meaning of "public records;" (3) agencies will be permitted to establish reasonable regulations for procedures to be used in requesting records; (4) information submitted by a private party to the Department of Commerce and Industry for the purpose of receiving assistance in locating a development in Maine can be held confidential; (5) exempted from disclosure are records deemed confidential pursuant to other state or federal law including, for example, certain banking, securities, labor and taxation information; (6) any records exempt from the requirements of disclosure **by this law, are not prohibited** from being disclosed, except "trade secrets;" (7) refusal by an agency to disclose a record must be justified in writing by the agency; (8) by providing that successful plaintiffs in a lawsuit to disclose a public record may recover reasonable attorneys' fees, the statute insures that agencies will not rely upon a citizen's unwillingness to expend money for attorneys' fees as a weapon in successfully denying citizen access to public records, i.e., it makes the right to access more than a "paper right," and (9) agencies will be enabled to be reimbursed for moneys and time spent in complying with the provisions of this law by charging reasonable fees.