

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2018

S.P. 819

In Senate, January 8, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator GAUVREAU of Androscoggin
Cosponsored by Representative STEVENS of Bangor, Representative RICHARDS of
Hampden and Representative PARADIS of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

**An Act Concerning the Freedom of Access Laws as They Relate to
Disclosure of Public Employee Personnel Records.**



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

2
4 **Sec. 1. 5 MRSA §7070, sub-§2, ¶E**, as amended by PL 1991, c.
229, §1, is further amended to read:

6 E. Complaints, charges or accusations of misconduct,
8 replies to those complaints, charges or accusations and any
other information or materials that may result in
10 disciplinary action, except when death, serious bodily
12 injury as defined in Title 17-A, section 2, subsection 23,
14 or property or financial damage in excess of \$5,000 resulted
16 from the alleged misconduct. If disciplinary action is
taken, the final written decision relating to that action is
no longer confidential after the decision is completed.

16 For purposes of this paragraph, "final written decision"
18 means:

20 (1) The final written administrative decision that is
not appealed pursuant to a grievance arbitration
22 procedure; or

24 (2) If the final written administrative decision is
26 appealed to arbitration, the final written decision of
a neutral arbitrator.

28 A final written administrative decision that is appealed to
arbitration is no longer confidential 120 days after a
written request for the decision is made to the employer if
30 the final written decision of the neutral arbitrator is not
issued and released before the expiration of the 120 days;

32 **Sec. 2. 16 MRSA §614, sub-§1**, as amended by PL 1985, c. 552,
34 is further amended to read:

36 **1. Limitation on dissemination of intelligence and**
38 **investigative information.** Reports or records in the custody of a
local, county or district criminal justice agency, in the custody
40 of the office of State Fire Marshal or in the custody of the
criminal law enforcement units of the Department of Marine
42 Resources or the Department of Inland Fisheries and Wildlife
containing intelligence and investigative information ~~shall~~ be
44 are confidential and ~~shall~~ may not be disseminated, if public
release or inspection of the report or record may would more
46 likely than not:

48 A. Interfere with law enforcement proceedings;

50 B. Result in public dissemination of prejudicial
information concerning an accused person or concerning the

2 prosecution's evidence that will interfere with the ability
of a court to impanel an impartial jury;

4 C. Result in public dissemination of information about the
private life of an individual in which there is no
6 legitimate public interest and which would be offensive to a
reasonable person;

8 D. Disclose the identity of a confidential source;

10 E. Disclose confidential information furnished only by the
12 confidential source;

14 F. Disclose investigative techniques and procedures or
security plans and procedures not generally known by the
16 general public; or

18 G. Endanger the life or physical safety of law enforcement
personnel.

20 **Sec. 3. 25 MRSA §1631, sub-§§15 and 16** are amended to read:

22 **15. Further statistical reports.** Statistical reports by
24 ~~Division of Special Services~~ on truck weights, ~~public utility~~
enforcement and beans; and

26 **16. Audits.** Annual audits; and

28 **Sec. 4. 25 MRSA §1631, sub-§17** is enacted to read:

30 **17. Complaints, charges or accusations of misconduct.**
32 Complaints, charges or accusations of misconduct, replies to
34 those complaints, charges or accusations and other information or
36 material that may result in disciplinary action when death,
38 serious bodily injury as defined in Title 17-A, section 2,
subsection 23 or property or financial damage in excess of \$5,000
resulted from the alleged misconduct.

40 **Sec. 5. 30-A MRSA §503, sub-§1, ¶B,** as amended by PL 1991, c.
229, §2, is further amended to read:

42 B. County records containing the following:

44 (1) Medical information of any kind, including
information pertaining to the diagnosis or treatment of
46 mental or emotional disorders;

48 (2) Performance evaluations and personal references
submitted in confidence;

50

2 (3) Information pertaining to the creditworthiness of
a named employee;

4 (4) Information pertaining to the personal history,
6 general character or conduct of members of an
employee's immediate family; and

8 (5) Complaints, charges or accusations of misconduct,
10 replies to those complaints, charges or accusations and
12 any other information or materials that may result in
14 disciplinary action, except when death, serious bodily
injury as defined in Title 17-A, section 2, subsection
23 or property or financial damage in excess of \$5,000
16 resulted from the alleged misconduct. If disciplinary
action is taken, the final written decision relating to
that action is no longer confidential after the
decision is completed.

18 For purposes of this subparagraph, "final written
20 decision" means:

22 (a) The final written administrative decision
24 that is not appealed pursuant to a grievance
arbitration procedure; or

26 (b) If the final written administrative decision
28 is appealed to arbitration, the final written
decision of a neutral arbitrator.

30 A final written administrative decision that is
32 appealed to arbitration is no longer confidential 120
34 days after a written request for the decision is made
to the employer if the final written decision of the
neutral arbitrator is not issued and released before
the expiration of the 120 days; and

36 **Sec. 6. 30-A MRSA §2702, sub-§1, ¶B,** as amended by PL 1991, c.
38 229, §3, is further amended to read:

40 B. Municipal records pertaining to an identifiable employee
and containing the following:

42 (1) Medical information of any kind, including
44 information pertaining to diagnosis or treatment of
mental or emotional disorders;

46 (2) Performance evaluations and personal references
48 submitted in confidence;

- 2 (3) Information pertaining to the creditworthiness of
a named employee;
- 4 (4) Information pertaining to the personal history,
6 general character or conduct of members of an
employee's immediate family; and
- 8 (5) Complaints, charges or accusations of misconduct,
10 replies to those complaints, charges or accusations and
12 any other information or materials that may result in
14 disciplinary action, except when death, serious bodily
injury as defined in Title 17-A, section 2, subsection
23 or property or financial damage in excess of \$5,000
16 resulted from the alleged misconduct. If disciplinary
18 action is taken, the final written decision relating to
that action is no longer confidential after the
20 decision is completed. The decision must state the
conduct or other facts on the basis of which
22 disciplinary action is being imposed and the
conclusions of the acting authority as to the reasons
for that action.

24 For purposes of this subparagraph, "final written
decision" means:

- 26 (a) The final written administrative decision
28 that is not appealed pursuant to a grievance
arbitration procedure; or
- 30 (b) If the final written administrative decision
32 is appealed to arbitration, the final written
decision of a neutral arbitrator.

34 A final written administrative decision that is
36 appealed to arbitration is no longer confidential 120
days after a written request for the decision is made
38 to the employer if the final written decision of the
neutral arbitrator is not issued and released before
40 the expiration of the 120 days; and

42 **STATEMENT OF FACT**

44 This bill changes Maine law concerning public employee
46 personnel records to allow the general public access to records
when a public employee has been accused of conduct causing death,
48 serious bodily injury or substantial financial or property
damage. This bill also changes the standard for denying access
to reports and records containing intelligence and investigative

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information. In addition, this bill deletes outdated references in the Maine Revised Statutes, Title 25, section 1631, subsection 15.