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State of Maine  
130th Legislature, First Regular/Special Session

**Sixteenth Annual Report  
of the  
Right to Know Advisory Committee**

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**January 2022**

Office of Policy and Legal Analysis





**STATE OF MAINE  
130<sup>th</sup> LEGISLATURE  
FIRST REGULAR/SPECIAL SESSION**

**Sixteenth Annual Report  
of the  
Right to Know Advisory Committee**

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## EXECUTIVE SUMMARY

This is the sixteenth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The members are appointed by the Governor, the Chief Justice of the Supreme Judicial Court, the Attorney General, the President of the Senate and the Speaker of the House of Representatives.

As in previous annual reports, this report includes a brief summary of the legislative actions taken in response to the Advisory Committee's January 2021 recommendations and a summary of relevant Maine court decisions from 2021 on the freedom of access laws. This report also summarizes several topics discussed by the Advisory Committee that did not result in a recommendation or further action.

For its sixteenth annual report, the Advisory Committee makes the following recommendations:

- Request that the Public Access Ombudsman and Maine Municipal Association gather data to assess the changes made by Public Law 2021, chapter 375 related to fees charged for public records requests and report back to the Advisory Committee no later than November 1, 2022;**
- Request that a revised matrix be adopted for use by legislative committees, the Joint Standing Committee on Judiciary and the Right To Know Advisory Committee when considering and reviewing proposed or existing public records exceptions to increase awareness of the Archives law which removes confidentiality protection for records after 75 years;**
- Enact legislation to amend the public records exception in Title 12, section 6072, subsection 10 related to certain data reports submitted by holders of aquaculture leases;**
- Recommend the use of standardized language in drafting legislation for confidential records by using the term "confidential" to designate records that would not be subject to disclosure under Freedom of Access Act;**
- Enact legislation to amend the remote participation law to address situations when a public body has not adopted a remote participation policy but the public body needs to meet;**
- Recommend that the Judiciary Committee convene an informal working group to study participation in the legislative process by residents of correctional facilities and the issues that must be resolved to allow participation;**
- Encourage the Maine Municipal Association and the Maine County Commissioners Association to consider sending out annual reminders to their members about record retention schedules and available training resources; and**
- Encourage legislative committees to add to committee orientation additional freedom of access training, conducted by the Public Access Ombudsman or the State Archivist,**



**that is specific to records management and includes a focus on digital record retention, including social media platforms.**

In 2022, the Right to Know Advisory Committee will continue to discuss the ongoing issues identified in this report, including a review of the data requested related to the impact of legislative changes in 2021 on fee waiver requests, reports of a significant increase in freedom of access requests to school districts and other state agencies from outside the state, concerns about remote meeting security including so-called “Zoom-bombing” of public meetings, an update from the Maine State Archives’ pilot project to archive social media, and ways to increase public access for those with technology and broadband limitations. The Advisory Committee will also continue to provide assistance to the Joint Standing Committee on Judiciary relating to proposed legislation affecting public access. The Advisory Committee looks forward to another year of activities working with the Public Access Ombudsman, the State Archivist, the Judicial Branch and the Legislature to implement the recommendations included in this report.

## I. INTRODUCTION

This is the sixteenth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine’s freedom of access laws. The Advisory Committee’s authorizing legislation, located at Title 1, section 411, is included in **Appendix A**.

More information on the Advisory Committee, including meeting agendas, meeting materials and summaries of meetings and its previous annual reports can be found on the Advisory Committee’s webpage at <http://legislature.maine.gov/right-to-know-advisory-committee>. The Office of Policy and Legal Analysis provides staffing to the Advisory Committee when the Legislature is not in regular or special session.

The Right to Know Advisory Committee has 18 members. The eighteenth member of the Advisory Committee – a member with legal or professional expertise in the field of data and personal privacy – was added with the enactment of Public Law 2021, chapter 313, effective October 18, 2021. Currently there are two vacancies. The chair of the Advisory Committee is elected by the members. Current Advisory Committee members are:

Representative Thomas Harnett, Chair	<i>House member of Judiciary Committee, appointed by the Speaker of the House</i>
Senator Anne Carney	<i>Senate member of Judiciary Committee, appointed by the President of the Senate</i>
Taylor Asen	<i>Representing the public, appointed by the Speaker of the House</i>
Amy Beveridge	<i>Representing broadcasting interests, appointed by the President of the Senate</i>
Jonathan Bolton	<i>Attorney General’s designee</i>
James Campbell	<i>Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House</i>
Honorable Justin Chenette	<i>Representing the public, appointed by the President of the Senate</i>
Lynda Clancy	<i>Representing newspaper and other press interests, appointed by the President of the Senate</i>
Linda Cohen	<i>Representing municipal interests, appointed by the Governor</i>

Julia Finn	<i>Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court</i>
Suzanne Goucher	<i>Representing broadcasting interests, appointed by the Speaker of the House</i>
Kevin Martin	<i>Representing state government interests, appointed by the Governor</i>
Judith Meyer	<i>Representing newspaper publishers, appointed by the Speaker of the House</i>
Christopher Parr	<i>Representing law enforcement interests, appointed by the President of the Senate</i>
Eric Stout	<i>A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor</i>
Victoria Wallack	<i>Representing school interests, appointed by the Governor</i>
<i>Vacant</i>	<i>Representing county or regional interests, appointed by the President of the Senate</i>
<i>Vacant</i>	<i>A member with legal or professional expertise in the field of data and personal privacy, appointed by the Governor</i>

The complete membership list of the Advisory Committee, including contact information, is included in **Appendix B**.

By law, the Advisory Committee must meet at least four times per year. During 2021, the Advisory Committee met five times: on October 13, October 26, November 10, December 1 and December 15. As required by 1 MRSA section 403-B, the Advisory Committee convened in person on October 26, 2021 and adopted a policy on remote participation to allow Advisory Committee members to participate remotely in Advisory Committee meetings, including subcommittee meetings, under certain circumstances and using certain methods of remote participation. The remote participation policy is posted on the Advisory Committee’s webpage. In accordance with the remote participation policy and due to the ongoing pandemic, Advisory Committee Chair Harnett determined that full Advisory Committee meetings would be conducted in a hybrid manner and that subcommittee meetings could be conducted remotely. The Advisory Committee members and members of the public who attended meetings in person were required to wear masks and self-screen for COVID-19 symptoms pursuant to Legislative Council policy. Meetings conducted in a hybrid or all-virtual formal were remotely accessible to the public through the Legislature’s YouTube channel and through the audio link on the Legislature’s webpage.

## II. COMMITTEE DUTIES

The Right to Know Advisory Committee was created to serve as a resource and advisor about Maine's freedom of access laws. The Advisory Committee's specific duties include:

- ❑ Providing guidance in ensuring access to public records and public proceedings;
- ❑ Serving as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know;
- ❑ Supporting the provision of information about public access to records and proceedings via the Internet;
- ❑ Serving as a resource to support training and education about Maine's freedom of access laws;
- ❑ Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the state of Maine's freedom of access laws and the public's access to public proceedings and records;
- ❑ Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;
- ❑ Examining inconsistencies in statutory language and proposing clarifying standard language; and
- ❑ Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

In carrying out these duties, the Advisory Committee may conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss and consider solutions to problems concerning access to public proceedings and records.

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws. The Advisory Committee is pleased to work with the Public Access Ombudsman, Brenda Kielty. Ms. Kielty is a valuable resource to the public and public officials and agencies.

### III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES

By law, the Right to Know Advisory Committee serves as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know. In carrying out this duty, the Advisory Committee believes it is useful to include in its annual reports a digest of recent developments in case law relating to Maine's freedom of access laws. In 2021, the Maine Supreme Judicial Court did not decide any cases related to freedom of access issues; however, the Advisory Committee does want to highlight one recent case decided by the Maine Superior Court.

#### **Dean v. State Fire Marshal's Office**

In this case, *Dean v. State Fire Marshal's Office*, 2021 WL 2470426 (Me.Super.2021), Randall Dean made a request to the State Fire Marshal's Office for records and information, including names and contact information of victims and witnesses collected as part of the office's investigation of a propane gas explosion in Farmington, Maine. Dean was the owner of a mobile home park adjacent to the site of the explosion; the mobile home park sustained significant property damage from the explosion. In response to the FOAA request, the State Fire Marshal's Office provided records, but redacted the names, contact information and medical information of participants in the investigation and victims of the explosion, including firefighters. The State Fire Marshal's Office contended that the information was confidential because the release would constitute an unwarranted invasion of personal privacy under the Intelligence and Investigative Record Information Act, 16 MRSA §804, sub-§§3-4. Dean argued that the names and contact information was not confidential.

Under FOAA, a public record may be copied or inspected by any person unless a record has been designated confidential by statute. In 16 MRSA §804, sub-§3, a record that is or contains intelligence and investigative record information may not be disclosed if there is a "reasonable possibility" that public release or inspection would "[c]onstitute an unwarranted invasion of personal privacy." The Superior Court determined that the State Fire Marshal's Office is a criminal justice agency within the meaning of the Act and that the records collected as part of their investigation were intelligence and investigative records. In deciding whether the release of witness identities and contact information, as a public record, would constitute an unwarranted invasion of personal privacy, the Superior Court relied on the Law Court's decision in *Blethen Maine Newspapers, Inc. v. State*, 2005 ME 56, 871 A.2d 523; the Law Court noted that whether disclosure of a record is warranted turns on the nature of the requested document and its relationship to the basic purpose of the FOAA to open agency conduct to public scrutiny, not on the purpose for which a particular record is being requested. In *Blethen*, the Law Court endorsed the practice of redacting witness names and other identifying information, as well as contact information, because there was no demonstration that disclosing such information was necessary to fulfill the public interest served by the FOAA. With regard to Dean's request for records, the Superior Court determined that the disclosure of the names of civilian witnesses and victims and contact information for all witnesses and victims of the Farmington explosion did not serve the basic purpose of the FOAA and that redaction of identifying and contact information was justified because public release of such personally identifying information would constitute an unwarranted invasion of personal privacy.

**IV. ACTIONS RELATED TO COMMITTEE RECOMMENDATIONS CONTAINED IN FIFTEENTH ANNUAL REPORT**

The Right to Know Advisory Committee made the following recommendations in its Fifteenth Annual Report. The legislative actions taken in 2021 as a result of those recommendations are summarized below.

<p><b>Recommendation:</b> Enact legislation to cap copying fees</p>	<p><b>Action:</b> The recommendation of the Advisory Committee was accepted by the Judiciary Committee and included in LD 1345, An Act To Implement the Recommendations of the Right To Know Advisory Committee. LD 1345 was enacted as Public Law 2021, chapter 313; the provision related to copying fees is found in §1.</p>
<p><b>Recommendation:</b> Enact legislation to require planning boards, specific school district officials and additional municipal officials and their deputies to complete Freedom of Access Act training, and to clarify the application of existing training requirements</p>	<p><b>Action:</b> The recommendation of the Advisory Committee was accepted by the Judiciary Committee and included in LD 1345, An Act To Implement the Recommendations of the Right To Know Advisory Committee. LD 1345 was enacted as Public Law 2021, chapter 313; the provision related to FOA training is found in §§5-7.</p>
<p><b>Recommendation:</b> Enact legislation to improve the review of public records exceptions by including consideration of access to information that will assist in making informed decisions about health and safety</p>	<p><b>Action:</b> The recommendation of the Advisory Committee was accepted by the Judiciary Committee and included in LD 1345, An Act To Implement the Recommendations of the Right To Know Advisory Committee. LD 1345 was enacted as Public Law 2021, chapter 313; the provision related to the review of public records exceptions is found in §§8-9.</p>
<p><b>Recommendation:</b> Enact legislation to expand the membership of the Right to Know Advisory Committee to include a member with experience and expertise in data and personal privacy issues</p>	<p><b>Action:</b> The recommendation of the Advisory Committee was accepted by the Judiciary Committee and included in LD 1345, An Act To Implement the Recommendations of the Right To Know Advisory Committee. LD 1345 was enacted as Public Law 2021, chapter 313; the provision related to membership of the RTKAC is found in §4.</p>

<p><b>Recommendation:</b> Enact legislation to revise the membership of the Archives Advisory Board to include a public member and two members representing journalistic and news perspectives</p>	<p><b>Action:</b> This recommendation was not included in Judiciary Committee legislation (related legislation in the 129th Legislature was referred to the State and Local Government Committee).</p>
<p><b>Recommendation:</b> Support funding to accelerate access to broadband statewide and to invest in technology for local governments to facilitate public access to public proceedings conducted remotely</p>	<p><b>Action:</b> This recommendation was not included in any specific Judiciary Committee legislation, but funding for expanded broadband access was included in the biennial budget enacted by the Legislature.</p>
<p><b>Recommendation:</b> Amend certain provisions of law in Titles 8 through 12 relating to previously-enacted public records exceptions</p>	<p><b>Action:</b> The recommendation of the Advisory Committee was accepted by the Judiciary Committee and included in LD 1221, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions. LD 1221 was enacted as Public Law 2021, chapter 182.</p>
<p><b>Recommendation:</b> Enact legislation to amend the fees that may be charged by a public body to cover the actual cost of searching for, retrieving and compiling a requested public record</p>	<p><b>Action:</b> The majority recommendation of the Advisory Committee was accepted by the Judiciary Committee and included in LD 1346, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Fees Charged for Responding to Public Records Requests. LD 1346 was enacted as Public Law 2021, chapter 375.</p>

## V. COMMITTEE PROCESS

In 2021, the Right to Know Advisory Committee formed three subcommittees to assist in its work: the Public Records Exceptions Subcommittee, the Subcommittee on Remote Participation and the Subcommittee on Technology. Each subcommittee discussed their assigned topics and issues thoroughly and determined whether to make recommendations for consideration by the full Advisory Committee. The deliberations of each subcommittee are summarized below. Part

VI of this report contains the specific recommendations from the subcommittees that were adopted by the full Advisory Committee.

### **Public Records Exceptions Subcommittee**

Seven members served on the Public Records Exceptions Subcommittee: Jonathan Bolton, Lynda Clancy, Julie Finn, Kevin Martin, Chris Parr, Eric Stout and Victoria Wallack. Chris Parr acted as Subcommittee Chair. The focus of the Public Records Exceptions Subcommittee is to review and evaluate public records exceptions as required of the Advisory Committee pursuant to 1 MRSA §433, sub-§2-A. The guidelines in the law require the Advisory Committee to review all public records exceptions in Titles 13 to 21-A no later than 2021 (a total of 74 exceptions were initially identified); in addition, the subcommittee completed review of 26 exceptions from Titles 8 to 12 which were tabled last year. The subcommittee also discussed the additional topics highlighted below. The subcommittee met three times: November 2, November 30 and December 10.

#### Review of existing exceptions

As a first step to the review of existing public records exceptions, the subcommittee reached out to state and local bodies for information, comments and suggestions with respect to the relevant public records exceptions administered by that body. Subcommittee members reviewed the agency responses to the questionnaires and also had available a chart listing all the exceptions, the agency that is responsible for each exception and each agency's recommendation for retention, amendment or repeal of the provision, with links to the applicable statutory language.

- Exceptions in Titles 8 to 12

The subcommittee reviewed 26 exceptions in Titles 8 to 12. While the members agreed that most of the exceptions under review were appropriate and did not need to be discussed further, the members did cull out certain exceptions for discussion before making their recommendation as to whether the exception should continue without change, should be amended or should be repealed.

The subcommittee recommended that there be no changes to 25 exceptions. See the list provided in **Appendix E**.

The subcommittee recommended that one exception be amended: Title 12, section 6072, subsection 10. This exception provides that certain reports about aquaculture leases are confidential, but that the Department of Marine Resources (DMR) can share those reports with the municipalities affected. The subcommittee recommended that the provision be amended to clarify that a copy of a report provided to a municipality is confidential. See the proposed amendment included in **Appendix D**.

While the subcommittee also discussed whether to recommend an amendment to the exception in Title 12, section 6749-S, they voted unanimously to make no change. This exception provides confidentiality protection for log books submitted by sea urchin buyers and processors to the



Department of Marine Resources (DMR). When originally contacted, DMR recommended repealing the confidentiality provision, then clarified that the department would prefer that the whole section be repealed; their general reporting statute applies and this section is not needed. The subcommittee expressed discomfort with repealing the whole section, and suggested that the DMR instead address repeal of the whole section through their committee of jurisdiction.

- Exceptions in Titles 13 to 21-A

The subcommittee considered 74 exceptions in Titles 13 to 21-A; the subcommittee agreed that it was not necessary to review seven exceptions contained in Title 15 related to juvenile records as those exceptions were recently enacted and vetted during the last legislative session by the Judiciary Committee. While the members agreed that most of the exceptions under review were appropriate and did not need to be discussed further, the members did cull out certain exceptions for discussion before making their recommendation as to whether the exception should continue without change, should be amended or should be repealed.

Of the 67 exceptions in Titles 13 to 21-A reviewed by the subcommittee, the subcommittee voted unanimously to recommend that there be no changes to 65 of those exceptions. See the list provided in **Appendix E**.

The subcommittee voted unanimously to table the exception in Title 20-A, section 10206, subsection 2, which applies to the records of the Energy Testing Laboratory of Maine (ETLM) until they have more information on which to act. Staff have been unable to find any information about the ETLM. Some members were uncomfortable repealing a provision when they do not know to what it applies. The subcommittee requested that staff contact the Archives and the State Budget Office to see if files exist in either location.

The subcommittee also agreed unanimously to table the exception in Title 21-A, section 196-A that protects information contained in the central voter list. The statute limits who can access the information, and authorizes use by political parties, candidate and issue campaigns and groups conducting “get out the vote” activities in support of campaigns. Mr. Parr questioned why political parties and candidates should have access but the general public should not. Staff will gather additional input from the Secretary of State’s Office in anticipation of further discussion by the subcommittee in 2022.

- Review of exception in Title 4, section 1806, subsection 2, paragraph E

At the request of Judy Meyer in the Advisory Committee meeting on December 1st, the subcommittee reviewed the exception in Title 4, section 1806, subsection 2, paragraph E governing requests for funds for private investigators, experts and other nonattorney services in a criminal case in which the court has appointed an attorney to represent the defendant. The subcommittee asked Justin Andrus, the Executive Director of the Maine Commission on Indigent Legal Services, to provide information about the existing public records exception. Mr. Andrus completed the questionnaire that agencies are requested by the subcommittee to submit, and discussed the importance of keeping that information confidential in order to ensure that trial strategy is not revealed by the defense, especially to the prosecution side. The information

protected by the statute is the request itself and the executive director's approval or denial of the request; that provision does not address the amount, which is covered by another provision of section 1806. The request and the executive director's decision are public once the case is completed. Mr. Andrus said that aggregate information can easily be provided. The Maine Commission on Indigent Legal Services (MCILS) receives monthly reports in which all accounts are broken out by month, by quarter and year-to-date. Although the commission does not produce a report of all investigator information, the commission would respond to a FOIA request.

Mr. Andrus clarified that just because an authorization is given, that does not mean all or any of the amount authorized has actually been spent. Expenditures happen closer to the conclusion of the case: services are rendered, invoiced and billed, and then paid. The law may not authorize the release of information if a request for information about expenditures is made while the case is ongoing. Mr. Andrus shared that he would like to rework all the statutes that govern MCILS and make sure they are clear as to what information can be shared and when. He noted that MCILS is the only agency in which there is a weighing of the First Amendment right to information with the Bill of Rights protecting every citizen, especially criminal defendants in this case. No other agency receives as much scrutiny.

Ms. Meyer said that, given that Mr. Andrus said the work is underway to rework the statutes, she is assured that the issue is and will be addressed appropriately. She said her concerns are satisfied, and she thanked the subcommittee for their immediate attention to her questions. The subcommittee did not propose any action.

All of the subcommittee's recommendations with regard to the exceptions that were reviewed were submitted to the Advisory Committee for further consideration at the December 1<sup>st</sup> and December 15<sup>th</sup> meetings.

#### Archives statute: 75-year limit on confidentiality

At the suggestion of the State Archivist Kate McBrien, the subcommittee reviewed Title 5, section 95-C, subsection 1, paragraph C. This provision removes the confidentiality protection for records held by Archives after 75 years. Ms. McBrien asked that the Advisory Committee and the Legislature consider the current 75-year limit in law and the historical significance of a record and be aware of the length of time when certain records designated as confidential may or may not be disclosed, i.e. after 75 years pursuant to current law, after a different time period or permanently made confidential. Ms. McBrien explained that she, the Archives staff and the Archives Advisory Board work with agencies to determine what records are "archival" and should be permanently retained. Once records are transferred to the Archives, they become the records of the Archives, and are no longer the agency's records. Confusion has arisen when the agency expected the confidential records to be kept confidential forever, but section 95-C supersedes that expectation. Ms. McBrien thinks it is important for it to be clear to everyone that Maine law does not provide for permanent and forever confidentiality; the default treatment of everything in the Archives' possession is to be accessible to the public after it has been in existence for 75 years. (The 75-year period begins to run when the file is completed or closed.)

The subcommittee discussed the 75-year limit and whether the Freedom of Access Act (FOAA) should be amended to call attention to the fact that a record designated as confidential will not remain so into eternity if it is retained permanently in the Archives. The members discussed whether it makes sense to amend Title 1, section 402, subsection 2 to say that, notwithstanding any other state law, the confidential records become open in 75 years. The members also discussed including a question about or reference to the 75-year trigger when reviewing existing public records exceptions (RTKAC) or proposed public records exceptions (Judiciary Committee of the Legislature). Members felt that the amount time – 75 years – is a legislative policy question that should be left to the Legislature and that the proposed solution might be more of an educational approach rather than a statutory change.

Prior to the second subcommittee meeting, staff shared a revised draft matrix that includes a note about the application of Title 5, section 95-C, subsection 1, paragraph C when reviewing a proposed or existing public records exception. Staff explained that the matrix can be used by the Judiciary Committee and Right to Know Advisory Committee as part of its review process. Staff also explained that the matrix can be distributed to legislative committees when considering public records exceptions so there will be increased awareness that Maine law does not provide for permanent and forever confidentiality. The members expressed support for revising the matrix to increase awareness of the 75-year limit on confidentiality. The subcommittee believed any policy recommendation to change the Archives statute should come from the State Archives, not the Right to Know Advisory Committee. Ms. McBrien explained that she was comfortable with the suggested approach to revise the matrix as it would help to ensure that the Legislature's intent for confidential records does not conflict with Title 5, section 95-C, subsection 1, paragraph C.

The subcommittee voted unanimously to recommend the revised matrix to the Advisory Committee for future use when legislative committees, the Judiciary Committee and the Advisory Committee are reviewing proposed or existing public records exceptions.

### Broad categories of exceptions

The subcommittee considered whether it makes sense to identify broad types of information that the statutes uniformly designate as confidential. The two categories most often mentioned are “proprietary information” and some description of “personally identifying information.” The subcommittee reviewed examples from current law that provide public records exceptions for “proprietary information” and terms similar to “personally identifiable information.”

After discussion, the subcommittee agreed that that a case-by-case approach makes sense for proprietary information – having the Legislature consider the context of each industry or business when establishing an exception for proprietary information makes sense. The subcommittee did not propose any action.

Eric Stout shared his experiences working with the federal Privacy Act and suggested a general category of information be excluded from public records, tracking the language used in the personal contact of public employees' exception; “If it's personal, it's not public.” Mr. Stout proposed a definition of “personally identifiable information” and a proposed amendment to add

a new paragraph V as an exception to the definition of public record in Title 1. Some subcommittee members expressed reservations about making general exceptions for “personally identifiable information” when there may be circumstances that require the disclosure of that information, e.g. names of persons arrested. The subcommittee did not propose any action.

#### Standardized language for public records exceptions

At the Advisory Committee’s direction, the subcommittee reviewed and discussed the report required by Public Law 2019, chapter 667, part B. The law directed the Office of Policy and Legal Analysis, in consultation with the Office of the Revisor of Statutes and the Right to Know Advisory Committee, to examine the statutes for inconsistencies in the wording of public records exceptions, and to recommend standardized language for use in drafting statutes to clearly delineate what information is confidential and the circumstances under which that information may appropriately be released. The report describes the use of inconsistent language in the laws governing public records exceptions and highlights the ambiguity about the intended meaning of laws. It also provides examples of language used in different drafting situations that relate to the confidentiality of a record that would otherwise be public and any circumstances authorizing the disclosure (or not) of that confidential record and suggests standardized language and guidance for drafting public records exceptions. In response to the report, the Right to Know Advisory Committee may make recommendations for the use of standardized language in the statutes that provides clear instruction for records custodians and the public about which records are subject to the public’s right to inspect and copy, and whether exceptions to that right exist.

The subcommittee reviewed the report’s suggested standardized language for public records exceptions based on whether the record can be shared with specific persons or for identified purposes. While the Advisory Committee cannot bind the Revisor’s Office to this language when drafting legislation, the Revisor’s Office will consider this as strong guidance for drafters. The subcommittee agreed with the report’s suggestion that drafters only need to include language designating a record as “confidential”; the language does not need to describe a record as “not a public record” either alone or in addition to being designated as “confidential”. There has been some suggestion in the past that there is a difference in treatment for a record described as “not a public record” as compared to a record designated “confidential,” but staff has not found any court cases to support that principle.

Subcommittee members Jonathan Bolton and Kevin Martin agreed that, when drafting exceptions, the emphasis should be to use “confidential.” Brenda Kielty, the Public Access Ombudsman, noted the confusion when the phrase “not a public record” has been used; some agencies have used that as the basis for responding to a request for public records with the response “no public records” when confidential records may exist in a manner that affects a requester’s right to appeal. Ms. Kielty expressed support for recommending standardized language. Mr. Parr agreed that a bright line in drafting would be helpful. References to a record as “not a public record” is unnecessarily confusing – records do meet the definition of a public record, but are excepted as confidential and not subject to disclosure. Standardizing language so that the use of “confidential” to designate records that would not be subject to disclosure under FOAA should be the recommended approach.

The subcommittee voted unanimously to endorse the suggested standardized language as drafting guidance and recommend it to the Advisory Committee; the subcommittee responded to the concerns raised by Jim Campbell at the December 1<sup>st</sup> Advisory Committee meeting about ensuring that information that is released is most protective of the personal and private information that remains confidential and took those concerns into account in the language of its recommendation.

### **Subcommittee on Remote Participation**

Eight members served on the Subcommittee on Remote Participation: Representative Thom Harnett, Senator Anne Carney, Amy Beveridge, Justin Chenette, Linda Cohen, Julie Finn, Chris Parr and Eric Stout. Rep. Harnett acted as subcommittee chair. The subcommittee discussed the topics highlighted below. The subcommittee met three times: November 10, December 1 and December 15.

#### Discussion of remote participation law and policies

At the request of Chair Harnett, the subcommittee members, the Maine Municipal Association and the Public Access Ombudsman shared concerns and suggestions for improving the remote participation law that was enacted as emergency legislation this year, Public Law 2021, chapter 290. The discussion included the following thoughts.

- The law is a little restrictive on what is an “emergency”
  - The law is a little restrictive on when remote participation can be used
  - What about a person who lives out of state part of the year?
  - Catchall policy that covers all boards in the community rather than individual policy for each board
  - Can a catchall policy apply to an entity that did not exist when the catchall policy was adopted?
  - Procedural concerns – the law requires that the policy be adopted in an in-person meeting (after notice and hearing), but what if an emergency situation exists that necessitates a remote meeting before the board can adopt a policy?
  - Concern about providing physical space for the public, plus technology for the public space
  - Technology – broadband limitations
- Draft amendment to remote participation law (Title 1, section 403-B)

At the December 1<sup>st</sup> meeting, the subcommittee discussed a draft amendment that had been prepared to address the situation in which a public body has not adopted a remote participation policy and the public body needs to meet to address an emergency or other important issue. Under current law, 1 MRSA §403-B would not allow a remote meeting until a policy is adopted by the public body during an in-person meeting. The draft offers a two-step process.

1. If the chair of the public body determines that an emergency exists that prevents the public body from meeting in person, the chair may call a meeting of the public body in which the members may participate by remote methods. The chair must provide the

required notice for the meeting. Once the meeting is convened, the members must vote on whether to support the chair's determination that an emergency exists that prevents the public body from meeting in person.

2. If the members vote in support of the chair's determination, after an opportunity for hearing, the members may vote on adopting a policy authorizing remote participation.

The subcommittee discussed the proposal and generally supported the language. The members discussed whether specific mention should be made about a quorum being required, whether the notice must include information about the public's ability to participate, whether the body's votes needed to be unanimous and whether the language should include "urgent issue" in addition to "emergency," as does the current law. At the December 15<sup>th</sup> meeting, the subcommittee included "urgent issue" and a requirement for the notice to include information about public participation. The subcommittee voted unanimously to recommend that the Advisory Committee recommend the proposed legislation to the Judiciary Committee.

- LD 1772, An Act To Amend the Remote Meeting Law in Maine's Freedom of Access Act

Chair Harnett explained that he had agreed to sponsor a new bill on behalf of the Maine Municipal Association to address remote participation concerns raised by municipalities. LD 1772, An Act To Amend the Remote Meeting Law in Maine's Freedom of Access Act, was recently printed and referred to the Judiciary Committee. Kate Dufour of the Maine Municipal Association explained that the bill is in response to two complaints the Association heard about the need for clarity.

First, LD 1772 repeals the language that outlines the reasons why it is not practicable for a member to attend in person (subsection 2, paragraph B of Title 1, section 403-B). Deleting paragraph B puts the responsibility on the municipalities to decide appropriate reasons for not attending a meeting in person. This gives each municipality the flexibility to include reasons appropriate to that municipality that support remote participation. It falls back to the principle of the state law providing a framework, and for the local entities to fill in the necessary details that particularly apply in each specific case. It also clarifies that the body may limit the public to only remote participation if the body is meeting only remotely because of an emergency or urgent situation.

Second, LD 1772 provides that a board or committee subject to the jurisdiction of a public body need not adopt a separate remote participation policy; instead, the subordinate board or commission may operate under the remote participation policy adopted by the public body. For example, if a town's selectboard adopts a remote participation policy, then that policy governs the planning board of the town, and the planning board is not required to adopt its own policy.

Subcommittee members agreed the changes sounded reasonable, as long as all are operating in good faith and follow principles of transparency and accountability.

### Discussion of remote participation by residents of correctional facilities

Chair Harnett and Senator Carney explained the issue of whether residents of correctional facilities could participate in public proceedings of the Legislature that came up in the Judiciary Committee and the Criminal Justice and Public Safety Committee during the legislative session. Several of the residents at the Maine State Prison expressed interest in testifying on a bill to reinstate parole in Maine. Although the Judiciary Committee was expecting their participation, the remote testimony did not happen. Several residents provided written testimony instead. Chair Harnett noted that the current Criminal Records Review Committee includes a member who participates remotely from the Maine State Prison. At Chair Harnett's request, the subcommittee is exploring whether the law should be amended to make the opportunity for such remote testimony possible or even required.

Cara Cookson, the Victim Witness Advocate Coordinator for the State (in the Office of the Attorney General), Andrea Mancuso for the Maine Coalition to End Domestic Violence and Elizabeth Ward Saxl for the Maine Coalition Against Sexual Assault were offered the opportunity to provide written comments and to participate in the December 1<sup>st</sup> subcommittee meeting. Both Ms. Cookson and Ms. Mancuso provided written comments expressing the concerns of crime victims and survivors, and Ms. Ward Saxl joined the meeting to provide comments and participate in the discussion. In addition, staff had inquired of Michael Kebede of the ACLU Maine as to whether there was information about similar questions or initiatives in other states that the ACLU could share. Mr. Kebede explained that they did not have national information, and participated in the discussion.

The subcommittee and guests discussed the various levels of participation in a legislative meeting, and whether such access should be provided for all bills or just those directly affecting those who are incarcerated. Senator Carney raised the question of whether the barrier to participation is created by the public access law or within the Maine Department of Corrections (MDOC). Chair Harnett agreed that the Freedom of Access Act does not guarantee participation in public proceedings. The subcommittee recognized that although the pandemic created the need for remote participation by the public, many would like the remote opportunity to continue indefinitely, even when legislative committees are meeting in person. Both Mr. Kebede and Ms. Ward Saxl offered to continue the discussion beyond the subcommittee's consideration. The subcommittee could recommend that a working group be created to carry on the conversation.

The subcommittee sought assistance from MDOC. Deputy Commissioner Ryan Thornell of the MDOC provided an overview of how MDOC is providing access now, and that this represents great strides in recent years. MDOC believes that residents in the MDOC facilities have good access to legislative proceedings, and it may be broader than the access of the average member of the nonincarcerated public. Dr. Thornell said residents can submit written testimony electronically, they can have their testimony read out loud by someone else in the committee room or in remote meetings, they have regular access by phone, text messages, and in-person contact with legislators, and they engage with public policy advocacy groups. In addition, residents can and do participate in activities facilitated by the Department, including discussions

of legislation. Dr. Thornell said the Department feels strongly that it supports what residents want to do to engage.

There are challenges, however, and the concerns are complex. There are approximately 1,600 residents in the MDOC facilities; accommodating one or two in meetings during the legislative interim is possible, but that accommodation becomes much more difficult when there are many members who want to participate in several different meetings when the Legislature is in full swing. Dr. Thornell is concerned about what effect unfettered, live access to all committee meetings would have on the facilities. For example, the daily schedule within a facility would not mesh with the participation in a public hearing. He expressed concern about the space and staffing necessary to support such access. Already the space that would be used for legislative participation is currently used for a range of educational and therapeutic programming, and the facilities are already understaffed. Dr. Thornell also mentioned concerns about equity – if MDOC allows access for one or two residents, does access have to be provided to all 1,600 residents? Many would not have the same access because of their educational and therapeutic obligations.

Dr. Thornell raised the question about technology requirements. The correctional facilities were not designed for the level of technology that is available today. Not all facilities have sufficient internet access, and most buildings are not good candidates for retrofitting to make the technology more available. The limited technology MDOC has is currently used and supported by the education staff. Staffing shortages loom large in any discussion about increasing activities in the facilities.

Finally, Dr. Thornell agreed with the concerns raised by the victims' advocates. This level of access for residents of correctional facilities would lead to more trauma to the victims and their families. It may even provide more access than the victims and their families have. Also, MDOC must provide notice and communicate with victims and their families, and this would take a significant increase in staffing to carry out that responsibility if residents are regularly testifying. That would be in addition to the significant amount of notification and advocacy work MDOC already does with victims and families. Dr. Thornell explained that victim services are not limited to violent crimes, but that a significant number of the residents have victim notification protocols; the notice and communication to victims is regardless of the type of crime.

Sheriff Dale Lancaster agreed with Dr. Thornell's discussion of the challenges of providing remote participation in legislative proceedings for those at the jail, but he noted that there are significant differences between a State inmate and a jail inmate. First, a large portion of the jail population is pretrial and have not been convicted. The population is very transient, and the longest stay is no more than six to nine months. Providing remote access would put increased pressure on staff at a time when the jails are significantly understaffed. In addition, there are 15 jails and all are different, with differing levels of technology available. Sheriff Lancaster said there is not a lot of room in most jails that could be utilized for this purpose. Victim notification and services vary from county to county; for example, Sheriff Lancaster's county does not have staff to provide victim services at all.



Chair Harnett proposed that the subcommittee recommend that the Advisory Committee recommend that the Judiciary Committee convenes an informal working group, made up of a broad range of interested parties, to study participation in the legislative process by residents of correctional facilities and the issues that must be resolved to make that happen. Chris Parr agreed to support the proposal as long as MDOC, Sheriffs, prisoner advocacy organizations and victim and family organizations would be participating stakeholders, but he noted that he would also support a more general discussion of increasing participation, for example, by people with disabilities or who are unable to attend public hearings during the day because of work or school. The subcommittee voted unanimously to support the recommendation to the Advisory Committee.

### **Subcommittee on Technology**

Seven members served on the Subcommittee on Technology: Amy Beveridge, Jim Campbell Lynda Clancy, Kevin Martin, Judy Meyer, Chris Parr and Eric Stout. Judy Meyer acted as Subcommittee Chair. The subcommittee discussed digital records and how they are retained, especially emails, text messages and other personal messaging application messages, and list management tools, such as email marketing platforms including MailChimp and Constant Contact. The subcommittee met two times: November 9 and November 29.

#### Discussion of retention of digital public records

Chair Meyer noted that the mindset of the Right to Know Advisory Committee is that all government business, no matter how conducted, needs to be traceable, recorded and available no matter what the media or technology in use.

Materials related to the policies for public records retention for Executive agencies from Maine State Archives were gathered by Eric Stout and reviewed by the subcommittee. These included policies and guidance for state government: the policy on preservation of state government records; state agency records training and resources; state records retention schedules; general schedules and agency-specific schedules. Current policy prohibits state employees from conducting state business through personal email accounts. Federal guidelines (from 2014) also state that any official government business received on an official's personal email account must be forwarded to a government account within 20 days so that it is discoverable. See <https://legislature.maine.gov/rtkac-technology-subcommittee-meeting-11102021> for the full email with links and state policy on email. The Maine State Archives [records retention policy](#) that applies to all state agencies was adopted in October 2013. The two-page policy is sent out to agency employees each year. The employee is required to sign to acknowledge awareness and compliance with the policy. The annual reminder has been sent out by the Secretary of State to all state agencies since first issued in October 2013.

The subcommittee discussed whether a similar type of annual reminder policy could prove useful at the local level. Members also discussed the challenges around text messages and other personal messaging applications and whether such an annual reminder should include these types of records as well.

The subcommittee agreed that annual reminders and an increased awareness of training resources would be useful at the local level for the purpose of records retention and digital records management. The subcommittee recommends encouraging the Maine Municipal Association and the Maine County Commissioners Association to send out annual reminders similar to the one sent to State agencies. This annual reminder could include the federal policy, similar language to that adopted in 2014-15 to the Federal Records Act ([44 USC 2911](#)) and language from National Archives and Records Administration [guidance](#). It should include information specifically related to the use of personal emails and other personal messaging applications, including how to transfer text messages and other similar types of messages and personal emails into a government records management system for retention and improved accessibility. State Archivist, Kate McBrien expressed a willingness to have Archives work on the language for guidance to be included in such an annual reminder. The subcommittee's recommendation was submitted to the Advisory Committee.

### Legislative policy and training

The Legislature's retention for emails and texts follows the same policies that apply to state agencies. The Retention Management Division of Maine State Archives provided information that the Legislature uses the same correspondence schedule as the agencies, and that the Archives and Records Management Law in Title 5, chapter 6, statutorily includes the Legislature in the definition of "state agency." However, the Legislature lacks a technological system for the retention of emails that recognizes when email correspondence could be destroyed. Currently, therefore, the Legislature is archiving emails on the server indefinitely. Eric Stout and Kevin Martin both commented that there isn't the technology to distinguish between types of email records (archival, program, general, transitory, non-business) so everything is retained. Although there may be guidance for how long different types of emails must be kept, in reality, all the emails are in "one big ocean".

Brenda Kielty, the Public Access Ombudsman, discussed the freedom of access training she provides to Legislators at the beginning of each Legislative term as part of legislator orientation. The training is 30-45 minutes and is an overview of the entire FOAA. The Director of Information Technology in the Legislature also provides training. The training for legislators includes how to set up legislative email accounts, records management, and practical aspects of communications. Ms. Kielty provided sample language for the FOA disclaimer for emails. She said she is a "broken record" on "just don't text." The Legislature does not require legislative email to be the only address that legislators use and does not forbid the use of personal emails.

Subcommittee staff added that the Legislative IT department helps legislators with only their legislative email (not their personal email). In addition, nonpartisan staff will send emails simultaneously to personal and legislative email addresses if a legislator requests that email be sent to their personal email address. Nonpartisan committee staff include basic FOAA information in committee orientations. Ms. McBrien and Ms. Kielty expressed willingness to attend committee orientations and answer questions.

The subcommittee agreed to encourage legislative committees to add additional FOAA training and invite Ms. McBrien and/or Ms. Kielty to attend committee orientations. This recommendation was submitted to the Advisory Committee.

### List management tools

The subcommittee discussed the issue of list management tools. The issue can include personal messaging applications, email marketing platforms such as “Constant Contact” and “Mailchimp,” and private Facebook groups – all things that are basically private conversations. These are outside services with their own privacy policies and rules or policies agreed to when signing up for these services. The subcommittee discussed the distinction between public records and those that are purely political and therefore not government business. The issue had been raised because Ms. Kielty had received a question from a requestor about records that included the metadata from Mailchimp which was not made available; ultimately, the requestor did not pursue the metadata question.

Ms. McBrien told the subcommittee that Maine State Archives had just started a new pilot project relating to the ability to archive and capture social media accounts to see how it works, how beneficial the data might be, and how accessible it would be. Legislators need to be accessible to their constituents and social media is how people are now accustomed to interacting. Subcommittee members agreed that it would be difficult to tell legislators that they could not use a particular platform and there could be First Amendment implications as well.

Members commented that they appreciated knowing that Archives was beginning this work and did not make any recommendations related to list management tools or social media.

## **VI. RECOMMENDATIONS**

The Advisory Committee makes the following recommendations.

- ☐ Request that the Public Access Ombudsman and Maine Municipal Association gather data to assess the changes made by Public Law 2021, chapter 375 related to fees charged for public records requests and report back to the Advisory Committee no later than November 1, 2022**

At the suggestion of the Public Access Ombudsman, the Advisory Committee discussed the fee waiver process as outlined in Title 1, section 408-A, subsection 11. This issue has been discussed in prior years and was brought forward this year for consideration of how state agencies are applying the discretion granted to them in the law without specific articulated standards and whether state agencies are applying that discretion in an even-handed manner to all requesters of public records. While the Advisory Committee discussed different options, the Committee agreed to defer further discussion of the topic in order to gather data over the course of the year to assess how the changes within Public Law 2021, Chapter 375 impact fee waiver requests.

The Advisory Committee recommends requesting by letter that the Public Access Ombudsman and the Maine Municipal Association collect data on how many days it takes an agency to respond to a FOA request and specifically how many requests can be fulfilled within the two hour no-fee window. In order to make sure that the Advisory Committee will have the data available to them in time to review the issue again next year, the letter will request that data be collected from January 1, 2022 through September 30, 2022 and reported back to the Advisory Committee by November 1, 2022.

*See letters in Appendix C.*

- Request that a revised matrix be adopted for use by legislative committees, the Judiciary Committee and the Right to Know Advisory Committee when considering and reviewing proposed or existing public records exceptions to increase awareness of the Archives law which removes confidentiality protection for records after 75 years**

The Advisory Committee recommends a revised matrix that can be used by legislative committees, the Judiciary Committee and the Advisory Committee as part of its review of proposed or existing public records exceptions. The revised matrix is meant to raise awareness of Title 5, section 95-C, subsection 1, paragraph C, which removes confidentiality protection for a public record held in the Maine State Archives after 75 years, and to help ensure that the Legislature's intent for confidential records does not conflict with this provision.

- Enact legislation to amend the public records exception to Title 12, section 6072, subsection 10 related to certain data reports submitted by holders of aquaculture leases**

The Advisory Committee recommends one change to the existing public records exceptions that were reviewed this year. The recommendation is to amend the public records exception in Title 12, section 6072, subsection 10 relating to seeding and harvesting reports provided to the Department of Marine Resources by holders of aquaculture leases. Currently, the reports are confidential and a municipality or municipalities where the lease is located, or adjacent, is entitled to a copy of a report upon request. The amendment would clarify that a copy of a seeding and harvesting report provided to a municipality is confidential.

*See recommended legislation in Appendix D, and a list of public records exceptions for which no amendments are recommended in Appendix E.*

- Recommend the use of standardized language in drafting legislation for confidential records by using the term “confidential” to designate records that would not be subject to disclosure under the Freedom of Access Act**

The Advisory Committee recommends standardizing language when drafting legislation to use the term “confidential” when designating records that would not be subject disclosure under FOAA. Reference to a record as “not a public record” is unnecessarily confusing.

- ❑ **Enact legislation to amend the remote participation law to address situations when a public body has not adopted a remote participation policy, but the public body needs to meet**

The Advisory Committee recommends that the Judiciary Committee amend the remote participation law. Current law does not allow a remote meeting until a policy is adopted by a public body during an in-person meeting. The Advisory Committee recommends enacting legislation to address the situation in which a public body has not adopted a remote participation policy and the public body needs to meet to address an emergency or other important issue.

*See recommended legislation in Appendix F.*

- ❑ **Recommend that the Judiciary Committee convene an informal working group to study participation in the legislative process by residents of correctional facilities and the issues that must be resolved to allow participation**

The Advisory Committee recommends that the Judiciary Committee convene an informal working group, made up of a broad range of interested parties, to study participation in the legislative process by residents of correctional facilities and the issues that must be resolved to allow participation. Stakeholders include the Maine Department of Corrections, Sheriffs, prisoner advocacy organizations, and victim and family organizations. Working group meetings are public.

- ❑ **Encourage the Maine Municipal Association and the Maine County Commissioners Association to consider sending out annual reminders to their members about record retention schedules and available training resources**

The Advisory Committee recommends encouraging the Maine Municipal Association and the Maine County Commissioners Association to send out annual reminders, similar to the two-page policy sent out to all state agency employees, about records retention schedules and available training resources. Maine State Archives could work on the language for local guidance and could consider including the federal policy and language adopted in 2014-15 as amendments to the Federal Records Act in [44 U.S.C. §2911](#) and language from National Archives and Records Administration (NARA) [guidance](#) that governs electronic messages, including personal email and other personal messaging applications.

- ❑ **Encourage legislative committees to add to committee orientation additional freedom of access training, conducted by the Public Access Ombudsman or the State Archivist, that is specific to records management and includes a focus on digital record retention, including social media platforms**

The Advisory Committee recommends additional FOAA training for legislators that is specific to records management and digital records management, including social media platforms, in addition to the general FOAA training provided by the Public Access Ombudsman at the beginning of each legislative term. Brenda Kielty, the Public Access Ombudsman, and Kate McBrien, the State Archivist, expressed willingness to conduct this additional training.

## **VII. FUTURE PLANS**

In 2022, the Right to Know Advisory Committee will continue to discuss the ongoing issues identified in this report, including a review of the data requested related to the impact of legislative changes in 2021 on fee waiver requests, reports of a significant increase in freedom of access requests to school districts and other state agencies from outside the state, concerns about remote meeting security including so-called “Zoom-bombing” of public meetings, an update from the Maine State Archives’ pilot project to archive social media, and ways to increase public access for those with technology and broadband limitations. The Advisory Committee will also continue to provide assistance to the Joint Standing Committee on Judiciary relating to proposed legislation affecting public access. The Advisory Committee looks forward to another year of activities working with the Public Access Ombudsman, the State Archivist, the Judicial Branch and the Legislature to implement the recommendations included in this report.



## **APPENDIX A**

**Authorizing Legislation: 1 MRSA §411**





# AUTHORIZING LEGISLATION

## TITLE 1 GENERAL PROVISIONS

### CHAPTER 13 PUBLIC RECORDS AND PROCEEDINGS

#### SUBCHAPTER 1 FREEDOM OF ACCESS

##### **§411. Right To Know Advisory Committee**

**1. Advisory committee established.** The Right To Know Advisory Committee, referred to in this chapter as "the advisory committee," is established to serve as a resource for ensuring compliance with this chapter and upholding the integrity of the purposes underlying this chapter as it applies to all public entities in the conduct of the public's business.

**2. Membership.** The advisory committee consists of the following members:

A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate;

B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House;

C. One representative of municipal interests, appointed by the Governor;

D. One representative of county or regional interests, appointed by the President of the Senate;

E. One representative of school interests, appointed by the Governor;

F. One representative of law enforcement interests, appointed by the President of the Senate;

G. One representative of the interests of State Government, appointed by the Governor;

H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House;

I. One representative of newspaper and other press interests, appointed by the President of the Senate;

J. One representative of newspaper publishers, appointed by the Speaker of the House;

K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House;

L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House;

- M. The Attorney General or the Attorney General's designee;
- N. One member with broad experience in and understanding of issues and costs in multiple areas of information technology, including practical applications concerning creation, storage, retrieval and accessibility of electronic records; use of communication technologies to support meetings, including teleconferencing and Internet-based conferencing; databases for records management and reporting; and information technology system development and support, appointed by the Governor; and
- O. One representative having legal or professional expertise in the field of data and personal privacy, appointed by the Governor.

The advisory committee shall invite the Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member of the committee.

**3. Terms of appointment.** The terms of appointment are as follows.

- A. Except as provided in paragraph B, members are appointed for terms of 3 years.
- B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed.
- C. Members may serve beyond their designated terms until their successors are appointed.

**4. First meeting; chair.** The Executive Director of the Legislative Council shall call the first meeting of the advisory committee as soon as funding permits. At the first meeting, the advisory committee shall select a chair from among its members and may select a new chair annually.

**5. Meetings.** The advisory committee may meet as often as necessary but not fewer than 4 times a year. A meeting may be called by the chair or by any 4 members.

**6. Duties and powers.** The advisory committee:

- A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws;
- B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for agencies and public officials. The advisory committee shall also provide general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries;
- C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the

law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as whom to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws;

D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section 412, subsection 3 and for making that information publicly available;

E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation;

F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released;

G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations;

H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered;

I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records;

J. Shall review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public; and

K. May undertake other activities consistent with its listed responsibilities.

**7. Outside funding for advisory committee activities.** The advisory committee may seek outside funds to fund the cost of public hearings, conferences, workshops, other meetings, other activities of the advisory committee and educational and training materials. Contributions to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring

to make a financial or in-kind contribution shall certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the advisory committee's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory committee.

**8. Compensation.** Legislative members of the advisory committee are entitled to receive the legislative per diem, as defined in Title 3, section 2, and reimbursement for travel and other necessary expenses for their attendance at authorized meetings of the advisory committee. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the advisory committee.

**9. Staffing.** The Legislative Council shall provide staff support for the operation of the advisory committee, except that the Legislative Council staff support is not authorized when the Legislature is in regular or special session. In addition, the advisory committee may contract for administrative, professional and clerical services if funding permits.

**10. Report.** By January 15, 2007 and at least annually thereafter, the advisory committee shall report to the Governor, the Legislative Council, the joint standing committee of the Legislature having jurisdiction over judiciary matters and the Chief Justice of the Supreme Judicial Court about the state of the freedom of access laws and the public's access to public proceedings and records.

## **APPENDIX B**

### **Membership List, Right to Know Advisory Committee**



## Right to Know Advisory Committee

### Appointments by the Governor

**Linda Cohen**

4 Tamarack Drive  
South Portland, ME 04106

Representing Municipal Interests

**Kevin Martin**

Department of Environmental Protection  
17 SHS  
Augusta, Maine 04333

Representing State Government Interests

**Eric Stout**

Office of Information Technology  
Department of Administrative and Financial Services  
78 SHS  
August, Maine 04333

Member with experience in Information  
Technology issues and costs in multiple  
Areas

**Victoria Wallack**

Maine School Management Association  
49 Community Dr # 1  
Augusta, ME 04330

Representing School Interests

### Appointments by the President

**Hon. Justin Mark Chenette**

6A Lilian Avenue  
Saco, ME 04072

Representing the Public

**Amy Beveridge**

10 Stonewall Lane  
Saco, ME 04072

Representing Broadcasting Interests

**Sen. Anne Carney**

21 Angell Point Road  
Cape Elizabeth, ME 04107

Senate Member of Judiciary Committee

**Lynda Clancy**

Main Street  
Rockport, ME 04856

Representing the Press

**Christopher Parr**

Maine State Police Headquarters  
45 State House Station  
Augusta, ME 04333-0042

Representing Law Enforcement Interests



## **Appointments by the Speaker**

### **Taylor Asen**

Gideon Asen, LLC  
217 Commercial Street, #403  
Portland, ME 04101

Representing the Public

### **James Campbell**

Maine Freedom of Information Coalition  
54 Bayview Street  
Belfast, ME 04915

Representing a Statewide Coalition of  
Advocates of Freedom of Access

### **Suzanne Goucher**

Maine Association of Broadcasters  
69 Sewall Street Suite 2  
Augusta, ME 04330

Representing Broadcasting Interests

### **Rep. Thomas Harnett**

52 Marston Road  
Gardiner, ME 04345

House Member of the Judiciary Committee

### **Judith Meyer**

Lewiston Sun Journal  
104 Park Street  
Lewiston, ME 04243-4400

Representing Newspaper Publishers

## **Attorney General**

### **Jonathan Bolton, Esq.**

Office of the Attorney General  
6 State House Station  
Augusta, ME 04333-0006

Attorney General's designee

## **Chief Justice**

### **Julia Finn**

Maine Judicial Branch  
PO Box 4820  
Portland, ME 04112

Member of the Judicial Branch

## **Vacancies**

### **Governor**

- Representative having legal or professional expertise in the field of data and personal privacy

### **Governor**

- Representing County or Regional Interests

## **APPENDIX C**

**Letters to Public Access Ombudsman and Maine Municipal Association requesting data on recent statutory change related to fees charged for public records requests**



Representative Thom Harnett, Chair  
Senator Anne Carney  
Taylor Asen  
Amy Beveridge  
Jonathan Bolton  
James Campbell  
Hon. Justin Chenette  
Lynda Clancy

Linda Cohen  
Julie Finn  
Suzanne Goucher  
Kevin Martin  
Judy Meyer  
Christopher Parr  
Eric Stout  
Victoria Wallack



**STATE OF MAINE  
ONE HUNDRED AND THIRTIETH LEGISLATURE**

**RIGHT TO KNOW ADVISORY COMMITTEE**

December 15, 2021

Brenda L. Kielty  
Public Access Ombudsman  
Office of the Attorney General

Re: Freedom of Access Act Requests Response Time

Dear Ms. Kielty:

During the first meeting of the Right to Know Advisory Committee, you asked the committee to consider how the fee waiver provision in the State's freedom of access law is applied and what impact that may have on accessibility of public records. The committee discussed the issue of fee waivers during the November 10<sup>th</sup> meeting.

During the meeting, concerns were raised that the standard response to a fee waiver request by some agencies is to deny the request and some members expressed an interest in seeing language included in the State's freedom of access law that would require the agency to include an explanation for the denial tied to the language in Title 1, section 408-A, sub-§11. The Advisory Committee also discussed the impact that recent changes to the freedom of access law increasing the amount of time without charge dedicated to searching for, retrieving and compiling the requested public record would have on fee waiver requests. Previous information provided to the Advisory Committee indicated that the majority of FOAA requests could be completed within an hour. The Advisory Committee is interested in learning how many requests can now be completed without charge in the increased timeframe of two hours and if this change reduces the number of fee waiver requests and therefore the number of waiver denials.

As such, the Advisory Committee requests that the Public Access Ombudsman ask agencies to gather data beginning January 1, 2022 through September 30, 2022 related to the number of FOAA requests that can be searched for, retrieved and compiled within two hours as a part of the required annual tracking and data collection completed by the agency FOAA contacts. The Committee asks that you report back to the Committee regarding this matter by November 1, 2022.

We appreciate your attention to this matter and for your continued assistance to this Committee.

Sincerely,

  
Representative Thom Harnett, Chair  
Right to Know Advisory Committee

Representative Thom Harnett, Chair  
Senator Anne Carney  
Taylor Asen  
Amy Beveridge  
Jonathan Bolton  
James Campbell  
Hon. Justin Chenette  
Lynda Clancy

Linda Cohen  
Julie Finn  
Suzanne Goucher  
Kevin Martin  
Judy Meyer  
Christopher Parr  
Eric Stout  
Victoria Wallack



**STATE OF MAINE  
ONE HUNDRED AND THIRTIETH LEGISLATURE**

**RIGHT TO KNOW ADVISORY COMMITTEE**

December 15, 2021

Kate Dufour  
Neal Goldberg  
State and Federal Relations Department  
Maine Municipal Association

Re: Freedom of Access Act Requests Response Time

Dear Ms. Dufour and Mr. Goldberg:

During the first meeting of the Right to Know Advisory Committee, the Public Access Ombudsman asked the committee to consider how the fee waiver provision in the State's freedom of access law is applied and what impact that may have on accessibility of public records. The committee discussed the issue of fee waivers during the November 10<sup>th</sup> meeting.

During the meeting, discussion focused on the impact that recent changes to the freedom of access law increasing the amount of time without charge dedicated to searching for, retrieving and compiling the requested public record would have on fee waiver requests. Previous information provided to the Advisory Committee from surveys conducted by MMA in 2019 and 2020 indicated that the majority of FOAA requests could be completed within an hour. The Advisory Committee is interested in learning how many requests can now be completed without charge in the increased timeframe of two hours and if this change reduces the number of fee waiver requests and as a result the number of waiver denials.

As such, the Advisory Committee requests that the Maine Municipal Association survey municipalities to gather data beginning January 1, 2022 through September 30, 2022 related to the number of FOAA requests that can be searched for, retrieved and compiled within two hours. The Committee asks that you report back to the Committee regarding this matter by November 1, 2022.

We appreciate your attention to this matter.

Sincerely,

  
Representative Thom Harnett, Chair  
Right to Know Advisory Committee

## **APPENDIX D**

**Recommended legislation to amend previously – enacted  
public records exceptions**



**RECOMMENDED LEGISLATION TO AMEND EXISTING PUBLIC RECORDS  
EXCEPTIONS REVIEWED IN TITLE 12**

**Sec. 1.**        **12 MRSA §6072, sub-§10** is amended as follows:

**10. Notification of granted leases.** After the granting of a lease:

A.

B. The department shall notify all riparian owners, intervenors and the municipality in which the lease is located that a lease has been granted. The notice must include a description of the area and how a copy of the lease may be obtained.

C. The lessee shall mark the leased area in a manner prescribed by the commissioner;  
and

D. The lessee shall annually submit to the department a seeding and harvesting report for the past year and a seeding and harvesting plan for the coming year. Upon written request, the department shall provide a copy of the report to the municipality or municipalities in which or adjacent to which the lease is located. The seeding and harvesting reports submitted by a lessee under this paragraph are considered confidential statistics for the purposes of section 6173. A copy of a report provided to a municipality pursuant to this paragraph is confidential.

**SUMMARY**

This draft implements statutory changes recommended by the Right To Know Advisory Committee after reviewing certain existing public records exceptions in Titles 8 to 12. The draft amends a public records exception in Title 12 relating to seeding and harvesting reports provided to the Department of Marine Resources by holders of aquaculture leases. Under current law, those reports are confidential and a municipality or municipalities in which or adjacent to which the lease is located is entitled to a copy of a report upon request. This draft amends that provision to clarify that a copy of a seeding and harvesting report provided to a municipality is confidential.





## **APPENDIX E**

**Public records exceptions reviewed in 2021 for which no statutory  
change is recommended**



**Public records exceptions reviewed in 2021: Titles 8 to 12 and Titles 13 to 21-A  
Recommended to be Continued without Change**

The following public records exceptions reviewed in Titles 8 to 12 should remain in law as written:

- Title 8, section 416-A, subsection 9, relating to the Tri-State Lotto concerning personal records in connection with payment of prize
- Title 8, section 1006, subsection 1, paragraph A, relating to information or records required by the Gambling Control Board for licensure: trade secrets and proprietary information
- Title 8, section 1006, subsection 1, paragraph B, relating to information or records required by the Gambling Control Board for licensure: would be unwarranted invasion of privacy of key executive, gaming employee or another person
- Title 8, section 1006, subsection 1, paragraph C, relating to information or records required by the Gambling Control Board for licensure: key executive or gaming employee compensation
- Title 8, section 1006, subsection 1, paragraph D, relating to information or records required by the Gambling Control Board for licensure: financial, statistical and surveillance information related to the applicant
- Title 8, section 1006, subsection 1, paragraph E, relating to information or records required by the Gambling Control Board for licensure: creditworthiness, credit rating or financial condition of person or project
- Title 8, section 1006, subsection 1, paragraph F, relating to information or records required by the Gambling Control Board for licensure: information from other jurisdictions conditioned on remaining confidential
- Title 8, section 1006, subsection 1, paragraph G, relating to information or records required by the Gambling Control Board for licensure: information designated confidential under federal law
- Title 8, section 1006, subsection 1, paragraph H, relating to information or records required by the Gambling Control Board for licensure: specific personal information, including Social Security number, of any individual
- Title 8, section 1006, subsection 3, relating to records and information developed as part of suitability requirement to select operator of central site monitoring system, held by Gambling Control Board and Dept. of Public Safety
- Title 8, section 1006, subsection 4, relating to financial, statistical and surveillance information from the central site monitoring system held by the Gambling Control Board and the Dept. of Public Safety
- Title 8, section 1007, subsection 2, relating to information or records received by the Gambling Control Board or Department of Public Safety from another agency pursuant to agreement

- Title 8, section 1052, relating to reports, information or records compiled by the Gambling Control Board and Dept. of Public Safety concerning noncompliance with or violation of the chapter by an applicant, licensee, owner or key executive
- Title 8, section 1052, subsection 3, relating to all complaints and investigative records of the Gambling Control Board during the pendency of an investigation
- Title 12, section 6072, subsection 10, relating to aquaculture lease seeding and harvesting reports
- Title 12, section 6072-A, subsection 17-A, relating to aquaculture leasing research and development
- Title 12, section 6077, subsection 4, relating to the aquaculture monitoring program
- Title 12, section 6078-A, subsection 1, relating to the Aquaculture Monitoring, Research and Development Fund concerning harvest information from leaseholders
- Title 12, section 6082, relating to information obtained from another jurisdiction that is designated confidential by that jurisdiction and must remain confidential
- Title 12, section 6173, subsection 1, relating to marine resources statistics
- Title 12, section 6173-A, subsection 1, relating to information designated as proprietary information submitted under the Maine Working Waterfront Access Pilot Project
- Title 12, section 6173-B, subsection 1, relating to information designated as proprietary information for research, aquaculture, education, surveillance and inspection, shellfish sanitation and depuration
- Title 12, section 6310, subsection 3, relating to medical information pertaining to lobster and crab fishing license denials
- Title 12, section 6749-S, subsection 1, relating to log book for sea urchin buyers and processors
- Title 12, section 8884, subsection 3, relating to landowner and wood processor reporting requirements concerning information about volume, species, product types, county of origin and personally identifying information of forest product suppliers

The following public records exceptions reviewed in Titles 13 to 21-A should remain in law as written:

- Title 13, section 1957, subsection 8, relating to the members of associations of agricultural producers and purchasing information
- Title 14, section 164-A, subsection 3, relating to identity or treatment of participants in the Maine Assistance Program for Lawyers
- Title 14, section 1254-A, subsection 1, relating to juror questionnaire recipients and names drawn
- Title 14, section 1254-A, subsection 7, relating to names of prospective jurors and contents of juror qualification forms
- Title 14, section 1254-A, subsection 8, relating to names of jury pool during the period of service of jurors and prospective jurors
- Title 14, section 1254-B, subsection 2, relating to juror selection records and information

- Title 14, section 6321-A, subsection 4, relating to financial information disclosed in the course of mediation under the foreclosure mediation program
- Title 15, section 101-C, subsection 3, relating to records necessary to conduct an evaluation concerning mental responsibility for criminal conduct
- Title 15, section 393, subsection 4-A, paragraph G, relating to information concerning application to possess firearm by person who was involuntarily committed
- Title 15, section 3009, subsection 2, relating to the reintegration of a juvenile into school
- Title 15, section 3010, subsection 2, relating to juvenile history record information
- Title 15, section 3307, subsection 1-A, relating to the identity of a juvenile until the petition is open to public inspection
- Title 15, section 3308-A, subsection 1, relating to juvenile case records
- Title 15, section 3308-A, subsection 3, relating to orders of adjudication for certain juvenile crimes
- Title 15, section 3308-A, subsection 4, relating to juvenile intelligence and investigative information, juvenile community corrections officers' records and other reports in juvenile care records
- Title 15, section 3318-A, subsection 5, relating to juvenile case records pending a competency examination
- Title 15, section 3318-C, subsection 2, relating to competency orders regarding a juvenile
- Title 16, section 703, subsection 2, relating to confidential criminal history record information (Criminal History Record Information Act)
- Title 16, section 804, relating to reports or records that contain intelligence and investigative information (Intelligence and Investigative Record Information Act)
- Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims
- Title 17-A, section 1176, subsection 5, relating to request by crime victim for notice of release of defendant
- Title 18-C, section 2-514, relating to wills deposited with the Probate Court
- Title 18-C, section 5-205, relating to confidential information received from the Department of Health and Human Services regarding the guardianship of a minor
- Title 18-C, subsection 5-207, subsection 3, paragraph C, relating to status reports to the Probate Court by guardian of a minor
- Title 18-C, section 5-308, subsection 3, relating to reports of a visitor or professional evaluation regarding the guardianship of an adult
- Title 18-C, section 5-409, subsection 3, relating to reports of a visitor or a professional evaluation regarding the conservatorship of an adult
- Title 18-C, section 5-423, subsection 4, relating to the credit report included in the conservator's report
- Title 18-C, section 9-304, subsection 1, paragraph B, relating to background checks for adoptions ordered by the Probate Court
- Title 18-C, section 9-304, subsection 2, paragraph A, relating to background checks initiated by the Department of Health and Human Services

- Title 18-C, section 9-308, subsection 3, relating to final adoption decrees
- Title 18-C, section 9-310, relating to adoption records concerning adoptions decreed on or after August 8, 1953
- Title 19-A, section 651, subsection 2, relating to social security numbers on marriage applications
- Title 19-A, section 908, relating to social security numbers on divorce records
- Title 19-A, section 1653, subsection 6, relating to addresses of children and victims in cases concerning parental rights and responsibilities involving domestic abuse
- Title 19-A, section 1753, subsection 5, relating to identifying information under the Uniform Child Custody Jurisdiction and Enforcement Act if health, safety or liberty jeopardized
- Title 19-A, section 1834, subsection 5, relating to Social Security numbers in parentage actions
- Title 19-A, section 2006, subsection 10, relating to social security numbers in child support actions
- Title 19-A, section 2111, subsection 5, relating to criminal background check information for DHHS employees and applicants with access to federal tax information
- Title 19-A, section 2152, subsection 11, relating to information collected in child support enforcement and medical support recoupment
- Title 19-A, section 2158, subsection 6, relating to records of child support obligors provided to wireless service provider
- Title 19-A, section 3012, relating to specific identifying information in child support enforcement
- Title 19-A, section 4008, relating to identifying information concerning protection from abuse actions if health, safety or liberty would be jeopardized
- Title 19-A, section 4013, subsection 4, paragraph E, relating to the Domestic Abuse Homicide Review Panel
- Title 20-A, section 4008, subsection 2, relating to school counselor or social worker activities
- Title 20-A, section 5001-A, subsection 3, relating to homeschooling records
- Title 20-A, section 6001, subsection 3, relating to education records of students
- Title 20-A, section 6101, subsection 2, relating to school records concerning employees and applicants
- Title 20-A, section 6103, subsection 3, relating to school records concerning criminal history record checks of employees and applicants
- Title 20-A, section 6205, relating to standards and assessments of student performance
- Title 20-A, section 6357, subsection 1, relating to student immunization records
- Title 20-A, section 7451, subsection 2, relating to records of the Baxter Compensation Authority
- Title 20-A, section 10206, subsection 2, relating to records of the Energy Testing Laboratory of Maine

- Title 20-A, section 11418, subsections 1 and 2, relating to Maine Educational Loan Authority applicants and recipients
- Title 20-A, section 11444, subsection 1, relating to the Student Financial Aid Supplemental Loan Program applicants and recipients
- Title 20-A, section 11494, subsection 1, relating to the Higher Education Loan Purchase Program borrowers
- Title 20-A, section 13004, subsection 2, relating to certification and registration of teachers
- Title 20-A, section 13004, subsection 2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel
- Title 21-A, section 1, subsection 21, relating to portion of incoming voting list relating to Address Confidentiality Program participants
- Title 21-A, section 22, subsection 2, relating to ballots
- Title 21-A, section 22, subsection 3, paragraph A, relating to records pertaining to a voter certified as a participant in the Address Confidentiality Program
- Title 21-A, section 22, subsection 3, paragraph B, relating to residence and mailing address of voter when voter submits statement to registrar stating good reason to believe physical safety jeopardized
- Title 21-A, section 22, subsections 5 and 6, relating to registered voter applications
- Title 21-A, section 122-A, relating to voter registration records of voters who are participants in the Address Confidentiality Program
- Title 21-A, section 172, relating to a voter registration file kept by the registrar when the voter is a participant in the Address Confidentiality Program
- Title 21-A, section 196-A, relating to information contained electronically in the central voter registration system
- Title 21-A, section 624, subsection 1, relating to that portion of voter list relating to Address Confidentiality Program participants
- Title 21-A, section 737-A, subsection 7, relating to disputed ballots
- Title 21-A, section 753-B, subsection 6, paragraph A, relating to the portion of the absentee voter list relating to voters who are Address Confidentiality Program participants
- Title 21-A, section 764, relating to applications and envelopes for absentee ballots
- Title 21-A, section 1003, subsection 3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices
- Title 21-A, section 1125, subsection 3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet





## **APPENDIX F**

**Recommended legislation to amend the remote participation law to provide for the adoption of a remote participation policy in a remote meeting when an emergency or urgent issue exists**



**Recommended legislation to amend the remote participation law to provide for the adoption of a remote participation policy in a remote meeting when an emergency or urgent issue exists**

Sec. 1. 1 MRSA §403-B is amended to read:

**§403-B. Remote participation in public proceedings**

**1. Remote participation.** This section governs remote methods of participation in public proceedings of certain public bodies. For the purposes of this section, "remote methods" means telephonic or video technology allowing simultaneous reception of information and may include other means when such means are necessary to provide reasonable accommodation to a person with a disability. Public proceedings may not be conducted by text-only means such as e-mail, text messages or chat functions.

**2. Requirements.** A public body subject to this subchapter may allow members of the body to participate in a public proceeding using remote methods only under the following conditions:

A. After notice and hearing the body has adopted a written policy governing the conditions upon which members of the body and the public may participate in a public proceeding of that body by remote methods,

(1) If a public body has not adopted a policy authorizing remote methods of participation under this section, and if the chair of the body determines that an emergency or urgent issue exists that prevents the public body from meeting in person to adopt a policy, the chair may call a meeting of the body in which the members may participate by remote methods. Notice of the meeting must include information about how the public can participate in the meeting. Once the meeting is convened, the members must vote on whether to support the chair's determination that an emergency or urgent issue exists that prevents the public body from meeting in person.

(2) If the members vote in support of the chair's determination under subparagraph (1), after an opportunity for hearing, the members may vote on whether to adopt a policy authorizing remote methods of participating in public proceedings of the body under this section;

B. The policy adopted pursuant to paragraph A must provide that members of the body are expected to be physically present for public proceedings except when being physically present is not practicable. Circumstances in which physical presence for one or more members is not practicable may include:

(1) The existence of an emergency or urgent issue that requires the public body to meet by remote methods;

(2) Illness, other physical condition or temporary absence from the jurisdiction of the body that causes a member of the body to face significant difficulties traveling to and attending in person at the location in the notice under section 406;

(3) With respect to a public body with statewide membership, significant distance a member must travel to be physically present at the location in the notice under section 406; and

(4) The area of the public body's jurisdiction includes geographic characteristics that impede or slow travel, including but not limited to islands not connected by bridges;

C. The policy adopted pursuant to paragraph A must provide members of the public a meaningful opportunity to attend by remote methods when members of the body participate by remote methods, and reasonable accommodations may be provided when necessary to provide access to individuals with disabilities;

D. If the body allows or is required to provide an opportunity for public input during the proceeding, an effective means of communication between the members of the body and the public must be provided;

E. Notice of the proceeding must be provided in accordance with section 406. When the public may attend by remote methods pursuant to paragraphs C and D, the notice must include the means by which members of the public may access the proceeding using remote methods. The notice must also identify a location for members of the public to attend in person. The body may not determine that public attendance at a proceeding will be limited solely to remote methods except under the conditions in paragraph B, subparagraph (1);

F. A member of the body who participates in a public proceeding by remote methods is present for purposes of a quorum and voting;

G. All votes taken during a public proceeding using remote methods must be taken by roll call vote that can be seen and heard if using video technology, and heard if using only audio technology, by the other members of the public body and the public; and

H. The public body must make all documents and other materials considered by the public body available, electronically or otherwise, to the public who attend by remote methods to the same extent customarily available to members of the public who attend the proceedings of the public body in person, as long as additional costs are not incurred by the public body.

**3. Remote participation not permitted.** This section does not authorize town meetings held pursuant to Title 30-A, section 2524 or regional school unit budget meetings held pursuant to Title 20-A, section 1482-A to be conducted using remote methods.

4. Application. This section does not apply to:

A. The Legislature; or

B. A public body to which specific statutory provisions for remote participation apply.