

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 702

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H.P. 514

House of Representatives, February 28, 1995

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**An Act to Amend the Maine Freedom of Access Laws.**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative BUNKER of Kossuth Township.  
Cosponsored by Representatives: CHASE of China, GERRY of Auburn, HATCH of Skowhegan, JOHNSON of South Portland, JONES of Bar Harbor, KEANE of Old Town, KILKELLY of Wiscasset, LaFOUNTAIN of Biddeford, LEMKE of Westbrook, LOOK of Jonesboro, McALEVEY of Waterboro, O'NEAL of Limestone, PERKINS of Penobscot, SAMSON of Jay, SAXL of Bangor, TRIPP of Topsham, WATSON of Farmingdale, WHEELER of Bridgewater, Senators: CAREY of Kennebec, O'DEA of Penobscot.

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

2  
4       **Sec. 1. 1 MRSA §402, sub-§3**, as amended by PL 1991, c. 773,  
§2, is further amended by adding at the end a new blocked  
paragraph to read:

6       Transaction records, documents, analog and digital data  
8       recordings, machine-readable data files or other similar format  
10       of records of any paid commercial contractor, consultant,  
12       temporary employee or other similar person of any unpaid advisory  
14       board, special board or commission or citizens' panel, employed  
16       or created and charged to advise or report to a public entity  
18       whose records are public under this subsection, are public  
20       records insofar as they are the result of or integral to services  
22       delivered to the public entity if the services are specific to  
24       responsibilities of the public entity and if the records are not  
26       otherwise exempt under paragraphs A to I.

28       **Sec. 2. 1 MRSA §402, sub-§§4 to 12** are enacted to read:

30       **4. Auxiliary data file.** "Auxiliary data file" is a file of  
32       auxiliary data records.

34       **5. Auxiliary data record.** "Auxiliary data record" means a  
36       record that contains all or part of the data of a larger  
38       machine-readable public record or all or part of the data from a  
40       historic public document that may be reorganized relative to the  
42       original record or document with or without additional data not  
44       contained in the original record or document. Auxiliary data  
46       records and files are often used to simplify and speed  
48       manipulation and management of a large original record or  
50       document.

34       **6. Communications record; communications log.**  
36       "Communications record" or "communications log" means a record or  
38       log that carries data describing the receipt or transmission of  
40       messages carrying public data at a particular data processing  
42       center or computer within a data processing center.

40       **7. Computer program interpretation.** "Computer program  
42       interpretation" is a report or series of reports that describe  
44       the manipulation or rearrangement of public data by an automatic  
46       data processor. When mathematical calculations are performed by  
48       a program to produce derivative or summary data, a computer  
50       program interpretation describes the calculations in conventional  
mathematical terms and the errors that may arise from the  
mathematical relation itself and the machine implementation of  
the relation. A computer program interpretation is distinct from  
so-called software documentation that describes technical details  
about program design, maintenance and operation and is often  
proprietary and is exempt from public disclosure.

2           **8. Data format.** "Data format," when used with  
3 machine-readable data, means the physical location of data on a  
4 recording medium, the physical interpretation of that data and  
5 its logical interpretation. The physical locations of data on a  
6 magnetic recording tape or disc may be defined by reference to an  
7 industry or government standard with numbers, letters and symbols.

8  
9           **9. Historic public document.** "Historic public document"  
10 means a public document that is presented on paper or a similar  
11 medium, using letters, numbers and symbols or other graphic  
12 conventions common in commerce, law and education.

13  
14           **10. Machine-readable public records.** "Machine-readable  
15 public records" include machine-readable replications of historic  
16 public documents, auxiliary data records, computer program  
17 interpretations when they are in machine-readable form, and  
18 communications records.

19           **11. Machine-readable replication.** "Machine-readable  
20 replication" of a historic public document represents each  
21 letter, number figure or table with electromagnetic signals  
22 significant to an automatic data processing system. A  
23 machine-readable replication represents only the data of the  
24 historic public document without omissions or additions.

25  
26           **12. Machine record.** "Machine record" means a particular  
27 collection of related data chosen to facilitate manipulation of  
28 the data or to accommodate physical characteristics of data  
29 processing equipment. In general, machine records representing a  
30 particular public record do not replicate a historic public  
31 document.

32  
33           **Sec. 3. 1 MRSA §409, sub-§1,** as amended by PL 1987, c. 477,  
34 §5, is further amended to read:

35  
36           **1. Records.** If any body ~~of~~ agency or official, who has  
37 custody or control of any public record, ~~shall refuse permission~~  
38 ~~to se inspect or copy or abstract a public record, this receives~~  
39 a formal written request for a specific public record or class of  
40 public records, the body, agency or official shall deliver the  
41 requested records in the listed format within 10 working days  
42 after the date of receipt of the request; except that, if the  
43 request is denied, the denial shall must be made by the body of,  
44 agency or official in writing, stating the reason for the denial,  
45 within 5 working days of the request for inspection by any person  
46 within that 10-working day period. Any person aggrieved by  
47 denial may appeal therefrom, within 5 30 working days of--the  
48 receipt of the written notice after the date of denial, and in  
49 accordance with Rule 80B of the Maine Rules of Civil Procedure to  
50

2 any Superior Court within the State. If a court, after a trial  
de novo, determines such the denial was not for just and proper  
4 are privileged in respect to their assignment for trial over all  
other actions except writs of habeas corpus and actions brought  
6 by the State against individuals.

8 **Sec. 4. 1 MRSA §411** is enacted to read:

10 **§411. Machine-readable public records**

12 **1. Publication of lists.** To implement the Legislature's  
policy that records be open to public inspection,  
14 machine-readable public records in the possession, custody or  
control of a body, agency or official of the State or any of its  
16 political subdivisions must be listed and described in  
publications, which must be readily available to the public. The  
18 publications must list and describe pursuant to subsection 2 all  
machine-readable records, including those considered confidential  
20 under section 402, subsection 3. In accordance with section 408,  
the publications must also describe the method for requesting  
22 copies of each machine-readable public record and the probable  
delivery time schedule and cost for those copies. Except for  
24 those machine-readable records listed as confidential in the  
publications at the time a record request is received,  
26 machine-readable records must be delivered to citizens of the  
State upon request.

28 **2. Record descriptions; data format.** The description of  
each machine-readable public record listed in subsection 1 must  
30 include a brief summary of its relationship to other  
machine-readable public records and historic public documents, a  
32 list of data items making up the record, and, if the record is  
declared confidential, a statement rationalizing the relationship  
34 of each listed data item to language of section 402, subsection  
3, paragraphs A to I. The data format, which may be, but is not  
36 limited to, magnetic recording tape or recording disc,  
fixed-field or comma-delimited ASCII or proprietary format, must  
38 be described directly or by reference to a format defined in an  
industry standard or a commercially available computer program  
40 system.

42 **3. Implementation.** Within one year after the effective  
44 date of this section, bodies, agencies and officials of the State  
or any of its political subdivisions in control or possession of  
46 machine-readable public records shall identify and describe the  
records they determine confidential. Within 3 years after the  
48 effective date of this section, those bodies, agencies and  
officials shall identify and describe all machine-readable public  
50 records in their possession or control. The machine-readable

2 record descriptions must be corrected and updated at intervals no  
4 greater than 2 years and incidental changes to record content and  
6 format must be published or made available from the responsible  
8 entity within 90 days of change implementation.

### STATEMENT OF FACT

10 This bill amends the freedom of access laws to clarify and  
12 simplify access to public records that are in machine-readable  
14 format. The bill requires that custodians of public records  
16 identify and describe all machine-readable records within 3 years  
of the effective date of this bill and all those determined  
confidential within one year of the effective date. This bill  
requires that lists describing all machine-readable records, even  
those determined confidential, be maintained, published and  
updated and be made available upon request.