

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 15

S.P. 22

In Senate, January 13, 2021

**An Act To Amend the Intelligence and Investigative Record
Information Act To Ensure Government Transparency and To
Protect the Privacy and Safety of the Public**

Submitted by the Department of Public Safety pursuant to Joint Rule 204.
Received by the Secretary of the Senate on January 11, 2021. Referred to the Committee
on Judiciary pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator DESCHAMBAULT of York.

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

2 **Sec. 1. 16 MRSA §807**, as amended by PL 2013, c. 507, §8, is repealed.

3 **Sec. 2. 16 MRSA §807-A** is enacted to read:

4 **§807-A. Confirming existence or nonexistence of intelligence and investigative record**
5 **information**

6 **1. Refusal to confirm existence or nonexistence.** A Maine criminal justice agency
7 may refuse to confirm the existence or nonexistence of a record that is or contains
8 intelligence and investigative record information, whether or not the information exists or
9 does not exist, only if there is a reasonable possibility that the fact of the record's existence
10 or nonexistence would:

11 A. Interfere with law enforcement proceedings related to crimes;

12 B. Endanger the life or physical safety of an individual, including, but not limited to,
13 a victim of domestic violence, a victim of abuse, a confidential source or law
14 enforcement personnel;

15 C. Constitute an unwarranted invasion of personal privacy of one or more individuals;
16 or

17 D. Disclose specific investigatory techniques that are not known to the general public
18 and that, if disclosed, would cause the use of those techniques to be compromised. For
19 the purposes of this paragraph, "specific investigatory techniques" does not include
20 types of technology that might be used for investigative purposes.

21 **2. Appeal.** A person aggrieved by the decision of a Maine criminal justice agency
22 under subsection 1 to refuse to confirm the existence or nonexistence of a record that is or
23 contains intelligence and investigative record information may, within 30 calendar days of
24 the receipt of written notice from the agency, appeal that decision to the Superior Court for
25 the county where the person resides or where the agency has its principal office. With
26 respect to an appeal under this subsection:

27 A. Within 14 calendar days of service of the appeal, an official of the Maine criminal
28 justice agency shall file with the court a statement of position explaining the basis for
29 the agency's decision;

30 B. Within 14 calendar days of service of the appeal, an official of the Maine criminal
31 justice agency may file with the court, in addition to the statement under paragraph A,
32 an ex parte statement of position providing an explanation of the basis for the agency's
33 decision if an ex parte explanation is necessary to avoid revealing the information
34 withheld under subsection 1;

35 C. The court may take testimony and other evidence it determines to be necessary in
36 the appeal;

37 D. If the court after review of the appeal and any filings and testimony in the appeal
38 and an in camera review of any ex parte statement filed by the Maine criminal justice
39 agency under paragraph B determines that the agency's decision was not in accordance
40 with subsection 1, the court shall enter an order requiring the agency to confirm the
41 existence or nonexistence of the record that is or contains intelligence and investigative

1 record information under subsection 1 and to further respond to the appellant's request
2 as appropriate and permitted by law; and
3 E. The appeal may be advanced on the court docket and receive priority over other
4 cases if the court determines that the interests of justice so require.

5 **SUMMARY**

6 This bill amends the Intelligence and Investigative Record Information Act to allow
7 Maine criminal justice agencies to refuse to confirm the existence or nonexistence of a
8 record that is or contains intelligence and investigative record information, but only in the
9 circumstances specified in the bill. Current law broadly prohibits Maine criminal justice
10 agencies from confirming the existence or nonexistence of such information to any person
11 or public or private entity that is not eligible to receive the information.

12 The bill also enacts an appeal process for a person aggrieved by a decision of an agency
13 to refuse to confirm the existence or nonexistence of a record that is or contains intelligence
14 and investigative record information.