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Fifteenth Annual Report of the Right to Know Advisory Committee

Maine State Legislature

Maine Office of Policy and Legal Analysis

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State of Maine
130th Legislature, First Regular Session

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

January 2021

Office of Policy and Legal Analysis



**STATE OF MAINE
130th LEGISLATURE
FIRST REGULAR SESSION**

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

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Amy Beveridge
James Campbell
Lynda Clancy
Linda Cohen**
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Suzanne Goucher
Kevin Martin**
Judy Meyer
Paul Nicklas*
Christopher Parr*
Luke Rossignol
William D. Shorey
Eric Stout
Victoria Wallack****

* until November 10, 2020

**beginning November 10, 2020

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EXECUTIVE SUMMARY

This is the fifteenth 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 2020 recommendations and a summary of relevant Maine court decisions from 2020 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.

Due to the ongoing civil public health emergency, the 129th Legislature ended without convening a special session and was not able to take final action on certain legislative recommendations made by the Advisory Committee in its January 2020 report. As a result, the Advisory Committee puts forward the following recommendations again:

- Enact legislation to cap copying fees;**
- 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;**
- 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;**
- 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; and**
- Enact legislation to revise the membership of the Archives Advisory Board to include a public member and two members representing journalistic and news perspectives.**

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

- Amend certain provisions of law in Titles 8 through 12 relating to previously-enacted public records exceptions;**
- 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;**

- ❑ **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; and**
- ❑ **Support the extension of legal authority for public bodies to conduct public proceedings remotely on a permanent basis as long as openness and transparency remain central principles and as long as the authorization is contingent on the public body adopting a written policy addressing certain requirements.**

In 2021, the Right to Know Advisory Committee will continue to discuss the unresolved issues identified in this report, including complaints related to misconduct of members of law enforcement. The Advisory Committee will also continue to assist 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 Judicial Branch and the Legislature to implement the recommendations included in this report.

I. INTRODUCTION

This is the fifteenth 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 17 members. Currently there is one vacancy. The chair of the Advisory Committee is elected every two years by the members. Current Advisory Committee members are:

Senator Mike Carpenter	<i>Senate member of Judiciary Committee, appointed by the President of the Senate</i>
Representative Thom Harnett, Chair	<i>House member of Judiciary Committee, appointed by the Speaker of the House</i>
James Campbell	<i>Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House</i>
Suzanne Goucher	<i>Representing broadcasting interests, appointed by the Speaker of the House</i>
Lynda Clancy	<i>Representing newspaper and other press interests, appointed by the President of the Senate</i>
Amy Beveridge	<i>Representing broadcasting interests, appointed by the President of the Senate</i>
<i>vacant</i>	<i>Representing law enforcement interests, appointed by the President of the Senate</i>
Victoria Wallack	<i>Representing school interests, appointed by the Governor *Appointed on November 10, 2020</i>
Julie Finn	<i>Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court</i>

Judy Meyer	<i>Representing newspaper publishers, appointed by the Speaker of the House</i>
Paul Nicklas	<i>Representing municipal interests, appointed by the Governor</i> <i>*Appointment ended November 10, 2020</i>
Linda Cohen	<i>Representing municipal interests, appointed by the Governor</i> <i>*Appointment began on November 10, 2020</i>
Christopher Parr	<i>Representing state government interests, appointed by the Governor</i> <i>*Appointment ended on November 10, 2020</i>
Kevin Martin	<i>Representing state government interests, appointed by the Governor</i> <i>*Appointment began on November 10, 2020</i>
Phyllis Gardiner	<i>Attorney General's designee</i>
Luke Rossignol	<i>Representing the public, appointed by the President of the Senate</i>
William Shorey	<i>Representing county or regional 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>
Taylor Asen	<i>Representing the public, appointed by the Speaker of the House</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 2020, the Advisory Committee met four times: on October 1st, November 6th, November 20th and December 4th. Due to the civil public health emergency, each meeting was conducted remotely using Zoom and open to the public through the Legislature's YouTube channel. The meetings were also accessible 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 other 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 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. For this annual report, the Advisory Committee has identified and summarized the following Maine Supreme Judicial Court decision related to freedom of access issues.

Blue Sky West, LLC v. Maine Revenue Services

In *Blue Sky West, LLC v. Maine Revenue Services*, 2019 ME 137, 215 A.3d 812, Blue Sky, a wind energy developer, submitted information about its property to Maine Revenue Services, under 36 MRSA §706, in 2016 and 2017 for the purposes of determining the value of the property for property tax purposes. Somerset County sought access to that information under the Freedom of Access Act. The Law Court determined that in order for the records to be exempt as confidential under the FOAA under 1 MRSA §402(3)(A) and 36 MRSA §706 the records must: (1) be designated as confidential when submitted; and (2) contain proprietary information. The Law court upheld the decision of the Superior Court that the 2016 records should be provided to Somerset County because Blue Sky had not originally designated them as confidential and the 2017 records should not have been provided to Somerset County because Blue Sky had designated them as confidential when submitted and they contained proprietary information as defined in 36 MRSA §706. (Note: 36 MRSA §706 was repealed and replaced by §706-A in PL 2017, c. 367.)

IV. RIGHT TO KNOW ADVISORY COMMITTEE SUBCOMMITTEES

Public Records Exceptions Subcommittee

Lynda Clancy, Julie Finn, Eric Stout and Christopher Parr initially served as members of the Public Records Exception Subcommittee, and Christopher Parr served as Subcommittee Chair. When Mr. Parr's appointment to the Advisory Committee ended on November 10, 2020, Kevin Martin succeeded him as a member of the Subcommittee and Julie Finn became 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 8 to 12 no later than 2021. In accordance with 1 MRSA §433, sub-§2-A, the Advisory Committee is charged with the review of more than 69 identified exceptions in Titles 8 to 12. As a first step, 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. The subcommittee met two times in 2020 (November 6 and November 20) to review the responses and to discuss whether each public record exception was appropriate or should be amended or repealed. The subcommittee was able to complete review of 46 exceptions; the remaining exceptions were tabled and will be considered again in 2021, along with the review of

the exceptions in Titles 13 to 21-A. All of the subcommittee's recommendations with regard to the exceptions that were reviewed were submitted to the Advisory Committee at the December 4, 2020 meeting.

Subcommittee on Remote Meetings Best Practices

The Subcommittee on Remote Meetings Best Practices was established by the Advisory Committee at its November 20th meeting to assist in the development of best practices recommendations for public bodies when the public is remote rather than physically present. The subcommittee met on December 4th and Rep. Thom Harnett agreed to chair the subcommittee. Amy Beveridge, Lynda Clancy, Julie Finn, Judy Meyer and Eric Stout participated as members of the subcommittee.

At the outset of its discussion, the subcommittee welcomed Kate Dufour and Neal Goldberg from the Maine Municipal Association (MMA) to present a report of MMA's survey of data collected from municipal officials concerning recent experiences with remote proceedings. Ms. Dufour described the remote participation experience as a silver lining in the dark pandemic, as municipalities have found it to be an incredible tool. Municipalities have been able to continue government operations without missing a beat, still providing services to their constituents even though many offices have been closed. It was noted that electronic meetings are not embraced by everyone and some needs are specialized and do not fit perfectly into the remote participation mode.

Municipalities noted that public participation has increased significantly with the use of remote participation tools. More participation means more people are learning about how their government is working. It also shows that participating can be a positive experience, and may encourage more participation at all levels of government. It may also help generate the next wave of volunteers, a group very important to the functioning of local governments.

Also noted, however, were the limitations presented by the fact that high-speed internet is not universally available throughout the State. Improving state-wide broadband availability is necessary to fully support the successful implementation of remote participation.

The authority to conduct proceedings through remote participation is a tool that municipalities would like to have even after the pandemic is over.

Mr. Goldberg added that municipalities expressed satisfaction with electronic meetings, and generally were able to adapt quickly to the new process modes. There are several good reasons for continuing the use of remote participation, including the year-round involvement of people who live in Maine only part of the year, the ability to hold meetings without worrying about hazardous travel in inclement weather and, when available, providing the public with an additional method of providing public comments. He mentioned the downsides of "Zoom-bombing" and the fact that broadband is not universally available.

Mr. Goldberg expressed the desire of municipalities to continue to be able to use remote participation methods, mainly to supplement in-person proceedings, even after the pandemic.

There is general support to require in-person attendance of members of the public body, but allow remote participation if the member cannot be there.

Although the larger municipalities did not respond to the MMA survey, Ms. Dufour said she understands that Portland is using electronic meetings very effectively. Although technology can create an age-based digital divide, because the pandemic has eliminated in-person activities across the board, there is not as much difference in who is participating as would be expected.

Advisory Committee member Eric Stout shared a document on Zoom security that has been posted on the RTKAC website.

The issue of accessibility to people with disabilities was raised in an email to the Advisory Committee, and Julie Flynn noted that the Judicial Branch chose to use the Zoom platform because closed captioning is available. The question of accessibility is a question that falls under the Americans with Disabilities Act, and must be addressed to ensure that everyone can participate fully in the government process. After the meeting, Ms. Finn shared comments from the Accessibility Coordinator for the Judicial Branch on how the Zoom platform can be used to provide accessibility.

Amy Beveridge and Judy Meyer both recognized that electronic meetings facilitate the ability of the press/media to monitor multiple meetings simultaneously without added travel or staff costs. The ability to engage in the legislative process without having to take a day off to travel to Augusta will be a great benefit, as well. A downside to not being able to be physically present means the press/media loses the opportunity to follow up or question individual policy makers directly after a meeting.

Ms. Meyer said she is more concerned about the ability of the public to participate. All subcommittee members recognized that attendance is not the same as participation. The administrative burden in running electronic meetings must be considerable. Brenda Kielty, the Public Access Ombudsman, expressed her continuing concern about the quality of participation. Ms. Dufour noted that MMA partnered with the law firm Bernstein Shur to develop procedures on "Zoom etiquette." Most municipalities have a good system of support, in that their peers are always willing to share tips and practices. Hybrid, rather than purely remote, meetings will present additional challenges.

Executive sessions can be conducted remotely: the Zoom platform allows the administrator to move whoever is not intended to be in the executive session into a "waiting room." When the executive session is over, whoever is still in the waiting room can be connected back into the meeting.

The subcommittee agreed to continue working, and Representative Harnett worked with staff to formalize specific recommendations. The Maine Municipal Association also informed the subcommittee that they will propose legislation to continue the authority to conduct electronic meetings post-pandemic. Everyone agreed that statewide high-speed internet is necessary to make remote participation effective and efficient, and should be supported.

V. COMMITTEE PROCESS

The Advisory Committee held four meetings, the Public Records Exceptions Subcommittee met two times and the Subcommittee on Remote Meetings Best Practices met once. Each subcommittee explained their discussions and recommendations to the full Advisory Committee. The Advisory Committee finalized its recommendations on December 4th. Part VII of this report contains the specific recommendations approved by the Advisory Committee. The Advisory Committee also discussed the issues described below, but does not make a recommendation on these issues at this time.

Complaints related to misconduct of members of law enforcement

At the October 1st meeting, Jim Campbell suggested that the Advisory Committee review Maine laws dealing with access to police complaints by Maine residents and their outcomes so that there are clear policies under FOAA for providing that information in a timely and complete way. It is known that there are complaints, there are practices to process and make decisions about those complaints and there are outcomes to those complaints, but none are accessible to the public. As a member of the Maine Freedom of Information Coalition, Mr. Campbell explained that the Coalition believes complaints and their outcomes should be public information but often the public, as well as the press, is denied access.

Because the Advisory Committee's position for a member representing law enforcement interests was vacant, the Advisory Committee agreed to defer further discussion of this topic until 2021 when the members will be able to include the perspective of law enforcement.

Caucuses

At the October 1st meeting, Advisory Committee member, Chris Parr suggested that the Advisory Committee discuss so-called "corner caucuses" used by Legislative committees and whether these caucuses are permissible under FOAA. Mr. Parr further suggested that the Advisory Committee consider whether FOAA should be amended or clarified on this particular issue.

The Advisory Committee members reviewed the statutes that other states have adopted to specifically address the application of public meetings laws to a political caucus, usually in the legislature. Some states have broadly exempted a political caucus, while others have allowed caucuses of the whole body (e.g., General Assembly), as opposed to committee caucuses, to be closed. The Rhode Island and North Carolina laws include language that warns against using caucuses to evade or subvert the open meetings law. Some states define the term "caucus," while others do not.

Staff shared a letter written by the Chief Deputy Attorney General to the Judiciary Committee Chairs in 2010. Although the letter is not an opinion of the office, it relies on the understanding that party caucuses are not generally committees or subcommittees of the Legislature (which are required to be open under the FOAA). "Accordingly, we have said that we could defend a decision to close a caucus, while noting that if a legal challenge were to be brought, the specific

circumstances would be relevant to the outcome." "Caucus" would include the party caucus held at the beginning of the legislative day as well as "corner caucuses" held by committee members of the same party.

The Advisory Committee’s discussion recognized that it is inappropriate for decisions to be made and actions to be taken outside of the public eye, but there was disagreement about the discussion that can take place among members of the same party in different situations. There was no consensus about how to define "caucus" or how to prove intent, which would be necessary under the Rhode Island or North Carolina models. Brenda Kielty, the Public Access Ombudsman, reiterated the need for clear standards in the statutes: make clear what actions are prohibited, what a challenger must prove and what the remedy for a violation should be. Eric Stout expressed his reliance on teaching correct principles: the legislators should remember they are doing the public's business, and be aware that there is a balancing involved to do the public's business in public.

While the Advisory Committee does not recommend a clear resolution or remedy, the Advisory Committee does believe that the use of caucuses by legislative committees – especially how the Appropriations Committee handles the Budget – should not be a mechanism for discussing legislative proposals or making decisions on legislative proposals out of the public eye to subvert the purposes of FOAA. Ms. Kielty agreed to be mindful of the Advisory Committee's discussion when she is preparing for the Legislature's mandatory FOAA training.

VI. ACTIONS RELATED TO COMMITTEE RECOMMENDATIONS CONTAINED IN FOURTEENTH ANNUAL REPORT

The Right to Know Advisory Committee made the following recommendations in its Fourteenth Annual Report. The legislative actions taken in 2020 as a result of those recommendations are summarized below.

<p>Recommendation: Amend certain provisions of law in Titles 1 through 7-A relating to previously-enacted public records exceptions</p>	<p>Action: The recommendations of the Advisory Committee were accepted by the Judiciary Committee and included in LD 2103, An Act To Implement the Recommendations of the Right To Know Advisory Committee Regarding Public Records Exceptions. LD 2103 was enacted as Public Law 2019, c. 667 and became effective June 16, 2020.</p>
<p>Recommendation: Direct legislative staff to help identify nonstandard language concerning existing public records exceptions</p>	<p>Action: The recommendation of the Advisory Committee was accepted by the Judiciary Committee and this language was included in LD 2103, An Act To Implement the Recommendations of the Right To Know Advisory Committee Regarding Public Records Exceptions. The law directs the Office of Policy and Legal Analysis, in consultation with the Revisor’s Office and the Advisory Committee, to identify nonstandard language and</p>

	develop recommended legislation to address it by September 1, 2021. LD 2103 was enacted as Public Law 2019, c. 667 and became effective June 16, 2020.
Recommendation: Enact legislation to provide parameters on the use of remote participation by members of public bodies	Action: The Judiciary Committee did not accept the recommendation of the Advisory Committee and proposed legislation related to remote participation. However, due to the declaration of a public health emergency, the Legislature enacted emergency legislation to authorize public proceedings to be conducted remotely during the public health emergency and for up to 30 days after. See Public Law 2019, c. 617, Part G effective March 17, 2020.
Recommendation: Enact legislation to cap copying fees	Action: The recommendation of the Advisory Committee was accepted by the Judiciary Committee and this language was included in the Committee Amendment to LD 1575, An Act to Improve the Freedom of Access Laws. LD 1575 was not finally acted upon before adjournment of the Second Regular Session and was carried over to any special session. Because the Legislature did not convene in Special Session before the end of the 129 th Legislature, the bill died upon termination of the 129 th Legislature.
Recommendation: 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	Action: The recommendation of the Advisory Committee was accepted by the Judiciary Committee and this language was included in LD 2102, An Act To Implement the Recommendations of the Right To Know Advisory Committee. The Judiciary Committee also agreed to provide funding, as the proposed legislation was identified as a municipal mandate. LD 2102 was not finally acted upon before adjournment of the Second Regular Session and was carried over to any special session. Because the Legislature did not convene in Special Session before the end of the 129 th Legislature, the bill died upon termination of the 129 th Legislature.
Recommendation: Request that the Public Access Ombudsman develop suggestions to enhance and improve FOAA training for public officials, and develop methods for gathering data on FOAA requests and requesters related to	Action: Brenda Kielty, Public Access Ombudsman, will update the Advisory Committee on this issue at a later date.

unfulfilled requests and costs	
<p>Recommendation: Request that the Joint Standing Committee on Judiciary establish a study group to examine the use of emerging technologies with regard to making and keeping records and to examine the use of communications technology during public proceedings</p>	<p>Action: The Judiciary Committee discussed this, but did not accept the recommendation of the Advisory Committee. No further action was taken.</p>
<p>Recommendation: 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>Action: The Judiciary Committee discussed this, but did not accept the recommendation of the Advisory Committee. No further action was taken.</p>
<p>Recommendation: 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>Action: The recommendation of the Advisory Committee was accepted by the Judiciary Committee and this language was included in LD 2102, An Act To Implement the Recommendations of the Right To Know Advisory Committee. LD 2102 was not finally acted upon before adjournment of the Second Regular Session and was carried over to any special session. Because the Legislature did not convene in Special Session before the end of the 129th Legislature, the bill died upon termination of the 129th Legislature.</p>
<p>Recommendation: 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>Action: The recommendation of the Advisory Committee was accepted by the Judiciary Committee and this language was included in proposed legislation, LD 2101, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Membership of the Archives Advisory Board. LD 2101 was referred to the State and Local Government Committee because of its jurisdiction over issues related to the State Archives. LD 2101 was voted by the SLG Committee and supported by a majority of the committee. However, LD 2101</p>

	was not finally acted upon before adjournment of the Second Regular Session and was carried over to any special session. Because the Legislature did not convene in Special Session before the end of the 129 th Legislature, the bill died upon termination of the 129 th Legislature.
Recommendation: Request that the Archives Advisory Board emphasize the publicizing of information about its meetings to enhance public awareness and participation given the importance of records retention schedules	Action: The Advisory Committee sent a letter to Tammy Marks at the Maine State Archives on January 8, 2020.
Recommendation: Send a letter to the Joint Standing Committee on Judiciary expressing issues that should be considered when dealing with surveillance videos	Action: The Advisory Committee sent a letter to the Judiciary Committee on January 8, 2020. The Judiciary Committee discussed this issue, but did not take any further action to address it during the Second Regular Session.
Recommendation: Defer to the Joint Standing Committee on Judiciary as to whether to require the collection and reporting of aggregate information concerning certain search warrants	Action: The Judiciary Committee discussed this issue, but did not take any further action to address it during the Second Regular Session.

VII. RECOMMENDATIONS

Due to the ongoing civil public health emergency, the 129th Legislature ended without convening a special session and was not able to take final action on certain legislative recommendations made by the Advisory Committee in its January 2020 report. As a result, the Advisory Committee puts forward the following recommendations again:

Enact legislation to cap copying fees

The Advisory Committee supports suggested legislation, originally proposed as part of LD 1575 considered in the 129th Legislature, that sets an upper limit on per page copying costs (10¢ per

standard 8½” x 11” black and white page). The suggested language also prohibits a per page copy fee for electronic records.

See recommended legislation in Appendix F.

☐ 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

The Advisory Committee recommends statutory changes to: 1) expand training to planning board members, code enforcement officers and town and city managers or administrators, and their deputies; 2) clarify which school officials are required to complete the training; and 3) clarify the timeline for completing the training for those in appointed positions.

See recommended legislation in Appendix F.

☐ 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

The Advisory Committee recommends language that directs the Judiciary Committee, when considering new public records exceptions, to weigh the fact that public access to the record ensures or would ensure that members of the public are able to make informed health and safety decisions. This new consideration would be included in the Right to Know Advisory Committee’s review of existing public records exceptions, as well.

See recommended legislation in Appendix F.

☐ 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

The Advisory Committee recommends expanding the membership of the Right to Know Advisory Committee to include a member who has legal or professional expertise in the field of data and personal privacy, to be appointed by the Governor.

See recommended legislation in Appendix F.

☐ Enact legislation to revise the membership of the Archives Advisory Board to include a public member and two members representing journalistic and news perspectives

The Advisory Committee recommends changing the membership of the Archives Advisory Board to include two members representing journalists, newspapers, broadcasters and other news media interests and one member representing the protection of personal privacy interests.

See recommended legislation in Appendix F.

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

❑ Amend certain provisions of law in Titles 8 through 12 relating to previously-enacted public records exceptions

The following recommendations provide for amendments to existing public records exceptions that were reviewed in 2020.

- Title 10, section 1107, relating to books, records or correspondence summonsed in an antitrust investigation, at the discretion of the person being investigated (amend to make the language consistent with how other exceptions refer to documents that are not subject to disclosure and to clarify that the confidentiality of the records is not tethered to an affirmative option of the person providing the records).
- Title 12, section 550-B, subsection 6, relating to water well information collected by the Department of Agriculture, Conservation and Forestry, Bureau of Geology, Natural Areas and Coastal Resources, Geological Survey (amend to repeal the exception designating as confidential information collected by the Maine Geological Survey at the request of well drilling companies to whom the information pertains if the bureau has determined it contains proprietary information).

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

❑ 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 [not supported by one member of the Advisory Committee]

A majority of the Advisory Committee (12-1 vote) supports 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. Current law allows an agency or official to charge up to \$15 an hour after the first hour (the first hour is free) for compiling the responsive record. The proposed legislation recommended by the Advisory Committee authorizes an agency or official to charge up to \$25 for each hour after two hours of staff time spent to compile the record. The \$25 hourly fee is a close approximation of the rate municipalities identified as the average rate paid to the municipal employees who are doing the bulk of the work in responding to public records requests. The proposed language also clarifies that the fees collected for copying and compiling responses may be retained by the agency that responds to the public records request.

Advisory Committee member Judy Meyer does not support the recommended legislation. Ms. Meyer recognizes that nuisance, commercial and extremely large requests take significantly more staff time to complete, but she believes the proposed language is not the appropriate remedy. The MMA survey on public records requests indicated that the vast majority of public records requests are completed very quickly. Ms. Meyer believes it is unfair to burden all requesters with the higher per hour fee when the vast majority of requests do not rise to the level of nuisance or abusive.

*See recommended legislation in **Appendix E**.*

❑ 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

The Advisory Committee recognizes that up to 20% of the State's population does not have access to high speed internet. The Advisory Committee recommends that the State dedicate the necessary funding to accelerate broadband access statewide and to provide investments in technology for governments to facilitate public access to public proceedings conducted remotely.

❑ Support the extension of legal authority for public bodies to conduct public proceedings remotely on a permanent basis as long as openness and transparency remain central principles and as long as the authorization is contingent on the public body adopting a written policy addressing certain requirements

The Advisory Committee supports the extension of legal authority for public bodies to conduct public proceedings remotely on a permanent basis as long as openness and transparency remain central principles. During the civil public health emergency, public bodies were granted legislative authority to conduct proceedings remotely in accordance with Public Law 2019, chapter 617, Part G. Public bodies, including municipalities, have been able to use remote meetings effectively to continue government operations when circumstances have prohibited or restricted in-person meetings. In many situations, public attendance and participation have increased with the ability to tune in and connect from home or other locations.

Because the authorization of remote participation in PL 2019, chapter 617, Part G is repealed 30 days after the termination of the state of emergency, legislation will be necessary to allow remote participation by members of public bodies to continue post-pandemic. The Legislature should take this opportunity to establish appropriate standards and provide guidance to all public entities that choose to make use of technology to conduct public proceedings. The Advisory Committee therefore recommends that the Legislature adopt enabling legislation, tied to best practices and based on the adoption by each public body of a written policy that meets not only statutory minimum requirements but closely addresses the need of the individual public body and its constituents and stakeholders.

The Advisory Committee recommends that the Legislature adopt remote proceedings authorization that is contingent on the public entity adopting a written policy that addresses, at a minimum, the following:

- Provides for an open and transparent process;
- Complies with Freedom of Access Act (FOAA), including notice and maintenance of meeting records;
- Establishes requirements for participation by members of the public body, including but not limited to how "present" for a meeting is defined, how a quorum is established, ensuring access to all of the same materials, conduct of executive session, and ensuring transparent and accurate recording of votes by all members of the public body;
- Establishes requirements for public access to the proceedings; and

- Provides for public participation in proceedings in which public participation is provided as a matter of practice or as required by statute.

The Advisory Committee recognizes that the use of technology to conduct public proceedings can take many forms and is evolving as technology develops and we all learn and adopt new procedures to meet the ever-changing needs. Rather than trying to establish static best practices for remote meetings in statute, the Advisory Committee recommends that there be a concerted and ongoing effort by public entities and the public to identify appropriate platforms and conduct that meet and advance the purposes of the FOAA: that the actions of government officials be taken openly and their deliberations be conducted openly. The Advisory Committee encourages members of the public as well as state and local government entities to share with us their experiences and suggestions as to how those best practices can be effectively communicated and adopted statewide. The Advisory Committee believes these best practices should include, in addition to the statutory minimum requirements already mentioned, the following:

- Be aware of the population served by the public body – consider special needs based on age, technology availability and familiarity, language challenges;
- Make sure technology is used that makes the public proceedings accessible to all, including those with disabilities or in need of reasonable accommodations to observe or participate meaningfully; recognize Americans with Disabilities Act (ADA) requirements and guidance;
- Use technology that is generally available statewide and is easy to use; a telephone option should be available for those without internet access;
- Understand the limitations of different platforms and methods, including license limitations with regard to number of attendees and participants and time parameters;
- Consider different frameworks for how meetings are conducted – all remote, hybrid, only public “attends” remotely;
- Consider providing one or more locations from which the public can observe and participate, if authorized, remotely;
- Consider staffing needs to support electronic meetings: staff responsible for establishing and running the online platform, staff helping the public participant troubleshoot, staff managing inbound calls, staff monitoring and reviewing online public comments and questions;
- Online platform etiquette – adopt reasonable requirements for conduct that maintain respect and civility for all involved;
- Provide appropriate cybersecurity safeguards (prevent meeting disruption such as "Zoom-bombing");
- If a quorum is lost for any reason, technical or otherwise, consider adjourning into an informational meeting with no action taken until the quorum can be reestablished, or adjourn the meeting completely;
- Notice of the public proceeding should include instructions on how the public can observe and participate, if permitted, and should include contact information if members of the public have questions;
- Post the agenda and materials, in ADA accessible formats, before the public proceeding;

- Permit the submission of written comments, questions and testimony where appropriate;
- Voting must be open and transparent and recorded accurately – consider roll call votes; and
- Record and then post the recording of each public proceeding.

With the adoption of enabling legislation and guidance on best practices, the Advisory Committee believes that all public entities will be able to develop written policies to conduct public proceedings remotely in a manner that addresses the needs of each individual public body and its constituents and stakeholders and while maintaining the central principles of openness and transparency embodied in Maine’s Freedom of Access Act.

VIII. FUTURE PLANS

In 2021, the Right to Know Advisory Committee will continue to discuss the ongoing issues identified in this report, including complaints related to misconduct of members of law enforcement. The Advisory Committee will also continue review of certain exceptions in Titles to 12 that were tabled and begin review of the exceptions in Titles 13 to 21-A. The Advisory Committee will also continue to assist 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 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; and
- 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.

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

MEMBERSHIP OF RIGHT TO KNOW ADVISORY COMMITTEE

As of January 1, 2021

Appointments by the Governor

Linda Cohen 4 Tamarack Drive South Portland, ME 04106	Representing Municipal Interests
Kevin Martin Department of Environmental Protection 17 State House Station August, ME 04333	Representing State Government Interests
Eric Stout 15 S. Ridge Dr. Winslow, ME 04901	Member with Experience in Information Technology Issues and Costs in Multiple Areas
Victoria Wallack 1035 Pond Road Mount Vernon, ME 04352	Representing School Interests

Appointments by the President of the Senate

Senator Michael E. Carpenter P.O. Box 1406 Houlton, ME 04730	Senate Member of the Judiciary Committee
Amy Beveridge 10 Stonewall Lane Saco, ME 04072	Representing Broadcasting Interests
Lynda Clancy 156 Main Street Rockport, ME 04856	Representing the Press
Luke Rossignol 1019 State Road Mapleton, ME 04757	Representing the Public
<i>Vacant</i>	Representing Law Enforcement Interests

Appointments by the Speaker of the House of Representatives

Representative Thomas Harnett
52 Marston Road
Gardiner, ME 04345

House Member of the Judiciary
Committee

Taylor Asen
126 William Street
Portland, ME 04101

Representing the Public

Suzanne Goucher
Maine Association of Broadcasters
69 Sewell Street, Suite 2
Augusta, ME 04330

Representing Broadcasting Interests

James Campbell
Maine Freedom of Information Coalition
Monroe Road
Searsport, ME 04974

Representing a Statewide Coalition of
Advocates of Freedom of Access

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

Representing Newspaper Publishers

Attorney General or Designee

Phyllis Gardiner
Office of the Attorney General
6 State House Station
Augusta, ME 04333

Designee

Chief Justice or Designee

Julia Finn
Maine Judicial Branch
P.O. Box 4820
Portland, ME 04112

Member of the Judicial Branch

APPENDIX C

Recommended Legislation to Amend Certain Provisions of Law in Titles 8 through 12 relating to previously-enacted Public records exceptions

**RECOMMENDED LEGISLATION TO AMEND EXISTING PUBLIC RECORDS
EXCEPTIONS REVIEWED IN TITLES 8 TO 12**

Sec. 1. **10 MRSA §1107** is amended to read:

§1107. Investigation by Attorney General

The Attorney General upon the Attorney General's own initiative or upon petition of 50 or more citizens of this State, shall investigate all seeming violations of sections 1102-A and 1105 to 1107, all contracts, combinations or conspiracies in restraint of trade or commerce, and all monopolies, and may require, by summons, the attendance and testimony of witnesses and the production of books and papers before the Attorney General relating to any such matter under investigation. The summons must be served in the same manner as summons for witnesses in criminal cases, and all provisions of law relating thereto apply to summonses issued under this section so far as they are applicable. All investigations or hearings thereunder or connected therewith to which witnesses are summoned or called upon to testify or to produce books, records or correspondence are ~~confidential public or private at the choice of the person summoned~~ and must be held in the county where the act to be investigated is alleged to have been committed, or if the investigation is on petition it must be held in the county in which the petitioners reside. Books, records or correspondence produced in response to a summons issued under this section may be disclosed by the Attorney General with the consent of the producing party and in court pleadings or other papers filed in court. The expense of such investigation must be paid from the appropriation provided by Title 5, section 203.

If, upon investigation, it appears to the Attorney General that the laws of this State, including sections 1102-A or 1105 to 1107, have been violated in any respect, the Attorney General shall prosecute the guilty parties and present all available information bearing upon such apparent violation to the proper prosecuting officer of the United States.

Any Justice of the Superior Court may by order, upon application of the Attorney General, compel the attendance of witnesses, the production of books and papers, including correspondence, and the giving of testimony, before the Attorney General in the same manner and to the same extent as before the Superior Court. Any failure to obey such order may be punishable by such court as a contempt.

Sec. 2. **12 MRSA §550-B, sub-§6** is amended to read:

6. Information use. Information collected by the Division of Geology, Natural Areas and Coastal Resources, Maine Geological Survey under this section is subject to Title 1, chapter 13, subchapter 1, ~~unless the well drilling company to whom the information belongs or pertains requests that it be designated as confidential and the bureau has determined it contains proprietary information. For the purposes of this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information the~~

~~disclosure of which would impair the competitive position of the person submitting the information and would make available information not otherwise publicly available.~~ The Division of Geology, Natural Areas and Coastal Resources, Maine Geological Survey shall make information collected under this chapter available to any federal, state or municipal entity or authorized agent of such entity.

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.

Section 1 amends a provision relating to books, records or correspondence summonsed in an antitrust investigation. The amendment makes the language consistent with how other exceptions refer to documents that are not subject to disclosure and clarifies that the confidentiality of the records is not tethered to an affirmative option of the person providing the records. The amendment further clarifies that books, records or correspondence produced in response to a summons may be disclosed by the Attorney General with the consent of the producing party and in court pleadings or other parties filed in court.

Section 2 amends a provision relating to water well information collected by the Department of Agriculture, Conservation and Forestry, Bureau of Geology, Natural Areas and Coastal Resources, Geological Survey. The amendment repeals the exception designating as confidential information collected by the Maine Geological Survey at the request of well drilling companies to whom the information pertains if the bureau has determined it contains proprietary information.

APPENDIX D

**Public records Exceptions Reviewed in 2020 for which no statutory
Change is Recommended**

Public records exceptions reviewed in 2020: Titles 8 to 12
Recommended to be Continued without Change

The following public records exceptions should remain in law as written:

- Title 8, section 270-A, relating to records and information included in application or materials required for issuance of commercial track license
- Title 8, section 300-B, subsection 10, relating to records of child support obligors provided to collect child support from pari-mutuel winnings
- Title 9-A, section 2-304, subsection 2, relating to reports of supervised lenders
- Title 9-A, section 6-105-A, last paragraph, relating to information concerning uniform multistate licensing system provided to Consumer Credit Protection by other jurisdictions
- Title 9-A, section 6-116, relating to the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection
- Title 9-A, section 6-117, relating to confidential information shared by agencies from other jurisdictions regulating consumer credit
- Title 9-B, section 226, subsection 1, relating to information derived by or communicated to the Bureau of Financial Institutions
- Title 9-B, section 252, subsection 3-A, relating to confidential information shared by agencies from other jurisdictions that regulate financial institutions
- Title 10, section 391, subsection 2, relating to the Small Enterprise Growth Program
- Title 10, section 391, subsection 3, relating to the Small Enterprise Growth Program
- Title 10, section 945-J, relating to the Maine International Trade Center concerning applications and proposals
- Title 10, section 975-A, subsections 2 and 3, relating to the Finance Authority of Maine concerning applications and proposals
- Title 10, section 1107, relating to books, records or correspondence summonsed in an antitrust investigation, at the discretion of the person being investigated
- Title 10, section 1109, subsection 4, relating to information reported to the Attorney General concerning acquisition of gasoline and heating oil assets
- Title 10, section 1188-A, relating to settlement conference discussions under the Maine Motor Vehicle Franchise Board
- Title 10, section 1495-G, subsection 3, relating to payroll processing bonding
- Title 10, section 1675, relating to information received by the Attorney General under the Petroleum Market Share Act
- Title 10, section 1677, relating to the name of retailers or retail outlets in Attorney General report concerning retail outlet concentration under Petroleum Market Share Act
- Title 10, section 8002, subsection 10, relating to information provided to the Commissioner of Professional and Financial Regulation
- Title 10, section 8003, subsection 2-A, relating to information shared with the Office of Licensing and Registration from other regulatory agencies on condition it remain confidential

- Title 10, section 8003-B, subsection 1, relating to complaints and investigations and client records of boards and commissions within or associated with the Department of Professional and Financial Regulation
- Title 10, section 8003-B, subsection 2-A, relating to complaints and investigations and client records of boards and commissions within or associated with the Department of Professional and Financial Regulation
- Title 10, section 9012, subsection 1, relating to information provided to the Department of Professional and Financial Regulation, Manufactured Housing Board
- Title 10, section 9202, subsection 1-B, relating to records of the Northern Maine Transmission Corporation (same language as Title 10, section 975-A)
- Title 12, section 544-B, subsection 4, relating to the location of a species or natural area
- Title 12, section 549-B, subsection 5, relating to investigatory and exploratory work reported under a mining permit
- Title 12, section 1827, subsection 3, relating to Department of Conservation records concerning camper reservations at state parks
- Title 12, section 8005, subsection 1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres
- Title 12, section 8005, subsection 2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs
- Title 12, section 8005, subsection 4, relating to forest management information designated confidential by agency furnishing the information
- Title 12, section 8423-C, subsection 4, relating to pre-salvage and salvage timber harvest reports
- Title 12, section 8611, subsection 1, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres
- Title 12, section 8869, subsection 13, relating to forest policy experimental areas
- Title 12, section 8883-B, subsection 8, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres
- Title 12, section 10110, subsection 1, relating to email address of hunting or fishing license applicant at request of applicant
- Title 12, section 12506, subsection 8, relating to eel, sucker, lamprey and yellow perch harvesting reports
- Title 12, section 12551-A, subsection 10, relating to smelt dealers' reports, including name, location, gear and catch
- Title 12, section 12804, subsection 5, relating to specific information concerning the location of a threatened or endangered species
- Title 12, section 12954, subsection 4, relating to records of purchasers and sellers maintained by hide dealers

APPENDIX E

Recommended Legislation related to 2020 Recommendations

**RECOMMENDED LEGISLATION
RELATED TO 2020 RECOMMENDATIONS**

Sec. 1. **1 MRSA §408-A, sub-§8** is amended to read:

8. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying.

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record as follows. ~~of not more than \$15 per hour after the first hour of staff time per request.~~ Compiling the public record includes reviewing and redacting confidential information.

(1) The agency or official may not charge a fee for the first 2 hours of staff time per request.

(2). After the first 2 hours of staff time, the agency or official may charge a fee of not more than \$25 per hour.

C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format.

D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies.

E. The agency or official may charge for the actual mailing costs to mail a copy of a record.

F. An agency or official may require payment of all costs before the public record is provided to the requester.

Sec. 2. **1 MRSA §408-A, sub-12** is enacted to read:

12. Retention of fees or costs. An agency may retain any fees or costs charged under this section.

SUMMARY

This draft makes the following changes.

1. It extends the time period for which an agency or official may not charge a fee for searching for, retrieving and compiling a requested public record from the first hour of staff time per request to the first 2 hours of staff time per request.
2. It increases the fee that may be charged after the first 2 hours of staff time per request for searching for, retrieving and compiling a requested public record from not more than \$15 per hour to not more than \$25 per hour.
3. It specifies that an agency may retain any fee or cost charged.

APPENDIX F

**Recommended Legislation related to 2019 Recommendations not finally
Acted on by 129th Legislature**

**RECOMMENDED LEGISLATION
RELATED TO 2019 RECOMMENDATIONS**

RECOMMENDED LEGISLATION TO CAP COPYING COSTS

Sec. 1. 1 MRSA §408-A, sub-§8, ¶A is amended to read:

A. The agency or official may charge a reasonable fee to cover the cost of copying. A reasonable fee to cover the cost of copying is no more than 10¢ per page for a standard 8½” x 11” black and white copy of a record. A per page copy fee may not be charged for records provided electronically.

Summary

This draft caps the fee to cover the cost of copying at no more than 10¢ per page for a standard 8½” x 11” black and white copy of a record and clarifies that a per page copy fee may not be charged for records provided electronically.

RECOMMENDED LEGISLATION TO AMEND FOAA TRAINING LAW

Sec. 1. 1 MRSA §412 is amended to read:

§412. Public records and proceedings training for certain elected officials and public access officers

1. Training required. A public access officer and an official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or public access officer shall complete the training not later than the 120th day after the date the official ~~takes the oath of office to assume~~ assumes the person's duties as an ~~elected~~ official or the person is designated as a public access officer pursuant to section 413, subsection 1.

2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:

- A. The general legal requirements of this chapter regarding public records and public proceedings;
- B. Procedures and requirements regarding complying with a request for a public record under this chapter; and
- C. Penalties and other consequences for failure to comply with this chapter.

An official or a public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

3. Certification of completion. Upon completion of the training course required under subsection 1, the official or public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The official shall keep the record or file it with the public entity to which the official was elected or appointed. A public access officer shall file the record with the agency or official that designated the public access officer.

4. Application. This section applies to a public access officer and the following officials:

- A. The Governor;
- B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;
- C. Members of the Legislature elected after November 1, 2008;
- D.
- E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;
- F. Municipal officers; ; municipal clerks, treasurers, managers or administrators, assessors, code enforcement officers and deputies for those positions; planning board members and budget committee members of municipal governments;
- G. Officials Superintendents, assistant superintendents and school board members of school administrative units; and
- H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

SUMMARY

This draft makes the following changes to the requirements for training.

1. It clarifies that an official must complete training within 120 days of assuming the duties of the position.
2. It expands the municipal officials required to completed training to include code enforcement officers, town managers and administrators and planning board members and clarifies that deputies of municipal clerks, treasurers, managers or administrators, assessors and code enforcement officers must also complete the training.
3. It clarifies that school superintendents, assistant superintendents and school board members are required to complete training.

RECOMMENDED LEGISLATION TO ADD TO REVIEW CRITERIA

Sec. 1. 1 MRSA §432, sub-§2, ¶G-1 is enacted to read:

G-1. Whether public access to the record ensures or would ensure that members of the public are able to make informed health and safety decisions;

Sec. 2. 1 MRSA §434, sub-§2, ¶G-1 is enacted to read:

G-1. Whether public access to the record ensures or would ensure that members of the public are able to make informed health and safety decisions;

SUMMARY

This draft adds to the list of criteria considered by the Right to Know Advisory Committee when reviewing existing public records exceptions and by the Judiciary Committee when evaluating proposed public records exceptions. The new criterion is whether the providing access to the record ensures or would ensure that members of the public are able to make informed health and safety decisions.

RECOMMENDED LEGISLATION TO AMEND RTKAC MEMBERSHIP

Sec. 1. 1 MRSA. §411, sub-§2, ¶M, as amended by PL 2015, c. 250, Pt. A, §1, is further amended to read:

M. The Attorney General or the Attorney General's designee; ~~and~~

Sec. 2. 1 MRSA §411, sub-§2, ¶N, as enacted by PL 2015, c. 250, Pt. A, §2, is amended to read:

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

Sec. 3. 1 MR.S.A. § 411, sub-§ 2, ¶ O is enacted to read:

O. One representative having legal or professional expertise in the field of data and personal privacy, appointed by the Governor.

SUMMARY

This draft adds a member to the Right to Know Advisory Committee who has legal or professional experience in the filed of data and personal privacy, to be appointed by the Governor.