



DEPARTMENT OF PUBLIC SAFETY

MAINE DRUG ENFORCEMENT AGENCY

STATE OF MAINE

OPERATIONS GENERAL ORDER

POLICY STATEMENT: It is the policy of the Maine Drug Enforcement Agency to ensure that:

- A. In accordance with the Maine Intelligence and Investigative Record Information Act and other applicable law, records that are confidential by law remain protected and are not publicly accessed or disseminated; and
- B. In accordance with the Maine Freedom of Access Act, any person shall be provided access to any public record in the custody of the Maine Drug Enforcement Agency within a reasonable period of time after making a request for access to the record.

TITLE: PUBLIC ACCESS TO AGENCY RECORDS

EFFECTIVE DATE: 10.01.2016		NUMBER: MANDATORY 5
REPLACES MDEA #2-19 (10.01.2016); AMENDED (10.12.2013); AMENDED MDEA #2-19 (03.27.2006); RESCINDS AND REPLACES MDEA-54 (06.01.2003)		RECENT HISTORY: AMENDS AND

DISTRIBUTION: UNRESTRICTED

SIGNATURE OF DIRECTOR: _____

I. PURPOSE

The purpose of this order is to establish guidelines for the inspection and copying Maine Drug Enforcement Agency records by the public.

II. DEFINITIONS

1. For the purpose of this General Order, the terms included in this section are defined as follows, unless otherwise indicated in the order.
 - A. **Administration of Criminal Justice.** "Administration of criminal justice" means activities relating to the apprehension or summoning, detention, pre-trial release, post-trial release, prosecution, adjudication, sentencing, correctional custody and supervision or rehabilitation of accused persons or convicted criminal offenders. "Administration of criminal justice" includes the collection, storage and dissemination of criminal history record information.
 - B. **Criminal justice agency.** "Criminal justice agency" means a federal, state or State of Maine government agency or any subunit of a government agency at any governmental level that performs the administration of criminal justice pursuant to a statute or executive

order. "Criminal justice agency" includes the Department of the Attorney General, district attorneys' offices and the equivalent departments or offices in any federal or state jurisdiction. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government and the government of any federally recognized Indian tribe.

- C. **Dissemination.** "Dissemination" means the transmission of information by any means, including but not limited to orally, in writing or by electronic means, by or to anyone outside the agency that maintains the information.
- D. **Intelligence and Investigative Record Information.** "Intelligence and investigative record information" means information of record collected by, prepared by or at the direction of the Maine Drug Enforcement Agency while performing the administration of criminal justice. "Intelligence and investigative record information" includes information of record concerning investigative techniques and procedures and security plans and procedures prepared by the Maine Drug Enforcement Agency. "Intelligence and investigative record information" does not include criminal history record information as defined in Title 16 §703(3) and does not include information of record collected or kept while performing the administration of juvenile justice.
- E. **Public Record.** "Public record" has the same meaning as the term "public records" as defined in Title 1 §402(3). The term "public record" does not include records that have been designated confidential by statute.¹

III. PROCEDURE

1. GENERAL RIGHT OF THE PUBLIC TO ACCESS RECORDS

- A. Except as otherwise provided by statute, every person has the right to access any public record in the custody of the Maine Drug Enforcement Agency during the regular business hours of the agency or Maine Drug Enforcement Agency employee having custody of the public record, within a reasonable period of time after making a request to access the record.
- B. A written or spoken request made by a person to access a Maine Drug Enforcement Agency record is presumed to be a request made

¹ Title 1, §402: Definitions

pursuant to the Maine Freedom of Access Act, regardless of whether the person expressly cites that law in making the request.

2. FREEDOM OF ACCESS ACT/RECORDS REQUEST CONTACT

- A. The Director is the agency's contact for persons requesting access to Maine Drug Enforcement Agency records.

3. SPECIFIC TYPES OF REQUESTS TO ACCESS RECORDS

- A. **Requests to Access Records Made via a Motion for Discovery in a Criminal Case.** A person requesting access to records pursuant to a motion for discovery relating to a pending criminal case shall be informed that the request must be forwarded to the Office of the Attorney General or District Attorney's Office having jurisdiction over the case to which the discovery request relates.
- B. **Requests to Access Records Made via a Motion for Discovery in a Civil Case.** A person requesting access records pursuant to a motion for discovery relating to a pending civil case must directly contact the Director to request such access.
- C. **Requests to Access Records Made via Subpoena to Inspect or Copy Records.** A person requesting access to records pursuant to a subpoena (whether related to a civil or criminal case) for the production of records must directly contact the Director to request such access.
- D. **Requests to Access Investigative Records.** Under Maine law, Maine Drug Enforcement Agency investigative records (and any and all attachments to such records) are confidential.² **Accordingly, investigative records may only be accessed by or disseminated if, and to the extent, permitted by law.**
1. **When public access to or dissemination of an investigative record is permitted by law, such dissemination must be through or by the Director.**
- E. **Requests to Access Criminal History Records.** A person requesting access to public criminal history record information must directly contact the Maine State Police, State Bureau of Identification to request such.
- F. **Requests to Access E-9-1-1 system records/information.** A person requesting access to E-9-1-1 system records or information must directly contact the Department of Public Safety, Bureau of Consolidated Emergency Communications to request such access.

² Title 25, §2957: Confidentiality

1. Access to E-9-1-1 system records/information is governed by Title 25 §2929: Confidentiality of system information.
 - G. **Requests to Access Records of Crimes Alleged or Proven to have been Committed by Juveniles.** A person requesting access to records relating to any crime alleged to have been committed by a juvenile, or proven to have been committed by a juvenile, must directly contact the Director to request such access.
 1. Generally speaking, public access to and dissemination of such records is **HIGHLY RESTRICTED.**³
 - H. **Requests to Access Personnel records.** A person requesting access to a Maine Drug Enforcement Agency employee's personnel record must contact the Director.
 1. **Many types of records in municipal, county and state employee personnel files are for the most part confidential.**⁴
 - I. **Requests to Access Personnel Records - "Giglio" requests.** Requests for so-called "Giglio information" must be forwarded to, and responded to by, the Director.
4. DISSEMINATION PERMITTED
- A. Dissemination of any Maine Drug Enforcement Agency intelligence and investigative record information is not precluded to another criminal justice agency; a court; or a person or public or private entity expressly authorized to receive the intelligence and investigative record information by statute, executive order, court decision or court order⁵ or a state agency responsible for investigating abuse, neglect or exploitation of children.⁶

NOTICE: THIS GENERAL ORDER IS FOR MAINE DRUG ENFORCEMENT AGENCY USE ONLY AND DOES NOT APPLY IN ANY CRIMINAL OR CIVIL PROCEEDING. THE GENERAL ORDER SHOULD NOT BE CONSTRUCTED AS TO CREATE, AND IS NOT INTENDED TO CREATE, A HIGHER LEGAL STANDARD OF SAFETY OR CARE IN AN EVIDENTIARY SENSE WITH RESPECT TO THIRD-PARTY CLAIMS. VIOLATIONS OF THIS ORDER ONLY MAY FORM THE BASIS FOR ADMINISTRATIVE SANCTIONS BY THE MAINE DRUG ENFORCEMENT AGENCY.

³ Title 15, §3009: Information related to reintegration of juvenile into school and Table of Contents for Chapter 507: PETITION, ADJUDICATION AND DISPOSITION

⁴ Title 30-A §2702 and 503, and Title 5 §7070: Personnel Records, respectively

⁵ Title 16, §805: Exceptions

⁶ Title 16, §806: Exceptions subject to reasonable limitations